17th Annual AB 1058 Child Support Training Conference

For Child Support Commissioners, Family Law Facilitators, Title IV-D Administrative and Accounting Staff, Paralegals, and Court Clerks

September 24–27, 2013

Los Angeles Airport Marriott Hotel

ADMINISTRATIVE OFFICE OF THE COURTS

JUDICIAL AND COURT OPERATIONS SERVICES DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

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We appreciate your attendance at the 17th Annual AB 1058 Child Support Training Conference. If you have any questions or comments, please contact the editors:

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(For child support commissioners only)

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Materials were distributed, not available online.

TAB B

New Child Support Commissioners' Orientation

(For child support commissioners only)

Hon. Adam Wertheimer,
Hon. Rebecca L. Wightman &
Mr. Michael L. Wright

Materials were distributed, not available online.

TAB C

Plenary Session: Welcomes/ Affordable Care Act and Child Support/Updates: AOC, DCSS, and Legislative

TAB C

Plenary Session: Welcomes

Hon. Scott M. Gordon &
Ms. Diane Nunn

TAB C

Plenary Session: Affordable Care Act and Child Support

Ms. Barbara Saunders

Child Support & The Affordable Care Act

Barbara Saunders – HMS

bsaunders@hms.com

17,000,000 Children

Source: 2000 U.S. Census

- 906 Pages

Shared Responsibility

- **The ACA seeks to expand coverage through four *shared responsibility* areas:**
  - Individual Mandate
  - Medicaid Expansion
  - Employer Requirements
  - Health InsuranceExchanges/Marketplaces

Individual Mandate

- Effective January 1, 2014
- Maintain *minimum essential coverage* or pay a penalty
- The adult or married couple who may claim a child as a dependent for federal income tax purposes is responsible for the penalty if the dependent does not have coverage or an exemption.
  - Hardship Exemption clarification June 2013
- Penalty must be paid when an individual's tax return is otherwise due (i.e. April 15).
  - The IRS may reduce the amount of the individual's tax refund in the future.
- Individuals who have coverage for one day in a month are considered to be covered for that month.
  - Individuals who are without coverage for less than three months in any year are not subject to the annual penalty.

Affordability Test

- Single father
- 2 dependent children
- Annual household income: $40,000
- Self-only coverage: $200/month
- Family coverage: $300/month

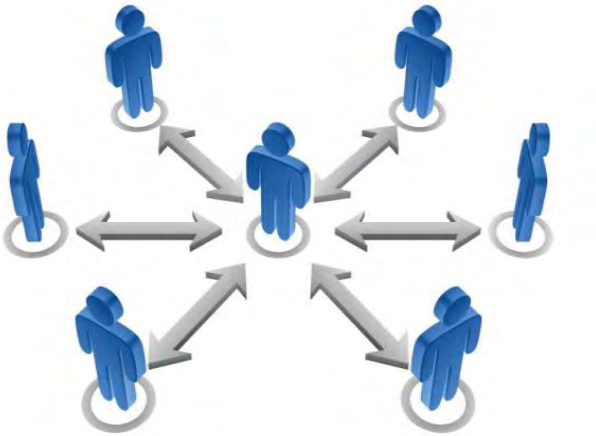
- Is coverage affordable?
  - (8% x $40,000 = $3,200)
- Father: Yes
  - Self only contribution: $2,400
  - No penalty if father maintains employer coverage
- 2 dependent children: No
  - Family coverage contribution: $3,600
  - If children remain uninsured the father will be exempt from paying a penalty

Employer Responsibility

- Effective **January 1, 2015**
  - **1 Year delay**
- Large employers must offer coverage to full-time employees and their dependents or pay a tax penalty if any full-time employee purchases coverage through an Exchange coverage and qualifies for a premium tax credit.
  - Large employers: 50 more full-time employees or full time equivalents in the preceding tax year
  - Full-time employees: works on average at least 30 hours per week
  - Dependents: children up to age 26 only
- If a large employer does not offer minimum essential coverage to full-time employees and their dependents, and one or more of their full-time employees receives a tax credit through the Exchange, the employer may be subject to a tax

Reporting Requirements

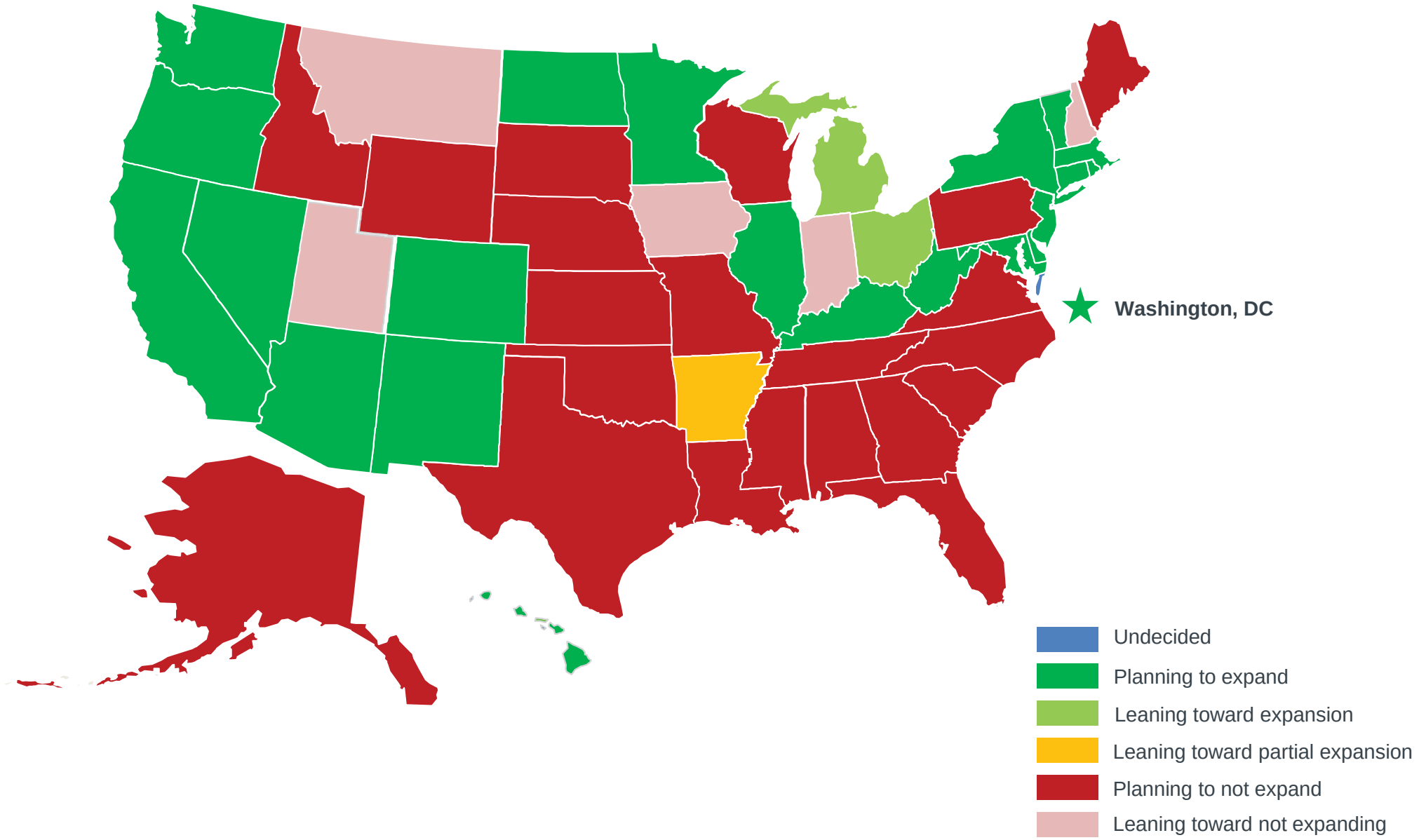
Employers Required to Report to IRS:



- Name, date, and employer identification number
- Whether minimum essential coverage is offered
- Length of wait period
- Months coverage was available
- Monthly premium for lowest-cost option
- Employer's share of cost
- Number of full-time employees for each month during the calendar year
- Name, address, and TIN of each full-time employee and months employees (and dependents) received coverage

Medicaid Expansion

- ACA required all states to expand Medicaid eligibility in January 2014 to individuals under 65 with incomes up to 133% of the Federal Poverty Level with virtually all of the costs of that expansion paid for by the federal government.
    - The supreme court ruling last summer made Medicaid expansion Optional
- Up to 12M newly eligible lives
- Streamlines income eligibility from 8 coverage groups to 3
    - Children
    - Pregnant women
    - Families (Parents/Caretaker relatives)
- Creates newly eligible coverage group to include non-pregnant/childless adults
- Requires adoption of Modified Adjusted Gross Income (MAGI) methodology for determining eligibility
- Replaces multiple income disregards with one 5% disregard for all programs



Medicaid Expansion; As of September 2013

Health Insurance Exchanges

- Implementation deadline: January 1, 2014
- States can run own Exchange or partner with CMS
  - Coveredca.com
- Single streamlined application for enrollment in a QHP, premium tax credits, cost-sharing reductions, Medicaid, and CHIP
- Real-time eligibility determinations
- Premium tax credits and cost-sharing reductions available to those between 100% to 400% FPL
- Must offer a child-only plan

Premium Tax Credits & Dependents

- Tax credits can only apply to a dependent if that child is claimed as a dependent for federal income taxes purposes by the parent filing for the premium credit.
- A non-custodial parents can cover their child under a QHP but are not eligible for the premium tax credit to offset the cost of coverage unless they can legitimately claim the child as a dependent on his or her income tax.
- Non-custodial parents living in different states from their children, but claim the child as a dependent (in order to access a tax credit through the Exchange), would not be permitted to enroll the child in a state which is not the home state of the child.

OCSE Perspective

Assistance is available to help parents find and enroll in coverage

- Healthcare.gov and 1-800-318-2596
- In-person assistance supported by the Marketplace
  - Navigators, certified application counselors, etc.
- Outreach and information tools at:

http://marketplace.cms.gov/getofficialresources/get-official-resources.html

Parent are exempt from the responsibility to cover themselves and their children if:

- They experience a hardship as defined by the Secretary of HHS.
- Federal Marketplaces will exempt a child who has been determined ineligible for Medicaid and CHIP, and for whom a party other than the party who expects to claim the child as a tax dependent is required by court order to provide medical support. (CCIIO Guidance June 26, 2013)
- State Marketplaces can do this too.

The Affordable Care Act does not amend Title IV-D.

- Child Support agencies still have the same medical support responsibilities under statute.
- Employers' medical support responsibilities have not changed.

Encourage states to:

- Help families connect to new coverage options through the Marketplace.
- Partnering with other programs
- Communicate with the Marketplace in your state.
- Talk to your state Medicaid agency.
- Educate employers

  www.sba.gov/healthcare

  https://www.healthcare.gov/small-businesses
- Data exchange authorities and procedures

Think about:

- Assuring that the parent who is responsible for providing coverage is the same parent who claims the child as dependent on their federal tax return

- How your state defines medical support (private and public coverage, cash)
- Updating your state's definition of reasonable cost.
  - Under the Affordable Care Act's individual responsibility requirements, coverage is not considered affordable if the premium is more than *eight percent* of household income

Role of the Child Support Program in Medical Support

California Child Support Program

- County operated w/State oversight
- 58 Counties; 51 LCSAs
- Judicial
- 1.318 million cases
  - ✓ 361,200 Currently Aided
  - ✓ 657,300 Formerly Aided
  - ✓ 300,200 Never Aided
- 1,381,121 kids in IV-D caseload
  - ✓ 636,332 IV-D kids with public healthcare coverage
  - ✓ 138,583 IV-D kids with private health coverage
  - ✓ 173,169 IV-D kids with combination of public & private
  - ✓ 433,037 IV-D kids with no known coverage

About California

- Medical-only cases are *not* referred to IV-D
- CA is expanding Medicaid under the ACA ("MediCal")
- CA is bringing up its own exchange ("Covered California")
  - ✓ CC estimates 5.3m in CA are uninsured
- Counties currently responsible for Medically Indigent
- Covered California interested in 138% - 400% of FPL population
- CA going to bring up SHOP in October/January

California ACA & CS Workgroup

- Child Support Directors Association of California
  - ✓ http://www.csdaca.org/
- Report released July 2013

What should the role of child support be with regard to medical support, given the ACA?"

- Environmental Scan
  - ✓ Laws &Regulations
  - ✓ Automation
  - ✓ Policies & Procedures
- Mitigation Strategies
- Recommendations for local, state, national response

CSDA Child Support Workgroup Members

- CSDA
- DCSS
- AOC
- OCSE Region IX
- HMS

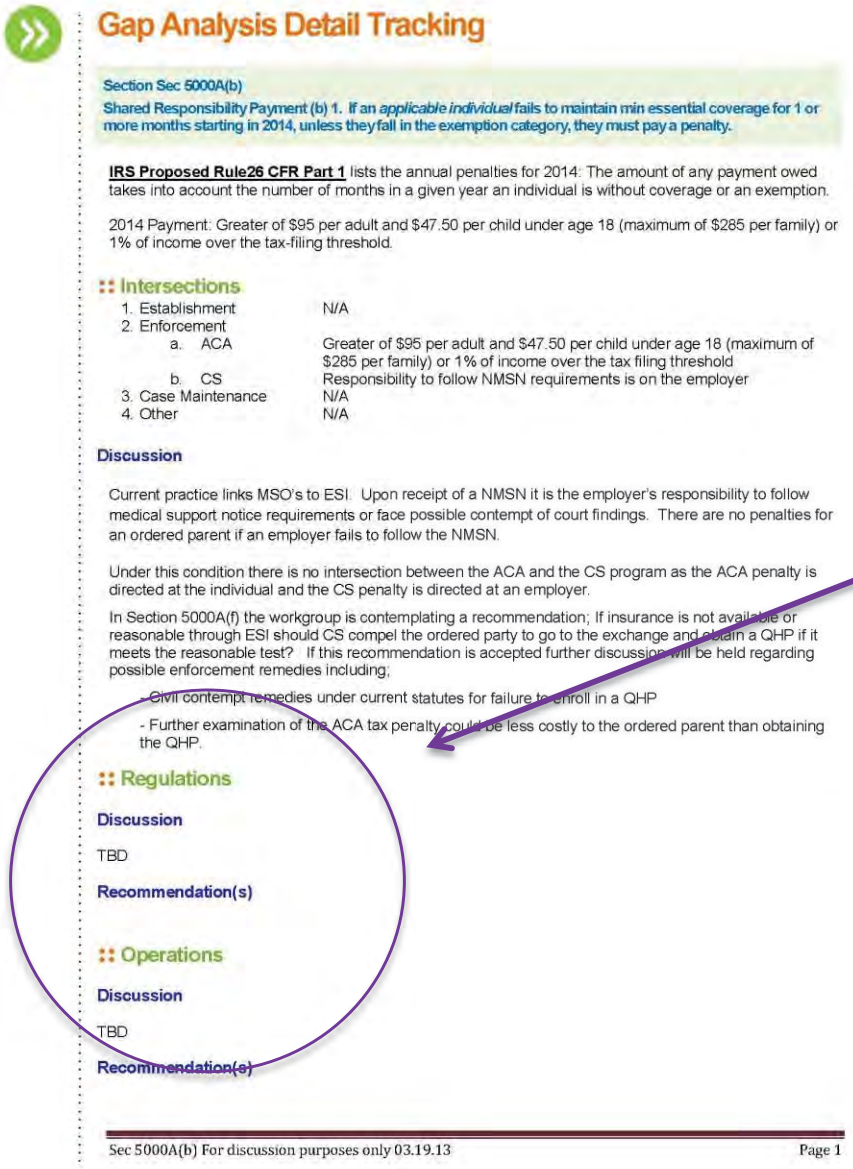
- Los Angeles
- Yolo
- Fresno
- Ventura
- Sonoma
- Sacramento
- San Mateo
- Sierra-Nevada
- Santa Cruz-San Benito
- Merced

Child Support & ACA Matrix

Individual Mandate

ACA/US Code	IRS, CMS Proposed/Final Rules and Guidance	OCSE CFR & Guidance	STATE Code & Guidance	Intersections
Part 1: Individual Responsibility **Sec 5000(a): Requirement to maintain minimum essential coverage.** Beginning 1.1.14 nonexempt -individual must maintain "min essential coverage" for themselves and any nonexempt person who may be claimed as a dependent of the individual or be subject to a tax penalty	**Who obtains coverage:** The provision applies to individuals of all ages, including children and seniors. The adult or married couple who can claim a child or another individual as a dependent for federal income tax purposes is responsible maintaining coverage for the dependent or making the payment if the dependent does not have coverage or an exemption. If an individual with respect to whom the shared responsibility payment is imposed for a month is another individual's dependent for the taxable year including that month, the other individual is liable for the shared responsibility payment for the dependent **Definition of Dependent, as defined by US Code 26 USC Section 152 ;** In the context of the individual mandate, a dependent is any individual whom n individual n could claim as a dependent on his federal income tax return (whether or not he actually claims the dependent). If more than one person could claim a dependent, the person who actually claims the dependent (or who has priority to claim the dependent, if no one does) is responsible for the penalty.	**CFR 303.31 The state IVD agency must;** (1) Petition the court or administrative authority to include private health insurance that is accessible to the child(ren), as defined by the State, and is available to the parent responsible for providing medical support at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support;		**Establishing MSO** ACA- Individual who could claim child for federal tax purposes CS- Either parent or both

Analysis Example



Gap Analysis Detail Tracking

Section Sec 5000A(b)

Shared Responsibility Payment (b) 1. If an *applicable individual* fails to maintain min essential coverage for 1 or more months starting in 2014, unless they fall in the exemption category, they must pay a penalty.

IRS Proposed Rule26 CFR Part 1 lists the annual penalties for 2014: The amount of any payment owed takes into account the number of months in a given year an individual is without coverage or an exemption.

2014 Payment: Greater of $95 per adult and $47.50 per child under age 18 (maximum of $285 per family) or 1% of income over the tax-filing threshold.

:: Intersections

1. Establishment	N/A
2. Enforcement	
a. ACA	Greater of $95 per adult and $47.50 per child under age 18 (maximum of $285 per family) or 1% of income over the tax filing threshold
b. CS	Responsibility to follow NMSN requirements is on the employer
3. Case Maintenance	N/A
4. Other	N/A

Discussion

Current practice links MSO's to ESI. Upon receipt of a NMSN it is the employer's responsibility to follow medical support notice requirements or face possible contempt of court findings. There are no penalties for an ordered parent if an employer fails to follow the NMSN.

Under this condition there is no intersection between the ACA and the CS program as the ACA penalty is directed at the individual and the CS penalty is directed at an employer.

In Section 5000A(f) the workgroup is contemplating a recommendation; If insurance is not available or reasonable through ESI should CS compel the ordered party to go to the exchange and obtain a QHP if it meets the reasonable test? If this recommendation is accepted further discussion will be held regarding possible enforcement remedies including;

- Civil contempt remedies under current statutes for failure to enroll in a QHP
- Further examination of this ACA tax penalty could be less costly to the ordered parent than obtaining the QHP.

:: Regulations

Discussion

TBD

Recommendation(s)

:: Operations

Discussion

TBD

Recommendation(s)

Sec 5000A(b) For discussion purposes only 03.19.13 Page 1

"Knowing what we know, what do we need to do? What do we want to do?"

Key Discussion Points

Order Establishment

- Definition of income (MAGI)
- Definition of “affordable”
- Other Guideline Considerations
  - ✓Tax exemptions for dependents
  - ✓Credit for medical expense
- Generally, *both* parents are ordered to provide medical coverage

Key Discussion Points

Medical Support Enforcement

- We enforce only via NMSN
  - ✓ No employer-provided coverage for NCP? We go no further.
- Cash medical language is generic – 50/50 share of uncovered expenses
- **Rare** to enforce against CP
- Unreliable data in system

Report Recommendations

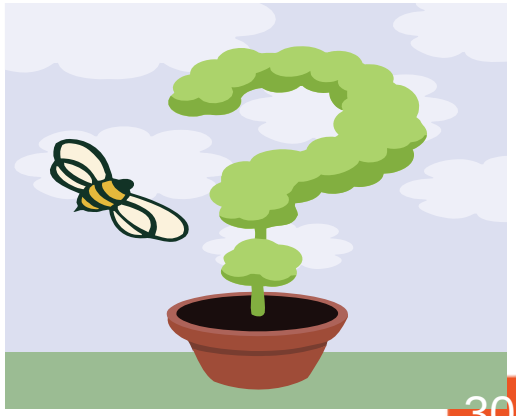
Short Term – CA Specific

- Do not seek legislative changes prior to the January 2014 implementation
- Do not seek to amend state laws unless federal regulations are amended
- Develop statewide training and outreach
  - ✓ Local staff and courts
  - ✓ Employers
  - ✓ Customers
- Develop FAQs
  - ✓ ACA Overview
  - ✓ Covered CA
  - ✓ Individual Mandate
  - ✓ CS and ACA intersection
- Establish collaborative workgroup AB 1058 (IV-D court)
  - ✓ Identify inconsistent policies
  - ✓ Tax exemption
  - ✓ Guideline factors
  - ✓ Examine current practice for medical support order establishment; CP, NCP, both?

Report Recommendations

Long Term – National level. What should the role of IV-D program be with regards to establishing and enforcing medical child support, given the implementation of the ACA

- Keep up dated on OCSE related activities
  - Provide comments and input
- Track Federal regulations as the relate to ACA and Child Support
  - Encourage collaboration between CMS, Dept. of Treasury and OCSE
- Support creation of a National Medical Support Workgroup to study and determine the future of Medical Child Support prior to the issuance of new program regulations



Final words of advice

- Stay informed – there are lots of moving parts
- Work collaboratively with your child support partners

TAB C

Plenary Session:
AOC Update

Mr. Michael L. Wright &
Ms. Anna L. Maves

Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title
Family Law: New Rule for Title IV-D Case Transfers to Tribal Court

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.372

Recommended by
California Tribal Court/State Court Forum
Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair

Family and Juvenile Law Advisory Committee
Hon. Kimberly J. Nystrom-Geist, Cochair
Hon. Dean T. Stout, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2014

Date of Report
September 10, 2013

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Executive Summary

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly propose a new California rule of court that would provide a consistent procedure for the discretionary transfer of title IV-D child support cases from the state superior courts to tribal courts when there is concurrent jurisdiction over the matter in controversy. This proposal was initiated as a result of meetings between the Yurok Tribe, federal Office of Child Support Enforcement, and the California Department of Child Support Services (DCSS).

Recommendation

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2014, adopt a new rule of court,

California Rules of Court, rule 5.372, to provide a consistent procedure for the discretionary transfer of title IV-D child support cases from the state superior courts to tribal courts when there is concurrent jurisdiction over the matter in controversy.

Previous Council Action

There has been no previous council action.

Rationale for Recommendation

This proposal responds to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state superior court to the tribal IV-D child support court when there is concurrent subject matter jurisdiction.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. No. 104-193, as amended by the Balanced Budget Act of 1997, P.L. No. 105-33 (111 Stat. 251), authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, the only option available to tribal members seeking child support program services was to apply to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for start-up planning for a tribal child support program on August 1, 2011. The Yurok was required to have comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs has created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the superior court to the tribal court. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, the proposed rule is drafted in anticipation that other tribes may develop such programs in the future. Some of the information considered in developing this rule are the following:

- When tribal IV-D child support programs have been developed in other states, tribes and states have followed similar procedures of developing state rules of court and tribal/state IV-D agency protocol agreements to provide for the orderly transfer of court cases and management responsibility for child support services.[1]

- In order to allow future tribal IV-D programs to tailor their specific needs to the procedure for identifying and transferring cases from the state title IV-D program, not every

[1] According to the federal Office of Child Support Enforcement, there are currently 52 tribal IV-D agencies located in the United States.

operational aspect or procedure of the respective IV-D agencies will be addressed by the statewide rule of court. The state title IV-D program and the Yurok Tribe IV-D program will be concurrently executing protocol agreements to set forth the agencies' respective responsibilities for the process of transferring case management responsibilities for child support services from the state to the tribe. Some examples of protocol provisions would include the process for identifying the specific tribal IV-D cases/parties that would be given notice of the intent to request case transfer, the number of cases selected for transfer, and how often the case transfers occur. These protocols may vary from tribe to tribe as new tribal programs come on board and protocol agreements are negotiated with DCSS.

- It is anticipated that the tribal IV-D agency and state IV-D agency will exchange information to identify child support cases with existing child support orders that would be appropriate for transfer from the superior court to the tribal court. Rule 5.372 is intentionally broad to allow the tribal IV-D agency and DCSS to develop protocols to meet the unique needs of each of the tribal IV-D programs and DCSS. Further, although it is anticipated that either a tribal IV-D agency or a state IV-D agency will be the party initiating case transfer, the rule allows for flexibility to permit a party to request transfer where appropriate.

- Each hearing on a request for case transfer will be heard in the superior court by the child support commissioner. The court's cost for the hearing and for transferring the file to the tribal court are reimbursable by the superior court's title IV-D grant as a title IV-D function.

- The content of the first proposed protocol helped inform the committee and the forum about what should be in the proposed rule of court and what will be reserved for the protocol developed between DCSS and the Yurok tribal child support agency. In order to accommodate the various needs of tribes who will apply for title IV-D funding, the committee and the forum expects each protocol to be different. The proposed protocol between the Yurok tribal child support agency and DCSS sets out that if both parties object to the case transfer from state to tribal court, the tribal child support agency will rescind the transfer request and no motion for the case transfer will be filed. If neither party objects to the case transfer, the matter will still go before the superior court for a finding on whether concurrent jurisdiction exists and an order for case transfer. If only one party objects, the matter will go before the superior court for a hearing on the issue of case transfer.

- The issue of concurrent jurisdiction between state and tribal courts is governed by various statutes and case law, for example:

    - In 1953, through the enactment of Public Law No. 83-280 (Public Law 280) (18 U.S.C. § 1162 and 28 U.S.C. § 1360), Congress extended to six states (including California) state jurisdiction over many crimes and some civil matters when the cause of action arose in Indian Country. While Public Law 280 extended state jurisdiction in specified areas, it did not diminish any inherent tribal court jurisdiction. Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as

long as they are willing to assume jurisdiction. *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630.

- The Full Faith and Credit for Child Support Orders Act, P.L. No. 103-383 (28 U.S.C. § 1738(B) mandates full faith and credit for child support orders between tribal and state courts. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment on the proposal was circulated for public comment from April 19, 2013, through June 19, 2013, to the standard mailing list for family and juvenile law proposals including child support professionals, as well as to the regular rules and forms mailing list.[2] These distribution lists include appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, child support commissioners, court administrators, attorneys, family law facilitators, court clerks, social workers, probation officers, mediators, the California Department of Child Support Services, the Child Support Directors Association's forms committee and legal practices committee, title IV-D program directors, and other family and juvenile law professionals. The invitation to comment was also circulated to California Tribal Leaders, Tribal Advocates and the Statewide Indian Child Welfare Act Working Group.

Seven written comments were received. Of these, all seven commentators agreed with the proposed rule of court. The committee and the forum reviewed and analyzed the comments and responded to a question submitted by one of the commentators. A chart of comments received and the committee and the forum's responses is attached at pages 9–11.

Several comments related to the proposed tribal transfer rule of court, including comments from the Superior Courts of Los Angeles, Orange and San Diego Counties. All three courts were supportive of the proposal. Specifically the Superior Court of Los Angeles County stated that the proposed rule is appropriate to promote the sovereignty of federal recognized tribes and provides consistency in the transfer procedure. Although neither the Superior Courts of Orange County nor San Diego County provided a specific comment regarding the proposal, both indicated they were supportive of the proposed rule. The Superior Court of San Diego County did ask whether the proposed rule applies only to cases that originated by the local child support agency or whether it also applies to dissolution cases in which a change of payee is filed and the local child support agency enforces the support order. The committee and forum revised the proposed rule to add the definition of a title IV-D case in the definition section of the rule. This definition

[2] As reflected in the attached comment chart, when rule 5.372 was circulated for comment, the rule number was identified as 5.380. Upon review, it was determined that there is already a rule of court with that number. Accordingly the proposed rule of court has been changed to rule 5.372 and all references to the rule number have been changed.

provides that title IV-D child support cases include all cases in which title IV-D services are being provided, whether the case originated by the local child support agency filing a summons and complaint or subsequently became a title IV-D cases when the local child support agency registered a child support order or intervened into a child support action by filing a change of payee. The committee and forum provided further clarification that under the proposed rule, at subsection (f), only the child support and custody provision of the action transfer to the tribal court.

The Yurok Child Support Services submitted a comment agreeing with the proposed rule and stated that the transfer rule is necessary because there has never been a tribal title IV-D child support program in California and the rule encourages cooperation between the state and tribe to provide child support services.

The California Judges Association also submitted a comment agreeing with the proposed rule because it will set up statewide procedures and boundaries for the transfer of child support cases from states courts to tribal courts.

Although the invitation to comment specifically requested comments on whether current title IV-D grant funding would be sufficient to address any additional costs associated with the transfer of title IV-D cases, there were no comments that responded to this question.

As an alternative to the proposed rule, the committee and the forum considered allowing each superior court to develop a local rule to transfer governmental child support cases to the tribal courts. This option was not considered practicable because while a tribe may be located in a single county, its members may be found throughout the state. The Yurok Tribe expects that it may have members with child support cases in counties throughout the state. Therefore, it is not practical to anticipate each of California's approximately 111 federally recognized tribes working out individual agreements with local courts in the 58 counties. There needs to be a uniform statewide rule. Circulating this new rule for public comment helps to ensure that it will reflect the needs of the state trial courts and the tribal courts. The committee and forum further concluded that the failure to enact a statewide rule would increase costs to the local courts by requiring each court to go through the process to develop its own local rule.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts of the rule should be minimal; courts would need to transfer cases to the tribal courts even without the adoption of the rule. Existing Judicial Council forms can be used for filing the request for case transfer with the superior court and for issuing orders after the hearing. Implementation of the rule may require some training of court staff in a new case transfer procedure for those courts that will be transferring cases. These one-time operational costs should be outweighed by the benefit to individual courts of not having to individual develop and enact local rules of court. Justice partners, including the Department of Child Support Services and the tribal IV-D programs, will have costs associated with creating notice forms and informational materials on the objection

process. DCSS and the only current tribal IV-D court recognize these costs and are nevertheless supportive of a statewide rule. Absent a statewide rule of court, there would be additional costs to justice partners, including the tribal courts, the California Department of Child Support Services, and local child support agencies, in having to train their staff in multiple local procedures.

Attachments

1. Cal. Rules of Court, rule 5.372 at pages 7–8.
2. Chart of comments at pages 9–11.

Rule 5.372 of the California Rules of Court is adopted, effective January 1, 2014, to read:

Rule 5.372. Transfer of title IV-D case to a tribal court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases from a California superior court to a tribal court.

(b) Definitions

(1) "Tribal court" means any tribal court of a federally recognized Indian tribe located in California that is receiving funding from the federal government to operate a child support program under title IV-D of the Social Security Act (42 U.S.C. § 654 et seq.).

(2) "Superior court" means a superior court of the state of California.

(3) "Title IV-D child support cases" include all cases where title IV-D services are being provided whether the case originates from the local child support agency's filing of a summons and complaint or later becomes a title IV-D cases when the local child support agency registers a child support order or intervenes in a child support action by filing a change of payee.

(c) Disclosure of related case

A party must disclose in superior court whether there is any related action in tribal court in the first pleading, in an attached affidavit, or under oath. A party's disclosure of a related action must include the names and addresses of the parties to the action, the name and address of the tribal court where the action is filed, the case number of the action, and the name of judge assigned to the action, if known.

(d) Notice of intent to transfer case

Before filing a motion for case transfer of a child support matter from a superior court to a tribal court, the party requesting the transfer, the state title IV-D agency, or the tribal IV-D agency must provide the parties with notice of their right to object to the case transfer and the procedures to make such an objection.

(e) Determination of concurrent jurisdiction

The superior court may, on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under California Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and

postjudgment cases. When ruling on a motion to transfer, the superior court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the transfer will occur unless a party has objected in a timely manner. On the filing of a timely objection to the transfer, the superior court must conduct a hearing on the record considering all the relevant factors set forth in (f).

(f) Evidentiary considerations

In making a determination on the application for case transfer, the superior court must consider:

(1) The nature of the action;

(2) The interests of the parties;

(3) The identities of the parties;

(4) The convenience of the parties and witnesses;

(5) Whether state or tribal law will apply;

(6) The remedy available in the superior court or tribal court; and

(7) Any other factors deemed necessary by the superior court.

(g) Order on request to transfer

The court must issue a final order on the request to transfer including a determination of whether concurrent jurisdiction exists.

(h) Proceedings after order granting transfer

Once the superior court has granted the application to transfer, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Lexi Howard Legislative Director	A	The California Judges Association provides the following comments on the proposed rule, as specified in Invitation to Comment SPR13-17. This proposal is for the creation of a new CRC providing a consistent procedure for the discretionary transfer of IV-D child support cases from State Court to Tribal Courts when there is concurrent jurisdiction. The hearing of the request for the transfer would be heard in the Superior Court by the AB 1058 Child Support Commissioner with the costs of the hearing and the potential transfer reimbursable by the IV-D grant. This is a new development because up to now there has never been a Tribal IV-D agency in California. It will require some additional information to be disclosed in a IV-D child support proceeding in State Court and the potential for additional hearing/s if the party objects to the transfer to Tribal Court. It does however provide for a uniform statewide rule rather than a multitude of local rules. CJA supports SPR13-17 because it will help set the boundaries and procedures for the potential transfer of a child support case from State to Tribal Courts and make a statewide rule for all State Courts to follow if and when applicable.	No response required.
2.	Child Welfare Services Corey Kissel CWS Policy Analyst	A	This proposed change does not impact Child Welfare Services.	No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Orange County Bar Association Wayne R. Gross President	A	No specific comments.	No response required.
4.	Superior Court of Los Angeles County	A	Given that there is one tribal child support agency in California which has gone through the requirements to qualify for Title IV-D funding and others are expected to follow, this CRC is appropriate to promote the sovereignty of federally recognized tribes and provide consistency in transfer procedures.	No response required.
5.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A	Is it intended that the new rule only applies to cases that originate with DCSS or would this also apply to regular dissolution cases in which a substitution of payee is filed and DCSS is enforcing support?	The committee and forum revised the proposed rule to provide further clarification in response to this comment. The rule will behas been revised in the definition section to provide clarification that a title IV-D child support cases include all cases where title IV-D services are being provided whether the case originated by the local child support agency filing a summons and complaint or subsequently becomes a title IV-D cases by the local child support agency registering a child support order or intervening into a child support action by filing a change of payee. Also, subsection (f) of the proposed rules specifies that only the child support and custody provisions of the action transfer.
6.	Hon. Rebecca Wightman Child Support Commissioner Superior Court of San Francisco County	A	I agree with the proposed rule, and believe it is very important to have a statewide rule that will be applicable to all courts on this subject.	No response required.
7.	Yurok Child Support Services Denise Bareilles	A	The proposed rule of court acknowledges the tribe's inherent jurisdiction over domestic	No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-17

Family Law: New Family Law Rule for Title IV-D Case Transfers to Tribal Court (adopt Cal. Rules of Court, rule 5.380 [now rule 5.372])

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Staff Attorney/Program Manager		relations matters. The case transfer rule is necessary because there has never been a Title IV-D tribal child support agency in California. The rule facilitates the tribal court and associated tribal child support agency's ability to work cases that are under the tribe's jurisdiction. The rule encourages a cooperative manner for the state and tribe to work together in servicing child support cases.	

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**DRAFT** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: **RESPONDENT/DEFENDANT:** **OTHER PARTY/PARENT:**	
EX PARTE APPLICATION TO ☐ ISSUE, ☐ MODIFY, OR ☐ TERMINATE AN EARNINGS ASSIGNMENT ORDER	CASE NUMBER:

APPLICANT DECLARES

1. ☐ **Child support** was ordered as follows on *(date):*
   a. Child's name b. Date of birth c. Monthly amount d. Payable by *(party):* e. Payable to *(party):*

   f. Total amount unpaid (arrears) is at least: $ as of *(date):*

2. ☐ **Spousal or domestic partner support** ☐ **family support** was ordered as follows:
   a. Date of order:
   b. Payable by ☐ petitioner ☐ respondent ☐ other parent
   c. Payable to ☐ petitioner ☐ respondent ☐ other *(specify):*
   d. Total amount unpaid (arrears) is at least: $ as of *(date):*

3. ☐ **Interest and penalties**
   a. The amount of arrears stated in items 1f and 2d ☐ does ☐ does not include interest at the legal rate. *(If interest is not included, it is not waived.)*
   b. The amount of arrears stated in items 1f and 2d ☐ does ☐ does not include penalties at the legal rate. *(If penalties are not included, they are not waived.)*

4. ☐ ***(Complete for support ordered before July 1, 1990, only)***
   Payment of ☐ child support ☐ spousal or partner support is overdue in the sum of at least one month's payment.
   Written notice of my intent to seek an earnings assignment was
   a. ☐ given at least 15 days before the date of filing this application
      (1) ☐ by first class mail.
      (2) ☐ by personal service.
      (3) ☐ contained in the support order described in item 1 or 2.
      (4) ☐ other *(specify):*

   b. ☐ waived *(explain)*:

5. ☐ An earnings assignment order has not been issued for support ordered after July 1, 1990.

Form Adopted for Mandatory Use
Judicial Council of California
FL-430 [Rev. January 1, 2014]

Family Code, §§ 3901, 5230, 5240, 5252
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	CASE NUMBER:

ISSUANCE OF EARNINGS ASSIGNMENT ORDER

6. **I request** an earnings assignment order issue for the following monthly deductions:
   a. ☐ $ per month current **child support.**
   b. ☐ $ per month current **spousal or domestic partner support.**
   c. ☐ $ per month current **family support.**
   d. ☐ $ per month **child support arrears.**
   e. ☐ $ per month **spousal or domestic partner support arrears.**
   f. ☐ $ per month **family support arrears.**
   g. **Total deductions per month:** $

MODIFICATION OF CHILD SUPPORT EARNINGS ASSIGNMENT ORDER

7. ☐ The existing earnings assignment order for child support should be modified as follows *(specify):*

The modified earnings assignment order is requested because *(check all that apply):*

a. ☐ One or more of the following children listed in the child support order are emancipated (support is no longer required by law) as of the following dates (name each emancipated child and date of emancipation):

b. ☐ The support arrears in this case are paid in full, including interest.

c. ☐ The earnings assignment order must be conformed to the most recent support order as follows *(specify):*

d. ☐ The local child support agency is no longer enforcing the current support obligation in this case but is required to collect and enforce any arrears owing.

e. ☐ Other *(specify):*

TERMINATION OF CHILD SUPPORT EARNINGS ASSIGNMENT ORDER

8. ☐ The earnings assignment order for child support should be terminated because *(check all that apply):*
   a. Past due support has been paid in full, including any interest due.
   b. ☐ There is no current support order.
   c. ☐ The child reached age 18 and completed the 12th grade on *(date):*
   d. ☐ The child reached 18 and is no longer a full-time high school student as of *(date):*
   e. ☐ The child reached age 19.
   f. ☐ The child died on *(date):*
   g. ☐ The child married on *(date):*
   h. ☐ The child went on active duty with the armed forces of the United States on *(date):*
   i. ☐ The child received a declaration of emancipation under Family Code section 7122 *(name each child and give details):*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	CASE NUMBER:

8. *(continued)*

j. ☐ The previous stay of the earnings assignment was improperly terminated *(specify):*

k. ☐ The State Disbursement Unit has been unable to deliver payment for a period of six months due to the failure of the support recipient to notify the State Disbursement Unit of a change in his or her address.

l. ☐ Other *(specify):*

MODIFICATION OF SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT EARNINGS ASSIGNMENT ORDER

9. ☐ The existing earnings assignment order for spousal, domestic partner, or family support should be changed as follows *(specify):*

The modified earnings assignment order is requested because *(check all that apply):*

a. ☐ The support arrears in this case are paid in full, including interest.

b. ☐ The earnings assignment order must be conformed to the most recent support order as follows *(specify):*

c. ☐ Other *(specify):*

TERMINATION OF SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT EARNINGS ASSIGNMENT ORDER

10. ☐ The earnings assignment order for spousal, domestic partner, or family support should be terminated because *(specify):*

a. Past due support has been paid in full, including any interest due.

b. ☐ There is no current support order.

c. ☐ The supported spouse or domestic partner remarried or registered a domestic partnership on *(date):*

d. ☐ The supported spouse or partner died on *(date):*

e. ☐ By terms of the current order, spousal, partner, or family support terminated on *(date):*

f. ☐ A previous stay of wage assignment was improperly terminated *(specify):*

g. ☐ The ☐ employer ☐ State Disbursement Unit has been unable to deliver payment for a period of six months due to the failure of the support recipient to notify that employer or the State Disbursement Unit of a change in his or her address.

h. ☐ Other*(specify):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ SIGNATURE

TAB C

Plenary Session:
DCSS Update

Ms. Vickie Contreras

No materials distributed.

TAB C

Plenary Session:
Legislative Update

Mr. Alan Herzfeld

End of Session Legislative Update

2013 AB 1058 Conference

Materials

- Handout
- Protective and Restraining Order Bills
- Parentage Bills
- Court and Statute Bills

ADMINISTRATIVE OFFICE OF THE COURTS

Protective & Restraining Order Bills

- AB 157: Expands activities for which protective orders can be issued under DVPA.
- AB 161: Expands restraining orders for financial matters.
- AB 176: Declares priority for no-contact orders

ADMINISTRATIVE OFFICE OF THE COURTS

Parentage Bills

- SB 274 (Leno)

  Allows a court to find that a child has more than two parents if such a finding is necessary to avoid harm to the child.

ADMINISTRATIVE OFFICE OF THE COURTS

Parentage Bills

- SB 115 (Hill)
  - The “Jason Patrick” bill.
  - Would grant standing to sperm donors who accept a child and holds the child out as his own.
  - Two year bill.

ADMINISTRATIVE OFFICE OF THE COURTS

Court and Statute Bills

- AB 868 (Amiano)

  Requires training in sensitivity and cultural competency for any judges, referees, commissioners, CASAs, mediators, and others who work with LGBT youth.

ADMINISTRATIVE OFFICE OF THE COURTS

Court and Statute Bills

- AB 1403 (Judiciary Committee)
  - Amends the Uniform Parentage Act to be gender-neutral.
  - Allows up to 10 SJO positions to be converted to judgeships so family and juvenile cases can be heard by judges.

ADMINISTRATIVE OFFICE OF THE COURTS

Follow Up Questions?

Alan Herzfeld

Associate Attorney

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916-323-3121

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ADMINISTRATIVE OFFICE OF THE COURTS

2013 AB 1058 Conference Legislative Update

Listed below are the family law related bills that have been passed the Legislature in 2013. Eight of these bills have been signed by the Governor and have a Chapter number assigned. With the exception of SB 115, the rest are enrolled and are being considered by the Governor. The status of the bills is as of Wednesday, September 18th. The Governor has until October 13th to sign or veto these bills. To obtain the text, status, history, or analyses of any bill listed below, go to leginfo.legislature.ca.gov, and use the Bill Information button to locate the bill. If you have further questions, please contact Alan Herzfeld at (916) 323-3121, or alan.herzfeld@jud.ca.gov.

AB 157 (Campos) Protective orders: credibly impersonating and falsely personating
Status: Signed by the Governor (Chapter 260, Statutes of 2013)
Summary: Effective July 1, 2014, adds false impersonation and credible impersonation, as defined, to the list of activities for which a protective order may be issued under the Domestic Violence Prevention Act.

AB 161 (Campos) Restraining orders
Status: Signed by the Governor (Chapter 261, Statutes of 2013)
Summary: Effective July 1, 2014, authorizes a court to issue an ex parte order restraining any party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage held for the benefit of the parties and/or their child(ren) for whom support may be ordered.

AB 176 (Campos) Family law: protective and restraining orders
Status: Signed by the Governor (Chapter 263, Statutes of 2013)
Summary: Effective July 1, 2014, provides that if more than one restraining order has been issued and one of the orders is an emergency protective order that has precedence in enforcement (Penal Code §162), a peace officer must enforce the emergency protective order. If none of the orders are emergency protective orders that have precedence in enforcement, and one of the orders is a no-contact order, a peace officer must enforce the no-contact order.

AB 238 (Gomez) Protective and restraining orders: computer database system
Status: Signed by the Governor (Chapter 145, Statutes of 2013)
Summary: Deletes the requirement that a law enforcement officer who requests an emergency protective order carry copies of the order while on duty. (Fam. Code, §6273.) Instead, requires that a law enforcement officer who requests an emergency protective order to enter the order into computer system maintained by the Department of Justice. (Fam. Code, §6271(d).)

AB 307 (Campos) Protective orders
Status: Signed by the Governor (Chapter 291, Statutes of 2013)
Summary: Among other things, expands a court's authority to issue protective stay-away orders valid for up to 10 years against a party who has been convicted of rape, spousal rape, or any crime requiring the party to register as a sex offender pursuant to Penal Code §290. Expands the list of protective stay-away the violation of which results in a misdemeanor contempt conviction.

AB 522 (Bloom) Civil actions: exceptions to dismissal for delay in prosecution
Status: Signed by the Governor (Chapter 40, Statutes of 2013)
Summary: Expands the types of dissolution cases that are exempt from dismissal for delay in prosecution.

AB 545 (Mitchell) Dependent children: placement: nonrelative extended family member
Status: Signed by the Governor (Chapter 294, Statutes of 2013)
Summary: For the purposes of placement of a expands the definition of "nonrelative extended family member" to include adult caregivers who have a familial relationship with a relative of the child (Welfare and Institutions Code §361.3(c)(2)), in addition to a familial relationship with the child directly.

AB 868 (Amiamo) Courts: training programs: gender identity and sexual orientation
Status: Signed by the Governor (Chapter 300, Statutes of 2013)
Summary: Expands training requirements for judges, referees, commissioners, mediators, Court Appointed Special Advocate, and others who work in family law cases to include the effects of gender, gender identity, sexual orientation, and cultural competency and sensitivity training regarding lesbian, gay, bisexual, and transgender youth.

AB 1403 (Committee on Judiciary) Family law
Status: approved by the Senate and the Assembly, enrolled and to the Governor
Summary: Confirms the Judicial Council's authority to convert up to 10 additional subordinate judicial officer positions to judgeships if the conversion will result in family or juvenile law cases being heard by a judge instead of by an SJO. Note that 1058 commissioner positions are not eligible for conversions. Also amends the Uniform Parentage Act to be gender neutral, reflecting the actual state of the law following rulings by the courts.

SB 274 (Leno) Family law: parentage: child custody and support
Status: approved by the Senate and the Assembly, enrolled and to the Governor
Summary: Allows a court to find that a child has more than two parents if such a finding is necessary to avoid harm to the child.

SB 115 (Hill) Parent and child relationship

Status: Two year bill; held by Assembly Judiciary Committee

Summary: Would allow a sperm donor who accepts a child into his home and holds the child out as his own to bring an action to determine the father and child relationship, expanding the standing in these cases to sperm donors who did not have a prior agreement to that effect in writing.

TAB D

Addressing Child Support Issues with Incarcerated and Recently Released Obligors

Hon. JoAnn Bicego,
Ms. Michelle McCarver,
Mr. Victor Rea &
Ms. Lollie A. Roberts

Addressing Child Support Issues with Incarcerated and Recently Released Obligors

17th Annual Child Support Training Conference

September 25-27, 2013

Criminal Justice Realignment Act of 2011 (AB 109/AB 117)

ADMINISTRATIVE OFFICE OF THE COURTS

- Significant changes to sentencing and supervision of felony offenders
- Applies to all sentencing on or after October 1, 2011

ADMINISTRATIVE OFFICE OF THE COURTS

Legislative Intent – PC §17.5

- Reduce recidivism among criminal offenders
- More prisons not sustainable and will not improve public safety

ADMINISTRATIVE OFFICE OF THE COURTS

- Support of community-based corrections programs and evidence-based practices
- Partnership required between local public safety entities and counties

ADMINISTRATIVE OFFICE OF THE COURTS

Felony Sentencing after Realignment

- Applies to non-violent, non-serious, non-sexual felony offenders
- Sentence served in County jail rather than State prison

ADMINISTRATIVE OFFICE OF THE COURTS

- No change in length of sentence
- No change in eligibility for probation or diversion
- No parole following release from jail commitment
- Straight or split sentence w/ mandatory supervision

ADMINISTRATIVE OFFICE OF THE COURTS

Post-Release Community Supervision (PRCS)

- Effective October 1, 2011
- Applies to certain felony offenders upon release from prison
- No serious or violent felonies or high risk sex offenders

ADMINISTRATIVE OFFICE OF THE COURTS

- Supervised by County Probation Department rather than State Parole
- Superior courts responsible for adjudicating PRCS violations

ADMINISTRATIVE OFFICE OF THE COURTS

Parole Violations

- Effective July 1, 2013
- Offenders on parole from prison with convictions for serious or violent crimes
- Supervised by Department of Corrections and Rehabilitation

ADMINISTRATIVE OFFICE OF THE COURTS

- Parole violations were handled by Board of Parole Hearings as administrative proceedings
- Superior Courts now have jurisdiction over parole violations
- Most violators cannot be returned to prison

ADMINISTRATIVE OFFICE OF THE COURTS

Local Impacts of Realignment

- Community Corrections Partnership
  - Each county is required to have one
  - Recommend local plan to Board of Supervisors for implementation of Act

ADMINISTRATIVE OFFICE OF THE COURTS

- Jail Capacity Issues

ADMINISTRATIVE OFFICE OF THE COURTS

- Implementing evidence-based practices
  - Alternative sentencing programs
  - Work programs
  - Training/educational services

ADMINISTRATIVE OFFICE OF THE COURTS

- Probation/PRCS/Parole Violators
  - Re-Entry Courts
    - goal to reduce recidivism and reintegrate offenders
    - collaborative/multi-agency
    - services offered at County level
    - oversight, treatment, training, education

ADMINISTRATIVE OFFICE OF THE COURTS

Economic Impact of Incarceration:
Post-Incarceration Challenges

Economic Impact of Incarceration

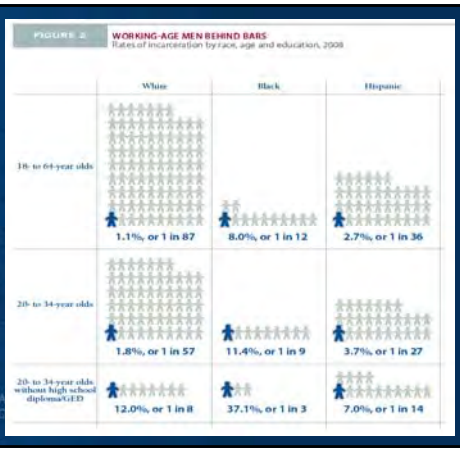
- Scope of Incarceration
- Economic Impact on former inmates
- Economic impact on children

ADMINISTRATIVE OFFICE OF THE COURTS

Collateral Costs: Incarceration's Effect on Economic Mobility.

Western, Bruce and Becky Pettit, The Pew Charitable Trusts.2010, http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf

ADMINISTRATIVE OFFICE OF THE COURTS



Impact of Incarceration on Children

- 54% of inmates are parents of minor children
- 1 in 28 children has an incarcerated parent
- More than 10% of African American children have an incarcerated father and 1% have an incarcerated mother
- 1% of all children currently have a parent incarcerated for a drug crime

ADMINISTRATIVE OFFICE OF THE COURTS

Impact of Incarceration on Children

- 44% of incarcerated parents lived with their children prior to incarceration
- More than half of incarcerated parents were the primary earners for their children
- During the period of the father's incarceration, the average child's family income fell 22%
- Family income after incarceration remained 15% below pre-incarceration level

ADMINISTRATIVE OFFICE OF THE COURTS

Impact of Incarceration on Children

- Parental income is one of the strongest indicators of a child's chances for upward economic mobility
- Children of incarcerated parents have more difficulty in school

ADMINISTRATIVE OFFICE OF THE COURTS

Post-Incarceration Challenges

- Substantial financial obligations
  - Court or supervision fees
  - Restitution
  - Child Support
- Difficulty finding employment
  - Lack of skills and experience
  - Lack of professional network/references
  - Stigma of incarceration

ADMINISTRATIVE OFFICE OF THE COURTS

ADMINISTRATIVE OFFICE OF THE COURTS

Post-Incarceration Challenges

Example: Obtaining a Driver License

- Proof of birth date
- Social Security card/number
- Stable residence
- Application form
- 60 day wait
- Written/driving test may be required
- Holds, suspensions, revocations

ADMINISTRATIVE OFFICE OF THE COURTS

Post-Incarceration Challenges

Other Challenges

- Safekeeping of Important Documents
- Safe and Stable living arrangements
- Former habits, hangouts, relationships
- Making and keeping Appointments
- Medication
- Treatment
- Support Network

ADMINISTRATIVE OFFICE OF THE COURTS

Post-Incarceration Challenges

- Securing stable employment is the key to successful reentry
- Access to education, job training and work supports help offenders secure employment and break the cycle of crime
- Offenders who participated in prison education programs were 29% less likely to be re-incarcerated

ADMINISTRATIVE OFFICE OF THE COURTS

Resources

- ***Collateral Costs: Incarceration's Effect on Economic Mobility***. **Western, Bruce and Becky Pettit,** The Pew Charitable Trusts.2010. *http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf*
- **Prison and the Poverty Trap: Long Prison Terms Eyed as Contributing to Poverty**, **By JOHN TIERNEY, Published: February 18, 2013 ,** http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0
- **Geller, Amanda, Irwin Garfinkel, and Bruce Western. 2011. "Paternal Incarceration and Support for Children in Fragile Families."** ***Demography*** **48: 25-47,** http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3220952/

ADMINISTRATIVE OFFICE OF THE COURTS

Resources

- **65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment**; Rodriguez, M. & Emsellem, M.; The National Employment Law Project; 2011. http://nelp.3cdn.net/e9231d3aee1d058c9e_55im6wopc.pdf
- **Western, Bruce and Becky Pettit. 2010. "Incarceration and Social Inequality."** ***Daedalus*** **139(3): 8-19.** http://www.amacad.org/publications/daedalus/10_summer_western.pdf
- **From Prison to Work: A Proposal for a National Prisoner Reentry Program**; Western, B.;T The Brookings Institute; The Hamilton Project; Discussion Paper 2008-16; 2008. http://www.brookings.edu/~/media/Research/Files/Papers/2008/12/prison%20to%20work%20western/12_prison_to_work_western.PDF
- **Prison Studies Project – Publications,** http://prisonstudiesproject.org/publications/

ADMINISTRATIVE OFFICE OF THE COURTS

Serving Incarcerated and Recently-Released Obligors: Local Child Support Agency Collaborations in California

LCSA Services to Incarcerated and Recently-Release Obligors

- The Child Support Picture
- AB 109
- Incarcerated Obligor Workgroup
- Incarcerated Obligors Liaison Workgroup
- Collaborations
- LCSAs & Probation Departments
- LCSAs & Community Service Providers

ADMINISTRATIVE OFFICE OF THE COURTS

The Child Support Picture

- Federal Performance Measures (FPMs)
  - Statistical measurement of effectiveness in key lines of business
- Statewide and local goals
  - Goals for FPMs and collections
- Child support program philosophy
  - Encourage parental participation
  - Work collaboratively with parents to support case success
- Emphasis on ability to pay
  - Orders for incarcerated obligors

ADMINISTRATIVE OFFICE OF THE COURTS

AB 109

- Effective October 1, 2011
- Early release for specified individuals
- The child support response
- Statewide collaboration efforts
- Local child support agencies
  - Collaboration with local Probation departments

ADMINISTRATIVE OFFICE OF THE COURTS

Incarcerated Obligors Workgroup

- Child Support Directors Association (CSDA)
- Established 2012
- Membership
  - 18 LCSA directors and staff

ADMINISTRATIVE OFFICE OF THE COURTS

Incarcerated Obligors Workgroup

- Workgroup charter and activities
- Primary areas of focus:
  - Collaboration with organizations that serve incarcerated, recently-released
  - Support outreach efforts to educate partners on child support program services
  - Educate parents who are incarcerated on ways to reconnect with their children

ADMINISTRATIVE OFFICE OF THE COURTS

Incarcerated Obligors Workgroup

- Primary areas of focus (continued):
  - Identify best practices for LCSAs to interact with correctional facilities
  - Provide prison Law Libraries with child support information
  - Collaborate with CDCR
  - Improve data gathering and analysis
  - Actively pursue grant opportunities that can be used to provide services to incarcerated/recently released individuals

ADMINISTRATIVE OFFICE OF THE COURTS

Incarcerated Obligor Liaison Workgroup

- Purpose of workgroup
- Presentations to inmates regarding child support program
- Forms to request caseworker contact
- LCSA liaisons process forms/ensure follow-up contact with inmates and case action

ADMINISTRATIVE OFFICE OF THE COURTS

Collaborations with Local Probation Departments

- Consistent model used by multiple LCSAs
- MOU
- Referral process
- Case management
- Data tracking & reporting

ADMINISTRATIVE OFFICE OF THE COURTS

MOU

- Executed between LCSA & Probation Department
- Typical provisions
- Access to data (lists/data sharing arrangements)
- Establishes referral process
- LCSA case management activities
- Collaborative role of Probation department and the LCSA
- LCSA tracking data and reporting to Probation

ADMINISTRATIVE OFFICE OF THE COURTS

Referral Process

- Probation provides list of probationers* to LCSA (name, SSN, DOB, phone number)
- LCSA matches list with child support automated system to identify probationers with child support case
- LCSA sends referral form to Probation for inmates with cases
- Probation officer directs probationer to contact LCSA
- Participation in Probation Day Reporting Centers

*Includes individuals on post-release community supervision (PRCS) and mandatory supervision portion of split sentence.

ADMINISTRATIVE OFFICE OF THE COURTS

Case Management

- Caseworker meets with probationer
- Review case status
- Educate probationer about available services and the importance of participating in his/her case
- Identify a strategy for the case (e.g., order modification, license re-instatement)
- Take next appropriate action on case

ADMINISTRATIVE OFFICE OF THE COURTS

Data Tracking and Reporting

- Reporting to Probation regarding probationer's cooperation with LCSA
  - Limitations on information sharing due to child support confidentiality requirements
- LCSAs track outcomes
- Rate of cooperation by probationers, case status, payment and FPM performance

ADMINISTRATIVE OFFICE OF THE COURTS

Stanislaus County

- Probation Officer located on-site at LCSA
- Receives monthly list (access to Probation database and child support automated systems)
- Researches case
- Meets with probationers in office, home visits, phone contacts, mail
- Updates case manager on probationer status
- Caseworker takes follow-up action

ADMINISTRATIVE OFFICE OF THE COURTS

LCSAs and Community Service Providers

- Locally-based services
- Day Reporting Centers
- Outreach services (Fontana Reentry Support Team)
- Faith-Based Service Providers
- Services in local jails
- State CDCR
- Presentations to inmates-referral forms
- San Quentin-IMPACT program

ADMINISTRATIVE OFFICE OF THE COURTS

Future Opportunities

- Data Availability
- SOMS
- CSE Interface
- New collaborations
- CSDA collaboration with County Probation Officers

ADMINISTRATIVE OFFICE OF THE COURTS

When Life Gives You Lemons: Outreach to the County Jail After Prison Realignment in Sacramento County

In The Beginning…

- Relationship Matters
- Needs, Expectations and Desired Outcomes
- Evaluate Resources

ADMINISTRATIVE OFFICE OF THE COURTS

Getting Prepared…

- Become Educated About the Facility
- Attend and Provide Training
- Develop Relevant Materials
- Examine Thoughts and Beliefs

ADMINISTRATIVE OFFICE OF THE COURTS

What It Looks Like...

- Pre Workshop Planning
- Environment
- Format
- Post Workshop Activity

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Along The Way...

- Maintain Flexibility
- Communicate Continuously
- Monitor Progress
- Be Patient

ADMINISTRATIVE OFFICE OF THE COURTS

Feedback Loop...

- Incarcerated Parents
- Jail Personnel
- Sacramento FLFO and DCSS Staff

ADMINISTRATIVE OFFICE OF THE COURTS

Lessons Learned…

- Stigma
- Trust
- Existing Processes Improved
- Workshops are Needed

ADMINISTRATIVE OFFICE OF THE COURTS

Prison Outreach: Do

- Lead with education campaign
- Educate corrections staff on confidentiality
- Emphasize goal of helping children
- Start small
- Anticipate delays
- Prepare
- Treat each contact as an opportunity

ADMINISTRATIVE OFFICE OF THE COURTS

Prison Outreach: Don’ts

- Assume anything
- Start too big
- Bring too many attorneys
- Ignore the chain of command
- Get discouraged

ADMINISTRATIVE OFFICE OF THE COURTS

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ADMINISTRATIVE OFFICE OF THE COURTS

2011 Criminal Justice Realignment Act
Frequently Asked Questions

(Revised December 10, 2012[1])

This document provides the Ad Hoc Criminal Justice Realignment Steering Committee's responses to the most frequently asked questions (FAQ's) relating to criminal justice realignment. The materials are for informational purposes only, and are not to be construed as legal advice. They will be revised and re-posted as additional information is available. In addition, specialized training materials are available on Serranus.

Contact: crimjusticerealign@jud.ca.gov

Unless otherwise indicated, all references are to the Penal Code.

SENTENCING OF CRIMES UNDER SECTION 1170(h)

1. What is the basic objective of the changes in felony sentencing made by the realignment legislation?

The primary objective of the realignment legislation is to change the place where many felony sentences are served when the defendant is not granted probation. Instead of being sentenced to state prison, many defendants will be serving their "prison" term in county jail. Realignment does not change any law or procedure up to the point sentence is pronounced. The length of the possible custody terms remains unchanged. Rules regarding probation eligibility remain unchanged. Alternative sentencing programs remain unchanged. What changes have been made to sentencing procedures relate to the fact that defendants now may be sentenced to 58 different county custody facilities, rather than one state prison system.

2. What crimes are affected by realignment?

Criminal justice realignment divides felonies for the purpose of sentencing into three primary groups.

a. Felonies sentenced to county jail: Section 1170(h), provides the following defendants must be sentenced to county jail if probation is denied:

- Crimes where the punishment is imprisonment in accordance with section 1170(h) without delineation of a specific term. In such cases the sentence is 16 months, two, or three years in county jail (§ 1170(h)(1)).
- Crimes where the statute specifically requires punishment in the county jail for a designated term, either as a straight felony commitment or as an

[1] Incorporates changes to criminal justice realignment that were enacted on September 21, 2011, by ABx1 17 (Blumenfield), Stats. 2011, ch. 12(operative on October 1, 2011), and enacted on June 27 2012, by SB 1023, Stats. 2012, ch 43 (operative June 27, 2012).

alternative sentence as a wobbler. The length of the term is not limited to 16 months, two, or three years, but will be whatever triad or punishment is specified by the statute (§ 1170(h)(2)).

b. Felonies excluded from county jail: Notwithstanding that a crime usually is punished by commitment to the county jail, the following crimes and/or defendants, if denied probation, must be sentenced to state prison: (§ 1170(h)(3))

- Where the defendant has a prior or current serious or violent felony conviction under section 1192.7(c) or 667.5(c), including qualified out-of-state serious or violent felonies. The exclusion does not include juvenile strikes.
- Where the defendant is required to register as a sex offender under section 290.
- Where the defendant has been convicted of a felony with an enhancement for aggravated theft under section 186.11.

c. Felonies specifying punishment in state prison: The Legislature carved out dozens of specific crimes where the sentence must be served in state prison. If neither state prison nor 1170(h) is designated in the statute, the crime is punishable in state prison. (§ 18(a).) It will be incumbent on courts and counsel to verify the correct punishment for all crimes sentenced after the effective date of the realignment legislation. Reference Appendix A, "Table of Crimes Punishable in State Prison or County Jail Under Section 1170(h)."

3. Some crimes specify punishment under section 1170(h), but at the same time are excluded under the statute. Which designation controls?

The new county jail punishment scheme is set out in section 1170(h)(1) and (2). Each of those provisions specify they will apply to designated crimes "except as provided in paragraph (3)." Paragraph (3), listing crimes and persons excluded from commitment to county jail, specifies its provisions apply "notwithstanding paragraphs (1) and (2)." Accordingly, it is clear the Legislature intended the exclusion provisions should control over the specific designation given to a particular crime. It is not clear what the commitment should be when an enhancement specifies punishment in state prison, but the enhancement is being applied to a crime that specifies punishment under section 1170(h). Nothing in the realignment law expressly applies to this situation.

4. If a defendant is convicted of both state prison and section 1170(h) crimes, where is the sentence to be served?

If any crime is punishable in state prison, the defendant serves the sentence for all crimes in state prison, whether the sentences are concurrent or consecutive.

5. When do the changes to sentencing laws apply?

The changes in felony sentencing apply to any person ***sentenced*** on or after October 1, 2011.

6. Is there a limit to the length of time a court may sentence a person to county jail under section 1170(h)?

No. Nothing in the realignment legislation limits the *length* of the county jail commitment. The only restrictions on the eligibility for a county jail commitment are based on the offense or the offender's record. See Answer 2(b), above.

7. How does criminal justice realignment change awarding of custody credits?

Effective October 1, 2011, section 4019 has been amended to provide that most inmates committed to county jail are to receive a total of four days of credit for every two days of actual time served. The provisions apply to persons serving a sentence of four or more days, including misdemeanor sentences, a term in jail imposed as a condition of probation in a felony case, pre-sentence credit for most persons sentenced to state prison, persons serving jail custody for violation of state parole or postrelease community supervision, and persons serving a sentence imposed under section 1170(h).

8. When do the changes to custody credits apply?

The changes to custody credits apply to ***offenses committed*** on or after October 1, 2011.

9. Is there any period of automatic parole for an inmate upon release from county jail on a felony conviction sentenced under section 1170(h)?

No. Persons sentenced under section 1170(h) to county jail are not released to parole or postrelease supervision (PRCS) upon serving their term—unlike those who serve time in state prison. Once the sentence has been fully served, the defendant must be released without any restrictions or supervision. A form of supervision, however, can be created as part of the defendant's sentence under section 1170(h)(5)(B); see Answer 10, below.

10. What is the meaning of section 1170(h)(5)?

Section 1170(h)(5) gives the sentencing judge discretion to impose two types of sentences to county jail. The court may commit the defendant to county jail for the straight term allowed by law. (§ 1170(h)(5)(A).) With this alternative, the defendant will serve the computed term in custody, less conduct credits, then be released without restriction. With the second alternative, the court may send the defendant to county jail for the computed term, but suspend a concluding portion of the term. (§ 1170(h)(5)(B).) During this time the defendant will be supervised by the county probation officer in accordance with the terms, conditions and procedures generally applicable to persons placed on probation. If the court chooses to impose the supervision period, the defendant's participation is mandatory. Like the straight sentence, once the custody and supervision term has been served, the defendant is free of any restrictions or supervision. These sentences are called "split" or "blended" sentences because they generally are composed of a mixture of custody and mandatory supervision time.

11. Is the supervision period of a split sentence imposed under section 1170(h)(5)(B) "probation?"

No. The original version of section 1170 has been amended to make it clear that the mandatory period of supervision imposed under the split sentence authorized under section 1170(h)(5)(B) is not probation.

12. Do statutes that render certain offenses ineligible for probation—e.g., section 1203.07—prohibit courts from imposing "mandatory supervision" under section 1170(h)(5)?

No. Mandatory supervision under 1170(h)(5)(B) is not probation. Mandatory supervision may not be used until the judge denies probation and imposes a split sentence. The supervision is part of the sentence imposed by the court. Accordingly, existing probation ineligibility provisions should not hinder a judge from imposing a split sentence.

13. If a statute specifies the crime is punishable in county jail under section 1170(h), is it still possible to send the defendant to state prison?

Unless an exclusion under section 1170(h)(3) applies, crimes punishable in county jail may not be punished by a commitment to state prison; the court must sentence the defendant to county jail if probation is denied. If a defendant is being sentenced for multiple felonies, only some of which require commitment to state prison, all of the sentence will be served in state prison, whether the sentences are run concurrently or consecutively. (§§ 669(d) and 1170.1(a).)

14. Is there a requirement that the People "plead and prove" any factor that disqualifies a defendant from a county jail commitment?

The realignment legislation contains no express requirement that the People "plead and prove" any factor that would disqualify a defendant from being sentenced under section 1170(h). It is an open question whether the use of the term "allegation" in section 1170(f) suggests there is such an obligation. The "plead and prove" issue has been raised in the context of factors that disqualify a defendant from certain enhanced custody credit provisions. The Supreme Court has held the People need not "plead and prove" the factors that would disqualify a defendant from receiving enhanced conduct credits. (*People v. Lara* (2012) 54 Cal.4th 896.) If the court is unwilling to apply a "plead and prove" requirement to custody credits, a factor arguably affecting the length of a defendant's custody term, it seems unlikely there will be such a requirement regarding the exclusions under section 1170(h) which only affect *where* the custody term is to be served.

15. Will a sentence imposed under section 1170(h) affect the ability of the court to grant a motion to specify a crime as a misdemeanor under section 17(b)?

A sentence imposed under section 1170(h) will be treated the same as a state prison sentence for the purposes of section 17(b). Accordingly, if the court imposes a sentence under section 1170(h) and either orders it into execution, or suspends its execution pending satisfactory

completion of probation, the court will no longer have the ability to specify the offense as a misdemeanor under section 17(b).

16. Where will a defendant serve a sentence if prior to October 1, the court imposed and suspended execution of a sentence to state prison for a crime now punishable under section 1170(h), and after October 1 does not reinstate the defendant on probation?

If the suspended term is for a crime now punished under section 1170(h), the term will be served in county jail if it is ordered into execution. (*People v. Clytus* (2012) 209 Cal.App.4th 1001.)

17. Will the provisions of section 1170(d) [recall of a sentence], and 1170(e) [compassionate release] apply to commitments under section 1170(h)?

Neither subdivisions (d) nor (e) of section 1170 mentions section 1170(h) commitments. Likely, however, defendants committed under section 1170(h) would have access to these procedures as a matter of equal protection of the law.

18. Can the court modify a sentence imposed under section 1170(h)?

Unless the court is able to exercise its discretion to recall a sentence under section 1170(d), there is no mechanism for modifying a straight sentence imposed under section 1170(h)(5)(A). Similarly, the court may have the ability under section 1170(d) to recall a split sentence imposed under section 1170(h)(5)(B). Additionally, however, the court may use the procedures in sections 1203.2 and 1203.3 to modify the conditions of mandatory supervision, including custody time.

19. When crimes are committed in county jail following a commitment under section 1170(h), must those crimes be run fully consecutive to the original commitment?

Section 1170.1(c) requires a full consecutive term for crimes committed in state prison, not simply a subordinate consecutive term limited to one-third the mid-base term. Commitments under section 1170(h) are not mentioned. Proposed legislation making the law the same for both state prison and 1170(h) commitments has been rejected by the Legislature.

20. Are there any rules or procedures governing the situation where a defendant is sentenced by multiple jurisdictions?

No. The realignment legislation is wholly silent regarding the service of a multiple-jurisdiction sentence.

21. What effect will section 17(b) have on "attempts" when committed to county jail under section 1170(h)?

Section 17(b) has been amended to include in the definition of "felony" a crime punishable in the county jail under section 1170(h) and eliminates the requirement that the term exceed one year to constitute a felony.

22. Can the court terminate mandatory supervision before the end of the sentence?

Yes. Section 1170(h)(5)(B), specifies the period of supervision shall be mandatory, "and may not be earlier terminated except by court order." No specific guidance is given for the exercise of the court's discretion.

23. Can section 1385 be used to dismiss the disqualifying factors to permit the use of section 1170(h) to commit a defendant to county jail?

Generally, no. Section 1170(f) provides: "Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385." Section 1170(f) does not prevent the court from striking a strike for the purposes of the Three Strikes law; it only prevents the use of section 1385 to strike a strike or other disqualifier for the purpose of allowing local punishment under section 1170(h). The rule, however, is limited to adult convictions; it has no application to juvenile adjudications. See Answer 24, below.

24. How does the adjudication for a juvenile strike relate to an 1170(h) sentence?

The exclusions under section 1170(h)(3) only reference adult strike convictions; juvenile adjudications are not mentioned. Accordingly, if the defendant has a juvenile strike adjudication, he will remain eligible for commitment under section 1170(h) for the purposes of the realignment legislation. However, if the defendant is found to have suffered the adjudication and it remains as part of the sentencing, the defendant must be committed to CDCR, not because of the realignment law, but because of the Three Strikes law. Such a consequence can be avoided in appropriate circumstances by striking the adjudication. With the elimination of the strike, the defendant may receive a sentence under section 1170(h).

25. Does the realignment law affect the application of Vehicle Code section 41500?

Section 41500 allows the forgiveness of certain traffic offenses once a defendant is sentenced to state prison. There is no similar provision for sentences imposed under the realignment legislation. It would seem there is a compelling equal protection argument for applying Vehicle Code section 41500 to 1170(h) sentences.

26. Does the realignment legislation affect the court's ability to consider probation or other alternative forms of punishment?

No. Section 1170(h)(4) specifically provides that "[n]othing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1."

27. Currently, the California Department of Corrections and Rehabilitation (CDCR) reviews felony sentences for accuracy. Will sheriffs do this for jail-only sentences? How? Will sheriffs review the record to ensure the court ordered the correct facility (i.e., prison or jail)?

Nothing in the criminal justice realignment legislation appears to change any of these activities. CDCR will continue to review prison commitment papers for felons sentenced to state prison; the prison packets will remain the same. Courts should consult with their local sheriff to ascertain whether they will handle commitments to county jail any differently for defendants sentenced under section 1170(h).

28. Do felony sentences served in county jail under section 1170(h) constitute "prison priors" for purposes of sentence enhancements?

Yes. Section 667.5(b) specifies sentences imposed under section 1170(h) will constitute a "prison prior," whether the sentence is a straight term under section 1170(h)(5)(A), or a split term under section 1170(h)(5)(B).

29. If the sheriff releases the defendant early from the custody portion of a split sentence, does the period of mandatory supervision automatically start?

No. Whether the period of mandatory supervision starts upon the defendant's release will depend on how the court structured the sentence; specifically, whether the court ordered the supervision period "accelerated" to correspond to the defendant being released from custody.

30. Can counties transfer mandatory supervision?

Yes. Mandatory supervision may be transferred to the defendant's county of residence under section 1203.9.

31. How will violations of mandatory supervision be handled?

With the passage of legislation effective June 27, 2012, the traditional procedures under section 1203.2 used for violations of probation will now be applicable to violations of mandatory supervision. In addition, the procedures used to modify probation under section 1203.3 may now be used to modify mandatory supervision.

32. If the defendant absconds from mandatory supervision or otherwise violates the terms of supervision, does the supervision period continue to run?

No. Sections 1170(h)(5)(B)(i) and 1203.2(a) provide for tolling of the period of supervision after summary revocation of mandatory supervision.

33. What options are available to the court when there is a violation of mandatory supervision?

Because the procedure for violations of mandatory supervision is the same as for violations of probation, the court will have sentencing options similar to violations of probation. The court could reinstate the defendant on mandatory supervision with or without additional jail time or a change in the conditions of supervision. The court could terminate supervision and remand the defendant to serve the balance of the term in custody. In no event, however, may the supervision and custody term exceed the original term imposed by the court.

34. Has there been a change to restitution fines?

Yes. Beginning January 1, 2013, when the court imposes a split sentence on the defendant under section 1170(h)(5)(B), the defendant must be assessed a mandatory supervision revocation restitution fine in the same amount as the restitution fine under section 1202.4(b). (§ 1202.45(b).)

35. Who collects victim restitution?

Effective January 1, 2013, the county board of supervisors may designate an agency within the county to collect victim restitution. If the sheriff is the designated agency, the sheriff must agree to the task. (§ 2085.5(d).)

POSTRELEASE COMMUNITY SUPERVISION (PRCS)

36. Who will be supervised on PRCS?

PRCS provides a means for supervising inmates released from state prison after completion of their sentence. It applies to all inmates except those who were serving sentences for serious or violent felonies, a third strike sentence under the Three Strikes law, any crime where the inmate is classified as a "High Risk Sex Offender," and any person who must receive treatment from the Department of Mental Health as a condition of parole.

37. Who will supervise an inmate released on PRCS?

An inmate released from state prison who is eligible for postrelease community supervision will be returned, like those released on parole, “to the county that was the last legal residence of the inmate prior to his or her incarceration,” except that “an inmate may be returned to another county if that would be in the best interests of the public.” (§ 3003(a) and (b).) The actual supervision will be done by the county’s probation department.

38. How long is a person supervised on PRCS?

The period of supervision can be for up to three years. The limit is tolled during any time supervision has been revoked or the inmate is an abscond. The inmate may earn an early release from supervision by remaining violation free for designated intervals.

39. What are the conditions of supervision?

The conditions of supervision are set at the time of inmate's release from custody. Many of the conditions are specified by statute, but the supervising agency may add additional conditions deemed necessary for public protection. The conditions, imposed without the need for the inmate's agreement, must include, but are not limited to:

- Search and seizure of the inmate's residence and possessions
- The imposition of up to 10 days of "flash incarceration" for a violation of PRCS without the need of a court hearing
- Arrest with or without a warrant if there is probable cause to believe the inmate is in violation of PRCS

The conditions may include continuous electronic monitoring and appropriate rehabilitative services.

40. What is "flash incarceration?"

The supervising agency is authorized to impose from one to ten days of incarceration for a violation of the conditions of PRCS. The time is not subject to conduct credits under section 4019. The inmate is not entitled to a judicial hearing before the sanction may be imposed. The inmate may be subjected to successive flash incarcerations for multiple violations. "Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations." § 3454(c).)

41. When do courts become involved in the violation process?

The supervising agency is required to address initial violations using evidence-based practices, including flash incarceration. If a violation is such that intermediate sanctions are "not appropriate," the supervising agency may petition the court to revoke, modify, or terminate PRCS.

42. What is the procedure for handling the violation petitions?

The procedure will be governed by section 1203.2, the process traditionally used for violations of probation. The court is required to hold the hearing on the violation within a reasonable time.

43. May the inmate be detained pending the hearing on the violation?

Yes, but the circumstances may vary depending on whether a petition to revoke PRCS has been filed with the court.

Before *a petition for revocation has been filed with the court:*

- *Arrests* – A peace officer who has probable cause to believe that a person subject to PRCS is violating any term or condition of release is authorized to arrest the person without a warrant and bring the person before the postrelease supervising county agency. (§ 3455(b)(1).)
- *Warrants* – An officer employed by the supervising agency is authorized to seek a warrant from a court, and the court or its designated hearing officer is authorized to issue a warrant for the supervised person's arrest, regardless of whether a petition for revocation has been filed. (§ 3455(b)(1).)

After *a petition for revocation has been filed with the court:*

- *Warrants* – The court or its designated hearing officer is authorized to issue a warrant for any person who is the subject of a petition for revocation of supervision who has failed to appear for a hearing on the petition, or for any reason in the interests of justice. (Section 3455(b)(2))
- *Detention* – The court or its designated hearing officer is authorized to remand to custody a person who does appear at a hearing on a petition for revocation of supervision or for any reason in the interests of justice. (§ 3455(b)(2).)
- *Detention* – A hearing on the petition for revocation shall be held within a reasonable time after the filing of the petition. The supervising agency is authorized to determine that a person should remain in custody until the first court appearance on the petition to revoke, and may order the person confined, without court involvement, on a showing by a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, the person may not appear if released from custody, or for any reason in the interests of justice. (Section 3455(c).) As in the probation context, courts presumably have sole discretion to decide custody status after the first appearance.

44. What are the sanctions available to the court if the inmate is found in violation of PRCS?

If the inmate is found in violation of PRCS, the court has three basic options:

- The court may reinstate the inmate on PRCS, with a modification of his conditions of supervision, including incarceration up to 180 days. The court may impose successive 180-day terms of custody, so long as the total of the custodial and supervision time does not exceed the three-year limit on PRCS. During the custody period, the inmate will receive normal conduct credits under section 4019 of a total of four days for every two days served.
- The court may revoke and terminate PRCS and commit the inmate to jail for up to 180 days. The inmate will be entitled to conduct credits under section 4019. The total of the custodial and supervision time may not exceed three years.

- The court may refer the inmate to a reentry court pursuant to section 3015, or other evidence-based program.

The court may not return the inmate to state prison. (§ 3458.)

45. Is there a new restitution fine for PRCS?

Yes. Under section 1202.45(b), the court must assesses a PRCS revocation restitution fine at the same time and in the same amount as the court assesses the restitution fine under section 1202.4(b). (§ 1202.45(b).) Because these inmates are returning from prison based on a commitment made long before the enactment of this assessment, and because the court does not acquire jurisdiction over these inmates until a petition to revoke or modify PRCS is filed, there is no clear opportunity to comply with the legislation. Presumably the court should impose the assessment when the inmate appears on a revocation or modification petition.

46. Is there a process where the inmate may simply accept the sanctions recommended by the supervising agency without the need for a court hearing?

Yes. At any stage of the process, the inmate may waive, in writing, his right to counsel and a court hearing, admit the violation, and accept the proposed sanction. (§ 3455(a).)

47. Are the proceedings on the petitions for revocation open to the public?

Yes. Court proceedings are presumptively open to the public unless expressly made confidential. Since the criminal justice realignment legislation is silent on this issue, these proceedings are presumed open.

48. Will the court be involved in an inter-county transfer when a person subject to PRCS is determined to live in another county?

No. Section 3460 establishes a process for the transfer by the supervising agency upon the agency's determination that the person no longer permanently resides in that agency's county. The court is not involved in this process.

49. Has the Judicial Council adopted rules and forms to govern PRCS revocation procedures?

Yes. Effective October 28, 2011, the Judicial Council adopted a *Petition for Revocation of Community Supervision* (form CR-300) and Rules 4.540 and 4.541 of the California Rules of Court. Rule 4.540 governs postrelease community supervision revocation procedures and Rule 4.541 prescribes minimum contents of supervising agency reports to courts. The *Petition for Revocation of Community Supervision* is designed for use by supervising agencies to initiate postrelease community supervision revocation proceedings. The form and rules are available at the Criminal Justice Realignment Resource Center, http://www.courts.ca.gov/partners/930.htm. In response to recent legislation that applied longstanding probation revocation procedures to revocations of PRCS, distinct procedural requirements for PRCS revocations are likely unnecessary. Accordingly, the Judicial

Council's Criminal Law Advisory Committee is currently developing a recommendation to repeal Rule 4.540 and form CR-300.

50. Do the procedural requirements of the federal *Valdivia* consent decree apply to the courts' revocation procedures?

Before the enactment of the criminal justice realignment legislation, parole revocation procedures conducted by the California Department of Corrections and Rehabilitation were subject to a federal court injunction. (See *Valdivia v. Schwarzenegger* (ED Cal. Civ. S-94-0671).) That injunction was the product of a negotiated settlement of litigation between the parties to that civil lawsuit; its terms and procedures "were not necessary or required by the Constitution. There is no indication in the record that these particular procedures are necessary for the assurance of the due process rights of parolees." (*Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 995.) Accordingly, case law interpreting the Constitution, and not the stipulations of the parties in *Valdivia*, establishes the due process standards applicable to community supervision revocation proceedings under the Act. (See e.g. *Morrissey v. Brewer* (1972) 408 U.S. 471, 489, and *People v. Vickers* (1972) 8 Cal.3d 451, 457-458.)

PAROLE REVOCATION (§ 3000.08)

51. At what point will the courts become involved with parole revocation proceedings?

The courts will hear allegations of parole violations starting July 1, 2013.

52. What inmates will be subject to these proceedings?

The parole revocation proceedings will involve those inmates who did not qualify for PRCS. Generally, that will include persons sentenced for serious or violent felonies, persons sentenced as a third strike offender under the Three Strikes law, high risk sex offenders, and those inmates required to undergo treatment with the Department of Health.

53. What role will state parole have with respect to these inmates?

Generally the courts will share jurisdiction over these inmates with state parole. Parole still must provide supervision and services to these inmates, but the court will adjudicate and sentence parole violations. Parole must try lower levels of intervention prior to referring the inmate to the court. The parole agency is given authority to impose up to 10 days of "flash incarceration" for violations.

54. What procedure will be used for the parole proceedings?

The procedure for dealing with parole revocations in court will be governed by section 1203.2.

55. Sanctions are available to the court if the inmate violates parole?

If the inmate is found in violation of parole, the court has four choices, depending on the nature of the case:

- Reinstate the inmate on parole with treatment or other modifications of parole, including the imposition of up to 180 days in jail.
- Revoke parole and sentence the inmate up to 180 days in jail.
- Refer the inmate to a reentry court under section 3015, or other similar program.
- For certain inmates on parole for life for murder or certain sex offenses, the court must remand the defendant to CDCR and refer his continued parole status to the Board of Parole Hearings.

Except for the last circumstance, the inmate may not be returned to CDCR for a parole violation.

56. Will any state parole revocation petitions be filed with the courts between October 1, 2011, and July 1, 2013?

No. Until July 1, 2013, all state parole revocation proceedings will be carried out as they are under current law, under the jurisdiction of the Board of Parole Hearings. Petitions for parole revocation may not be filed with a court until July 1, 2013.

57. Will the *Valdivia* consent decree apply to parole proceedings under section 3000.08?

It is not entirely clear that the provisions of the *Valdivia* consent decree will apply to the parole revocation proceedings conducted by the court. Unlike PRCS, however, the courts share joint jurisdiction over the inmate with agencies that were are a party to the *Valdivia* action. The extent of the application of the consent decree likely will be determined in subsequent litigation.

EDUCATION AND RESOURCES

58. What training opportunities and materials are available for judges, commissioners, supervision revocation hearing officers, and court staff?

The AOC's Office of Education/CJER provides ongoing education through their various written materials, videos, webinars, and live programs regarding supervision revocation hearings, sentencing, and models of implementation. These are advertised in the weekly AOC Court News Update email. CJER's Criminal Law Toolkit for judges and commissioners on SERRANUS includes a link to CJER's live programs registration calendar and a link to their Criminal Justice Realignment Judicial Education Resources page. This Resource page is a comprehensive listing of all CJER's online judicial education products related to Realignment. A parallel resource page regarding court staff education is available on COMET. Please refer to those pages for more information.

59. Where can I find educational material and other information on this topic?

Specialized training materials are available on Serranus, as described in #52 above. In addition, the AOC maintains an online Criminal Justice Realignment Resource Center at http://www.courts.ca.gov/partners/realignment.htm. The website contains information about criminal justice realignment funding, proposed rules of court and forms, pending and enacted legislation affecting realignment, and other resources.

60. Can the Administrative Office of the Courts provide assistance to courts who wish to recruit and hire individuals to serve as revocation hearing officers?

Yes. The AOC Human Resources Division staff are available to help in recruitments for courts.

CASE MANAGEMENT

61. Should courts create a new case file for petitions for revocation of supervision, even if the case that resulted in the underlying conviction originated in the same superior court?

Yes. A petition for revocation of supervision will be a new case type and should be given a new file, regardless of where the commitment offense occurred. The petition is not associated with a previous case, and should be treated as a separate action. In addition, courts will be required to track this new caseload for budget purposes, so creating a new case file will facilitate this process.

62. Will courts be required to count these matters as "new filings" for statistical purposes, particularly in light of the fact that the matters may not have originated in the same court? A new category for JBSIS?

The Judicial Council adopted the Trial Court Budget Working Group's budget allocation recommendations on August 26, 2011. Included was a recommendation that future allocation of funding for court revocation proceedings be based on actual court-specific caseload information, rather than the estimates used for fiscal year 2011-2012. Therefore, the number of petitions for revocation filed will need to be tracked by the court and reported to the Administrative Office of the Courts. Additional information regarding expenditure of these funds may be requested as well.

63. What category will the related court records fit under for record retention purposes?

The Judicial Council's Court Executives Advisory Committee (CEAC) is currently conducting a comprehensive review of Government Code section 68152, which governs retention of court records, and is developing recommendations for council-sponsored legislation in 2012 to update these provisions. CEAC will incorporate into this process

recommendations regarding retention of records associated with petitions for revocation of supervision.

64. Reporting to other agencies: Do courts have to report these matters to other agencies like DOJ? For L.E.A.D.S. purposes? C.L.E.T.S.?

The Governor and the Legislature are reviewing these issues to determine whether clarifying legislation is necessary.

65. Do courts have to prepare abstracts of judgments for county jail sentences under Penal Code sections 1170(h)(1) and (h)(2)?

Yes. The realignment legislation amended section 1213 to require courts to provide abstracts of judgments in all felony cases resulting in county jail commitments under section 1170(h). Specifically, section 1213(a) requires courts to send abstracts to "the officer whose duty it is to execute … the judgment." For jail commitments under sections 1170(h)(1) and (h)(2), the officer charged with executing the judgment is presumably the county sheriff. Courts should not send abstracts of judgments to the California Department of Corrections and Rehabilitation (CDCR) for commitments under sections 1170(h)(5)(A) or (B). Because sentences under those sections do not result in state prison commitments, CDCR will not retain abstracts for those commitments. Courts must, however, continue to send abstracts of judgments to CDCR for commitments to state prison for persons excluded from county jail under section 1170(h)(3).

66. Do courts have to use Judicial Council abstract of judgment forms for county jail commitments under Penal Code sections 1170(h)(1) and (h)(2)?

Yes. Generally, all felony abstracts of judgments must be "prescribed by the Judicial Council." (§ 1213.5.) If a court uses a minute order in lieu of an abstract, "the first page or pages shall be identical in form and content to that prescribed by the Judicial Council for an abstract of judgment, and other matters as appropriate may be added thereafter." (§ 1213(b).) On December 13, 2011, the Judicial Council approved revisions to the relevant abstract of judgment forms (CR-290, CR-290A, and CR-290.1) to include information regarding sentences under Penal Code section 1170(h), including county jail commitments and mandatory supervision.

TOPICS UNDER REVIEW

Many additional questions regarding criminal justice realignment have been raised but require further review. Please note that the Steering Committee will provide additional information as soon as possible regarding several different topics, including appeals, role of defense counsel, court records, discovery, evidence, and the applicability of previous federal litigation affecting current parole proceedings. Updates to this memorandum will be posted at http://www.courts.ca.gov/partners/realignment.htm.

In the meantime, if courts have additional questions or concerns please feel free to submit them to crimjusticerealign@jud.ca.gov for review and possible inclusion in the next FAQ memorandum.

TABLE OF CRIMES PUNISHABLE IN STATE PRISON OR COUNTY JAIL

Designations - Prison-eligible or 1170(h)
Prison-eligible crimes are underlined, crimes punishable under section 1170(h) are in normal font. When the proper designation is Unknown either because more information is required or because the law is unclear, it is designated in bold italics.

Subsections:
The table lists each code section identifying relevant subsections. If a code section includes several subsections, the section is listed first, followed by each applicable subsection separated by commas (e.g., 148(b),(c),(d)(all).) If a subsection has several sub-subsections, those sub-subsections appear in parentheses next to the subsection as reflected by "(all)" in the preceding example.

"(All)" means that all relevant subsections or sub-subsections are included. If a subsection or sub-subsection is treated differently, it is given a separate listing.

General Rules
Prison-eligible crimes are those felonies not punishable pursuant to 1170(h) (§ 18(a)), unless it is a Vehicle Code felony with no punishment specified; in such circumstances it is punishable by commitment to jail (VC § 42000.).

P.C. § 1170(h)(3) further provides that prison is to be imposed if any of the following apply:
1. Conviction of a current or prior serious or violent felony conviction listed in sections 667.5(c) or 1192.7(c),
2. When the defendant is required to register as a sex offender under section 290; or
3. When the defendant is convicted and sentenced for aggravated theft under the provisions of section 186.11.

A careful reading of sections 1170(h)(1), (2) and (3), makes it clear that when an exclusion applies to a crime, it will override language in the specific statute that makes the crime punishable in county jail.

Enhancements
Enhancements sometimes specify "prison" where the term for the enhancement is to be served. It is unclear whether the enhancement would change where the sentence is to be served when attached to an 1170(h) crime. 1170.1(a) provides that if either the principal or

subordinate term is prison-eligible, the entire sentence is to be served in prison. It says nothing about enhancements.

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Probate

2253

Public Contract

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Public Resource

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Revenue & Tax

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Streets & Hwys

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14107.4(all)
15656(a),(c)
17410

Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
Allocations for FY 2011-2012 Funding

	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx$17.689M)	Allocation of Security Funding (Bx$1.149M)
	A	B	C	D
Alameda	388	5.54%	$ 980,126	$ 63,665
Alpine	1	0.01%	2,526	164
Amador	3	0.04%	6,315	410
Butte	58	0.83%	146,514	9,517
Calaveras	1	0.01%	2,526	164
Colusa	1	0.01%	2,526	164
Contra Costa	134	1.91%	337,234	21,905
Del Norte	3	0.04%	7,578	492
El Dorado	29	0.41%	73,257	4,758
Fresno	336	4.80%	848,769	55,132
Glenn	8	0.11%	18,946	1,231
Humboldt	60	0.86%	151,566	9,845
Imperial	31	0.44%	78,309	5,087
Inyo	3	0.04%	6,315	410
Kern	221	3.16%	558,268	36,263
Kings	28	0.39%	69,468	4,512
Lake	16	0.23%	40,418	2,625
Lassen	3	0.04%	7,578	492
Los Angeles	1,942	27.73%	4,904,419	318,570
Madera	40	0.56%	99,781	6,481
Marin	10	0.14%	25,261	1,641
Mariposa	-	0.00%	-	-
Mendocino	25	0.35%	61,889	4,020
Merced	66	0.94%	166,722	10,830
Modoc	1	0.01%	2,526	164
Mono	1	0.01%	2,526	164
Monterey	128	1.83%	323,341	21,003
Napa	11	0.16%	27,787	1,805
Nevada	4	0.06%	10,104	656
Orange	328	4.68%	827,297	53,738
Placer	41	0.59%	103,570	6,727
Plumas	2	0.02%	3,789	246

Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
Allocations for FY 2011-2012 Funding

	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx$17.689M)	Allocation of Security Funding (Bx$1.149M)
Riverside	266	3.80%	671,942	43,646
Sacramento	479	6.83%	1,208,738	78,514
San Benito	6	0.09%	15,157	985
San Bernardino	415	5.92%	1,047,068	68,013
San Diego	354	5.06%	894,239	58,086
San Francisco	201	2.87%	507,746	32,981
San Joaquin	180	2.56%	453,435	29,453
San Luis Obispo	47	0.67%	118,727	7,712
San Mateo	69	0.99%	174,301	11,322
Santa Barbara	62	0.89%	156,618	10,173
Santa Clara	245	3.49%	617,631	40,119
Santa Cruz	45	0.64%	113,674	7,384
Shasta	62	0.88%	155,355	10,091
Sierra	-	0.00%	-	-
Siskiyou	7	0.10%	17,683	1,149
Solano	145	2.06%	365,021	23,710
Sonoma	68	0.96%	170,512	11,076
Stanislaus	113	1.61%	285,449	18,542
Sutter	21	0.29%	51,785	3,364
Tehama	21	0.29%	51,785	3,364
Trinity	-	0.00%	-	-
Tulare	47	0.66%	117,464	7,630
Tuolumne	6	0.08%	13,894	902
Ventura	151	2.15%	380,178	24,695
Yolo	46	0.65%	114,937	7,466
Yuba	35	0.50%	88,413	5,743
TOTAL	**7,003**	**100.00%**	**$ 17,689,000**	**$ 1,149,000**
Total Operations Funding:	**$ 17,689,000**			
Total Security Funding:	**$ 1,149,000**			

* Source: California Department of Corrections and Rehabilitation

Criminal Justice Realignment
Allocations for FY 2012-2013 Funding

Court	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of $9.073 Million in FY 2012–2013 (Bx$9,073,000)
	A	B	C
Alameda	388	5.54%	$ 502,724
Alpine	1	0.01%	1,296
Amador	3	0.04%	3,239
Butte	58	0.83%	75,149
Calaveras	1	0.01%	1,296
Colusa	1	0.01%	1,296
Contra Costa	134	1.91%	172,973
Del Norte	3	0.04%	3,887
El Dorado	29	0.41%	37,575
Fresno	336	4.80%	435,349
Glenn	8	0.11%	9,718
Humboldt	60	0.86%	77,741
Imperial	31	0.44%	40,166
Inyo	3	0.04%	3,239
Kern	221	3.16%	286,345
Kings	28	0.39%	35,631
Lake	16	0.23%	20,731
Lassen	3	0.04%	3,887
Los Angeles	1,942	27.73%	2,515,563
Madera	40	0.56%	51,179
Marin	10	0.14%	12,957
Mariposa	-	0.00%	-
Mendocino	25	0.35%	31,744
Merced	66	0.94%	85,515
Modoc	1	0.01%	1,296
Mono	1	0.01%	1,296
Monterey	128	1.83%	165,847
Napa	11	0.16%	14,252
Nevada	4	0.06%	5,183
Orange	328	4.68%	424,335
Placer	41	0.59%	53,123
Plumas	2	0.02%	1,944
Riverside	266	3.80%	344,651
Sacramento	479	6.83%	619,983
San Benito	6	0.09%	7,774
San Bernardino	415	5.92%	537,059

Criminal Justice Realignment
Allocations for FY 2012-2013 Funding

San Diego	354	5.06%	458,671
San Francisco	201	2.87%	260,432
San Joaquin	180	2.56%	232,575
San Luis Obispo	47	0.67%	60,897
San Mateo	69	0.99%	89,402
Santa Barbara	62	0.89%	80,332
Santa Clara	245	3.49%	316,794
Santa Cruz	45	0.64%	58,306
Shasta	62	0.88%	79,684
Sierra	-	0.00%	-
Siskiyou	7	0.10%	9,070
Solano	145	2.06%	187,226
Sonoma	68	0.96%	87,458
Stanislaus	113	1.61%	146,412
Sutter	21	0.29%	26,561
Tehama	21	0.29%	26,561
Trinity	-	0.00%	-
Tulare	47	0.66%	60,249
Tuolumne	6	0.08%	7,126
Ventura	151	2.15%	195,000
Yolo	46	0.65%	58,953
Yuba	35	0.50%	45,349
Total:	**7,003**	**100.00%**	**$ 9,073,000**

** Source: California Department of Corrections and Rehabilitation 2010.*

Total Operations Funding	$	9,223,000
Reserve		(150,000)
Funding for Operations	$	9,073,000

AOC Briefing

June 2012

A PRELIMINARY LOOK AT CALIFORNIA PAROLEE REENTRY COURTS

ADMINISTRATIVE OFFICE OF THE COURTS
CENTER FOR FAMILIES, CHILDREN & THE COURTS

AOC Briefing

Judicial Council of California
Administrative Office of the Courts

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Prepared by the AOC

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All AOC Briefings are available on the California Courts website at
www.courts.ca.gov/cfcc-publications.htm#acc12628

Project Background

In 2009, the California Legislature allocated $10 million of American Recovery and Reinvestment Act State Justice Assistance Grant monies for a statewide pilot project that established or enhanced parolee reentry courts in six counties: Alameda, Los Angeles, San Diego, San Francisco, San Joaquin, and Santa Clara.

Reentry court programs are designed to prevent parole violators with a history of substance abuse or mental illness from returning to prison by providing enhanced services and supervision and shifting jurisdictional responsibility from the California Department of Corrections and Rehabilitation (CDCR) to the pilot courts. Although program models may differ from court to court, all reentry courts are modeled after drug courts, which have been shown to reduce recidivism and are associated with cost savings.[1]

The Legislature has charged the Administrative Office of the Courts (AOC), in cooperation with CDCR, with evaluating California's pilot reentry courts and assessing their impact on recidivism. Funded in part by the California Endowment, this evaluation will measure the six programs' recidivism outcomes and explore the cost-effectiveness of reentry courts. Analyses will also identify program elements essential to reducing recidivism and parole revocation rates as well as the types of participants who benefit most from these interventions. This research briefing provides background on California's recidivism problem, the parolee reentry court pilot project, and preliminary data on the reentry court programs.

California's Recidivism Crisis

California has the largest prison population and also supervises the most parolees of any state in the nation.[2] As of October 1, 2011, the active parole population statewide was 104,782.[3] A 2011 CDCR report found that almost two-thirds of the state's parolees are returned to prison[4] within three years of their release—30% within the first six months—either for new convictions or for technical or administrative violations.[5] High recidivism rates are costly, with the average annual cost per California inmate in 2010–2011 at $45,006.[6]

65% of California parolees return to prison within three years—30% in the first six months.

Many parolees in California struggle with substance abuse and many serve time in prison for drug-related crimes. In fact, 32% of parolees were originally committed to prison for drug-related offenses.[7] Many parolees also suffer from mental health disorders, and those with prison mental health classifications are more likely than other parolees to face revocation, with a 36% higher risk of committing all types of parole violations.[8]

Approximately 14% of parolees have mental health issues.

Parolees often lack basic resources, such as stable housing and employment, that aid in successful community reentry. CDCR reports that at any given time, 10 percent of the state's

parolees are homeless. In major urban areas such as San Francisco and Los Angeles, the percentage of parolees who are homeless ranges from 30 to 50 percent.[9] Many also lack the basic skills necessary for getting a job, while most employers are reluctant to hire an applicant with a serious criminal history, so finding work in a state with an unemployment rate as high as California's is all the more difficult for parolees.

How Reentry Courts Work

California's parolee reentry courts are modeled after drug courts, following evidence-based practices and adhering to the 10 key components of drug courts.[10]

- Every reentry court is made up of an interdisciplinary team led by a judge. Most teams include a defense attorney, a prosecutor, a parole officer, a probation officer, and treatment staff or case managers.
- Reentry court participants are assessed for their risk of reoffending and for their treatment needs. Treatment and community supervision plans are then created based on the information obtained from these assessments.
- Participants attend regularly scheduled court sessions, usually one to four times a month, to discuss their adherence to their supervision/treatment plans and other program requirements.
- Graduated sanctions, such as admonishments, increased frequency of mandatory court sessions, and jail sanctions, are used to respond to noncompliant behaviors. Incentives, such as verbal praise, reduced frequency of court hearings, and transportation or food vouchers, are used to reward and encourage participants' progress.
- Participants remain in the program and receive services, such as case management and substance abuse and mental health treatment, for approximately 12 months. Once parolees successfully complete the program, reentry courts often recommend their early discharge from parole.

Impact of Public Safety Realignment on Reentry Courts

Reentry courts have altered their programs in the wake of California public safety realignment legislation. In 2011, the California Legislature enacted a number of bills that shifted (or "realigned") responsibility for managing certain categories of offenders from the state correctional system to county oversight. Under realignment, fewer felony offenses are punishable by state prison sentences—which are reserved primarily for violent, serious or sex-related offenses or for offenders with histories of such crimes—while all other felonies are generally served in local jails.[11] Inmates released from prison on or after October 1, 2011, will no longer be supervised by CDCR parole officers if their sentences were for nonviolent and nonserious offenses; they will now be supervised by county probation departments, a procedure known as postrelease community supervision (PRCS). When parole is revoked, individuals on PRCS and parolees alike (with some exceptions) will be incarcerated in county jails instead of state prisons.

With the passage of criminal justice realignment, reentry courts will continue to accept parolees under state supervision as well as locally supervised offenders and will now act as postrelease programs that divert participants at risk of re-incarceration from both state prisons and county jails, thereby saving both state and local monies.

Promising Practices in Reentry Court Programs

Reentry courts are such a recent development that research on them is limited, but research on other collaborative justice courts such as drug and mental health courts demonstrates that these programs effectively reduce recidivism. Research also shows that these courts are associated with significant savings and tend to work best for high-risk offenders.[12] California's pilot reentry courts have already identified a number of promising practices:

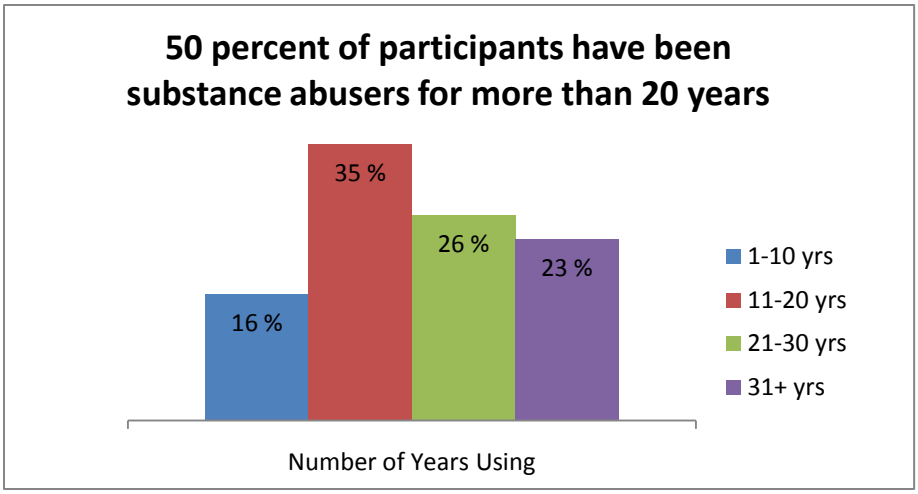
- Providing evidence-based trauma treatment for female parolees, because many women in the criminal justice system have histories of trauma.
- Ensuring a smooth transition from jail to the appropriate treatment provider, particularly for participants with mental health needs. Transporting participants directly to the treatment provider on release, and prior to or at release, gathering the participants' medical records along with any prescriptions and a small supply of any prescribed psychiatric medications to take along. Coordinating with parole outpatient clinics (POCs) and other treatment providers to avoid disruption of participants' medication schedules.
- Providing cognitive behavioral therapy and addressing each participant's criminogenic risk factors.
- Emphasizing direct interaction between the judge and the participant. Verbal praise and encouragement from the reentry court judge are important positive reinforcements that help motivate participants to engage in treatment and other services and comply with court orders.
- Maintaining consistent communication among reentry court team members so that everyone stays apprised of participants' recent activity.
- Involving program graduates as mentors for current participants.

Participants in California Reentry Courts

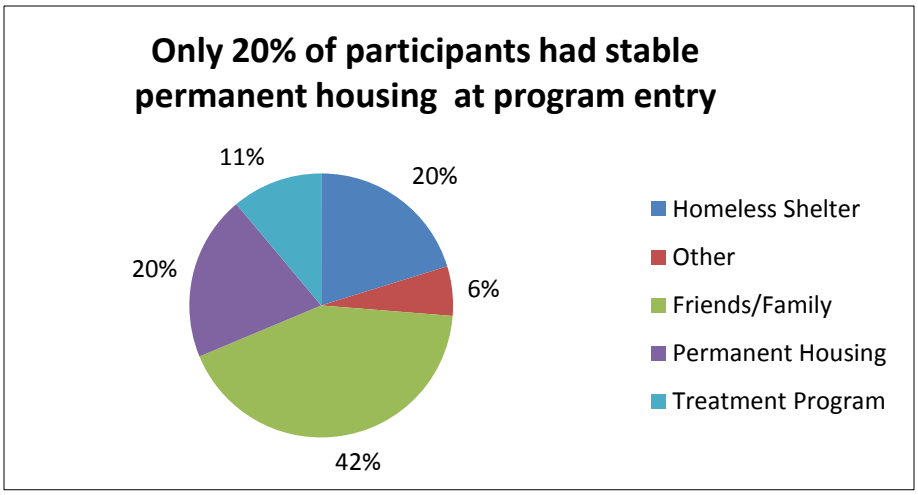
As of September 30, 2011, a total of 656 parolees had entered the six reentry court pilot programs.[13] (All reentry court participant statistics in this section reflect data collected by the AOC from the pilot programs.) Reentry courts offer parole violators one last chance at reprieve before returning to prison, with 26 percent of participants referred to the program for having committed new felonies and 74 percent referred by a parole agent in response to a parole violation. Reentry court participants as a population were 83 percent male, with a mean age of 38, 28 percent between 46 and 71 years old, and 44 percent were African American, 29 percent White (non-Hispanic), and 22 percent Latino.

Reentry court programs are designed to focus on high-risk parolees facing many compounding challenges, such as homelessness, substance abuse, and mental health problems. According to mental health assessments and participants' self-reports, some 38 percent suffer other mental health disorders.[14] Virtually all reentry court participants—99 percent—have struggled with substance abuse issues for many years (see chart).

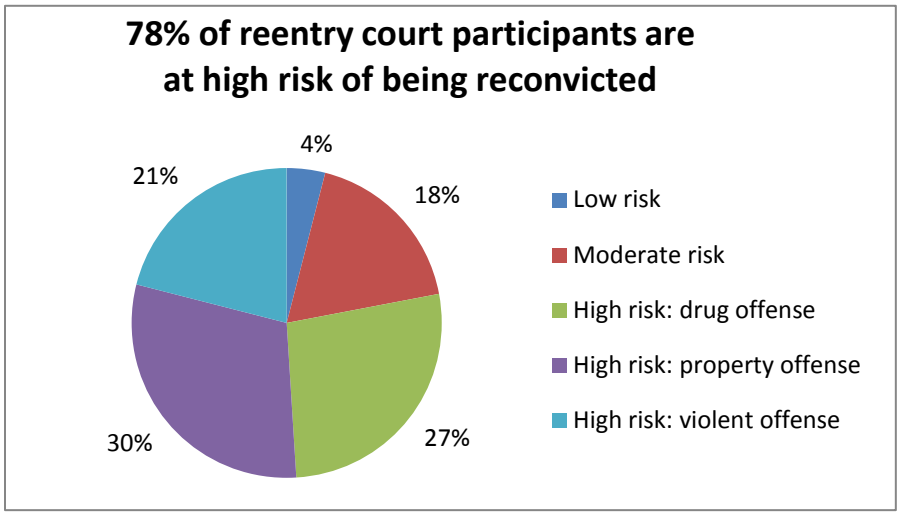
99% of reentry court participants struggle with substance abuse. 38% have mental health disorders.



The majority of reentry court participants lack stable housing when they enter the program, with 20 percent residing in homeless shelters on entry. Most also enter the program unemployed or otherwise impoverished, with 41 percent of participants relying on public aid as their primary income source and 55 percent having monthly incomes less than $500.



Reentry court participants often have serious criminal records and a high risk of recidivism. Forty three percent of current reentry court participants have previously committed a violent or serious felony offense.[15] According to the California Static Risk Assessment Tool, an actuarial tool used by CDCR to assess parolees' risk of reconviction, 78 percent of reentry court participants are at high risk for recidivating. In 2011, CDCR reported that 53 percent of the general parolee population were at high risk.[16] The chart below shows the risk levels for reentry court participants and breaks down the high-risk group into more specific levels defined by high risk for drug, property and violent recidivism.[17]



Promising Outcomes

Although the reentry court programs are in relatively early stages of implementation, outcomes in preliminary analyses are promising. Survival analyses were used to predict the timing and likelihood of parolee returns to prison based on current data,[18] indicate that approximately 23 percent of reentry court participants are likely to be returned to prison within six months of their entering the program.[19] As noted earlier, all reentry court participants enter the program after having committed a parole violation. Previous research indicates that 78% of all parole violations result in revocations to prison.[20] Without a comparison group it is difficult to draw conclusions from these figures; however, it is encouraging to note that despite the fact that reentry court participants were in violation status upon program entry and tend to have higher risks than the general (pre-realignment) parolee population, there is evidence to suggest that their return to prison rate may be significantly lower.

Data collected for the evaluation can be used to inform policy and modify and improve program practices.

The final evaluation will use a quasi-experimental model with a matched comparison group for each of the six reentry court programs to further investigate the effectiveness of these programs in reducing recidivism and revocations and identify participant subgroups that benefit most from this type of intervention. The evaluation will also include analyses of costs and savings associated with reentry court programs and will include qualitative

data from both stakeholder and participants to provide information on program models and lessons learned. The final evaluation will be submitted to the legislature by October of 2013.

California's criminal justice system is undergoing unprecedented challenges and changes due to the current fiscal climate and public safety realignment. The results from this evaluation will be distributed widely to courts and their criminal justice partners and will help inform policy and practice. Existing reentry courts can make use of the findings to tailor their programs, and courts interested in developing similar programs to address the problem of recidivism can utilize the evaluation as a blueprint.

NOTES

1. U.S. Govt. Accountability Ofc., *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts*, Publication No. GAO-12-53 (Dec. 2011), *http://www.gao.gov/products/GAO-12-53* (as of March 8, 2012).
2. R. Grattet, J. Petersilia & J. Lin, *Parole Violations and Revocations in California* (Oct. 2008) Natl. Inst. of Justice, Washington, DC, *www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf* (as of March 8, 2012).
3. Cal. Dept. of Corrections & Rehab., *Monthly Report of Population as of Midnight, Sept. 30, 2011* (Oct. 2011), *www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1109.pdf* (as of March 8, 2012).
4. Cal. Dept. of Corrections & Rehab., *2011 CDCR Adult Institutions Outcome Evaluation Report* (Nov. 2011), *www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0607_Recidivism_Report_(11-23-11).pdf* (as of March 8, 2012).
5. *Ibid.*
6. Cal. Dept. of Corrections & Rehab., *Corrections: Year at a Glance* (Annual Rpt.—Fall 2011), *www.cdcr.ca.gov/News/docs/2011_Annual_Report_FINAL.pdf* (as of March 8, 2012).
7. Cal. Dept. of Corrections & Rehab., *supra* note 3.
8. R. Grattet et al, *supra*.
9. Cal. Dept. of Corrections & Rehab., *Prevention Parolee Failure Program: An Evaluation* (Rpt. to the Cal. Legislature—Apr. 1997).
10. Natl. Assn. of Drug Ct. Professionals, *Defining Drug Courts: The Key Components* (1997) U.S. Dept. of Justice, Ofc. of Justice Programs, Drug Ct. Programs Ofc., *www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf* (as of March 8, 2012).
11. Sentences for certain nonviolent, nonserious, and non–sex-related felony offenses will still be served in state prison. For a list of these offenses or to learn more about public safety realignment, see the Criminal Justice Realignment Resource Center page on the California Courts website at *www.courts.ca.gov/partners/890.htm* (as of March 8, 2012).
12. M. Cosden, J. Ellens, J. Shnell & Y. Yamini-Diouf, "Evaluation of a mental health treatment court with assertive community treatment" (2003) 21(4) *Behavioral Sciences and the Law* 415–427; D. E. McNeil, and R.L. Binder, "Effectiveness of a mental health court in reducing criminal recidivism and violence" (2007) 164 *American Journal of Psychiatry* 1395–1403; M. Moore and A. Hiday, "Mental health court outcomes: A comparison of re-arrest and re-arrest severity between mental health court and traditional court participants" (2006) 30 *Law and Human Behavior* 659–674; D.B. Wilson, O. Mitchell & D.L. MacKenzie, "A systematic review of drug court effects on recidivism" (2006) 2 (4) Journal of Experimental Criminology 459–487.
13. The reentry court participant data in this section were collected from the pilot court programs by the AOC between October 2010 and September 2011. All participants in this dataset entered the reentry court programs prior to the launch of California's public safety realignment.
14. This number is likely underestimated because of a lag between mental health assessment and data collection.
15. Serious and violent felony convictions as defined by Penal Code sections 1192.7(c) and 667.5(c); prior conviction data were received from CDCR.
16. Cal. Dept. of Corrections & Rehab., *supra* note 3.
17. For more on how risk levels are calculated, see *Development of the California Static Risk Assessment Instrument (CSRA),* a report from the Center for Evidence-Based Corrections, University of California, Irvine, at *http://ucicorrections.seweb.uci.edu/sites/ucicorrections.seweb.uci.edu/files/CSRA%20Working%20Paper_0.pdf*.
18. Survival analyses are actuarial-based techniques applied by researchers to predict the timing and likelihood of an event, such as parolee returns to prison.
19. Individual-level prison return data provided by CDCR and analyzed by AOC data specialists.
20. R. Grattet et al, *supra*.

AP Exclusive: Jails house 1,100 long-term inmates

By DON THOMPSON Associated Press News Fuze
Posted:

MercuryNews.com

SACRAMENTO, Calif.—California counties are housing more than 1,100 inmates serving sentences of five years or more in jails designed for stays of a year or less, according to the first report detailing the size of that population under Gov. Jerry Brown's realignment strategy to reduce state prison overcrowding.

The oversight of so many long-term inmates is presenting challenges for county sheriffs. In addition to finding space in their often-crowded jails, in many cases the sheriffs must provide specialized programs that are more costly than those for traditional county inmates.

"We are not set up to house inmates for this period of time," said Nick Warner, the California State Sheriffs' Association's legislative director. "They're living in conditions that they're not designed to stay in for this long."

The report, covering all but six of the state's 58 counties, was done by the association and sent to the governor and Legislature. The Associated Press obtained a copy prior to the public release.

The association found 1,153 inmates in county jails were sentenced to at least five years, including 44 serving sentences of 10 years or more.

Most of the inmates were sentenced for vehicle theft, drug trafficking, receiving stolen property, identity theft and burglary, although a Riverside County inmate is serving nearly 13 years for felony child abuse and a Solano County inmate is serving more than 10 years as a serial thief. The Los Angeles County Jail is holding 35 percent of all long-term inmates, including one sentenced to 43 years for drug trafficking.

The number of long-term inmates in local jails will keep growing as the state diverts more lower-level criminals from state prisons to comply with the governor's realignment law and federal court orders to reduce the population in the state's 33 adult prisons. Before lawmakers approved Brown's realignment in 2011, the only prisoner who might spend more than a year in a county jail would be someone awaiting trial in a complicated case such as murder.

While the number of long-term inmates represents less than 2 percent of the 77,000 prisoners who can be housed in California's 58 county jails, sheriffs say they command a disproportionate share of money and attention. For example, most county jails lack the large exercise yards, classrooms and treatment space required for inmates who are incarcerated for years instead of a few months.

Many sheriffs would like to return their long-term inmates to state prisons, Warner said, although he acknowledged that is not likely as long as the state is trying to relieve prison crowding.

Jeffrey Callison, a spokesman for the state Department Corrections and Rehabilitation, acknowledged that sheriffs need a different type of facility to handle long-term inmates, but he noted that state lawmakers authorized $500 million last year to help counties renovate jails and add space.

"The jails are getting modernized," he said. "They're able to offer more programs to their inmates."

Lawmakers have approved $1.2 billion in bonds for building new jails, many of which are under construction. Counties are getting $865 million in operating money through the state this fiscal year, with their allocation budgeted to exceed $1 billion next year.

Callison said the state also is discussing with counties ways in which they can better accommodate their long-term inmates, including contracting with outside facilities that are better designed to handle that population.

He said judges also can sentence inmates to split sentences that reduce jail time while requiring that released felons are supervised after being released.

"The U.S. Supreme Court ordered California to dramatically reduce its prison population. Rather than release prisoners early, the state is complying through realignment," Elizabeth Ashford, a spokeswoman for the governor, said in an emailed statement.

She said the state will keep helping counties as they implement the policy.

By Kevin Dickinson
July 19. 2013 2:39PM

Jail alternatives

Daily Recovery Center workers replace old bleacher boards Wednesday at Miner Stadium. Daily News Photo/Kevin Dickinson

In his famous American Notes, Charles Dickens wrote of a visit to an American prison: "I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers."

Nearly 170 years after Dickens's tour of the U.S., the Siskiyou County Sheriff's Department is reconsidering U.S. incarceration for reasons both practical and progressive. Under AB-109, the California Realignment Plan has altered sentencing laws. Now, many criminals who would normally be incarcerated within a state prison are being housed at county jails.

To contend with this influx of inmates, the sheriff's department has been planning to build a larger jail facility. Yet, even with the additional bed space, sheriff Jon Lopey explained it won't be enough.

"We can't afford to put everyone in jail and throw away the key," he said.

Moving away from that impractical option, the sheriff's department adopted an Alternative Sentence Program. Lopey stated the idea behind alternative sentencing is firm but fair enforcement. Rather than simply sequestering criminals from society as the end-all, be-all corrective solution, the sheriff's department has taken steps toward treating the forces driving criminal activity in the community, such as poverty, a lack of access to mental health care and the inability to successfully navigate social systems.

Instead, the sheriff's department is helping probationers find housing, food and counseling, as well as integrating into society despite mistakes they have made in their past.

The hope is to reduce Siskiyou County's recidivism rate – that is, the percentage of criminals who return to their crimes or commit other crimes, landing them back in jail and the system.

The recidivism rate is often used as a performance measure for correctional programs and investments.

Lopey pointed out California's current recidivism rate is approximately 70%. In 2007, that rate was 57.8% with the national average standing at 43.3%, according to a report from the Pew Center on the States.

"Just putting people in jail has not worked, so we need to do something different," said corrections officer Allison Giannini, the program coordinator. "And that's what we've been working toward: what is different and what do we need to do to be different."

An important step toward lessening Siskiyou County's recidivism is the Day Recovery Center (DRC), an outreach program housed at the old juvenile hall on Juvenile Lane.

Probationers and parolees are referred to the DRC in lieu of jail time. Using community corrections partnerships, the program aims not to punish but to educate and bring about progression by teaching key life skills – though, as with any education, some lessons might feel a tad punishing.

Giannini stated one important key-life skill is helping the probationers to be self-sufficient.

To meet this goal, the DRC maintains a garden and chicken coop. The garden teaches many important skills, such as how to tend and harvest crops, as well as make soil – the DRC garden's soil is entirely self-made. The probationers are also taught how to produce foodstuffs like cornmeal and salsa from the crops.

"A lot of people get out of jail and think it'll be easy, and their family is excited," said Giannini. "And after the first two days of everybody being excited, it wears on you that now you have to stay sober, you have to get a job and it's really hard to get a job."

To help with the mental struggle, DRC promotes inward self-sufficiency, too, through marriage counseling, anger therapy, parenting classes, and drug and alcohol therapy. Heal Therapy collaborates with the DRC to provide these services and others, including an equine therapy program that is proving successful.

Lopey explained that the program's focus is on community-based treatments, noting that research has suggested this method is most effective because the community is in the best position to determine how to help. In true quid pro quo fashion, DRC probationers help the community.

On July 16, the DRC began replacing old bleacher boards at Miner Street Stadium. It also works with Caltrans on highway beautification projects and with the Rescue Ranch, a non-profit animal shelter.

Chris Taylor, a corrections services specialist, helps the probationers re-enter the community in an effort to shut down the "revolving door" issues plaguing incarceration-only correctional policies.

"When you're incarcerated for a while or in our program, and you can't work, it's pretty difficult to get back on your feet," said Taylor.

He explained that many inmates are released back into society without food, a home or even a job, and that can be overwhelming for them.

Taylor said it can be difficult to find work with a record, especially in an area where jobs are hard to come by and there are many competing applicants, noting previous inmates must work against the "stigma of conviction."

The DRC can provide the inmates with donations like clothes and food. It also helps them find homes, acquaint themselves with community resources and provides them with the tools to find employment.

"They're no different than a lot of the people doing the hiring," said Taylor. For him, the program is about giving people "second, and sometimes third, chances."

Since the DRC is less than a year old, there are no hard statistics yet to show progress or a reduction in Siskiyou County's recidivism, but the anecdotal evidence shows promise.

"We have a great program here," Michael, a DRC participant, told the Siskiyou Daily News. "Sometimes you make wrong choices; doesn't make you a bad person." He points out the program has helped him through counseling and lining up a potential job.

Patricia, another DRC participant, said the program puts her to work but added, "I don't know where my head would be right now if I wasn't busy."
She explained that some people come through, don't take the program seriously and wind up back in jail.

"There have been successes and failures," said Giannini, noting how different people have different needs.

She added that the failures lead to fixes to ensure progress and more future successes. She added, "They're part of the system, and that's what we're trying to break is that cycle. You don't want to stay part of the system for the rest of your life."

http://www.siskiyoudaily.com/article/20130719/NEWS/130719724

By Kevin Dickinson
August 01. 2013 10:40AM

Day Reporting Center Hold Open House

Attendees of the Day Reporting Center's open house have lunch before the presentations. Daily News Photo/Kevin Dickinson

The Day Reporting Center (DRC) had an open house Wednesday to show members of the community its progress throughout the last year. Demonstrations included a slideshow of projects, an exhibit on equine therapy and testimonials from realignment administration and probationers.

As part of realignment, the DRC aims to provide alternative sentencing methods, other than jail time.

Lunch was served at the event with homegrown coleslaw and potato salad from the program's garden. DRC participant Shawn Manning said he and others picked the produce and prepared the side dishes the day before. If the open house had been a week later, Manning pointed out, there would have been cantaloupe.

The DRC's harvest report noted the garden's current yield to be: 5 pounds of peas, 8 pounds of onions, 15 pounds of squash, 23 pounds of cabbage, 42 pounds of lettuce and 48 pounds of potatoes."The proof is in the pudding," Jeff Weiss said, pointing to his half-devoured coleslaw. "There's nothing else to say."

Weiss consulted on the construction of the DRC's garden and taught the participants how to turn the rocky ground into fertile soil. He is already looking toward the future of the project.

Pointing out how the DRC participants make excellent loam, Weiss said he's looking into a strategy to create extra, potentially generating revenue for the probation department and providing the community with a source of high-quality organic material.

"It'll be a way to locally recycle biomass effectively," said Weiss.

Frank Falcone, who has been at the DRC for roughly three years, said, "We all work together, and that's amazing to me."

He credited the DRC with helping him get his job back, not to mention the jobs he has had to turn down due to receiving too many offers.

Correctional service specialist Chris Taylor had additional information on the DRC's progress with job placement. To date, Taylor and the program have helped five individuals find jobs at local businesses; six are currently studying for their GEDs and two are enrolled at College of the Siskiyous. Many others have secured placement in residential treatment.

Ramon Feliciano, a DRC participant since January, commented positively on the help he's received from Heal Therapy's programs, including the drug and alcohol and equine therapy.

Judd Pindell, general manager of Heal Therapy, explained the equine treatment as using the horse as a "therapeutic modality," the same way another therapy might use art as the remedial instrument.

Siskiyou County Probation Department was also present to exhibit other methods of realignment. Electronic surveillance techniques such as GPS-tracking and alcohol-monitoring allow probationers to serve sentences while granting them access to jobs, family and medical services.

Jennifer Villani, deputy chief probation officer, said the new realignment programs have really helped. Before case loads were extremely high, but the more proactive supervision has helped eased the burden on the department. "We can breath," she said.

Speaking toward the DRC and realignment, chief probation officer Todd Heie said the Community-Corrections Partnership really looked at changing the whole system "rather than just Band-Aid solutions."

http://www.siskiyoudaily.com/article/20130801/NEWS/130809977

Reducing dropouts cuts crime

Re "Alternative schools slammed as flawed option for troubled youths" (Capitol & California, July 21): Students who drop out are more likely to get into trouble. Research shows that a 10 percent increase in graduation rates would cut homicides and aggravated assaults by 20 percent. For this reason, having students engage in classroom learning is a crime-prevention strategy that I strongly support.

Students struggling with behavioral issues need more attention, not less. Unfortunately, troubled students frequently get transferred to community schools with high dropout rates instead of getting help addressing their disciplinary problems.

Recent research indicates that getting transferred makes matters worse. According to one study, high school students who transfer schools even once are twice as likely to drop out.

Senate Bill 744 would make it less likely that students could be transferred to community schools without having engaged in conduct for which they could be expelled. This would help keep our youth on a graduation track and go a long way toward decreasing dropouts.

– Police Chief Christopher W. Boyd, Citrus Heights

STATE OF CALIFORNIA-HEALTH AND HUMAN SERVICES AGENCY

DEPARTMENT OF CHILD SUPPORT SERVICES

INCARCERATED PARENT'S REQUEST TO REVIEW CHILD SUPPORT

DCSS 0018 (11/12/10)

INSTRUCTIONS: Fill in the information below and mail this form to:
Sacramento County Department of Child Support Services PO Box 269112 Sacramento CA 95826 (I/O code 38-001)
It will be submitted to the local child support agency that handles your child support case.

I am requesting a review of my child support order to see if it can be lowered or stopped while I am incarcerated. I understand this does not change what I currently owe in back child support (arrears).*

NAME (PLEASE PRINT) (LAST)	(FIRST)
SOCIAL SECURITY NUMBER	DATE OF BIRTH
CURRENT ADDRESS/INSTITUTION	CDCR NUMBER/BOOKING NUMBER/JAIL NUMBER
DATE OF CURRENT INCARCERATION	EXPECTED DATE OF RELEASE

ADDRESS WHERE YOU WILL RECEIVE MAIL WHEN RELEASED (STREET OR P.O. BOX):

CITY	STATE	ZIP CODE

I am requesting a review of my child support order for the following child(ren).

CHILD'S NAME (First and Last Name)	CHILD'S AGE/ BIRTHDATE	COUNTY HANDLING THIS CHILD SUPPORT CASE	OTHER PARENTS

IF YOU NEED MORE SPACE, USE ADDITIONAL PAPER

OTHER QUESTIONS/CONCERNS:

☐ * Check here if you would like information regarding the Compromise of Arrears Program.

Privacy Statement

The Information Practices Act of 1977 (Civil Code Section 1798.17) and the Federal Privacy Act of 1974 (Public Law 93 579) requires that this notice be provided when collecting personal information from individuals. Information requested on this form, including your Social Security Number, is used by the Department of Child Support Services (DCSS) for purposes of identification and communication with you. The DCSS is required, under Section 466(a)(13) of the Social Security Act, to collect the Social Security Number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgement. Social Security Number information is mandatory and will be kept on file at the local child support agency to locate and identify individuals and assets for the purpose of establishing, modifying, and enforcing child support obligations. Enrolling a child in health insurance may require the release of the child's Social Security Number and mailing address to the other parent's employer or the release of the child's Social Security Number to the other parent. The information in your case may be discussed with or given to the State, other public agencies that can legally receive such information, and to the other parent or his/her attorney to the extent required by law.

I understand that if the order is changed while I am incarcerated the order may be changed again when I am released and that I should contact my local child support agency upon my release. I declare under penalty of perjury that I have no income or assets and have no way of paying child support.

SIGNATURE OF INMATE

DATE

SOLICITUD DE PADRES PRESOS PARA LA REVISIÓN DEL MANTENIMIENTO DE HIJOS

DCSS 0018 SPA (11/12/10)

INSTRUCCIONES: Escriba la información que se le pide a continuación y envíe este formulario por correo a: Sacramento County Department of Child Support Services PO Box 269112 Sacramento CA 95826 (I/O code 38-001) El formulario se entregará a la agencia local de mantenimiento de hijos que se ocupa de su caso.

Yo, solicito una revisión de mi orden de mantenimiento de hijos para ver si se puede reducir o suspender mientras me encuentro preso/a. Tengo claro que eso no cambia lo que actualmente debo en pagos atrasados de mantenimiento de hijos (deudas atrasadas).*

NOMBRE (CON LETRA DE MOLDE) (APELLIDO)	(NOMBRE DE PILA)

NÚMERO DE SEGURO SOCIAL	FECHA DE NACIMIENTO
DOMICILIO/INSTITUCIÓN ACTUAL	NÚMERO DEL CDCR/NÚMERO DE REGISTRO/NÚMERO DE CÁRCEL
FECHA DEL ENCARCELAMIENTO ACTUAL	FECHA PREVISTA DE LIBERACIÓN

DOMICILIO DONDE RECIBIRÁ CORRESPONDENCIA CUANDO SEA LIBERADO/A (CALLE O APARTADO POSTAL):

CIUDAD	ESTADO	CÓDIGO POSTAL

Yo, solicito una revisión de mi orden de mantenimiento de hijos para el/la/los/las siguiente/s hijo/a/os/as.

NOMBRE DEL/DE LA HIJO/A (Nombre de pila y apellido)	EDAD DEL/DE LA HIJO/A /FECHA DE NACIMIENTO	EL CONDADO A CARGO DEL CASO DE MANTENIMIENTO DE HIJO	OTROS PADRES

SI NECESITA MÁS ESPACIO, USE UNA HOJA ADDICIONAL

OTRAS PREGUNTAS/ O PREOCUPACIÓNES:

☐ * Marque esta casilla si desea obtener más información acerca del Programa de Compromiso de Deudas Atrasadas.

Declaración de Privacidad

La Ley de las Prácticas de la Información (*Information Practices Act*) de 1977 (Sección 1798.17 del Código Civil) y la Ley Federal de Privacidad (*Federal Privacy Act*) de 1974 (Ley Pública 93 579) exigen que se dé a conocer este aviso cuando se reúna información personal de los individuos. La información que se pide en este formulario, incluido su Número del Seguro Social, es usada por el Departamento de Servicios de Manutención de Menores (*Department of Child Support Services*, DCSS) con el fin de identificarlo y poder comunicarse con usted. Según la Sección 466(a)(13) de la Ley del Seguro Social (*Social Security Act*), el DCSS debe obtener el Número del Seguro Social de todo individuo que se someta a una sentencia de divorcio, una orden de mantenimiento o la determinación o el reconocimiento de la paternidad. La información sobre el Número del Seguro Social es obligatoria y se guardará en un archivo en la agencia local de mantenimiento de hijos para localizar e identificar a los individuos y sus activos con el fin de establecer, modificar y hacer cumplir las obligaciones del mantenimiento de hijos. Para inscribir a un/a hijo/a en un seguro médico, es posible que sea necesario proporcionar el Número del Seguro Social del/de la niño/a y el domicilio al empleador del otro padre o proporcionar el Número del Seguro Social del/de la niño/a al otro padre. Es posible que la información de su caso se discuta o se proporcione al Estado, u otras agencias públicas con autorización legal para recibir dicha información, o al otro padre o su abogado/a según lo exija la ley.

Tengo claro que, si se cambia la orden mientras me encuentro en prisión, es posible que la orden se cambie de nuevo cuando me pongan en libertad y que debo ponerme en contacto con la agencia local de mantenimiento de hijos en cuando me pongan en libertad. Yo declaro bajo pena de perjurio que no tengo los ingresos ni las ventajas o manera de pagar mantenimiento de hijos.

FIRMA DEL PRESO

FECHA

TAB E

Affordable Care Act: Impact on Title IV-D Practices in the Court

Mr. Michael L. Wright

Affordable Care Act: Impact on Title IV-D Practice in Court

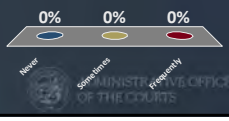
Michael Wright

AB 1058 Program Manager/Supervising Attorney

Current Practices That Intersect with Affordable Care Act

Do you currently *allocate* the dependency tax exemption to the Non-custodial Parent

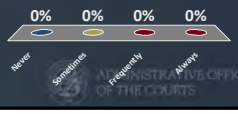
1. Never
2. Sometimes
3. Frequently



Current Practices That Intersect with Affordable Care Act

Do you *consider* allocating the dependency tax exemption to the Non-custodial Parent

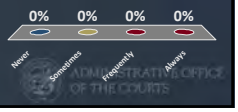
1. Never
2. Sometimes
3. Frequently
4. Always



Current Practices That Intersect with Affordable Care Act

If you allocate the dependency exemption to the NCP and the CP is present do you have the CP execute IRS form in court

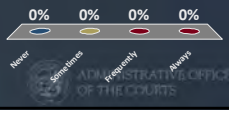
1. Never
2. Sometimes
3. Frequently
4. Always



Current Practices That Intersect with Affordable Care Act

Do you order both parents to provide health insurance coverage for the minor children

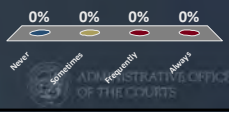
1. Never
2. Sometimes
3. Frequently
4. Always

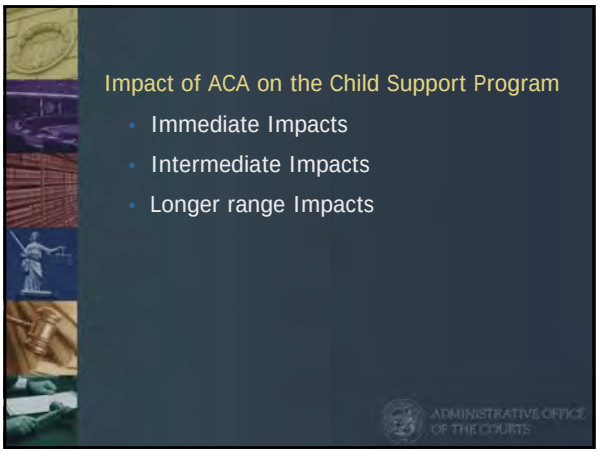


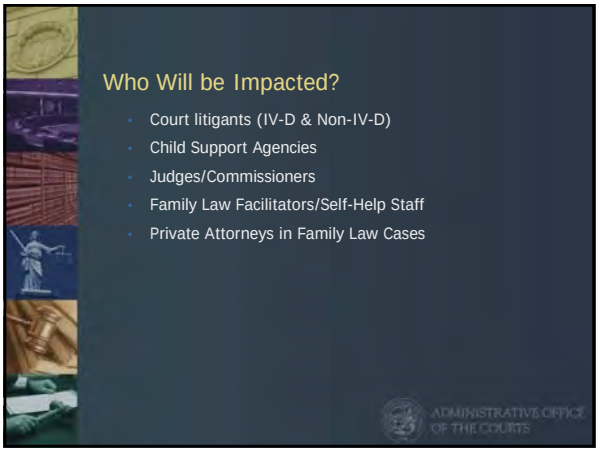
Current Practices That Intersect with Affordable Care Act

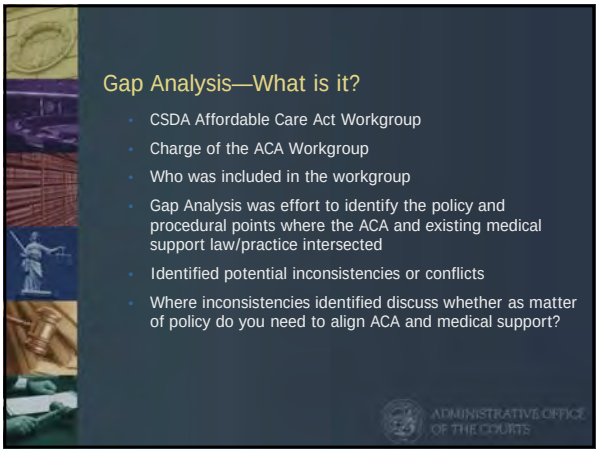
When information on the cost of covering the children is available, do you make a finding of whether insurance is currently available at "reasonable cost"

1. Never
2. Sometimes
3. Frequently
4. Always




Impact of ACA on the Child Support Program
Immediate Impacts
Intermediate Impacts
Longer range Impacts
ADMINISTRATIVE OFFICE OF THE COURTS


Who Will be Impacted?
Court litigants (IV-D & Non-IV-D)
Child Support Agencies
Judges/Commissioners
Family Law Facilitators/Self-Help Staff
Private Attorneys in Family Law Cases
ADMINISTRATIVE OFFICE OF THE COURTS


Gap Analysis—What is it?
CSDA Affordable Care Act Workgroup
Charge of the ACA Workgroup
Who was included in the workgroup
Gap Analysis was effort to identify the policy and procedural points where the ACA and existing medical support law/practice intersected
Identified potential inconsistencies or conflicts
Where inconsistencies identified discuss whether as matter of policy do you need to align ACA and medical support?
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Specific Areas Identified in the Gap Analysis

- Dependency Tax Exemption
- Coverage Source
- ACA Affordability
- Coverage Gaps
- Tax Penalty
- Expanded MediCal
- Premium Tax Credits & Cost Sharing

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Gap Analysis: Expanded MediCal

- State Option to expand MediCal eligibility requirements—California has opted to expand
- Most states eligibility was 138% of federal poverty level (FPL) but California eligibility was already up to 250% for children
- In California expansion opens up eligibility to non-disabled, non-elderly, childless adults with income up to 138% of FPL; asset test eliminated.
- Largest impact will be on many of our lower income NCP's being eligible
- No Medically Needy Only referrals to LCSA in California so little impact on size of the caseload
- Healthy Families (CHIP) being merged into MediCal

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Gap Analysis: Coverage Source

- Current Medical Support Orders (MSO) looks primarily to private coverage available through employment or privately obtained health insurance and includes vision/dental care
- Under ACA individual mandate is satisfied by coverage through government sponsored program, employer sponsored program, the new health exchange/marketplace or privately obtained insurance

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Gap Analysis: ACA Affordability v. IV-D Reasonability

- Determination of "Reasonable Cost" under current medical support orders is under FC 3751. Cost to add the child does not exceed 5% of the payor's gross income. Remember, if the NCP is eligible for the Low Income Adjustment (LIA), cost is deemed to be not reasonable
- The test of "affordability" for the individual mandate is cost is 8% or less of household income. You do the calculation for the individual using this test and then again for all dependents. Could result in finding affordable for individual but not for dependents.

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Gap Analysis: Coverage Gaps

- Coverage for any one day in month = considered coverage for full month = no penalty
- Short coverage gap = 3 months or less = no penalty
- If multiple short coverage gaps in one year, 1st gap counts as the allowable gap
- Penalty waived for first part of coverage gap spanning multiple years.

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Gap Analysis: Dependency Tax Exemption

- Current child support practice in California allows the court to allocate the dependency exemption to the NCP as part of determining child support request. Can also be allocated by stipulation of the parties
- Authority: Monterey County v. Cornejo, 53 Cal3d 1271 (1991)
- No direct authorization for local child support agencies to allocate. Impact on proposed judgments/default cases
- Factors that courts currently consider in determining whether to allocate the dependency exemption to an NCP
- MSO has little or no current relevance to determination

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Gap Analysis: Dependency Tax Exemption

- Under ACA the person eligible to claim the dependent is responsible for providing health insurance coverage unless exempt
- Under ACA the person eligible to claim the dependent is subject to the ACA tax penalty if they fail to provide the coverage
- Under ACA the person eligible to claim the dependant is eligible to go to the Exchange/Marketplace for dependant's coverage if otherwise eligible
- Under ACA the person eligible to claim the dependent is eligible for possible tax subsidies and cost sharing if otherwise eligible and obtained through the exchange

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Gap Analysis: Tax Credits and Cost Sharing

- Tax credits only apply if coverage is obtained through the Exchange
- Must be the your state's exchange—so interstate cases where NCP may try to get through California exchange = no tax credit
- Only if income is between 100-400% of FPL (sliding scale benefits)
- Applies only to US Citizens or lawfully present in the US
- Impact if employer offers family plan—if employer offers family plan at any cost & employer self-coverage is affordable = dependents are not eligible for tax credits
- If employer offers no family plan dependents may be eligible for tax credit

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Gap Analysis: Cost sharing subsidies

- What are cost sharing subsidies? Protect lower income individuals with out of pocket costs.
- Who is eligible? 250% of FPL.
  - Single Individual = $27,936
  - Family of 4 = $57,636 annual HH income

Choice of 4 plans through the exchange; premium cost vary but the cheaper the monthly premiums the higher the deductible and co-pays (give some examples)

Only those who purchase the "Silver" plan are eligible for cost sharing subsidies (Source: Center on Budget & Policy Priorities)

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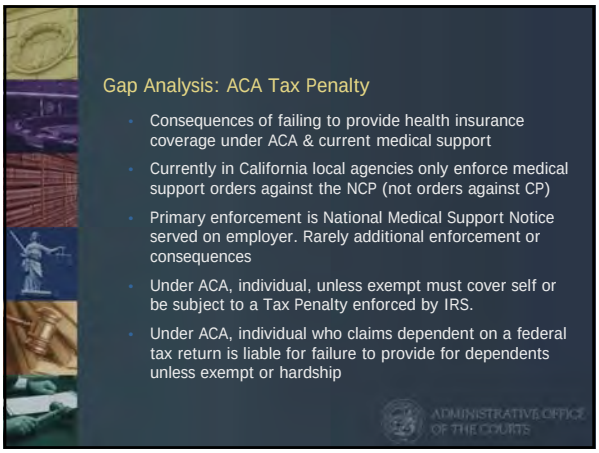
Gap Analysis: ACA Tax Penalty
Consequences of failing to provide health insurance coverage under ACA & current medical support
Currently in California local agencies only enforce medical support orders against the NCP (not orders against CP)
Primary enforcement is National Medical Support Notice served on employer. Rarely additional enforcement or consequences
Under ACA, individual, unless exempt must cover self or be subject to a Tax Penalty enforced by IRS.
Under ACA, individual who claims dependent on a federal tax return is liable for failure to provide for dependents unless exempt or hardship
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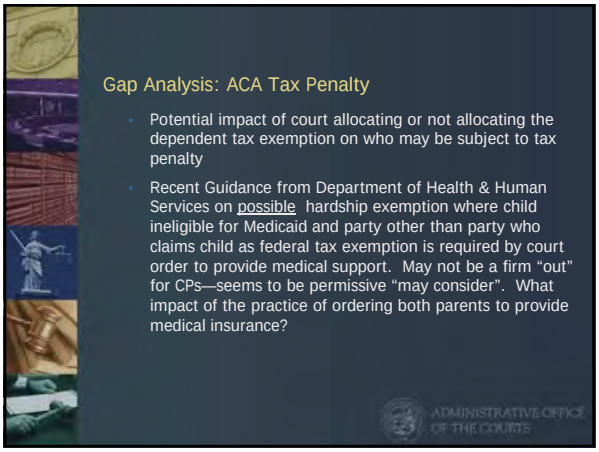
Gap Analysis: ACA Tax Penalty
Potential impact of court allocating or not allocating the dependent tax exemption on who may be subject to tax penalty
Recent Guidance from Department of Health & Human Services on possible hardship exemption where child ineligible for Medicaid and party other than party who claims child as federal tax exemption is required by court order to provide medical support. May not be a firm "out" for CPs—seems to be permissive "may consider". What impact of the practice of ordering both parents to provide medical insurance?
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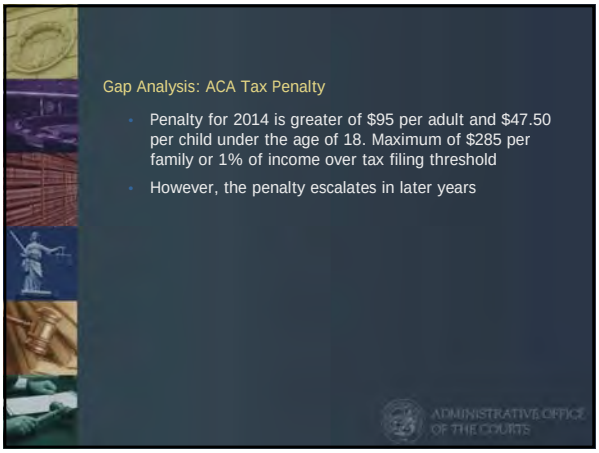
Gap Analysis: ACA Tax Penalty
Penalty for 2014 is greater of $95 per adult and $47.50 per child under the age of 18. Maximum of $285 per family or 1% of income over tax filing threshold
However, the penalty escalates in later years
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New Questions When Calculating Guideline Child Support

- How to treat any tax penalty?
- How to treat any premium tax credit?
- Impact of allocating dependency exemption; maximizing support strategies
- Availability of information to insure that actual cost of medical insurance for parents and children are included in the support calculation

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•Enforcement of Medical Support Orders: Is anything changing?

- Standard IV-D Order to Provide Medical Insurance
- Basic provision = No change in language; meets current federal Final Rule: Child Support Enforcement Program Medical Support AT-08-08 (2008)
- Should we continue to order both parents to provide medical insurance if available at no or reasonable cost? What are possible impacts 1/1/2014 when ACA goes "live"?

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Enforcement of Medical Support Orders: Is anything changing?

- Orders for unreimbursed medical support
- Continues to be a statutory requirement
- Should be aware that all plans obtained through the health insurance exchange will have substantial deductibles and co-pays
- How does the nature of the exchange plan (Bronze, Silver, Gold and Platinum) effect the amount of deductibles and co-pays
- Caps on total out of pocket under exchange plans

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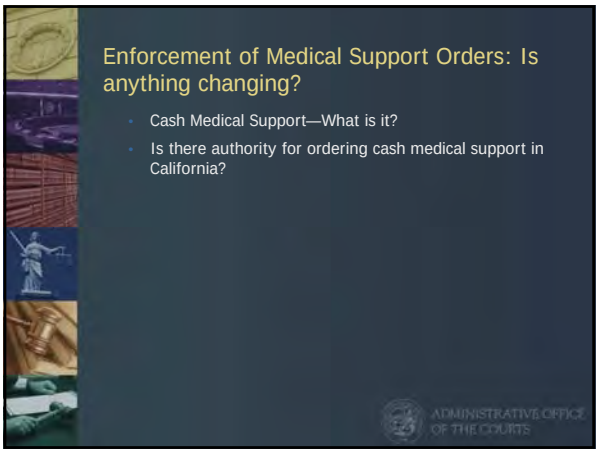
Enforcement of Medical Support Orders: Is anything changing?
Cash Medical Support—What is it?
Is there authority for ordering cash medical support in California?
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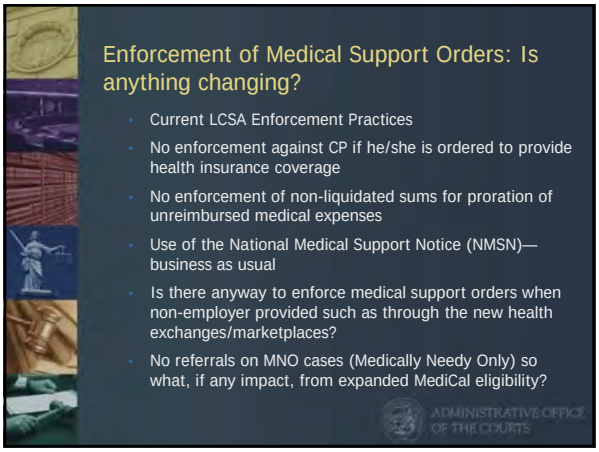
Enforcement of Medical Support Orders: Is anything changing?
Current LCSA Enforcement Practices
No enforcement against CP if he/she is ordered to provide health insurance coverage
No enforcement of non-liquidated sums for proration of unreimbursed medical expenses
Use of the National Medical Support Notice (NMSN)—business as usual
Is there anyway to enforce medical support orders when non-employer provided such as through the new health exchanges/marketplaces?
No referrals on MNO cases (Medically Needy Only) so what, if any impact, from expanded MediCal eligibility?
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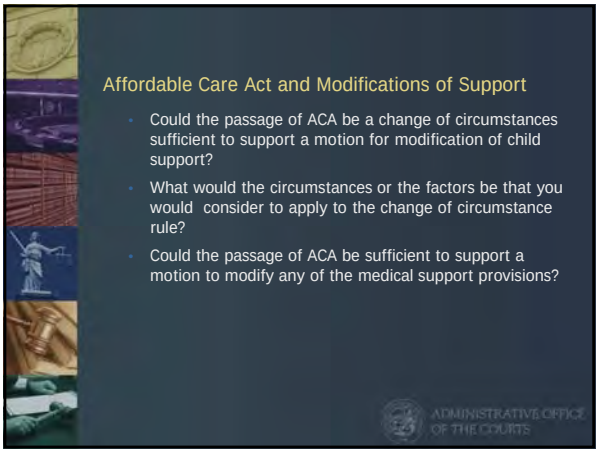
Affordable Care Act and Modifications of Support
Could the passage of ACA be a change of circumstances sufficient to support a motion for modification of child support?
What would the circumstances or the factors be that you would consider to apply to the change of circumstance rule?
Could the passage of ACA be sufficient to support a motion to modify any of the medical support provisions?
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Potential Customer Service Issues under ACA

- Having two parallel systems will lead to customer questions—how to deal with those?
- Child Support professionals need to be knowledgeable but need not become the overall ACA experts
- Referrals to the ACA experts—who are they and where can we find them?

Hypothetical #1

- NCP John is an undocumented alien who lives in California. CP Mary has two minor children by John. Mary is undocumented but both children were born in California. Mary claims both children as dependents on her federal tax return. Neither John nor Mary has insurance available through their employers. Mary's household income is 300% of the federal poverty level(FPL).

Can John apply for health insurance for the children through the Exchange?

Can Mary apply for health insurance for the children through the Exchange?

Will the children qualify for the premium tax credit?

Hypothetical #1

Can John apply for health insurance for the children through the Exchange?

1. Yes
2. No

Hypothetical #1

Can Mary apply for health insurance for the children through the Exchange?

1. Yes
2. No

Hypothetical #1

Will the children qualify for the premium tax credit?

1. Yes
2. No

Hypothetical #2

- NCP Larry is employed and has health insurance for his self available through his employer. Larry, who lives alone, makes $2000 per month and the cost for his insurance is $150 per month. The cost to add both of his children to his employer family plan is an additional $300. Larry is court ordered to provide coverage for the children.

- Can Larry apply for less expensive coverage for his children through the Exchange?
- Is Larry subject to the tax penalty if he fails to insure himself?
- Is Larry subject to the tax penalty if he fails to insure the children?
- Should the LCSA serve a NMSA on Larry's employer?

Hypothetical #2

Can Larry apply for less expensive coverage for his children through the Exchange?

1. Yes
2. No

Hypothetical #2

Is Larry subject to the tax penalty if he fails to insure himself?

1. Yes
2. No

Hypothetical #2

Is Larry subject to the tax penalty if he fails to insure the children?

1. Yes
2. No

Hypothetical #2

Should the LCSA serve a NMSA on Larry's employer?

1. Yes
2. No

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Hypothetical #3

- CP Melinda has two children. She is employed part-time and grosses $1000 per month. Her employer does not provide health insurance coverage and the children are currently uninsured. NCP David has been court ordered to provide health insurance coverage for the children but it is not currently available through his employment.
- Can David apply for himself and the children through the exchange?
- Can Melinda apply for herself and the children through the exchange?

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Hypothetical #3

Can David apply for himself and the children through the exchange?

1. Yes
2. No

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Hypothetical #3

Can Melinda apply for herself and the children through the exchange?

1. Yes
2. No

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Hypothetical #4

- CP Mary is receiving TANF benefits and is not employed. Her two children also receive MediCal benefits. NCP Tom is employed and makes $3000 per month. The court has awarded Tom the dependency exemption for the two children and CP Mary has executed the necessary IRS form relinquishing the exemption. The court has ordered Tom to provide health insurance for the children. Tom has insurance available for himself through employment but there is no family plan offering.

Can Tom apply through the Exchange for the children only?

Is Tom subject to ACA tax penalty if he fails to cover the children?

On these facts, what factors would you consider in awarding Tom the dependency exemption?

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Hypothetical #4

Can Tom apply through the Exchange for the children only?

1. Yes
2. No

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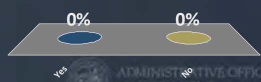
Hypothetical #4

Is Tom subject to ACA tax penalty if he fails to cover the children?

1. Yes
2. No



Hypothetical #4

On these facts, what factors would you consider in awarding Tom the dependency exemption?

1. Yes
2. No

Resources on ACA

- Link to the California Affordable Care Act Child Support Workgroup Report
- http://www.csdaca.org/resources/1/Policy%20and%20Reg%20doc/Cali_ACA_CS_workgroup_report_FINAL_REVIEW_v6.pdf
- Covered California website
- http://www.coveredca.com/

MONTEREY COUNTY v. CORNEJO*DOCKET NO. S014436.*

53 Cal.3d 1271 (1991)

812 P.2d 586

283 Cal. Rptr. 405

MONTEREY COUNTY, Plaintiff and Appellant,
v.
ROBIN JOSEPH CORNEJO, Defendant and Respondent.

Supreme Court of California.

July 18, 1991.

COUNSEL

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, Richard B. Iglehart, Chief Assistant Attorney General, John H. Sugiyama, Assistant Attorney General, Morris Beatus and Josanna Berkow, Deputy Attorneys General, for Plaintiff and Appellant.

Ira Reiner, District Attorney (Los Angeles), Harry B. Sondheim and Brent Riggs, Deputy District Attorneys, as Amici Curiae on behalf of Plaintiff and Appellant.

Segretti, Pitman & Erdbacher, Robert J. Pitman and John Viljoen for Defendant and Respondent.

OPINION

ARABIAN, J.

We granted review to determine whether, in a proceeding brought by the district attorney for modification of a child support order and determination of arrearages, the trial court may allocate to the noncustodial parent the dependency deduction for state and federal tax purposes. We hold that the allocation was proper.

I. FACTS

The essential facts are undisputed. Respondent Robin Joseph Cornejo is the natural father of Jason A., born to Dina G. on September 17, 1980. The couple never married.

Respondent separated from Dina and the unborn child in January 1980. That same month, Dina began to receive welfare benefits (Aid to Families with Dependent Children (AFDC)) from Monterey County (County); she continued to receive public assistance until 1983.

In April 1980, the district attorney of the County filed a complaint on behalf of Dina and Jason for child support and reimbursement of public assistance. Respondent acknowledged paternity and agreed to pay child support of $100 per month. He also stipulated to Dina's continued physical and legal custody of Jason. The district attorney filed two subsequent actions in 1983 for upward modifications of the support order and a determination of arrearages.

The instant proceeding commenced in December 1988, when the district attorney again sought an increase in child support, to $385 per month, and a determination of arrearages, pursuant to Welfare and Institutions Code sections 11350.1 and 11475.1.[1] In a responsive declaration respondent agreed to monthly child support payments of $250 and $25 per month toward arrearages. At the same time, respondent requested that he be allowed to claim the child as a dependent for federal and state income tax purposes. Respondent alleged that Dina had claimed the dependency deduction each year since Jason's birth. The district attorney opposed the request on three grounds: (1) that the trial court's "jurisdiction" in child support enforcement actions under section 11350.1 was limited to the issues of support and paternity and did not extend to tax matters; (2) that it was "inappropriate" to litigate the custodial parent's tax benefits in an action to which she was not a party; and (3) that a reallocation of the deduction would require a further adjustment of child support.

The parties ultimately agreed upon a modification of child support to $272 per month, and arrearages of $2,546.32, leaving the allocation of the dependency deduction as the sole unresolved issue. Following a hearing, the trial court ordered that respondent "shall be allowed to claim the minor child ... as a dependent for state and federal income tax purposes until further order of the court."

The Court of Appeal affirmed, holding that the trial court possessed the statutory authority to allocate the tax deduction, and that Dina's interests were adequately protected in the enforcement proceeding.

The Attorney General filed a petition for review on behalf of the County.[2] In addition to the statutory and due process claims raised below, the County alleged that federal tax law divested the trial court of jurisdiction to allocate the dependency deduction to the noncustodial parent. While generally we will not consider arguments which could have been but were not timely made in the Court of Appeal (Cal. Rules of Court, rule 29(b)(1)), we granted review because the federal preemption claim presents an important jurisdictional issue of first impression in this state.

II. DISCUSSION

A. *FEDERAL TAX DEPENDENCY EXEMPTION*

Our analysis centers on section 152(e) of the Internal Revenue Code (section 152(e)). Prior to January 1, 1985, the pertinent provisions of that section provided that unless otherwise specifically agreed to in a writing by the parties or addressed in a court decree, a noncustodial parent was entitled to claim a dependency exemption where that parent paid more than $1,200 toward the support of a child in any calendar year and the custodial parent "did not clearly establish that he [or she] provided more for the support of such child during the calendar year than the parent not having custody." (Int.Rev. Code of 1954, § 152(e)(2)(B), as amended in 1976.) State decisions had uniformly interpreted the pre-1985 version of section 152(e) to allow state court allocation of the exemption to the noncustodial parent. (See, e.g., *Grider* v. *Grider* (Ala. Civ. App. 1979) 376 So.2d 1103; *Greeler* v. *Greeler* (Minn. Ct. App. 1985) 368 N.W.2d 2; *Morphew* v. *Morphew* (Ind. Ct. App. 1981) 419 N.E.2d 770; *Pettitt* v. *Pettitt* (La. Ct. App. 1972) 261 So.2d 687; *Westerhof* v. *Westerhof* (1984) 137 Mich.App. 97 [357 N.W.2d 820]; *Niederkorn* v. *Niederkorn* (Mo. Ct. App. 1981) 616 S.W.2d 529; *MacDonald* v. *MacDonald* (1982) 122 N.H. 339 [443 A.2d 1017].)

(1) Section 152(e) was problematic for the Internal Revenue Service (IRS), however, because it often involved the IRS as an unwilling mediator in factual disputes between divorced or separated parents over which parent provided more support for the child and was thus entitled to the dependency exemption. Accordingly, the law was amended by the Tax Reform Act of 1984 (Pub.L. No. 98-369, 98 Stat. 494) to provide that the custodial parent is always entitled to the exemption unless he or she signs a written declaration disclaiming the child as an exemption and the noncustodial parent attaches the declaration to his or her return. (Int.Rev. Code of 1954, § 152(e)(2).)[3]

The reasons for the amendment to section 152(e) are set forth in the legislative history of the Tax Reform Act of 1984, as follows: "The present rules governing the allocations of the dependency exemption are often subjective and present difficult problems of proof and substantiation. The Internal Revenue Service becomes involved in many disputes between parents who both claim the dependency exemption based on providing support over the applicable thresholds. The costs to the parties and the Government to resolve these disputes is relatively high and the Government generally has little tax revenue at stake in the outcome. The committee wishes to provide more certainty by allowing the custodial spouse the exemption unless the spouse waives his or her right to claim the exemption. Thus, dependency disputes between parents will be resolved without the involvement of the Internal Revenue Service." (Legislative History of the Deficit Reduction Act of 1984 (Pub.L. No. 98-369) H.R.Rep. No. 432, pt. II, 98th Cong., 2d Sess., reprinted in 1984 U.S. Code Cong. & Admin. News, pp. 697, 1140.)

Since the amendment to section 152(e), the vast majority of jurisdictions considering the issue have concluded that state courts retain jurisdiction to allocate dependency exemptions to noncustodial parents. (*Gamble* v. *Gamble* (Ala. Civ. App. 1990) 562 So.2d 1343; (*Lincoln* v. *Lincoln* (1987) 155 Ariz. 272 [746 P.2d 13]; *Serrano* v. *Serrano* (1989) 213 Conn. 1 [566 A.2d 413]; *In re Marriage of Einhorn* (1988) 178 Ill.App.3d 212 [533 N.E.2d 29]; *Ritchey* v. *Ritchey* (Ind. Ct. App. 1990) 556 N.E.2d 1376; *In re Marriage of Kerber* (Iowa Ct. App. 1988) 433 N.W.2d 53; *Hart* v. *Hart* (Ky. Ct. App. 1989) 774 S.W.2d 455; *Rovira* v. *Rovira* (La. Ct. App. 1989) 550 So.2d 1237; *Wassif* v. *Wassif* (1989) 77 Md.App. 750 [551 A.2d 935]; *Bailey* v. *Bailey* (1989) 27 Mass. App. 502 [540 N.E.2d 187]; *Fudenberg* v. *Molstad* (Minn. Ct. App. 1986) 390 N.W.2d 19; *Nichols* v. *Tedder* (Miss. 1989) 547 So.2d 766 [77 A.L.R.4th 757]; *Corey* v. *Corey* (Mo. Ct. App. 1986) 712 S.W.2d 708; *In re Marriage of Milesnick* (1988) 235 Mont. 88 [765 P.2d 751]; *Babka* v. *Babka* (1990) 234 Neb. 674 [452 N.W.2d 286]; *Gwodz* v. *Gwodz* (1989) 234 N.J.Super. 56 [560 A.2d 85]; *Zogby* v. *Zogby* (1990) 158 A.D.2d 974 [551 N.Y.S.2d 126]; *Cohen* v. *Cohen* (1990) 100 N.C. App. 334 [396 S.E.2d 344]; *Fleck* v. *Fleck* (N.D. 1988) 427 N.W.2d 355; *Hughes* v. *Hughes* (1988) 35 Ohio St.3d 165 [518 N.E.2d 1213], cert. den. 488 U.S. 846 [102 L.Ed. 97, 109 S.Ct. 124]; *Motes* v. *Motes* (Utah Ct.App. 1989) 786 P.2d 232; *In re Marriage of Peacock* (1989) 54 Wn.App. 12 [771 P.2d 767]; *Cross* v. *Cross* (W. Va. 1987) 363 S.E.2d 449; *Pergolski* v. *Pergolski* (1988) 143 Wis.2d 166 [420 N.W.2d 414].)[4]

As the court in *Motes* v. *Motes, supra,* 786 P.2d 232, succinctly stated, "the amendment was merely intended to enhance the administrative convenience of the IRS, not to interfere with state court prerogatives." (*Id.* at p. 237; see also *Fudenberg* v. *Molstad, supra,* 390 N.W.2d at p. 21 ["State court allocation of the exemption does not interfere with Congressional intent. It does not involve the IRS in fact-finding determinations. State court involvement has no impact on the IRS. Thus, allocation of the exemption is permissible."].)

The same courts also generally agree that, while a court order by itself is insufficient under section 152(e) to accomplish an allocation to the noncustodial parent, state trial courts retain the authority to allocate the dependency exemption by ordering the custodial parent to execute the necessary waiver. (See, e.g., *Cross* v. *Cross, supra,* 363 S.E.2d at p. 457; *Wassif* v. *Wassif, supra,* 551 A.2d at p. 940; *Motes* v. *Motes, supra,* 786 P.2d at pp. 236-239; *Nichols* v. *Tedder, supra,* 547 So.2d at pp. 772-780; *Fudenberg* v. *Molstad, supra,* 390 N.W.2d at p. 21; *Pergolski* v. *Pergolski, supra,* 420 N.W.2d at p. 417; *In re Marriage of Milesnick, supra,* 765 P.2d at p. 754; *Lincoln* v. *Lincoln, supra,* 746 P.2d at pp. 16-17; *In re Marriage of Einhorn, supra,* 533 N.E.2d at pp. 36-37;[5] see also *McKenzie* v. *Jahnke* (N.D. 1988) 432 N.W.2d 556, 557; *In re Marriage of Lovetinsky* (Iowa Ct. App. 1987) 418 N.W.2d 88, 90; and compare *Jensen* v. *Jensen* (1988) 104 Nev. 95 [753 P.2d 342, 345] [trial court may exercise its equitable powers to compel the custodial parent to execute a waiver, but only if a similar economic result cannot be achieved, as a matter of law, by adjusting alimony and child support to achieve after-tax financial parity].)

As the court in *Cross* v. *Cross, supra,* 363 S.E.2d 449, cogently explained: "What the new Code section sought to achieve was certainty in the allocation of the dependency exemption *for federal tax administration purposes.* By placing the dependency exemption in the custodial parent unless a waiver is executed, the new statute relieves the Internal Revenue Service of litigation. The new statute is entirely

silent concerning whether a domestic court can *require* a custodial parent to execute a waiver, and this silence demonstrates Congress's surpassing indifference to how the exemption is allocated as long as the IRS doesn't have to do the allocating." (*Id.* at p. 457, original italics.) Indeed, in the absence of any conflict with the congressional purpose, and in light of the long-standing state court practice of allocating dependency exemptions pursuant to their equitable powers in domestic relations cases, it is eminently reasonable to infer that if Congress had intended to forbid state courts from allocating the exemptions by ordering the waiver to be signed, it would plainly have "said so." (*Id.* at p. 458; accord *Motes* v. *Motes, supra,* 786 P.2d at p. 236; *Wassif* v. *Wassif, supra,* 551 A.2d at p. 940; see also *Hisquierdo* v. *Hisquierdo* (1979) 439 U.S. 572, 581 [59 L.Ed.2d 1, 11, 99 S.Ct. 802] [In family law matters "this Court has limited review under the Supremacy Clause to a determination whether Congress has `positively required by direct enactment' that state law be preempted."].)

A small minority of courts have concluded otherwise, holding either that the 1984 amendment to section 152(e) divests state courts of their traditional authority to allocate the dependency exemption (*Lorenz* v. *Lorenz* (1988) 166 Mich.App. 58 [419 N.W.2d 770]), or that even if state courts may consider the exemption in awarding child or spousal support, they may not order custodial parents involuntarily to execute the required waiver. (*Sarver* v. *Dathe* (S.D. 1989) 439 N.W.2d 548; *McKenzie* v. *Kinsey* (Fla. Dist. Ct. App. 1988) 532 So.2d 98; *Brandriet* v. *Larsen* (S.D. 1989) 442 N.W.2d 455.)[6] We find these decisions to be singularly unpersuasive.

Michigan is the only jurisdiction which has clearly adopted the view that the amendments to section 152(e) "divested state courts of jurisdiction over which party could take the exemptions." (*Lorenz* v. *Lorenz, supra,* 419 N.W.2d at p. 771) *Lorenz* engaged in little or no analysis beyond simply noting that section 152(e) does not expressly authorize state authority in this area. As discussed earlier, however, neither does the statute prohibit — expressly or impliedly — a state court's requiring the execution of a waiver. So long as the declaration is signed by the custodial parent and attached to the return of the noncustodial parent, the federal goal of administrative clarity and convenience is served; the statute manifests utter indifference to whether the declaration was signed voluntarily or pursuant to court order.

The decisions holding that section 152(e) precludes an involuntary waiver of the dependency exemption are equally without merit. The Florida District Court of Appeal rejected the majority view on the ground that "deductions and exemptions ... are not to be extended beyond the clear import of the language used" (*McKenzie* v. *Kinsey, supra,* 532 So.2d at p. 100, fn. 3), while the South Dakota Supreme Court in *Brandriet* v. *Larsen* concluded that the amendment to section 152(e) "appear[s] to contemplate a `voluntary' waiver." (442 N.W.2d at p. 459.) As pointed out earlier, however, section 152(e) plainly grants the noncustodial parent the right to an exemption if he or she obtains a declaration from the custodial parent; the statute is absolutely *silent* as to whether or not a state court may direct the custodial parent to execute the declaration. Thus, as the court in *Motes* v. *Motes, supra,* 786 P.2d 232, aptly noted, "the *McKenzie* court offends the very theory it purports to uphold by imposing prohibitions on state courts which are not expressly or impliedly imposed by section 152." (*Id.* at p. 239.)

Furthermore, as we discuss more fully below, all of the foregoing decisions have recognized — as indeed they must — that the dependency exemption provides a financial benefit to the parent entitled to claim it and thus must be considered in setting child and alimony support; indeed, in three of the decisions where the exemption was held to have been improperly awarded to the noncustodial parent (*Lorenz* v. *Lorenz, supra,* 419 N.W.2d at p. 772; *Davis* v. *Fair, supra,* 707 S.W.2d at p. 718; *Sarver* v. *Dathe, supra,* 439 N.W.2d at p. 552), the matter was remanded to the trial court to *reduce* the previously awarded child support and alimony in light of the noncustodial parent's loss of this financial benefit. Thus, as several courts have observed, invalidating the allocation constitutes little more than a perverse exercise in futility: "[T]he minority view forces state courts to achieve financial parity indirectly, by downwardly adjusting otherwise appropriate alimony and child support, rather than achieving parity directly, by sensibly allocating the exemptions." (*Motes* v. *Motes, supra,* 786 P.2d at p. 239; accord *Cross* v. *Cross, supra,* 363

S.E.2d at pp. 458-459; *Nichols* v. *Tedder, supra,* 547 So.2d at p. 779; *Gamble* v. *Gamble, supra,* 562 So.2d at p. 1346.)

Finally, as many states have recognized, practical considerations militate strongly in favor of states retaining discretion to allocate the exemption by ordering the execution of a waiver. "The facts of life are that income tax exemptions are valuable only to persons with income, and up to a certain point, the higher the income the more valuable exemptions become because of the progressivity of the federal income tax." (*Cross* v. *Cross, supra,* 363 S.E.2d at p. 459; accord *Nichols* v. *Tedder, supra,* 547 So.2d at pp. 776-777; *Motes* v. *Motes, supra,* 786 P.2d at p. 239.) The respective incomes of the parents may be such that if the noncustodial parent is allowed the exemption, his or her income tax may be reduced by an amount *greater* than the increase in the tax liability of the custodial parent deprived of the exemption. This circumstance will obtain where, as is often the case, the custodial parent's adjusted gross income is less than the adjusted gross income of the noncustodial parent. (See *Nichols* v. *Tedder, supra,* 547 So.2d at pp. 773-775.)

In such a case, the effect of awarding the exemption to the noncustodial parent is to increase the after-tax spendable income of the family as a whole, which may then be channeled into child support or other payments. (*Nichols* v. *Tedder, supra,* 547 So.2d at pp. 774-775.) To deny state courts the power to allocate the exemption in these circumstances would only "maximize the federal taxes to be paid to the detriment of the parents and the children." (*Ibid.;* accord *Motes* v. *Motes, supra,* 786 P.2d at p. 239; *Cross* v. *Cross, supra,* 363 S.E.2d at p. 459; *Young* v. *Young* (1990) 182 Mich.App. 643 [453 N.W.2d 282, 289] (conc. opn. of Sawyer, J.).) Consequently, it is eminently reasonable for a trial court to allocate the dependency exemption to the noncustodial parent in the higher income bracket, and increase the child support payments to offset the cash value of the exemption.

In sum, we find nothing in the 1984 amendment to section 152(e) that precludes our state trial courts from exercising their traditional equitable power to allocate the dependency exemption to the noncustodial parent by ordering the custodial parent to execute a declaration waiving the exemption. In the instant case, however, we note that the trial court assigned the tax exemption for the minor child to respondent but did not order the custodial parent, Dina, to sign the necessary declaration which must be attached to respondent's tax return. Nevertheless, it appears from the record that the trial court fully intended to allocate the exemption in accordance with section 152(e).[7] Accordingly, the matter will be remanded to the trial court to make clear that Dina is to execute the requisite declaration in consideration of the increased child support she will be receiving.[8]

B. *DUE PROCESS*

(2) Apart from the question of federal preemption, the Attorney General contends that allocation of the exemption to the noncustodial parent in a proceeding in which the custodial parent is not a party violates the latter's due process rights. We do not agree.

As noted earlier, the County, represented by its district attorney, brought this action on behalf of the mother pursuant to sections 11475.1 and 11350.1. Both statutes were enacted by the California Legislature as a precondition to the state's participation in the federal AFDC program. (See §§ 10600 et seq. & 11200 et seq.) A 1975 amendment to title IV of the federal Social Security Act mandates that states which participate in the AFDC program shall provide child support collection services to all individuals, whether or not they are receiving public assistance. (42 U.S.C. § 654(6)(A); 45 C.F.R. § 302.33(a).)

Section 11475.1 implements this mandate. At the time of these proceedings, the statute specifically provided in part that the district attorney "shall have the responsibility for promptly and effectively enforcing child and spousal support obligations" and that the district attorney "shall take appropriate

action, both civil and criminal, to enforce this obligation when the child is receiving public assistance, including Medi-Cal, and when requested to do so by the individual on whose behalf enforcement efforts will be made when the child is not receiving public assistance...."[9] (§ 11475.1, subd. (a); *Worth* v. *Superior Court* (1989) 207 Cal.App.3d 1150, 1154 [255 Cal.Rptr. 304].)

Section 11350.1 specifies the procedures to be followed and limits the issues to be litigated in actions brought under section 11475.1. Section 11350.1 reads in part as follows: "Notwithstanding any other statute, in any action brought by the district attorney for child support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or caretaker parent. The caretaker parent shall not be a necessary party in the action but may be supoenaed as a witness. In an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of paternity, if applicable, and child support.... [¶] ... Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) or otherwise, and litigating the issue of support. In that event, the court in those proceedings shall make an independent determination on the issue of support which shall supersede the support order made pursuant to this section."

Although contested below, the relevance of the dependency exemption to the issue of child support and the authority of the trial court under section 11350.1 to allocate the exemption, are now conceded by the Attorney General. To be sure, section 11350.1 limits the triable issues to paternity and child support. Both statutory and case law make clear, however, that the dependency exemption is highly pertinent to the issue of child support, and is therefore a proper subject of consideration in enforcement proceedings undertaken by the County. Section 11476.1, subdivision (g) directs that in determining the noncustodial parent's reasonable ability to pay, "any relevant circumstances set out in Section 246 of the Civil Code shall be considered." Civil Code section 246 requires the court to consider, inter alia, the earning capacity and needs of each party (subd. (a)), the obligations and assets of each (subd. (b)), and any other factors which the court deems just and equitable (subd. (h)). (See *Van Diest* v. *Van Diest* (1968) 266 Cal.App.2d 541, 545 [72 Cal.Rptr. 304] ["Circumstances to be considered by the trial judge in awarding ... child support are the needs of the parties and the ability to meet those needs, including property owned, obligations to be met, ability to earn and actual earnings."].)

Clearly the parents' income tax liability is an "obligation to be met" under this rubric (*In re Marriage of Neal* (1979) 92 Cal.App.3d 834, 847 [155 Cal.Rptr. 157]) and the allocation of the dependency exemption a "just and equitable" factor to be considered in the determination of the amount to be paid. (*Fuller* v. *Fuller* (1979) 89 Cal.App.3d 405, 409 [152 Cal.Rptr. 467].) As alluded to earlier, nearly every state to consider the matter has concluded that, in the words of the Iowa Court of Appeals: "[D]ependency deductions are connected directly with the requirements of a noncustodial parent to provide support and the allocation of the allowance has a direct effect on the financial resources available to the child." (*In re Marriage of Lovetinsky, supra,* 418 N.W.2d at p. 90; See also *Baird* v. *Baird* (Mo. Ct. App. 1988) 760 S.W.2d 571, 573 [allocation of the dependency exemption "may directly affect the entire financial position of each party."]; *In re Marriage of Fowler, supra,* 554 N.E.2d at p. 243 ["The allocation of the tax exemption is an element of support, over which a trial court has considerable discretion."]; *Sarver* v. *Dathe, supra,* 439 N.W.2d at p. 551 ["[A]llocation of this tax exemption affects the financial situation of the parties and constitutes a factor in considering ability to pay child support. These are absolutely interlocking considerations."].)

Notwithstanding the undisputed relevance of the dependency exemption to the issue of child support, the Attorney General contends that consideration of the tax matter in a proceeding to which the custodial parent was not a party, such as a child support enforcement action brought by the district attorney, violates the custodial parent's due process rights. We do not agree. As noted earlier, the County, represented by the district attorney, filed this action "on behalf of" the minor child and Dina, the custodial parent. (§§ 11350.1, 11475.1, subd. (a).) Although it is true that she was not a party, Dina fully

cooperated with the district attorney's efforts on her behalf, submitted financial disclosure statements and was available to testify as a witness. Both parents have an equal responsibility under the law to support and educate their child. (Civ. Code, § 196a.) Thus, like that of respondent, Dina's employment, income, obligations, number of dependents, withholding and other tax information were highly pertinent to the County's motion for modification of support.

Dina not only had an opportunity and an obligation to present evidence on the question of the dependency exemption, but affirmatively did so; the district attorney submitted written points and authorities in opposition to the award and argued the matter to the court. Accordingly, we perceive no denial of her due process rights.[10]

Significantly, we note also that section 11350.1 explicitly preserves Dina's right to relitigate the issue of child support, and the related matter of the dependency exemption, in a subsequent action under the Family Law Act, and expressly provides that "[i]n that event, the court in those [subsequent] proceedings shall make an *independent* determination on the issue of support which shall *supersede* the support order made pursuant to this section." (Italics added.) Thus, as the court in *County of Santa Clara* v. *Farnese* (1985) 183 Cal.App.3d 257 [237 Cal.Rptr. 457] trenchantly observed, an order under section 11350.1 "is not graven in stone." (183 Cal. App.3d at p. 265.) Dina, in short, is not bound by the allocation of the exemption in the section 11350.1 enforcement proceeding; she may initiate a subsequent action on her own behalf, and the court in that proceeding must make an "independent" determination of the issue, which shall "supersede" the earlier order.

The Attorney General and amicus curiae nevertheless assert that allocation of the dependency exemption in a section 11350.1 action may implicate tax law considerations beyond the expertise of the district attorney, and thereby prejudice the interests of the custodial parent. We note, however, that the matter here was not unduly complex; both parents were single, both had incomes limited to wages or commissions, and the only dependent involved was the one minor child. Moreover, to the extent that either the district attorney or the custodial parent is concerned that the latter's rights are not adequately represented, either one may seek to have the custodial parent made a party to the proceedings. Furthermore, the court is not obligated to decide the issue; if it concludes that the exemption question involves collateral matters or that the evidence before it is inadequate to decide the issue, it may simply decline to treat it and leave the parents to an independent action under the Family Law Act. (*County of San Joaquin* v. *Woods* (1989) 210 Cal.App.3d 56, 61 [258 Cal.Rptr. 110].)

The Attorney General and amicus curiae also express concern that the district attorney may be placed in a position of conflict or even potential liability if the relationship with the custodial parent is characterized as that of attorney/client; there may be circumstances, for example, where custody of the minor child changes and the district attorney is compelled to seek support from the parent whom it earlier "represented." We discern no such dilemma. The statutory scheme empowers the district attorney to establish, modify and enforce support obligations "in the name of the county on behalf of the child, children or caretaker parent." (§ 11350.1.) (3) The purpose of such actions is to provide a direct procedure for a county to recoup public assistance, and to assist parents with limited resources to enforce support obligations so that public funds are not again unnecessarily expended. (*City and County of San Francisco* v. *Thompson* (1985) 172 Cal.App.3d 652 [218 Cal.Rptr. 445]; *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, 298-300 [139 Cal.Rptr. 349].) Notwithstanding the collateral benefit to the custodial parent, the "client" in such actions remains the county.

In conclusion, we find no merit to the claim that the award of the dependency exemption in this case violated the due process rights of the custodial parent.

CONCLUSION

The judgment of the Court of Appeal is affirmed and modified to provide that the matter be remanded to the superior court for entry of an order conditioning its award of support upon execution by the custodial parent of an appropriate waiver of the dependency exemption.

Lucas, C.J., Broussard, J., Panelli, J., and Baxter, J., concurred.

MOSK, J., Dissenting.

I do not disagree with the majority that a court may, if appropriate and consistent with section 152(e) of the Internal Revenue Code, allocate a tax dependency exemption to a noncustodial parent by ordering the custodial parent to execute a declaration waiving the exemption.

I do not agree, however, that such an allocation may be ordered without giving the custodial parent notice and an opportunity to be heard on the issue. Unquestionably, a court could not order a noncustodial parent to pay child support without such requisites of due process. (See *Solberg* v. *Wenker* (1985) 163 Cal.App.3d 475, 478-479 [209 Cal.Rptr. 545] ["Judgments for paternity or child support, entered as a result of an agreement between the district attorney and a parent not represented by an attorney, are voidable if the unrepresented parent can establish that he or she was not advised by the district attorney of the right to trial on the questions of paternity and ability to support and that he or she was unaware of such rights and would not otherwise have executed the agreement."].) In my view, the custodial parent is entitled to equal due process protection.

The majority assert that here the custodial parent's due process rights were protected because the district attorney filed the child support action on her behalf, she submitted financial disclosure statements, she could have been called to testify as a witness, and she could relitigate the issue of the tax dependency exemption in a subsequent action. I am not convinced that the foregoing is sufficient under article I, section 7, subdivision (a) of the California Constitution.

In *Anderson* v. *Superior Court* (1989) 213 Cal.App.3d 1321 [262 Cal.Rptr. 405], the custodial parent appeared without counsel as a witness in a child support action initiated by the county against her estranged husband for reimbursement for aid to families with dependent children (AFDC) benefits. On the basis of her testimony, the court found she had not met her support obligations and ordered her to undertake job searches or enter the state workfare program to avoid a reduction in her AFDC payments.

The Court of Appeal directed the court to vacate its order. It considered the three factors set forth in *Mathews* v. *Eldridge* (1976) 424 U.S. 319, 335 [47 L.Ed.2d 18, 33, 96 S.Ct. 893], to determine what level of constitutional due process is required: "`First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.'" (*Anderson* v. *Superior Court, supra,* 213 Cal. App.3d at p. 1330.) It also considered a fourth factor set forth in *People* v. *Ramirez* (1979) 25 Cal.3d 260, 267-268 [158 Cal.Rptr. 316, 599 P.2d 622], i.e., that persons subjected to deprivatory governmental action be treated with respect and dignity. (213 Cal. App.3d at p. 1330.) The Court of Appeal there concluded that the trial court violated the custodial parent's rights when it failed to require adequate and timely notice of the family law procedure through which her AFDC benefits could be reduced or lost.

Applying these factors here leads to the inescapable conclusion that the custodial parent's due process rights were violated. First, the private interest at stake was the tax dependency exemption. As the majority concede, this exemption provides a financial benefit to the parent entitled to claim it. (Maj. opn., *ante,* at p. 1279.) Its allocation by the court may in fact affect the entire financial position of each party. (See *Sarver* v. *Dathe* (S.D. 1989) 439 N.W.2d 548, 551; *Baird* v. *Baird* (Mo. Ct. App. 1988) 760 S.W.2d

571, 573.) Thus affected were the custodial parent's economic interests, i.e., the property referred to in the constitutional due process provision.[1]

Second, the potential risk of an erroneous deprivation was substantial. The custodial parent was not represented by the district attorney, nor was her position on the question of the dependency exemption urged to the trial court. Contrary to the majority's assertion, the district attorney did not present the custodial parent's arguments against reallocating the exemption; instead he argued that the issue should not be considered in the support action. For example, he wrote in his memorandum of points and authorities: "The position of the District Attorney is that issues of a dependency deduction for tax purposes are governed by state and federal tax law; they should not even be considered in a support action brought by the District Attorney." And he used the same strategy at the hearing: although he casually mentioned the custodial parent's view, he primarily argued that the question was not properly before the court. It follows that the custodial parent in fact had no opportunity to be heard or to be represented by counsel on this significant property issue.

Third, it would not have been unduly burdensome to have allowed the custodial parent an opportunity to be heard. The state's interest in a support proceeding "`is to insure that the moneys disbursed by the county for the aid of a needy child be returned to the public source from which they are disbursed.'" (*County of Yolo* v. *Francis* (1986) 179 Cal.App.3d 647, 655 [224 Cal.Rptr. 585].) The state also has an interest in ensuring adequate support for children following their parents' dissolution of marriage. (*Anderson* v. *Superior Court, supra,* 213 Cal.App.3d 1321, 1331.) Neither of these interests would be undermined by giving the custodial parent notice and an opportunity to be heard on an issue that affects her property and welfare. Thus, although not statutorily obliged to do so, the district attorney could have then appropriately argued against the reallocation of the tax exemption (see *Worth* v. *Superior Court* (1989) 207 Cal.App.3d 1150, 1155 [255 Cal.Rptr. 304]), or could have allowed the custodial parent to appear in propria persona or to retain her own counsel. The benefits of affording such process would have far outweighed any conceivable burden.

Finally, it is true that the custodial parent may subsequently institute an independent action to relitigate the issue of the exemption, if she can find the means to do so. However, for "`"government to dispose of a person's significant interests without offering him [or her] a chance to be heard is to risk treating him [or her] as a nonperson, an object, rather than a respected, participating citizen."'" (*Anderson* v. *Superior Court, supra,* 213 Cal. App.3d at p. 1330, quoting *People* v. *Ramirez, supra,* 25 Cal.3d 260 at pp. 267-268.) Especially in circumstances, such as here, in which the custodial parent received public support and is dependent on the county to assert her need for increased child support, we should not so lightly allow a summary deprivation of her interests. I commend the Attorney General and the district attorney for attempting to protect those interests. This court should do no less.

To conclude, the court's allocation of the tax dependency exemption to the noncustodial parent, although arguably consistent with statutory law, violated the custodial parent's constitutional due process rights. I would reverse the judgment of the Court of Appeal.

Kennard, J., concurred.

FOOTNOTES

1. Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.
2. The California District Attorneys Association has filed an amicus curiae brief in support of the County.
3. See IRS form 8332, "Release of Claims to Exemption For Child of Divorced or Separated Parents." The amendment to section 152 of the Internal Revenue Code provided two additional exceptions to the rule of automatic allocation to the custodial parent, neither of which is applicable in this case. (Int.Rev. Code of 1954, § 152(2)(3), (4).)

4. One court has concluded that section 152(e) applies only to parents who are or have been married and thus precludes allocation of the exemption to a noncustodial parent who has never married the custodial parent. (Gleason v. Michlitsch (1986) 82 Or.App. 688 [728 P.2d 965, 967].) No other state court has followed this holding, which appears to be contrary to the plain language of the statute. (See Fudenberg v. Molstad, supra, 390 N.W.2d 19.) Section 152(e)(1)(A) of the Internal Revenue Code refers to three categories of parents: "divorced or legally separated"; "separated under a written separation agreement"; and those who "live apart at all times during the last 6 months of the calendar year...." Respondent and Dina clearly fall within the third grouping.
5. At one point the Illinois Appellate Courts had appeared to be split on this issue. In re Marriage of Einhorn, supra, 533 N.E.2d 29, held that the amendment to section 152(e) "contains no requirement that the declaration must be signed voluntarily and does not prohibit state courts to order the custodial parent to sign the declaration" (533 N.E.2d at p. 37; accord In re Marriage of Van Ooteghem (1989) 187 Ill.App.3d 696 [543 N.E.2d 899]). In re Marriage of Emery (1989) 179 Ill.App.3d 744 [534 N.E.2d 1014, 1018], on the other hand, had concluded that the trial court "was without authority to award the exemption...." The apparent conflict was resolved when the appellate court that had decided Emery subsequently distinguished its prior decision, observing that the question of whether a trial court may order the custodial parent to sign a waiver was not actually before it in Emery, and held, in conformity with Einhorn and Van Ooteghem, that "a trial court may, in its discretion, allocate the tax dependency exemption to the noncustodial parent by ordering the custodial parent to sign a declaration that he or she will not claim the dependency exemption." (In re Marriage of McGarrity (1989) 191 Ill.App.3d 501 [548 N.E.2d 136, 138].) Subsequent Illinois decisions have uniformly followed Einhorn. (In re Marriage of Rogliano (1990) 198 Ill.App.3d 404 [555 N.E.2d 1114, 1121]; In re Marriage of Fowler (1989) 197 Ill.App.3d 744 [554 N.E.2d 240, 243].)
6. There are other cases that are sometimes cited in opposition to the majority view, but these are generally distinguishable. Two such decisions are Theroux v. Boehmler (Minn. Ct. App. 1987) 410 N.W.2d 354 and Davis v. Fair (Tex. Ct. App. 1986) 707 S.W.2d 711. In each case the court held that the trial court lacked the authority under section 152(e) to allocate the dependency exemption to the noncustodial parent. The distinguishing feature of each case, however, is that in neither was the issue of a court-ordered waiver presented; the court had allocated the exemption to the noncustodial parent, but had failed to order the custodial parent to execute the statutorily mandated waiver. (Theroux, supra, 410 N.W.2d at p. 358; Davis, supra, 707 S.W.2d at pp. 712, 715.) Thus, carefully analyzed, neither case directly conflicts with the majority position.
7. At the hearing on respondent's motion for the allocation of the exemption, the trial court was made aware of the need for Dina to sign a waiver, and the trial court observed: "I mean she's got to waive, she's got to waive to allow him to take it as a dependency. If she doesn't no one gets any benefit out of this."
8. As discussed more fully in the following section, Dina was not a party to the proceeding; it was brought on her behalf by the district attorney pursuant to sections 11475.1 and 11350.1. Therefore, while the trial court technically could not "order" Dina to execute the necessary waiver, it could condition the award of child support upon her doing so.
9. The pertinent provisions of section 11475.1 have since been amended. The amendment effected no change in substance. (See Stats. 1989, ch. 1359, § 12.5.)
10. The dissenting opinion states that the district attorney did not address the merits of the allocation issue. On the contrary, the district attorney's written opposition stated: "The position of the custodial parent, Dina G., is that the defendant is not entitled to the credit because there are so many expenses associated with raising the child that (the father) refuses to pay." As noted, the trial court considered the income and expenses of both parents in its decision awarding the exemption to respondent. Thus, we find that Dina suffered no prejudice or denial of due process.
1. The trial court was under the erroneous impression that because the custodial parent was earning under $10,000 a year, she was exempt from income tax and unaffected by any reallocation in the dependency exemption. Yet the custodial parent's income declaration stated her gross income was $1,024 a month. The court's miscalculation illustrates the problem of not allowing the custodial parent the opportunity to be heard. The district attorney recognized this in his argument to the court: "Well, [whether the custodial parent receives a tax benefit is] one of the issues that we feel is raised by their request. That's a tax law question, Your Honor, and it's inappropriate to address it here. And she's not a party, the County's a party. She's not."

Gap Analysis - 1. Tax Exemption

Section 5000(a): Beginning January 2014 a nonexempt individual must maintain "minimum essential coverage" for themselves and any nonexempt person who may be claimed as a dependent of the individual, or be subject to a tax penalty.

Definition of Dependent

26 USC Section 152: In the context of the individual mandate, a dependent is any individual whom an individual could claim as a dependent on his federal income tax return (whether or not he actually claims the dependent). If more than one person could claim a dependent, the person who actually claims the dependent (or who has priority to claim the dependent, if no one does) is responsible for the penalty.

Intersections

	Affordable Care Act	Child Support
Establishment	1. Individual who could claim child for federal tax purposes	1. Either parent or both
Enforcement	N/A	N/A
Case Maintenance	N/A	N/A
Other	N/A	N/A

Discussion

The ACA and child support laws place different responsibilities upon individuals for obtaining healthcare coverage for their dependents.

Under the ACA, the federal government, state governments, insurers, employers, and individuals are given the shared responsibility to reform and improve the availability, quality, and affordability of healthcare coverage in the United States. The individual responsibility provisions require each individual to have minimum essential coverage or pay a penalty. The individual who could claim the dependent on their federal income tax return is responsible for maintaining coverage for the dependent.

Current child support law evolved during a time when the focus was to enroll dependents within the child support caseload in private healthcare coverage that was available, accessible, and of reasonable cost. In the vast majority of situations, only employer-sponsored insurance met the criteria; therefore, federal regulations allow states the flexibility to order one or both parents to obtain healthcare coverage to increase the opportunity that more dependents would be enrolled in private healthcare coverage. Which parent has the federal tax exemption plays no part in the determination of who could be ordered to obtain healthcare coverage under federal child support regulations.

California Tax Dependency Exemption

A California trial court has the authority under California case law to allocate the dependency exemptions between parties and to order the parties to execute and deliver the documents necessary to transfer the exemption to the other party[13]. The court has broad authority to determine this issue.

The allocation of the dependency exemption under the California child support guidelines can make a significant difference in the party's net income and thus, the dollar amount of the child support obligation. Most California child support guideline calculators have an option that shows the impact of the tax exemption on the child support obligation.

Approximately 1/3 of California child support orders have an allocated dependent tax exemption. For the remaining cases, the order is silent. If there is no court-allocated dependency exemption, parties to the case are required to follow IRS tax codes regarding the claiming of the exemption.

Regulations

Discussion

The Workgroup has determined that no short-term legislative change for this intersection is required prior to the January 2014 ACA implementation date.

In the future, if the IV-D program maintains responsibility for establishing Medical Support Orders (MSOs), consideration should be given to include the option for states to consider the designation of a dependency tax exemption, in most cases, to the parent responsible for obtaining coverage.

It should also be noted that currently in California, the custodial parent (CP) is generally not a party to the child support action until after entry of an order/judgment. In California, the agency prepares and serves a Proposed Judgment that becomes the Judgment by default if no Answer is filed. Given that the CP is not a party to the action, the agency cannot enter an order that the CP provide medical insurance coverage. However, existing state law requires that one or both parents be ordered to provide coverage. Therefore, the non-custodial parent (NCP) is ordered to provide the coverage by default. Further complicating the default situation is the fact that only the court, not the local child support agency, can allocate the dependency exemption.

Recommendation(s)

1. No short-term legislative change is required prior to the January 2014 ACA implementation date

2. No changes to current state laws unless federal regulations are amended

[13] *Monterey County v. Cornejo*, 53 Cal.3d 1271;283 Cal. Rptr.405. (1991)

Operations

Discussion - Local Courts

Under the ACA, the allocation of the tax exemption plays an integral part in identifying the individual who may have to pay a tax penalty if dependent coverage is not maintained as identified in **Gap Analysis - 5. Tax Penalty.**

Currently, AB1058 commissioners and family law judges determine the allocation of the dependency exemption as a part of the child support order determination. The MSO currently has no relevance to the allocation of the tax exemption.

With the implementation of the ACA, the allocation of the tax exemption may impact one or both parties' ability to comply with the ACA.

The scenario below is very common in the Child Support Program:

CP has the dependent residing in the household and will be claiming the dependent for the taxable year under ACA requirements. The CP is identified as the individual liable for maintaining minimum essential coverage for said dependent.

NCP has an MSO for the dependent requiring enrollment of the dependent in employer-sponsored insurance or other coverage entity.

If the NCP fails to meet their court-ordered obligation (MSO) to provide healthcare coverage for the dependent, it may result in the CP facing the assessment of a tax penalty for the dependent claimed if the CP is unable to maintain minimum essential coverage for the dependent on their own.

Current California medical support and child support laws and practices can have a significant impact on the amount of child support and the ability to comply with medical and child support orders, as well as with the ACA. Any consideration of a change in existing policy and practices should evaluate the impact on the calculation of guideline child support and ability to comply with related court orders. Appendix C2 includes a summary of existing California medical support and child support laws as they impact the calculation of support. Also included are a variety of guideline child support scenarios and the resulting child support amounts. These scenarios include a common scenario under existing practices, varying impacts of allocating the dependency exemption to either the CP or NCP, and treating the cost of the child's coverage as additional support rather than the current practice of
deducting from the payer's income.

(A parallel discussion can be found in Gap Analysis – 13. Premium Tax Credits and 3. 5% v. 8%.)

Recommendation(s)

The implementation of the ACA in January 2014 adds a layer of complexity and possible conflict for individuals who are trying to meet both their personal responsibilities and medical support obligations under very different legal constraints. California trial courts have the flexibility to change procedures regarding the allocation of the dependent exemption. Based on this fact, the Workgroup makes the following recommendations, as a short-term solution, to decrease conflict and possible confusion for the parties of a child support case during the first year of ACA implementation:

1. Establish collaborative workgroup with AB1058 commissioners and family law judges to encourage consistent application and standardization when Medical Support Orders (MSOs) are established or modified after the implementation of the ACA and develop a work plan to:

Operations & Policy

- **Determine the feasibility and impact of new or modified child support orders having a specific finding of the dependency exemption to one of the parties to the order.**
- **Develop guidelines on the allocation of the dependent exemption when:**
  - Establishing or modifying MSOs
  - Stipulations
  - Default judgments
- **Encourage the allocation of the dependency exemption be given to the party ordered to provide health insurance coverage for the child**
  - If both parties are ordered to provide coverage the following factors should be considered:
  - CP should be allocated the tax exemption in most cases to allow greater control and flexibility for the CP, as health insurance coverage can be fluid.
  - Consider allocating the tax exemption to the NCP in cases where the NCP has stable employment with employer-sponsored insurance that meets the test of reasonable, and NCP has the available financial resources to support the coverage.
- **Determine the feasibility and impact of aligning the definition of "reasonable" with the ACA definition of affordable**
- **Research and examine barriers that may arise when a CP is not a party to the child support action until after entry of an order/judgment**
- **Any consideration of a change in existing policy and practices should evaluate the impact on the calculation of guideline child support and ability to comply with related court orders**
- **Track and review impact of any temporary solutions**

Communication & Outreach

- **Identify and develop FAQ and scenarios for use by AB1058 commissioners and family law judges regarding the issue**
- **Support training of AB1058 commissioners and family law judges**
- **Completion October 2013**

Systems & Interfaces

» Review and update judicial and/or LCSA MSO related documents as needed

Discussion - LCSA

The Workgroup identified this intersection may have impact on the day-to-day operations of the LCSA. It is anticipated that case members will be contacting the LCSAs regarding their responsibilities in relationship to the ACA mandates and MSO requirements and to ask for additional supportive services.

Part of the LCSA training will include information regarding the definition of "qualifying events" to enroll through the Exchange outside of open enrollment periods. For the child support caseload, change of employment, loss of current employer coverage, and establishment of a medical support order are considered qualifying events.

Recommendation(s)

Operations & Policy

1. CSDA-led development of ACA training and intersections with Child Support program
   - » Investigate cost and level of effort for onsite regional training versus webinar training
   - » Completion October 2013

Communication & Outreach

2. CSDA-led development of a work plan for the creation of FAQ and/or outreach materials for statewide use by child support professional
   - » Establish collaborative workgroup with DCSS for development of materials
     - » Internal and external materials
       - » LCSA
       - » DCSS
       - » CP & NCP
       - » Employers
       - » Other identified stakeholders
     - » Identify types of media: brochure, FAQ, state webpage
     - » Training plan for LCSA & DCSS
     - » Completion October 2013

Systems & Interfaces

» Update LCSA and state website links as needed

Gap Analysis - 5. Tax Penalty

Section Sec 5000A(b) Shared Responsibility Payment (b) 1: If an applicable individual fails to maintain minimum essential coverage for one or more months starting in 2014, they must pay a penalty unless they fall in the exemption category.

IRS Proposed Rule 26 CFR Part 1 lists the annual penalties for 2014. The amount of any payment owed takes into account the number of months in a given year an individual is without coverage or an exemption.

2014 Payment: Greater of $95 per adult and $47.50 per child under age 18 (maximum of $285 per family) or 1% of income over the tax-filing threshold. These penalties will be assessed in 2015 after individuals file their tax returns.

Intersections

	Affordable Care Act	Child Support
Establishment	N/A	N/A
Enforcement	1. Individual who claims dependent on a federal income tax return is liable for the shared responsibility payment 2. Penalty for 2014 is the greater of $95 per adult and $47.50 per child under the age of 18. Maximum of $285 per family or 1% of income over the tax filing threshold	1. Responsibility to follow NMSN requirement is on the employer
Case Maintenance	N/A	N/A
Other	N/A	N/A

Discussion

Current child support practice links Medical Support Orders (MSOs) to Employer-Sponsored Insurance (ESI). Upon receipt of an NMSN it is the employer's responsibility to follow medical support notice requirements or face possible contempt of court findings. There are no penalties for an ordered parent if an employer fails to follow the NMSN.

In the proposed rule, the IRS states than an individual is liable for the shared responsibility payment (tax penalty) of his/her dependent if he/she claims or may claim the dependent on his/her federal income tax return.

The following scenario is very common in the Child Support Program and demonstrates the potential conflict between CPs and NCPs.

Scenario

A CP has the dependent residing in the household and will be claiming the dependent for the taxable year. The NCP has a medical support obligation for the dependent requiring enrollment of the dependent in employer sponsored insurance or other covered entity.

Potential Conflicts

1. The NCP fails to meet his/her court-ordered obligation to provide healthcare coverage (medical support order) for the dependent, resulting in the CP facing the possible assessment of a shared responsibility payment for the dependent claimed if the CP is unable to maintain minimum essential coverage for the dependent on his/her own.

2. When completing a federal tax return, the CP may not be able to accurately attest to any coverage gaps for the liable dependent for the taxable year. According to 26 USC § 6055 – Reporting of Health Insurance Coverage, health insurance issuers are required to provide annual coverage statements about individuals for whom minimum essential coverage is provided. Here, we assume the statement for dependents would be provided to the individual who has enrolled the dependent in healthcare coverage (in this case, the NCP), **not** the individual who claims the dependent on their federal tax return.

3. Within the Child Support Program, there are often communication deficiencies between the CP and the NCP which may result in the CP having problems securing proof of coverage for the dependent to determine if there were any coverage gaps within the taxable year. This could seriously impede the CP in meeting his/her federal tax return filing deadlines, and may cause the CP to submit incorrect information. As a result, the CP could potentially be placed in the untenable position of not knowing until after the fact if he/she was facing the assessment of a shared responsibility payment.

Additionally, the Workgroup discussed the possibility that if the level of the tax penalty is lower than the annual cost to cover the dependent, some parents may opt to pay the tax penalty rather than meet their medical support responsibilities.

Regulations

Discussion

The Workgroup has determined no short-term legislative change for this intersection is required prior to the January 2014 ACA implementation date.

During deliberations the Workgroup examined possible solutions that could be shared with both CMS and the Department of Treasury that would relieve the CP in paying a shared responsibility payment for not maintaining minimum essential coverage as described in the above scenarios.

Center for Consumer Information and Insurance Oversight(CCIIO) (CMS) to either:

» Create a hardship exemption at 155.605(g) for CP in the above scenario where the NCP has not enrolled the dependent in healthcare coverage; or

» Create a new exemption category under Sec 5000A(d-e) for the CP with tax exemption where the NCP has an MSO

Department of Treasury

» Not assess the shared responsibility payment for individuals in this scenario as proposed in §1.5000A-5 Administration and Procedure as a reasonable cause for not meeting the mandate; or

» Provide relief, waive, or abate the assessed shared responsibility payment in § 1.5000A-5

Administration and Procedure for individuals who report this scenario or similar scenarios as a reasonable cause for not meeting the mandate

Published on June 26, 2013 CMS released final regulations titled, "Patient Protection and Affordable Care Act; Exchange Functions; Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions." On that same date CMS also published; Guidance on Hardship Exemption Criteria and Special enrollment Periods.

The Workgroup was pleased to note that under the guidance CMS clarified[14] that Marketplaces may consider the following circumstances in determining what constitutes a hardship under 45 CFR 155.605(g)(1) if they prevent an individual from obtaining coverage under a QHP, which include:

» An individual who is a child who has been determined ineligible for Medicaid and CHIP, and for whom a party other than the party who expects to claim him or her as a tax dependent is required by court order to provide medical support. We note that this exemption should only be provided for the months during which the medical support order is in effect

This supported the Workgroups suggested solution as mentioned above and was determined by members to resolve a major conflict for custodial parents in child support cases.

The Workgroup was also pleased to note in in IRS Proposed Rule 26, no changes to Section 6402(c) – Offset of Past Due Support Against Overpayments, which requires the Secretary of the Treasury to apply a reduction under this subsection first to the amount certified by the state as past due support under Section 464 of the Social Security Act before any other reduction is allowed by law.

The Federal Tax Offset program is an extremely effective collection method for the Child Support Program and the families depending on those collections. In the most current report to Congress released by the Office of Child Support Enforcement (FY2011), $2.2 billion was collected from the Federal Tax Offset program. Any changes to the hierarchy found in Section 6402 would negatively impact the effectiveness of the Federal Tax Offset program and payments to families.

Recommendation(s)

1. **No short-term legislative change is required prior to the January 2014 ACA implementation date**

2. **No changes to current state laws unless federal regulations are amended**

3. **The Workgroup recommends that efforts be directed to OCSE, Department of Treasury, and HHS to review the requirement that Health Insurers provide annual coverage statements to the policy holder. The Workgroup also recommends that these entities be encouraged to consider requiring health insurance issuers to provide CPs access to annual coverage statements.**

Health insurance issuers will be required to provide annual coverage statements to the individual making the premium payments. In many cases this information will be provided to the NCP as the individual covering the dependent, but it will be the CP who will claim the dependent as a tax exemption and will need coverage confirmation for filing a tax return.

[14]Dept of HHS, Center for Medicare & Families, June 26, 2013; SUBJECT Guidance on Hardship Exemption Criteria and Special Enrollment Periods.

Operations

Discussion – LCSA

The Workgroup identified this intersection as having a significant impact on the day-to-day operations of the LCSA. It is anticipated that parents will be contacting the LCSAs regarding their responsibilities in relationship to the ACA mandates and MSO requirements.

In addition, it is anticipated that there will be an increase in requests by CPs for assistance in verifying dependent coverage by the NCP. This could lead to increased requests for medical support order enforcement and requests for review and modification of the MSO.

Recommendation(s)

Operations & Policy

1. CSDA-led development of ACA training and intersections with Child Support Program
   - » Investigate cost and level of effort for onsite regional training versus webinar training
   - » Completion October 2013

Communication & Outreach

2. CSDA-led development of a work plan for the creation of FAQs and/or outreach materials for statewide use by child support professionals
   - » Establish collaborative workgroup with DCSS for development of materials
     - » Internal and external materials
       - » LCSA
       - » DCSS
       - » CP & NCP
       - » Employers
       - » Other identified stakeholders
     - » Identify types of media: brochure, FAQ, state webpage
     - » Training plan for LCSA & DCSS
     - » Completion October 2013

Systems & Interfaces

» Update LCSA and state website links as needed

Gap Analysis - 13. Tax Credits

Subtitle E – Affordable Coverage Choices for All Americans Part I – Premium Tax Credits and Cost-Sharing Reductions Sec. 1401(a) Sec 36(b): Refundable tax credit providing premium assistance for coverage under a qualified health plan. Amends the Internal Revenue Code to provide tax credits to assist with the cost of health insurance premiums.

Premium tax credits are available to individuals and families with incomes between 100% of the federal poverty level ($23,550 for a family of four) and 400% of the federal poverty level ($94,200 for a family of four) that purchase coverage in the health insurance Exchange in their state. Premium tax credits are also available to lawfully residing immigrants with incomes below 100% of the poverty line who are not eligible for Medicaid because of their immigration status.

To receive the credits, individuals must be U. S. citizens or lawfully present in the United States. They can't receive premium tax credits if they are eligible for other "minimum essential coverage," which includes most other types of health insurance such as Medicare or Medicaid, or employer-sponsored coverage that is considered adequate and affordable.

While tax credits can help lower monthly premium payments, cost-sharing subsidies protect lower-income individuals with health insurance from high out-of-pocket costs at the time of service. Individuals may be eligible for subsidies if their income is less than about $27,936 for a single person and less than approximately $57,636 for a family of four in 2012. Individuals who qualify for cost-sharing subsidies will pay less for healthcare expenses, including costs incurred when receiving medical care. These government financial assistance programs are offered on a sliding scale, based on annual household income.

Intersections

	Affordable Care Act	Child Support
Establishment	N/A	N/A
Enforcement	1. Individual may qualify for a premium tax credit or subsidy through Exchange	1. Individual could receive a tax credit and not be in compliance with MSO 2. Ordered parent may be required to enroll dependent through Exchange but not be eligible for a tax credit
Case Maintenance	N/A	N/A
Other	N/A	N/A

Discussion

The following details regarding tax credits for child only plans was provided by Diane Stanton, Special Consultant for External Affairs, Covered California™.

The affordability test is based on "self-only" coverage for the employee only. Therefore, if an employer gives its employees the option of enrolling in a family plan to cover the employees' dependents (spouse and children) but the employer only contributes toward the employee-only coverage (but not toward the dependents' coverage), and the employee's self-only coverage is affordable (employee's share of premiums for self-only coverage, not the family plan, is not more than 9.5% of his annual household income) and provides minimum value, the dependents will NOT be eligible to receive tax subsidies through Covered California™ because they are deemed to be eligible

for (or to have access to) employer-sponsored minimum essential coverage through the employee. That is the case even if the cost of premiums the employee has to pay for family coverage exceeds 9.5% of the employee's household income.

However, if the employer does not provide such option at all (does not offer any family plans to its employees), then the employees' dependents are deemed ineligible for employer-sponsored minimum essential coverage and can get subsidized coverage through Covered California™.

In a case of child-only coverage for an employee's child(ren), the subsidy will be calculated the same way as it is calculated for an individual (the adjusted monthly premium for the applicable child-only benchmark plan minus the product of taxpayer's household income and the applicable percentage based on the FPL) (see 26 CFR § 1.36B-3(g)). For additional children, adjusted monthly premium will be calculated either by adding up each individual rate of each child or by determining group rates for two or more children.

The maximum out-of-pocket (OOP) for an individual policy is $6,250 for self-only coverage or $12,500 for family coverage in 2013. It's unknown at this time whether the maximum OOP expenses would be the same for a child-only policy. Premiums for health insurance policies offered at Covered California™ are currently unavailable but the cost of coverage can be estimated by visiting cost-estimate calculator at coveredca.com

Regulations

Discussion

The Workgroup has determined no short-term legislative change for this intersection is needed prior to the January 2014 ACA implementation date.

Recommendation(s)

1. No short-term legislative change is required prior to the January 2014 ACA implementation date

2. No changes to current state laws unless federal regulations are amended

Operations

Discussion - Local Courts

As discussed in Gap Analysis – 1. Tax Exemption, currently, AB1058 commissioners and family law judges determine the allocation of the dependency exemption as a part of the child support order determination. The MSO currently has no relevance to the allocation of the tax exemption.

With the implementation of the ACA, the allocation of the tax exemption may disadvantage one or both of the party's ability to comply with the ACA.

Only individuals who may claim a dependent for federal tax purposes are eligible to receive a premium tax credit. This may place an ordered parent in a child support case at a financial disadvantage if they attempt to comply with a medical support order when obtaining coverage through a health insurance Exchange.

Gap Analysis – 1. Tax Exemption provides additional detailed discussion and recommendations regarding the designation of the dependency exemption. The following recommendations should be included in the collaborative workgroup with California Family Court.

Recommendation(s)

1. Establish collaborative workgroup with AB1058 commissioners and family law judges to encourage consistent application and standardization when MSOs are established or modified after the implementation of the ACA and develop a work plan to:

Operations & Policy

» Determine the feasibility and impact that prospective or modified child support orders should have a specific finding of the dependency exemption to one of the parties to the order.

» Develop guidelines on the allocation of the dependent exemption when establishing or modifying
  - » MSOs
  - » Stipulations
  - » Default judgments

» Encourage the allocation of the dependency exemption be given to the party ordered to provide health insurance coverage for the child

» If both parties are ordered to provide coverage the following factors should be considered:
  - » CP should be allocated the tax exemption in most cases to allow greater control and flexibility for the CP as health insurance coverage can be fluid.
  - » Consideration should be given to ordering the NCP to provide coverage in cases where the NCP has stable employment with employer sponsored insurance that meets the test of reasonable, and the NCP has the financial resources to support the coverage.

» Determine the feasibility and impact of aligning the definition of "reasonable" with the ACA definition of "affordable."

» Research and examine barriers that may arise when a CP is not a party to the child support action until after entry of an order/judgment

» Any consideration of a change in existing policy and practices should evaluate the impact on the calculation of guideline child support and ability to comply with related court orders

» Track and review impact of any temporary solutions

Communication & Outreach

» Identify and develop FAQ and scenarios for use by AB1058 commissioners and family law judges regarding the issue

» Support training of AB1058 commissioners and family law judges

» Completion October 2013

Systems & Interfaces

» Guidelines calculator should be examined to determine what level of effort is needed to program dependency exemption as a mandatory field

Discussion - LCSA

The Workgroup identified this intersection may have an impact on the day-to-day operations of the LCSA. It is anticipated that parents, particularly NCPs, may be contacting the LCSA to seek information regarding obtaining a tax exemption in order to obtain a tax credit when enrolling a dependent through an Exchange.

Recommendation(s)

Operations & Policy

1. **CSDA-led development of ACA training and intersections with Child Support Program**
   - » Investigate cost and level of effort for onsite regional training versus webinar training
   - » Completion October 2013

Communication & Outreach

2. **CSDA-led development of a work plan for the creation of FAQs and/or outreach materials for statewide use by child support professionals**
   - » Establish collaborative workgroup with DCSS for development of materials
     - » Internal and external materials
       - » LCSA
       - » DCSS
       - » CP & NCP
       - » Employers
       - » Other identified stakeholders
     - » Identify types of media: brochure, FAQ, state webpage
     - » Training plan for LCSA & DCSS
     - » Completion October 2013

Systems & Interfaces

- » Update LCSA and state website links as needed

TAB F

International Issues in Child Support Cases

Ms. Mary Dahlberg

International Issues in Child Support Cases

17th Annual Child Support Training Conference

September 25-27, 2013

Mary Dahlberg

Senior Associate

Center for the Support of Families

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Or

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Overview

- Jurisdiction
- Reciprocity
- UIFSA 1996 (current)
- UIFSA 2008 (some day)

ADMINISTRATIVE OFFICE OF THE COURTS

Why is this case in your court?

- IV-D agency must accept applications from anyone, regardless of location or residence. OCSE Policy Interpretation Question (PIQ) 99-01; 42 U.S.C. 654 (4)(A)(ii)

ADMINISTRATIVE OFFICE OF THE COURTS

Personal Jurisdiction

- One party resides in California.
- The other party submitted to the jurisdiction of California by applying through the IV-D agency for affirmative relief in our courts.

ADMINISTRATIVE OFFICE OF THE COURTS

Physical Presence

The physical presence of the petitioner is not required for the establishment, enforcement, or modification of a support order or entry of judgment of paternity

Family Code 4930, subd. (a)

ADMINISTRATIVE OFFICE OF THE COURTS

Reciprocity is not required

- Court of general jurisdiction, including child support
- Personal jurisdiction over the parties

= jurisdiction to hear the case unless precluded by specific law (i.e., modification)

ADMINISTRATIVE OFFICE OF THE COURTS

Reciprocity

- Reciprocal country defined as a "state" under UIFSA and federal IV-D regulations.

Family Code 4901, subd. (s)(2)

ADMINISTRATIVE OFFICE OF THE COURTS

Reciprocity

- Laws are "substantially similar"

or

- Declared by federal agency

or

- Declared by state

ADMINISTRATIVE OFFICE OF THE COURTS

Federal Reciprocity

- Procedures to establish paternity and establish and enforce support obligations
- Central Authority, free services
  - Public Law § 104-193 (42 U.S.C. § 659(a).)

ADMINISTRATIVE OFFICE OF THE COURTS

State Reciprocity

- Attorney General or DCSS
- Concurrent with federal reciprocity
- Custodian of record for current declarations is AG

ADMINISTRATIVE OFFICE OF THE COURTS

UIFSA

- Applies to all cases where one party resides outside California or where the order was issued outside California
  - Note: UIFSA is in addition to other laws and mostly procedural.

ADMINISTRATIVE OFFICE OF THE COURTS

Intergovernmental Forms

- Federal forms have been adopted as Judicial Council forms
- Not required if documentation conforms to general court rules
  - Bilingual forms, etc.

See 45 CFR 303.7(d)(2)(ii) and (iii); Dear Colleague Letter (DCL) 11-22

ADMINISTRATIVE OFFICE OF THE COURTS

Filed documents

- Verified
- Specify relief sought
- "conform substantially with the requirements imposed" by federal forms

Family Code 4925

ADMINISTRATIVE OFFICE OF THE COURTS

Verification

International documents will rarely be notarized.

ADMINISTRATIVE OFFICE OF THE COURTS

- Before any judge having a seal in the applicant's jurisdiction, or an authorized U.S. embassy or consulate agent (Code of Civil Procedure, §2015)
- Under penalty of perjury (Code of Civil Procedure, § 2015.5)

ADMINISTRATIVE OFFICE OF THE COURTS

Registration

- Procedural not jurisdictional
  - Order from another state may be registered.

ADMINISTRATIVE OFFICE OF THE COURTS

Most Common Defense

Issuing court had no personal jurisdiction

Look to facts of the case, regardless of law in issuing country

Obligor may choose to submit

ADMINISTRATIVE OFFICE OF THE COURTS

Registration does not modify currency of obligation or duration.

ADMINISTRATIVE OFFICE OF THE COURTS

Administrative orders

- Definition of "order" does not say "judicial order." Family Code, §4901, subd. (u)
- Any order enforceable in the issuing jurisdiction is enforceable here, with the same limitations discussed earlier.

ADMINISTRATIVE OFFICE OF THE COURTS

Federal reciprocity

- Specifically mentions administrative orders in some declarations

ADMINISTRATIVE OFFICE OF THE COURTS

Continuing Exclusive Jurisdiction (CEJ)

CEJ is unique to the United States.

ADMINISTRATIVE OFFICE OF THE COURTS

CEJ

Modification of an order issued in foreign jurisdiction with CEJ

- No consent from resident of CA necessary

Family Code, § 4960, subd. (a)(2)

ADMINISTRATIVE OFFICE OF THE COURTS

UIFSA 2001:

If a foreign country or political subdivision will not or may not modify its order pursuant to its laws.

Family Code, § 4964 (not enacted)

ADMINISTRATIVE OFFICE OF THE COURTS

Choice of Law

Except as otherwise provided, the procedural and substantive laws of this state generally applicable to similar proceedings shall apply.

Family Code, § 4917

ADMINISTRATIVE OFFICE OF THE COURTS

Choice of Law

A tribunal of this state may exercise all powers and provide all remedies available in similar proceedings originating in this state.

Family Code, § 4917

ADMINISTRATIVE OFFICE OF THE COURTS

Choice of Law

The laws of the state that issued the order determine the nature, extent, amount, and duration as well as payment of arrearages.

Family Code § 4953

ADMINISTRATIVE OFFICE OF THE COURTS

Miscellaneous Issues

- Health care costs
- Translation
- Telephonic appearances

ADMINISTRATIVE OFFICE OF THE COURTS

Coming soon: UIFSA 2008

- Adds Article 7 and modifies other provisions of UIFSA 2001 as necessary to cover provisions of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (the Hague Convention on Child Support)

ADMINISTRATIVE OFFICE OF THE COURTS

- S.508 - Strengthen and Vitalize Enforcement of Child Support (SAVE Child Support) Act

  Sen. Menendez (NJ)

ADMINISTRATIVE OFFICE OF THE COURTS

- H.R. 1896 - International Child Support Recovery Improvement Act of 2013
  - Passed by the House of Representatives on June 18, 2013

ADMINISTRATIVE OFFICE OF THE COURTS

- 2 years after passage to enact
- Senate has already given advice and consent
- Convention goes into effect after President signs and deposits ratification

ADMINISTRATIVE OFFICE OF THE COURTS

UIFSA 2008

- Note: All other provisions of UIFSA 2001 will be part of UIFSA 2008. California will move from UIFSA 1996 to UIFSA 2008

ADMINISTRATIVE OFFICE OF THE COURTS

New Resources under Convention :

Country profiles

Caseworker Guide

- Improved follow-up and caseworker communication
- Modification rules will become somewhat more uniform
- Increased efficiency for registration/enforcement of existing orders

ADMINISTRATIVE OFFICE OF THE COURTS

Resources

Family Law Quarterly:

Everything you wanted to know about UIFSA. Each volume mentioned here includes several child related articles. UIFSA articles include Prof. John (Jack) Sampson's "unofficial" comments.

The 2009 edition discusses the new convention and UIFSA 2008.

Vol. 27 No. 1, Spring 1993
Vol. 28, No 1, Spring 1994
Vol. 32, No. 1, Summer 1998
Vol. 36, No3, Fall 2002
Vol. 43 No 1, Spring 2009

Web sites and information

U. S. State Department web site:
http://travel.state.gov/
Links to treaties in force, general international information.

Hague Conference on Private International law
http://www.hcch.net
Links to conventions.

United Nations
http://treaties.un.org

NCSEA web site
http://www.ncsea.org/resources-info/international-child-support/

Office of Child Support Enforcement:
http://www.acf.hhs.gov/programs/cse/

European Union
https://e-justice.europa.eu (you need to pick "en" for the english pages)

In re C.G.G., a minor, and concerning Gillberg v. Gillberg (Colo.Ct.App. 1997)
946 P.2d 603
Both parents were born in Sweden but resided in Colorado at the time of this action. One child was born of the marriage and he has lived in both Connecticut and Colorado.
The parties entered into an agreement concerning child custody and support in Colorado before filing a dissolution action in Sweden. The agreement was ratified in the Swedish dissolution. A decree of dissolution was entered by the Swedish court and a second agreement concerning the same matters was later executed.
Mother sought enforcement of the child support agreement. The trial court denied her petition, holding that Sweden was the proper jurisdiction to resolve all matters between the parties. Mother appealed.

HELD: Reversed and remanded with directions. Colorado courts have jurisdiction to enforce foreign judgments for child support and to interpret the parties' agreement on support and custody. The provision in the Swedish agreement that Sweden was to have exclusive jurisdiction over all questions relating to the marriage is contrary to the public policy of Colorado to provide for the support of its children. The case was remanded to the trial court to determine whether statutory requirements for exercise of subject matter jurisdiction over foreign child support judgment were satisfied.

Personal Jurisdiction

Willmer v. Willmer (Cal.Ct.App. 2006)
144 Cal.App.4th 951
Mother and father, both born in Germany, lived together in Canada, moved to Germany, and later married in Canada while continuing to reside in Germany. Their child was born in Germany. When they separated, legal proceedings for custody and support were initiated in Germany where both parties had attorneys. Father returned to Canada during the pendency of the Germany action, while mother and child remained in Germany. Service of the legal documents was made by publication under German law and a 1994 German default judgment was entered ordering father to pay child and spousal support. In 2004, Father was located in California. The German judgment was registered for enforcement. Father appealed.

HELD: Affirmed. Father failed to prove German court lacked personal jurisdiction. To the contrary, the facts supported the proper assertion of jurisdiction by the German court. The California Attorney General declared that Germany is a reciprocal state under UIFSA. Because any alleged concealment ended while the child was still a minor, the mother was not estopped from enforcing the German order. (See *IRMO Comer* (1996) 14 Cal.4th 504).

Luxembourg ex rel. Ribeiro v. Canderas (N.J.Super.Ct.Ch. Div. 2000)
768 A.2d 283
After the parties' child was conceived and born in Portugal, the father moved to New Jersey. Mother and child moved to Luxembourg and initiated legal action resulting in parentage and support orders. Mother then registered the Luxembourg orders in New Jersey. Father appealed.

HELD: Reversed. There was no basis consistent with due process clauses of federal and state constitutions for the Luxembourg court to exercise personal jurisdiction over father in this child support case. Thus, the tribunal in Luxembourg did not act in accordance with law or procedure substantially similar to that of UIFSA in asserting personal jurisdiction. As result, the Luxembourg judgment was unenforceable in New Jersey. Father had no contacts at all with Luxembourg; he never visited the country and owned no property there.

Note: Many European countries give their courts jurisdiction to determine parentage and support issues based solely upon the child's presence in the country, requiring no "minimum contacts" with the obligor. This is the first case we have seen holding that such judgments will not pass constitutional muster in the United States courts.

Subject Matter Jurisdiction

Richardson v. Richardson (Cal.Ct.App. 2009)
179 Cal.App.4th 1240, 2009 WL 4283136
Mother and child resided in Japan. Father, a California resident, filed for divorce in California. The trial court found it did not have jurisdiction to enter a child support order because child's "home state" was Japan.
HELD: Reversed. California superior courts have jurisdiction over child support matters. While the UCCJEA prohibited a California custody order because the child's home state was Japan, subject matter jurisdiction over support matters is not governed by the UCCJEA. The applicable law is UIFSA. There was no previous support order and no petition or comparable pleading for support had been filed in Japan. Therefore California had subject matter jurisdiction to enter a support order.

Foreman v. Foreman (N.C.Ct.App. 2001)
550 S.E.2d 792
The trial court entered an order decreeing that a British support order was valid and enforceable in North Carolina. Father appealed.
HELD: A North Carolina court has subject matter jurisdiction to enforce a British support order registered in North Carolina under UIFSA. The court held that the New York Convention on the Recovery Abroad of Maintenance gave England reciprocal status with North Carolina on the issue of child support. Thus, England was a "state" for purposes of registering child support order under UIFSA, even though the United States is not a signatory to the Convention.

Note: Great discussion on "substantially similar" laws and who makes the determination.

Haker-Vokening v. Haker (N.C.Ct.App. 2001)
547 S.E.2d 127
The parties were married in Switzerland and living there when father filed for divorce. The Swiss court entered an order pursuant to the parties' voluntary agreement. The North Carolina trial court granted mother's request to register and enforce the Swiss order under UIFSA. Father appealed.

HELD: Reversed. A foreign jurisdiction does not qualify as a "state" under UIFSA unless it has support laws and procedures "substantially similar" to UIFSA. The record in this case contained no evidence that Switzerland has such laws. The registered order cannot be enforced on the basis of comity in this action for registration and enforcement; the mother must file a civil complaint seeking enforcement on that basis.

Note: Switzerland is now a federal reciprocating country.

Reciprocity

Bouquety v. Bouquety (Fla.Ct.App. 2006)
933 So.2d 610
Father and Mother maintained a permanent residence in Martinique. While the family lived in Miami, Florida, due to Father's temporary job transfer, the Mother sought a decree of divorce, child support, and attorney fees in the Florida court. The request for divorce was dismissed because of the residency requirement was not met prior to filing. However, the court awarded $1,000.00 in child support to Mother effective July 1, 2000. When Father's job transferred him to Haiti, he filed there for a divorce and modification of the Florida order. In 2001, the Haitian court entered a divorce decree dissolving the parties' marriage and modifying the Florida support order to the U.S. equivalent of $400.00 per month. Mother had meanwhile moved back to Martinique and responded by filing a parentage action with a request for an increase in support from that granted by the Florida court. In 2004, the Martinique court granted Mother's request, established paternity, and set a child support amount which was nearly identical to that established by the court in Florida. Mother filed enforcement proceedings in Florida alleging that Father was deficient in some payments under the Florida order prior to the entry of the Haitian court order. She also alleged additional payments due to her from the entry of the Haitian order until the time the Martinique order was entered. The Father filed a motion to dismiss the enforcement proceedings in Florida alleging the Florida court lacked subject matter jurisdiction.
HELD: Reversed. Father failed to prove that the Martinique order was entered pursuant to a law substantially similar to UIFSA and even if it was, UIFSA permits the Florida court to enforce any amount that accrued prior to the modification. The court further questioned whether assertion of personal jurisdiction over Mother by the Haitian court comported with our constitutional requirements for due process and fundamental fairness. Even if jurisdiction was proper, Father failed to prove Haitian laws were substantially similar to UIFSA.
Note: The first part of determining a controlling order is to determine whether there is more than one valid order. This court decided only the Florida order was valid.

Registration

Liuksila v. Stoll (D.C.Ct.App. 2005)
887 A.2d 501
Mother, a German resident, registered a German support order for enforcement in the District of Columbia. Father objected to the registration, claiming he resided in Finland, even though he owned a house in the District of Columbia and worked at the International Monetary Fund. The

trial court confirmed registration and father did not appeal. Two years later, a writ of attachment was served on father's bank account. Father moved to quash.
HELD: Because father failed to appeal the confirmation order, it was res judicata. Hence, father could not later collaterally attack the German court's jurisdiction. In addition, father could not now raise any defense to the registration that could have been raised in a timely contest, including lack of personal jurisdiction in Germany. The court rejected father's claim that failure to file certified copies of the German judgments required dismissal. The court stated that even had father timely raised that issue (which he did not), UIFSA provides that failure to file certified copies does not affect an order's validity or enforceability, but may subject the party failing to file to sanctions.

State ex rel. Desselberg v. Peele (N.C.Ct.App. 1999)
523 S.E.2d 125
Father moved to vacate registration of a German child support order under Uniform Reciprocal Enforcement of Support Act (URESA).
HELD: A North Carolina court can enforce a German judgment of paternity and order for child support under principles of comity. Though neither the United States Constitution's Full Faith and Credit Clause nor the Full Faith and Credit for Child Support Orders Act (FFACCSOA) applies to orders entered in foreign countries, North Carolina courts may choose to enforce foreign orders if the foreign court had jurisdiction over the cause and the parties. The father is a North Carolina resident who fathered an out-of-wedlock child while stationed in Germany with the United States Army. Germany obtained jurisdiction by issuance of a summons and service upon the father by certified mail at his home in North Carolina, where he signed the certified mail receipt in 1986. Service was acceptable under both North Carolina law and the Hague Service Convention.

Comity

Rains v. Rains (Wash.Ct.App. 1999)
989 P.2d 558
Father brought a declaratory judgment action seeking a determination that an Italian child support order was unenforceable. The trial court granted father's motion for summary judgment because enforcement of the order would contravene Washington's public policy limiting obligations for post-majority support. The Court ordered Washington to reimburse father. State and mother appealed.
HELD: Reversed in part, and remanded to determine the amount of father's obligation. The Washington state support enforcement agency lacks authority to administratively enforce an Italian support order which requires the father to support his adult daughters until they are self-sufficient, as it is not the order of another "state." However, the state courts may enforce the order under principles of comity. The Italian order does not violate Washington's public policy limiting post-majority support because Washington case law provides that an obligation to provide post-majority support can be imposed after the obligor is given proper notice. In this case, the father was aware of his duty under Italian law to support his daughters until they could support themselves.

Kalia v. Kalia (Ohio Ct.App. 2002)
783 N.E.2d 623
The parties married in India, where they had two children. Father left India, moving first to Canada where he obtained a divorce, and later moved to the United States. Mother obtained a divorce in India under the Hindu Marriage Act (HMA) after the Indian court found the Nova Scotia, Canada decree was invalid. The Indian court held that Nova Scotia did not have jurisdiction over mother and the divorce was granted on grounds not recognized by the HMA. Mother moved to register the Indian order in Ohio for enforcement under UIFSA. The trial court allowed registration on principles of comity. Father appealed.
HELD: Affirmed. The Indian order cannot be enforced under UIFSA as India does not meet its definition of a "state." However, the order can be enforced under comity principles because enforcing a man's obligation to support his family is not repugnant or contrary to United States laws. The Court found no violation of the First Amendment's Establishment Clause or of public policy in an order of support for a child over 18.

Schwarcz v. Zik (N.J.Super.Ct. 1993)
640 A.2d 1212
The parties were married in Israel where they had one child. Mother obtained an Israeli order for father to pay child support. Father moved to New Jersey. Mother filed an action in New Jersey seeking establishment and enforcement of the Israeli order. After being personally served with the summons and complaint in New Jersey, father asserted the Israeli orders were not enforceable in New Jersey because Israel did not have a reciprocal enforcement agreement with New Jersey.
hELD: The orders are enforceable in New Jersey. URESA is not the exclusive means by which foreign orders may be enforced. The orders may be enforced under principles of comity if the foreign court had subject matter jurisdiction and if the judgment would not offend New Jersey's public policies.

Currency Conversion

Hixson v. Sarkesian (Alaska 2005)
123 P.3d 1072
An Alaska dissolution judgment ordered father, a resident of Switzerland, to pay support. Father's income for purposes of calculating guideline support was converted from Swiss francs to U.S. dollars at the current exchange rate. Mother later requested a modification of support based on the fluctuating exchange rates even though father's income had not changed substantially. The trial court determined that father was saving money because of the currency exchange rate and added that savings to his adjusted income to calculate child support. However, the court further found that since child support increased by only eight percent, there was no material change in circumstances and denied Mother's motion. Mother appealed.
HELD: Reversed. The exchange rate fluctuation does not qualify as "income" under Alaska law even though it clearly affects income. However, the fluctuating exchange rate can be considered a "change of circumstances" supporting modification. A parent's foreign income must be converted into dollars before support can be calculated. The court rejected father's argument that the fluctuating exchange rate would lead to frequent relitigation of child support, pointing out

that a trial court could use an average currency exchange rate over an appropriate time period or choose a rate from a specific date.

Notice and Opportunity

IRMO Kohl (Ill.App.Ct. 2002)
778 N.E.2d 1169
The Israeli court entered an order for spousal and child support against father basing jurisdiction on service of process on father in Ecuador. The court received the registered mail receipt sent to "M. Kohl" and signed by "M." Mother later sought enforcement under UIFSA in Illinois. Father filed a motion to dismiss, contending he had left Ecuador before the alleged service, had no notice of the Israeli action, and did not appear in it. The trial court dismissed the registration and mother appealed.
HELD: Affirmed. Father's passport confirmed he left Ecuador before the receipt was signed. Thus, he could not have received service of the Israeli action. Since he did not appear in the action, the Israeli court lacked jurisdiction over him and its resulting order cannot be enforced under doctrines of comity or res judicata.

Downs v. Yuen (N.y.App.Div. 2002)
748 N.y.S.2d 131
Mother obtained a divorce judgment in Hong Kong for $10 million as a lump sum which was partly for her support. She initiated an action in New York to enforce the judgment. The court granted her motion for summary judgment and father appealed.
HELD: Affirmed. The Hong Kong divorce judgment is enforceable in New York under principles of comity. The support aspect made it unenforceable under New York's Foreign Country Money Judgment Recognition Act. Hong Kong does not qualify as a "state" under UIFSA, but the judgment can be enforced per comity under New York laws. The burden was on father to offer evidence that Hong Kong's judicial system, as a whole, does not comport with due process. He failed to do so. The evidence showed father was given ample notice and an opportunity to be heard in the Hong Kong proceedings.

Bank Melli Iran v. Pahlavi (9th Cir. 1995)
58 F.3d 1406
Foreign banks brought an action to enforce foreign default judgments against the sister of the former Shah of Iran. The trial court granted summary judgment for defendant.
HELD: Affirmed. Foreign default judgments against the sister of the former Shah of Iran would not be enforced under the California Foreign Money-Judgments Recognition Act or Algerian Accords, since she could not have obtained fair trial in Iranian courts at the time of the judgment. Therefore, she was denied due process. The evidence showed that defendant could not personally appear before Iranian courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf.

Note: This is an extreme example but keep it in mind when defending enforcement of a foreign order.

Public Policy

Pfeifer v. Cutshall (Pa.Super. 2004)
851 A.2d 983
Mother obtained a German order for support and retroactive arrears against father who had been stationed in Germany at the time of the child's conception. She then sought enforcement of the German order in Pennsylvania. After paying sporadically for some time, father was found in contempt. However, the court ordered the child support agency to recalculate the support retroactive to mother's filing of the petition for support in Germany rather than the earlier date used by the German court. Mother appealed noting there was no petition for modification before the court and the arrears had been confirmed on registration.
HELD: Affirmed. The court found it was required to recognize a support obligation established in a foreign nation's court, but was not required to give that order effect "without concern for principles of justice and fairness to the extent our sense of justice is offended." The court found that in registering the order and seeking its enforcement in Pennsylvania, mother submitted herself and the action to the laws of Pennsylvania. Under Pennsylvanian law, a child support order is only retroactive to the date of filing of the complaint for support. There was no indication mother had requested support prior to filing the action in Germany, or that father had consented to entry of the order. The court thus deemed it "contrary to good public policy to provide enforcement for the German court's order in a manner which would never occur as to an order which originated in this Court."

Taking of Evidence

In re Letter Rogatory from the Nedenes District Court (Norway) (S.D.N.y. 2003)
216 F.R.D. 277
A Norwegian court sent a letter rogatory to United States District Court in New York per the Hague Convention on Taking of Evidence Abroad. The Norwegian court asked that a deposition of the putative father (defendant in paternity case) be taken and, if he denied paternity, that genetic tests be done. The U. S. Attorney's Office filed a motion to compel the deposition. The putative father responded with a motion for a protective order.
HELD: The court granted the US Attorney's motion and denied defendant's motion. The court held that the statutory requirements were met; it was unnecessary to apply New York state law requiring a prima facie showing of paternity before genetic tests could be ordered.

International "UIFSA" Cases

***State v. Villasenor del Castillo**, Not Reported in N.W.2d, 2005 WL 1331220 (Minn.App. Jun 07, 2005) (NO. A04-1528)* NCP = MN, CP = MX. HELD: No fed recip declaration. 94 MN AG opinion of similarity, so reciprocity. Cite PIQ-99-01, IV-D services w/o regard to residence or citizenship, but statue ambiguous. MN has subj jurisd for CS. But, NCP claims paying to MX court. Remand to determine if action in MX precludes simultaneous action in MN. MN Guidelines vs. MX standard of living issue noted and unresolved.

***Cresenzi v. Cresenzi**, 2004 WL 2668272 (Conn.Super. Oct 26, 2004) (NO. 6470413)*
99 Macedonia child "alimony" "verdict" in US$, CP = Macedonia, NCP = CT. HELD: Registration incomplete so dismiss w/o prejudice. (Good discussion of ways to pursue ENF of foreign support order.)

***Gladis v. Gladisova**, 382 Md. 654, 856 A.2d 703 (Md. Aug 24, 2004) (NO. 127 SEPT.TERM 2003)* CP = Slovak; NCP = MD; 98 MD div w/"general support and maintenance" - no specific amt; later, seeking to "est" supp amt. HELD: lower cost of living not a basis for deviation from Guidelines (inc shares); [FN] Slovak = (foreign recip) State so dissent re guidelines n/a when "out of UStates" is n/a.

***Grumme v. Grumme**, 871 So.2d 1288 (Miss. May 06, 2004) (NO. 2003-CA-01209-SCT)*
99 GU div w/agree that jurisdiction would be country where CP and kid reside, CP = UK, NCP = MS. HELD: MS has jurisdiction to ENF and MOD per UIFSA, cite UCCJA case that parties can not consent to jurisdiction contrary to Act. [*contra* ? - UIFSA 2001 § 205(a)(2)]

***In re Marriage of Galante**, 2003 WL 22719326, Nonpublished/Noncitable, (Cal. Rules of Court, Rules 976, 977), (Cal.App. 1 Dist., Nov 14, 2003) (NO. A100735)* litigation "covering the domestic relations landscape" begun in Zimbabwe prior to CA. HELD: no showing Zimbabwe a "state"so as to require CA to defer. Good discuss of INTL family law issues, incl property judgments.

***County of Ventura v. Dimmick**, 2003 WL 21492942, Nonpublished/Noncitable, (Cal. Rules of Court, Rules 976, 977), (Cal.App. 2 Dist., Jun 30, 2003) (NO. B157232)* NCP = CA, CP = Japan; 92 Japan divorce - no mention of support. NCP admits pat. HELD: CA has subj jurisd over CA parent's duty to pay support; CA not inconvenient forum

***D.K. v. People ex rel. A.K.**, 2003 WL 21436640 (Colo., Jun 23, 2003) (NO. 03SC130)*
Intimation in response to denial of cert that there is a Russian order in existence that was not mentioned or dealt with in allowing CO to EST an order. See opinion 1/16/3 @ 2003 WL 124400.
***People ex rel. A.K.**, 2003 WL 124400 (Colo.App., Jan 16, 2003) (NO. 02CA0554)*
NCP = CO, CP = Russia HELD: CO can EST for applicant residing in Russia; CO guidelines may need deviation.

***Kalia v. Kalia**, 151 Ohio App.3d 145, 783 N.E.2d 623, 2002-Ohio-7160 (Ohio App. 11 Dist. Dec 20, 2002) (NO. 2001-T-0041)* 76 Canada div. 95 India div after finding CN div had "no legal validity". HELD: India ord. ENF via comity; CN ord not *res judicata* - CN not a court of competent jurisd.; no pub policy problems with ENF India ord; no error in finding India is not a "state" per UIFSA.

***Coy v. Coy**, 2002 WL 31402080, Nonpublished/Nonciteable, (Cal. Rules of Court, Rules 976, 977), (Cal.App. 4 Dist., Oct 25, 2002) (NO. G029348)* 97 CA div, 99 New Zealand custody ord, 2000 NZ "provisional ord" HELD: NZ = recip "state" w/ substantially similar laws to CA since 82; provisional order not an order, so CA can EST cs order.

***In re Marriage of Kohl**, 334 Ill.App.3d 867, 778 N.E.2d 1169, 268 Ill.Dec. 547 (Ill.App. 1 Dist. Oct 15, 2002) (NO. 1-00-3163)* CP = Israel, NCP = IL; Israel default order. HELD: No Notice of Registration so failure to contest w/in 20 days n/a; no controverting evid to NCP statement of non service [by cert mail in Equador]; later actions in one Israel forum does not mean submission to Israeli cs tribunal jurisd; pers jurisd issue not litigated before so no *res judicata*; no pers jurisd, so not recognize via comity not abuse of discretion.

***Downs v. Yuen**, 298 A.D.2d 177, 748 N.Y.S.2d 131, 2002 N.Y. Slip Op. 07235 (N.Y.A.D. 1 Dept., Oct 08, 2002) (NO. 1803, 1803A)* Hong Kong $ 10M jdgmt is for support and ENF via comity even if Foreign Country Money-Jdgmnts Recog Act and UIFSA n/a. Facts support due process afforded in getting jdgmt.

***State, Support Enforcement Services v. Beasley**, 801 So.2d 515, 2000-1770 (La.App. 3 Cir. 10/10/01) (La.App. 3 Cir. Oct 10, 2001) (NO. 00-1770)* 91 GA div; CP = Germany, NCP = LA. HELD: LA w/o subj jurisd to MOD GA order at request of NCP; "mod" includes changing health care provisions.

***Brannan v. Smith**, Not Reported in P.3d, 107 Wash.App. 1054, 2001 WL 950216(Wash.App. Div. 1 Aug 20, 2001) (NO. 46382-9-I)* 87 New South Wales, Aus support order; 91NSW mod. CP = Aus; NCP = WA. HELD: 91 mod void - NCP not allowed to participate, no due process. Assuming substantial similar, WA Ct. w/o subj jurisd to ENF 87 order - not registered. Absent reg, no subj jurisd - [?] comity, no reg requirement.

***Foreman v. Foreman**, 144 N.C.App. 582, 550 S.E.2d 792 (N.C.App. Jul 03, 2001) (NO. COA00-524)* CP = England, NCP = NC; 90 ENG order. HELD: NC has subj matter jurisd to ENF ENG order; ENG = state per unilateral reciprocity extension; UIFSA allows ENF of orders entered preUIFSA. [revised opinion possible]

***Country of Luxembourg ex rel. Ribeiro v. Canderas**, 338 N.J.Super. 192, 768 A.2d 283 (N.J.Super.Ch. Dec 29, 2000) (NO. FD-20-2276-00U)* 98 LUX order, CP = LUX, NCP = NJ. NCP never in LUX and owns no prop there. HELD: no Fed or NJ recip country agreement; no evid of LUX having substantially similar long arm; no per jurisd basis per US or NJ Constitution; no comity - contrary to public policy where no pers jurisd.

***Grave v. Shubert**, 2000 WL 1221343 (Minn.App., Aug 29, 2000) (NO. C5-00-399)* 93 MN div; 99 EN "reduced" support. CP = MN, NCP = England HELD: EN does not have CEJ "MOD" concept, so laws not "substantially similar"; MN did not req MOD, so no loss of CEJ and no reduction; ENF of MN arrears proper.

***Poljakov v. Kshywonis**, 2000 WL 960960 (Ohio App. 9 Dist., Jul 12, 2000) (NO. C.A.19843)* 95 GR div; CP = GR; NCP = OH. HELD: GR "order" was not order, was finding of potential support amount; therefore OH should EST support order, not Reg GR "order". NCP notice of Reg not adequate notice for EST.

***Nicholson v. Nicholson**, 747 A.2d 588, 2000 ME 12 (Me. Mar 20, 2000) (NO. CUM-99-342)* 86 - ME div, dad pays mom; 89 - ENG order for dad to pay mom; 95 - ENG mod for "nominal" support due to one child w/dad and dad unemployed and dad also "relieved" of ENG arrears; 97 - ME found mom should pay dad and dad owed ME for TANF arrears. HELD: basing mom's support on ME guidelines, not ENG cost of living, not abuse of discretion; arrears under ME order prior to ENG "mod" can be enforced by ME.

***Youssefi v. Youssefi**, 328 N.J.Super. 12, 744 A.2d 662 (N.J.Super.A.D., Feb 03, 2000) (NO. A-3275-98T3)* 88 - NJ div; CP = UT; NCP = France HELD: Although NJ may have lost jurisd to MOD, it continues to have jurisd to ENF. Other issues re: Hague service ruled against NCP.

***State ex rel. Anson/Richmond Child Support Enforcement Agency ex rel. Desselberg v. Peele**, 136 N.C.App. 206, 523 S.E.2d 125 (N.C.App. Dec 21, 1999) (NO. COA99-151)* 86 - GR [German] order, 93 MOD. HELD: GR had pers jurisd over NCP and valid service per NC and Hague convention law for first order; [no issue raised on 93 MOD]; neither ff&c nor FFCCSOA apply to foreign orders, but NC will honor on the basis of comity.

***Rains v. State, Dept. of Social and Health Services, Div. of Child Support**, 98 Wash.App. 127, 989 P.2d 558 (Wash.App. Div. 3 Dec 02, 1999) (NO. 17841-2-III)* IT [Italian] order; CP = IT, NCP = WA. HELD: ff&c, UEFJA, Uniform Foreign Money-Judgments Recognition Act n/a - "foreign means state or territory; UCCJA n/a - only custody; didn't "seek" ENF via UIFSA; wanted admin enf and per WA law admin enf only applies to "states". HOWEVER, order enforceable under principles of comity, including post emancipation support in accordance with IT law.

***Franklin v. Com., Dept. of Social Services, Div. of Child Support Enforcement ex rel. Franklin**, 497 S.E.2d 881, 27 Va. App. 136 (Va.App., Apr 14, 1998) (NO. 1045-97-4)* first case on "acts or directives" - CP claims 3 mo in VA; NCP claims only signed up for job in VA; everyone goes to live in Africa; bad times; CP goes to US embassy to avoid abuse, returns to DC in hotel for a week, then to VA. Held - UIFSA "acts and directives" sufficient to give VA jurisdiction over NCP.

***Abu-Dalbouh v. Abu-Dalbouh**, 547 N.W.2d 700 (Minn.App., May 14, 1996) (NO. C4-95-2628)*
abuse, refusal to reveal addresses. 9/95 - MN "quasi" divorce. Held - MN has jurisdiction via UCCJA for custody issues over all three kids; under UIFSA - MN had support jurisdiction over kid #1, but not kids #2 and #3

***Day v. State Dept. of Social and Rehabilitation Services, Child Support Enforcement Div.**, 272 Mont. 170, 900 P.2d 296 (Mont., Jul 27, 1995) (NO. 95-157)*
82 - NV div; 83 - Ft. Peck Indian Reservation order. Held - under FFCCSOA, tribes are "states"; longer SOL between states applies; ∴MT applies; FFCCSOA applies to decisions rendered after effective date [10/20/94]

TAB G

Roundtables: Child Support Commissioners'/Family Law Facilitators'/Paralegals'

TAB G

Child Support Commissioners' Roundtable

(For child support commissioners only)

Facilitated by
Hon. David E. Gunn

Materials were distributed, not available online.

TAB G

Family Law Facilitators' Roundtable

(For family law facilitators only)

Facilitated by
Ms. Lollie A. Roberts &
Ms. Fariba R. Soroosh

Materials were distributed, not available online.

TAB G

Paralegals' Roundtable

(For paralegals only)

Facilitated by
Ms. Debra Spatafore

Additional materials were distributed, not available online.

17th Annual AB 1058 Child Support Training Conference

Paralegal Roundtable
September 25-27, 2013
Prepared and Presented by:
Debra Spatafore, Paralegal, LA County

New Legislation
New Forms

AB 1807 (Stats 2013, Ch. 116)
Eff. 1-1-13

Amended Family Code 3047:

- Prohibits trial court from ordering a custody evaluation.
  - -- As part of its review of a temporary custody order.
  - -- Absent showing reversion is not in child's best interest.

Family Code § 3047

Military duty, temporary duty, mobilization, or deployment as justification; modification of custody or visitation orders; ability to appear at hearing; relocation of nondeploying parent; deployment as basis for inconvenience; legislative intent.

AB1807 Further states:

- Deployment is temporary
- Trial Court is required to expedite hearings

Involving returning military personnel.

In re Marriage of E.U. and J.E., 4th Appellate District G046687; Super. Ct. No. 02FL002563

Appellate court over turned the TC order.

- T/Ct. grants Mother custody order during deployment.
- Upon Father's return, he sought reversion to pre-deployment order under FC §3047.
- F filed a writ petitioner which was denied.
- T/Ct ordered a custody evaluation under Ev C 730
- The evaluation found no mental or physical impairment to father.
- Under best interest of child, T/Ct does not change order
- Father appeals.
- CA-4(3) Reverses with instruction

Appellate court found:

- That Mother did not provide supporting factual assertions pursuant to CRC 8.204(a)(1)(C). FC 3047, the burden rested with Mother to shwo that pre-deployment custody should not be reinstated.
- Any hearing order will revert must be fair, efficient and expeditious
- A 17 month delay fails by this standard.
- Further, that Father had primary custody of child since 2005 and officially documented by order in 2006.
- The Appellate court found that TC did not provide expeditiously to Father for return of the custody order upon his return from deployment to Afghanistan.

Family Code § 3047
(a) A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification…
(b)1…any necessary modification of the existing custody order shall be deemed a temporary custody order made without prejudice, which shall be subject to review and reconsideration upon the return of the party from military deployment, mobilization, or temporary duty.(3)(B) …visitation may be given to stepparent or grandparent in parents absence…
How does this affect child support???

Military deployment and child support.
Based on information some military receive an increase of pay when they deploy. The child(ren) should benefit from said increase of pay especially absent the parent participating in the visitation wherein some of the costs are offset. Upon return from deployment just like custody and visitation then the support order should return to its previous order.

Discussion:
1. What are your thoughts, experience on this topic?
2. How is your department/court managing these situations?
3. Do you know of any other codes or case law to clarify any of this information?

SB 1206 (Stats 2012, Ch. 276) Eff. 1-1-13
Family Code § 3134.5

- Temporary absence is a bridge back to originating State FC § 3134.5 – allows broader powers – now DA can grab assets of abducting parent. Bookmark National Center for missing & exploited children.
- FC § 3134.5 is amended concerning protective custody warrants for children
- Trial Court can issue a warrant and order freezing assets of abductor.
- Applications are made by DA and enforceable in any county.

In re Marriage of Lim & Carrasco

- 2013 WL 1093119 (CA-6)
- Father appeals CS and SS order payable to him; TC sets support based on Mom working 80% schedule
- CA-6 AFFIRMS
- TC set support based on mom's income at $22k month instead of $27k per month.

- TC determined it was in best interest of child(ren) for mom to only work 80% schedule at her firm.
- Mom claimed "during this difficult transition" of separation for 3 & 4 yr old
- Taking into account her recent medical leave for injuries from DV (unclear if by F)
- She could only work 80%
- Lawyers income is based upon billable hours, not necessarily hours worked.
- TC was consistent with requirements citing IRMO Cheriton (2001) 92 Cal.App.4th 269
- Based on earnings not ability to earn.

DISCUSSION

Family Court Case Management Program

- How does your court work with the Case Management program?
- Who is running the program and holding the "hearings"?
- What is the process your court is taking to get these cases moving?

90 day notice

- If no proof of Service is filed at 90 days a Notice of Hearing goes out to the Petitioner.
- Some litigants file upon receipt of notice.
- Some litigants do not receive notice as they have moved with no forwarding address.
- Some come to hearing prepared and some not prepared. 30 days passed and time we prepare R.E.D. & Def. Judgment packet same day as hearing.

Respondent cannot be found

- We have a posting and publication workshop for litigants to get through the service process by alternate methods.
- What is your court doing to help manage this?
- Do you provide SRL with a how to search packet; serve packet?

Discussion

Best Service v. Limited Resource
(even higher now)

- With this ever changing economy and continuous rise of unemployment or under employment we need to remember best service/best practice which is what the Elkins Team came up with. I understand they say unemployment is down. It is not, they are just no longer on the radar. (my opinion and that of the unemployed SRL).
- Is your court still holding workshops? Do you hand out packets and then review once SRL completes them?
- Do you see litigants on a one on one basis?
- Do you sit and complete the forms for the litigants?

How does your facility work?

- I would like to hear how your facility is streamlining the case load to keep up with the higher demand of assistance by SRL.
- How are the SRL receiving the assistance you are able to provide?
- How difficult is it to get from your office through the filing system at the Clerk's office?
- How far out are your cases set for hearings?

Discussion

AB2393
Changed the low-income adjustment threshold. For cases before January 1, 2013, the threshold is $1,000.00.
1/1/13 – 2/28/13 $1500.00
3/1/13 – until the Judicial Council adjusts it, the threshold is $1,533.00.

Divorce Season vs. Tax Season

- The beginning of the year is sometimes referred to as "divorce season." a time to end marriages by decision of many couples. Some wait until the holidays are over for that one last family time. Other's so they can benefit from filing taxes joint.
- US Tax Code for 2013 may make that more difficult…
- The recent Taxpayer Relief Act increased tax rates on income and investments for wealthier Americans.
    - Divorcing couples may need to think more carefully about financial issues like spousal support and property division especially if a large amount of assets is at stake.

New taxes affect divorce

- Spouses receiving spousal support (alimony) will see it taxed at a higher rate. It may make more sense to negotiate for real estate instead.
- Maybe have the payer maintain the property instead of paying s/s.
- High income spouses may wish to give away deferred income in divorce, which could be taxed at a higher rate.
- Someone with high assets, high income may want to consult with someone that understands the law, financial and emotional ramifications of divorce.

Discussion

That's All Folks!

Enjoy the rest of the conference
Thank you for your time,
participation and attention.

TAB H

Language Access: Civil Rights Laws and Your Work with LEP Court Customers

Ms. Ana Maria Garcia &
Ms. Kate Meiss

Language Access: Civil Rights Laws and Your Work with LEP Court Customers

AB 1058 Child Support Conference

Presentation By: Ana Maria Garcia & Kate Meiss

Sept. 25, 2013

NLSLA
Neighborhood Legal Services of Los Angeles County

1

Training Objectives

- Understand The Importance of Language Access & Legal Requirements
- Learn Tools & Means To Effectively Assist LEP Litigants
- Emerging Trends

2

Key Laws/Policy

- Government Code 11135
- Dymally-Alatorre Bilingual Services Act
- Title VI of the Civil Rights Act of 1964
- Department of Justice's Guidance is the "Gold" Standard

3

Goal of Civil Rights Laws

- Meaningful and Equal Access to Programs and Services
- By Funded Entities
  - Funded directly or indirectly
  - At federal, state, or local level
  - Courts, court services
- Without Unreasonable Delay

4

Key Federal Laws & Rules

- Federal Regulations: DOJ: 28 C.F.R. § 42.405 (d)(1)
- Executive Order 13166
- Agency LEP Guidance--DoJ's (67 Fed. Reg. 41455 (2002))
- LEP.Gov

5

Covered Entities Cannot…

- Limit the Scope of Service to LEPs
- Delay Services (unreasonably)
- Require LEPs to Bring their own Interpreters
  - Should never use children

6

Covered Entities Should

- Provide Translated Materials
- Provide Interpreters
- Have Language Line or other "Back Up " Systems for Interpretation
- Have a Language Access Plan
- Train their Staff

7

OCR Guidance: Written Translations

- Must Identify & Translate All "Vital Documents"
  - Vital documents impact legal rights or obligations
- OCR's "Safe Harbor"
  - 5% or 1000 ***potential*** customers
  - Must still provide equal access with oral interpretation

8

OCR Guidance: Interpreters

- Bilingual Staff Best
  - Staff interpreters; contracted interpreters; volunteer; ***Language Line Service***
- Proficiency in Both Languages
  - knowledge of specialized terminology
  - Understand confidentiality & impartiality rules, role of interpreter (i.e. ethics and practices)

9

Compliance & Enforcement

- Funding Agency Enforces—DoJ
- DoJ's New Emphasis on Courts & Access to Justice
  - August 2010 State Courts Letter
  - Several State Settlements
  - DoJ Letter to LA Courts
  - Chief Justice Cantil-Sakauye's Remarks (August 2013)

10

Using Interpreters for LEPs

- http://www.youtube.com/watch?v=pVm27HLLiiQ

11

The Importance of Language Access

Goals of NLSLA's LEP Policy

- Eliminate Language Barriers
- Ensure Access
  - At All Levels: Self Help, Intake, Individual Assistance, Workshops
- Provide High Quality Services Regardless of Language Spoken

12

Effectively Serving LEPs

NLSLA's Language Access Policy

- Oral Communication
  - Intake
  - Self Help
  - Outreach
- Written Communication
  - Outreach
- NLSLA's Tools for Serving LEPs
- Documenting Service to LEPs

13

The Importance of Language Access

NLSLA Essential Languages

- Bilingual Staff
- Translate All Vital Documents Into These Languages
- Must Interpret & Translate For Other Languages As Needed

Spanish

Armenian

Chinese
Mandarin/Cantonese

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Oral Communication

Finding an Interpreter for Intake

- Self Help Staff & Volunteers
- Bilingual Staff in NLSLA
  - Receptionist
  - Secretary/Paralegal
- ATT Language Line

15

Oral Communication

No Unreasonable Delays

No One Should Be Turned Away Or Scheduled For A Later Intake Or Appointment Because Of Language

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Oral Communication

Do Not Use Family to Interpret

- **Do Not** Use Family or Friends as Interpreters
- If Client Insists
  - Advocate Must Explain NLSLA Has Free Interpreter
  - Advocate & Litigant Sign "Waiver" Form

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Oral Communication

If Family/Friend Used

NLSLA's Bilingual Staff Must Observe to Ensure the Interpretation is:

- Competent
- Accurate
- Complete

18

Oral Communication

Never Use A Minor To Interpret

NLSLA Prohibits The Use Of Minors Acting As Interpreters Except:

- To Identify Client's Language Needs; Or
- In An Emergency Situation To Assess Client's Immediate Needs

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Written Communication

Workshops/Outreach

- Translations in NLSLA Essential Languages—Others as Needed
  - Flyers
  - Intakes/Evaluations/How To's
- Workshops
  - Power Points in Other Languages
  - Posters
- LEP Coordinator Can Help

20

Effective Communication

Blind or Visually Impaired

- Recording devices
- To Translate Documents Into Braille Talk to LEP Coordinator
- Use Large Print
  - Consider @ Outreach As Well

21

Effective Communication

Deaf or Hearing Impaired

- California Relay Service-711
  - TTY/TTD (Text Telephone)
- Sign Language Interpreter
  - Ask LEP Coordinator
- Written Notes Not Appropriate
  - Okay Just to ID Language (e.g. ASL)
  - **Use Notes Only** after offer free interpreter for deaf & refuses

22

Tools for Effectively Serving LEPs

- Materials/Brochures/Posters
- Intake/Time System
- Equipment & Contracts for Services
- Forms

23

Tools for Effectively Serving LEPs

Language Identification

- Poster & Stand Up Card (20 languages, not Farsi)
- LLS Brochure (lists over 70 languages, including Farsi)
  - Client points to his/her language
  - Order from LLS provider

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Tools for Effectively Serving LEPs

"I Speak" Cards

- Language Identification
- Explains Rights
  - For Use With Other Agencies
- Give To LEP Clients
- Available In NLSLA's Essential Languages

25

Tools for Effectively Serving LEPs

Contracts & Equipment

- Language Line (LLS) Contract
  - **Use It!** Qualified People
  - More Than 90% of World's Languages
  - Tracking usage helps ID our client's needs

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Emerging Trends: Video Conferencing

- Interpreters to be Used Remotely
  - Banks of interpreters
  - Save money
- Florida Court Model

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Contacts/Presenters

- Ana Maria Garcia, Supervising Attorney, Neighborhood Legal Services of Los Angeles County; AnaMariaGarcia@ NLS-LA.org
- Kate Meiss, Neighborhood Legal Services of Los Angeles County. kmeiss@nls-la.org

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TAB I

New Family Law Facilitators' Orientation

Mr. Michael L. Wright,
Ms. Kristine D. Reiser &
AOC AB 1058 Staff

Materials were distributed, not available online.

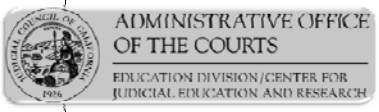
TAB J

AB 1058 Court Clerks' Training (& UIFSA)

Ms. Heather Barajas,
Mr. Barry J. Brooks,
Ms. Anna L. Maves,
Ms. Kathryn Whitney &
Mr. Michael L. Wright

AB1058 Annual Conference

2013: Court Clerk Fundamentals



COURT CLERK III
Kathryn Whitney

13 years w/ Calaveras Superior Court
11 years with AB1058
Civil/Family Law/Probate/Child Support
kwhitney@calaveras.courts.ca.gov

COURT CLERK III
Heather Barajas

4 years with Yuba Superior Court
4 years with AB1058
Family Law & Self-Help/Child Support/Child Custody Mediation
hbarajas@yubacourts.org

INTRODUCTION

- ✓ Breaks & lunch

- ✓ Code direction, not individual courts

- ✓ Please turn off cell phones

- ✓  Round Table

- ✓ Class attendance; leaving early

INDEX CARDS

- Name & Court
- Question Or Topic You Would Like To Have Addressed
- Every Question is Welcome

SUPERVISING ATTORNEY

MICHAEL WRIGHT

ASSISTANT ATTORNEY GENERAL WITH THE TEXAS TITLE IV-D AGENCY

BARRY J. BROOKS

SENIOR ATTORNEY

ANNA MAVES

With AOC for 7 years
Center for Families, Children & the Courts
anna.maves@jud.ca.gov

COURT CLERK TRAINING REQUIREMENT

- California Rule of Court 5.355 Minimum standard of training for court clerk staff whose assignment includes Title IV-D child support cases

CALIFORNIA RULE OF COURT 5.355

- Court clerk
- Assignment includes Title IV-D child support cases
- Minimum of 6 hours annually
- Federal & state laws concerning child support and related issues

CHILD SUPPORT PROGRAM BACKGROUND FOR COURT CLERKS

WHAT IS TITLE IV-D?

- Title IV-D of the Social Security Act (Federal Law)
- Requires each state to provide services to the public to establish parentage and get and enforce child support orders
- Provides federal funding to states to assist with the cost of the program

TITLE IV-D FUNDING

- California Department of Child Support Services is the single state-level IV-D agency. All program funding flows through DCSS
- Program is 2/3 federal Title IV-D funds & 1/3 state funds
- DCSS contracts with the AOC to provide child support court services. AOC then contracts with each court
- What do the courts and the AOC have to do to keep this funding?
  - Keep accurate records including having each person who works on the child support program keep accurate time records.

TIME STUDYING

- Purpose is to make sure that grant funding is going to pay for grant-related activities
- If an employee works 100% on Title IV-D work timesheet showing all hours under Title IV-D is enough
- If employee works on Title IV-D and other non-funded activities must track time spent by funding source
- What is IV-D eligible activity for court clerk?

CHILD SUPPORT PROGRAM BACKGROUND

- Historical Background
  - Title IV-D Performance Problems in California
    - Current system of establishing child support was inadequate
    - Needed system that was quick & efficient
    - Lack of uniformity of policies and procedures among courts/child support agencies

LEGISLATURE'S RESPONSE

- Enacted AB 1058 in 1996 (Child Support Commissioner and Family Law Facilitator Program)
  - Provided the courts with direction on how to develop an effective program
  - Provided the courts with funding

AB 1058 PROGRAM OBJECTIVES

- Establish a simple, speedy and cost-effective system that was accessible to families
- Mandate uniform and simplified procedures
- Create specialized child support commissioners and family law facilitators

AB 1058 PROGRAM REALIZED

- Child support commissioners/family law facilitators in each county
- Specialized court procedures that are streamlined and unique to Title IV-D
- Created specialized rules & forms
- Set up minimum qualifications for staff and standard training requirements

RULES & FORMS

GENERAL OVERVIEW

Who can come up with ideas for rules & forms?

What is the process for review and approval?

What is the timeline?

RULES & FORMS

GOVERNMENTAL FORMS

- Special role of these forms given the volume of IV-D cases; numbers of self-represented litigants and the DCSS statewide automated environment
- Role of Local Agencies in forms development and review
- Special concerns

SPECIALIZED COURT PROCEDURES FOR IV-D CASES

- Proposed Judgment Process
- Amended Proposed Judgment
- Limitations on review of default judgments
- Confidential proof of service (redaction of addresses)
- Objection to Child Support Commissioner vs. Stipulation to Commissioner
- Others?

FEES & COSTS IN TITLE IV-D CASES

- Exemption of Child Support Agency from payment of fees and costs (Government Codes 6103.9)
- No fee to file response or subsequent paper in action brought by DCSS (Government Code 70672)
- What about Requests for Hearing on Wage Assignment? (CRC 5.335(c))

PLANS OF COOPERATION

- Required by the funding contract between AOC/court
- Can set out local case/form processing timelines
- Requires quarterly POC meeting between court and agency
- How can this be used to benefit case/forms processing and effective local court procedures.

HOW CAN YOU TELL THE CURRENT STATUS OF THE LOCAL AGENCY REGARDING A CASE?

Use of FL-632

This form is used when the local child support agency enters the case.

- Current Support
- Support Arrears
- Medical Support

This form is used when the local child support agency leaves the case.

REGISTRATION VS. CHANGE IN CASE MANAGEMENT RESPONSIBILITY

Use of FL-634

- Development of the Child Support Computer Program
- Change in Local Agency Policy & Practice
- Rationale behind the change
- Impact on the court

BREAK
10:00 – 10:30

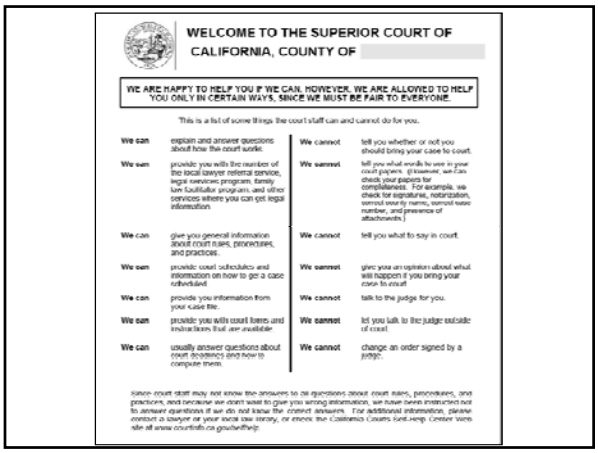
Longer break to allow attendees to check out of rooms.

LEGAL INFORMATION VS. LEGAL ADVICE

Judicial Council form MC-800

Keep a copy handy!
Note: AOC provided larger copies to post – know where they are posted!

"WE ARE HAPPY TO HELP YOU IF WE CAN. HOWEVER, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS, SINCE WE MUST BE FAIR TO EVERYONE."



WELCOME TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF

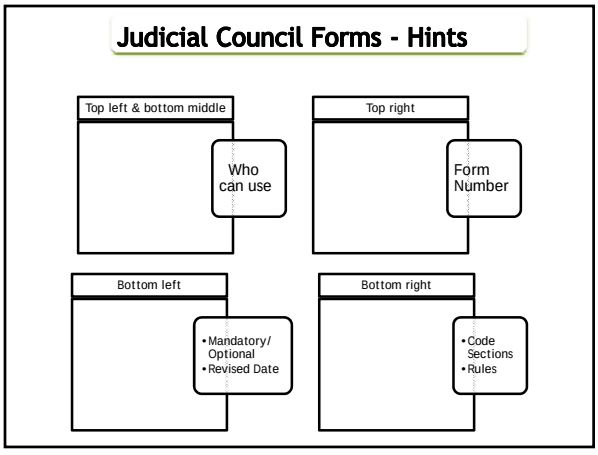
WE ARE HAPPY TO HELP YOU IF WE CAN. HOWEVER, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS, SINCE WE MUST BE FAIR TO EVERYONE.

This is a list of some things the court staff can and cannot do for you.

We can	explain and answer questions about how the court works.	We cannot	tell you whether or not you should bring your case to court.
We can	provide you with the names of the local lawyer referral service, legal services program, family law facilitator programs, and other services where you can get legal information.	We cannot	tell you what words to use in your court papers. (However, we can check your papers for completeness. For example, we check for signatures, notarization, correct case name, correct case number, and presence of attachments.)
We can	give you general information about court rules, procedures, and practices.	We cannot	tell you what to say in court.
We can	provide court schedules and information on how to get a case scheduled.	We cannot	give you an opinion about what will happen if you bring your case to court.
We can	provide you information from your case file.	We cannot	talk to the judge for you.
We can	provide you with court forms and instructions that are available.	We cannot	let you talk to the judge outside of court.
We can	usually answer questions about court deadlines and how to compute them.	We cannot	change an order signed by a judge.

Since court staff may not know the answers to all questions about court rules, procedures, and practices, and because we don't want to give you wrong information, we have been instructed not to answer questions if we do not know the correct answers. For additional information, please contact a lawyer or your local law library, or check the California Courts Self-Help Center Web site at www.courtinfo.ca.gov/selfhelp.

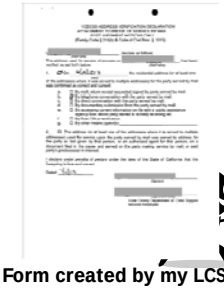
ABOUT MANDATORY VS. OPTIONAL FORMS AND FIELDS



JUDICIAL COUNCIL FORMS

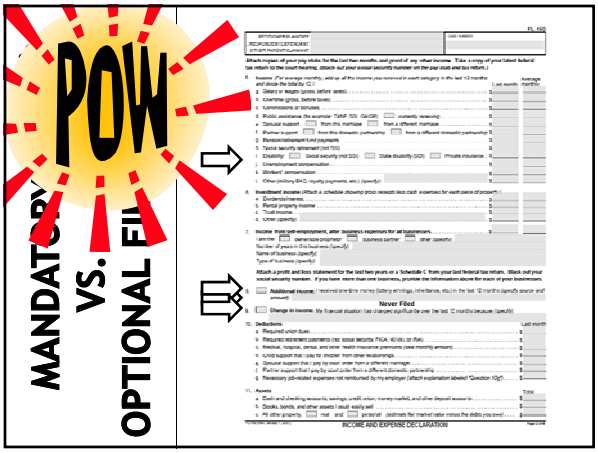
Mandatory	Optional
• Form is mandatory and must be used– cannot use pleading paper • Will state Adopted for mandatory use • Clerk can reject for filing • LCSA's have six months to convert to new forms	• Forms not mandatory – may state the following: • Adopted for alternative mandatory use • Approved for optional use

OPTIONAL FORMS



Form created by my LCSA for their use.

Form created by the Judicial Council for optional use.



SUMMONS & COMPLAINT (AKA SUMPLAINT - FL-600)

- Filed by governmental agency
- Court address
- Parties
- Items 1 – 13 as applicable
- Signed by LCSA attorney, not clerk
- PROPOSED judgment (FL-630)is attached (box 1A checked)

****NOTE****

- This form may be used for original, amended or supplemental complaint.
- 1st amended complaint may be filed without leave of the court prior to answer being filed.

DECLARATION FOR AMENDED PROPOSED JUDGMENT - FL-616

- Filed by governmental agency
- Court address
- Parties
- POS
- AMENDED PROPOSED judgment is attached (box 1A checked)

****NOTE****

- This form is used ONLY when the LSCA has received (within 30 days of POS of S/C) additional income information that changes the financial request of the judgment. supplemental complaint.
- POS - Defendant's time to answer is extended by 30 days if served in person; and 35 days if served by mail, from the date of service of the Declaration for Amended Proposed Judgment
- Other parent may be served by mail. Defendant may be served by mail ONLY if service of the original S/C was by personal service.

PROOF OF SERVICE

- Proof of Service is no different in AB1058 cases than any other types of cases.
- POS is found in CCP 415.10, etc.
- Service of S/C may be by personal service; certified mail with a returned, signed Notice and Acknowledgment of Receipt; substitute service with follow-up mail service; or by publication.
- You may want to keep a copy of the SERVICE OF PROCESS TABLE easily accessible.

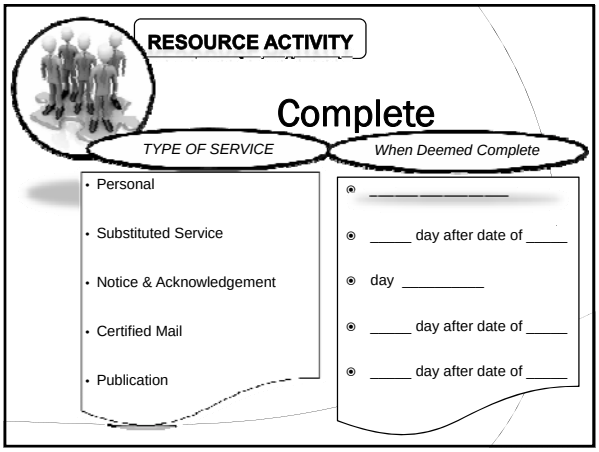
****INTERESTING NOTE****

- If service by certified mail & NAR, per CCP 415.30(d)

"If the person to whom a copy of the summons and of the complaint are mailed pursuant to this section fails to complete and return the acknowledgement form set forth in subdivision (b) within 20 days from the date of such mailing, the party to whom the summons was mailed shall be liable for reasonable expenses thereafter incurrent in serving or attempting to serve the party by another method permitted by this chapter, and, except for good cause shown, the court in which the action is pending, upon motion, with or without notice, shall award the party such expenses whether or not he is otherwise entitle to recover his costs in the action"

SERVICE OF PROCESS TABLE

METHODS OF SERVICE	SERVICE REQUIREMENTS	SERVICE DEEMED COMPLETED
Personal Service **CCP 415.10**	Personally delivered to respondent	Immediately upon delivery
Substituted Service **CCP 415.20(B)** Requires a due diligence declaration showing attempt(s) of personal service	Delivery to a competent adult (over 18) apparently in charge at the respondent's home, usual place of abode, business or mailing address (not a PO Box), who must be told of the contents delivered AND a copy must be mailed to respondent at same address	10th day after the date of mailing
Service by Mail **CCP 415.30** Notice and Acknowledge of Receipt; Sender must complete date of mailing, sign and indicate what documents are being sent.	Respondent must sign and date the Notice and Acknowledgement of Receipt; the original is returned to the court attached to the Proof of Service	The date the Notice and Acknowledgement is signed by the Respondent
Service by Mail **CCP 415.40** Certified mail outside of California only	Delivery to respondent by certified mail, return receipt signed and dated by respondent; attached to Proof of Service prior to filing with the court; declaration of service by mail will also be completed	10th day after date of mailing
Service by Publication **CCP 415.50** Available where other party cannot be service by any reasonable method with due diligence	Application and order for publication of summons must be submitted to the court. Upon proper review, the court can order summons published in newspaper most likely to give actual notice	28th day after the first day of publication Government Code 6064



PROOF OF SERVICE
(WHEN DEEMED COMPLETE)

TYPE OF SERVICE	WHEN POS DEEMED COMPLETE
Personal	Immediately upon delivery
Substituted Service	10th day after date of mailing
Notice & Acknowledgement	Day NAR signed by Respondent
Certified Mail	10th day after date of mailing
Publication	28th day after 1st date of

What if person refuses service? Or tosses documents on ground? Is POS valid?

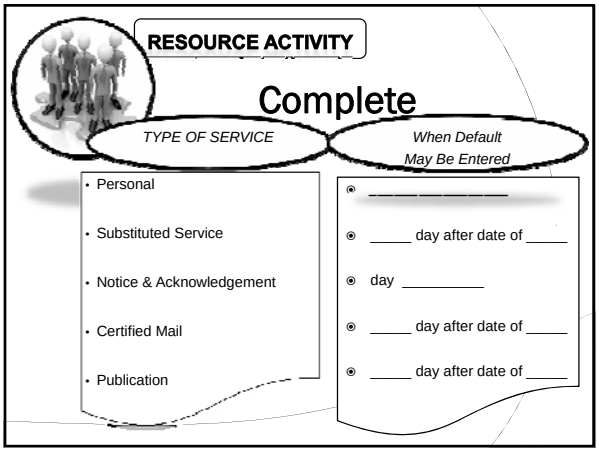
REQUEST FOR DEFAULT

- **Check to be sure that POS is sufficient as to defendant. If the time has not expired for defendant to file answer, check with your court to see if you should hold the document, file in but not enter default, or return to LCSA without filing along with a note of explanation.**
- **The Declaration for Default or Uncontested Judgment (FL-616) is Adopted for Mandatory Use – however, courts may choose to not use it.**

****NOTE****

May not be entered if any of the following documents have been filed and the motions pending:

- **Answer**
- **Denial**
- **Motion to Dismiss**
- **Demurrer and/or Motion to Strike**
- **Motion to Quash**
- **Motion to Stay Proceedings**
- **Motion to Transfer**



DEFAULT TIMELINE TABLE

(WHEN DEFAULT MAY BE ENTERED)

TYPE OF SERVICE	WHEN POS DEEMED COMPLETE
Personal	31st day after date of service
Substituted Service	41st day after date of mailing
Notice & Acknowledgement	31st day after NAR signed
Certified Mail	41st day after date of mailing
Publication	59th day after 1st date of publication

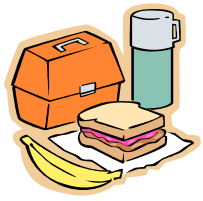
JUDGMENT
FL-630

- Filed by governmental agency
- Court address
- Parties
- POS
- **Judgment** (now box 1B is checked)

****NOTE****

- The clerk is no longer responsible for processing, filing or serving the Notice of Entry of Judgment.

LUNCH
12:00 – 1:00



ROUND TABLE

CALIFORNIA RULE OF COURT 5.125

- Effective January 1, 2013
- What problem was rule trying to fix?
- Review of the provisions of the Rule
- Applicability to Title IV-D cases & potential program impact

MINUTE ORDERS

- Minutes are to be maintained by the clerk as part of the permanent record of the court [GC§69844] - it is the official record of the Court's proceedings, required by law, showing who was present at the hearing and what happened, as well as what findings and orders the court made.
- Judicial Council Form FL-692, adopted for alternative mandatory use.

IMPORTANT INFO/TIPS
The minutes should be written, using complete sentences.
Present tense vs. Past tense (need to be consistant)
Better to say too much than too little
Chronological record of events
No abbreviations should be used in body of minute order
Keep in mind your minutes may be read by Judicial Officers, counsel, the public, and possibly the Supreme Court

PARTS OF A MINUTE ORDER (CONT)

HEADING	• Title of case and case number • Names of court staff members: judicial officer, court clerk, court reporter and bailiff • Court Name and department number • Parties to action
OPENING	• If matter continued, the date, time and department of next hearing • Nature of proceedings being continued (may be different than nature of proceedings from hearing that day) • Statement of any continued orders

PARTS OF A MINUTE ORDER

BODY OF MINUTE ORDER

- Summary of what occurred
- Witnesses and Interpreters
- Exhibits marked and accepted (entered)
- Stipulations, waivers and motions
- Court findings, rulings, admonishments and orders

CLOSING EVENTS

- Appearances
- Status of the Hearing
  - continued from last date
  - proof of compliance
  - review, etc.

EXHIBITS

- Before a document is presented to a witness or referred to, it should be "marked for identification". The clerk will place a tag or label to the exhibit according to their court's procedure. Do not place exhibit tags on any printed portion of documents. The minute order must include that the exhibit was marked, if it was received into evidence, the number/letter assigned to it, and a brief description. *If the exhibit is returned to the submitting party during the hearing, so indicate on the minutes.*
- Once introduced, marked for identification only, or received/admitted into evidence, the exhibit becomes the sole responsibility of the clerk. (PC §1417.) The clerk must not release any exhibit except on order of the court. The clerk must require a signed receipt for a released exhibit [CRC 2.400(c)(1)].
- Exhibits that are marked for identification only cannot be considered by a Judicial Officer as evidence. Only exhibits that have been admitted (received) into evidence may be considered by a Judicial Officer.

SWEARING IN THE PARTIES

OATH TO WITNESS

- DO YOU SOLUMNLY STATE UNDER PENALTY OF PERJURY, THAT THE EVIDENCE THAT YOU SHALL GIVE IN THIS ISSUE OR MATTER SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?
- PLEASE BE SEATED, STATE YOUR FULL NAME, AND SPELL YOUR LAST NAME FOR THE RECORD. [CCP §2094(2)]

OATH TO HEARING IMPAIRED INTERPRETER

- DO YOU SOLEMNLY STATE UNDER PENALTY OF PERJURY, THAT YOU WILL WLL AND TRULY INTERPRET THE SPOKEN LANGUAGE INTO THE SIGN LANGUAGE, AND THE SIGN LANGUAGE INTO THE SPOKEN LANGUAGE, IN THE CASE NOW PENDING BEFORE THIS COURT?
- [*EVID §751(a)*]

BREAK
2:45 – 3:00

Shorter break to end class early and allow attendees to get to airport timely.

CROSSWORD

Instead of the traditional list of words and definitions, we have created a crossword puzzle for you!

PLEASE COMPLETE THE SURVEY!

Your feed back is important to us.

Thank you for coming and see you next year.

TAB K

AB 1058 Administration and Accounting

Mr. Paul Fontaine,
Mr. Abutaha Shaheen &
Mr. Michael L. Wright

AB 1058 Administration & Accounting Training

17th Annual Child Support Training Conference
September 26, 2013

Michael Wright, AB 1058 Program Manager/Supervising Attorney
Paul Fontaine , Supervising Accountant
Abutaha Shaheen, Grant Accountant

Agenda

- Introductions
- Program Manager's Update
- Program Changes
- AB 1058 Accounting Forms
- Administrative and Grant Reporting Requirements
- Cost Treatments and Methods of Allocation
- Request for Program Modifications and Enhancements
- Invoicing Cycle
- General FAQ Session
- One on One FAQ Discussion

ADMINISTRATIVE OFFICE OF THE COURTS

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AB 1058 Program Manager Update

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Agenda

- Child Support Program Overview
- Contractual Agreements and Deliverables
- Program Audits
- Program Activities and time reporting
- Program Funding Status and Updates
- Mid-Year Reallocation Process
- Program Budget Implications and Solutions

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AB 1058 Program Overview

What is the AB 1058 Program?

- Legislative mandated IV-D program
- Enforce child support cases
- Collection and distribution of payments
- Provide health care coverage to support child

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Title IV-D Program Services

- Locate noncustodial parents
- Establish paternity
- Establish child support orders
- Enforce child support orders
- Collection and distribution of support

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AB 1058 Program Overview

Government Roles

- Federal (Office Of Child Support Enforcement, OCSE)
  - Funding to establish program
  - Policies & Regulations
- State Administer (DCSS & AOC)
  - Child Support Commissioner (CSC)
  - Family Law Facilitator (FLF)
- Local services provided
  - Courts
  - LCSA

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AB 1058 Program Contracts

- Contract between DCSS and JCC
- Contract between JCC and Local Court
  - Block grant subject to expectation of a standard package of "services"
  - Court Deliverables

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Standard Service Package

- Expectations
  - CSC calendar time, FTEs and support staff
  - Court reporters & interpreters
  - Security
  - Training Requirements

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Court Deliverables

- Plan of Cooperation with Local Child Support Agency (LCSA)
- Disclosure of all funding sources
- Written contract between contracted FLF and CSC
- Quarterly FLF Data Report (customer service statistics)
- Written FLF Office Complaint resolution process

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AB 1058 Program Audits

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AB 1058 Program Audits

- Historical Audits
  - Office of Child Support Enforcement (OCSE)
  - Administrative Office of the Courts
- Current Audits
  - Department of Child Support Audit (DCSS)
  - Department of Finance

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AB 1058 Program Audits

- Department of Child Support Audit Update
  - Compliance of federal and state regulations
  - Completion of program deliverables
  - Proper accounting records and adequate documentation
  - Program cost efficiencies
  - Consistency of application of cost

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AB 1058 Program Audits

- Department of Finance Audit
  - Financial statements
  - Proper accounting records and adequate documentation
  - Internal control - Segregation of duties
  - Authorized approvals
- Administrative Office of the Courts Audit
  - Operations/Internal Control
  - Contract Compliance

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AB 1058 Program IV-D Services

AB1058 Commissioner vs. Other Family Law Services

AB 1058 Services

- Child support cases opened at LCSA
- Child Support matters
- Paternity matters
- Companion Spousal support matters
- Health insurance matters

Other Family Law Services

- Non-LCSA parentage/child support cases heard by commissioner
- Domestic Violence
- Custody and Visitation
- Dissolution of marriage issues other than support
- Adoptions
- Juvenile Delinquency

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FLF Program Expansion

- Increase merge of Family Law Facilitator and Self-Help offices
- Separation of Funding
  - IV-D Program funds
  - Self Help funds
  - Other court program funds
- Understanding of activities between AB 1058 facilitator, self help and other family law functions

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AB 1058 Family Law Facilitator Functions

Title IV-D

- Child support cases opened at LCSA
  - Child Support matters
  - Paternity matters
  - Companion Spousal support matters
  - Health insurance matters

Outreach Activities

- Child support cases not yet filed at the LCSA.
  - Providing information & referral services
  - Distributing court forms
  - Brief Explanation of court process

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Self-Help and other family Law Functions

- Domestic Violence
- Custody and Visitation
- Dissolution of marriage issues other than support
- Adoptions
- Juvenile Delinquency
- Non-Child Support Related Activities
- Other non-grant activities, ie. General court administration

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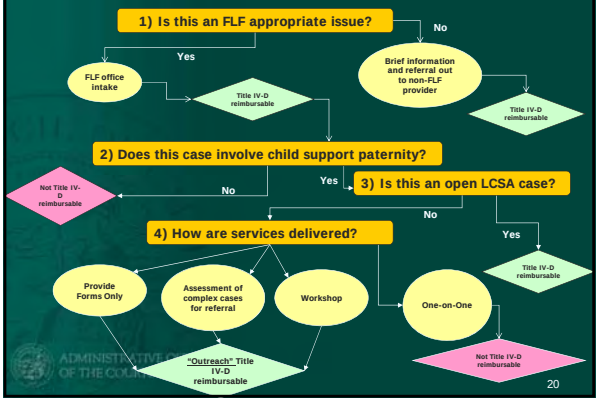
FLF Reimbursability Decision Tree



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AB 1058 Program Funding & Spending Update

AB 1058 Program Funding

- Program Funding Sources:
  - Title IV-D Funding
    - 2/3 Feds & 1/3 State
  - Trial Court Trust Fund
    - Expanded Services (DV, Custody-Visitation-Dissolutions)
    - Self Help
  - Other grant and non-grant funds
    - Interpreter, security, court construction funds

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AB 1058 Program Funding

Federal Drawdown Option

- Short term alternative began FY 07-08
- Additional federal funds
- Requires court contribution
- Subject to a cap

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Federal Drawdown Option

Mechanism for the courts to recover two-thirds of additional program costs beyond the base maximum

Example:

Court expenses exceed base allocation by $300.

- Court Share (1/3) - $100
- Federal Share (2/3) - $200

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AB 1058 Program Funding

- Flat funding in Child Support Program for FY 10-11 and FY 11-12
- Decrease in Child Support Program base funding for FY 08-09 + increase in federal draw down option
- Flat funded in Child Support Program for FY 07-08 + federal draw down option

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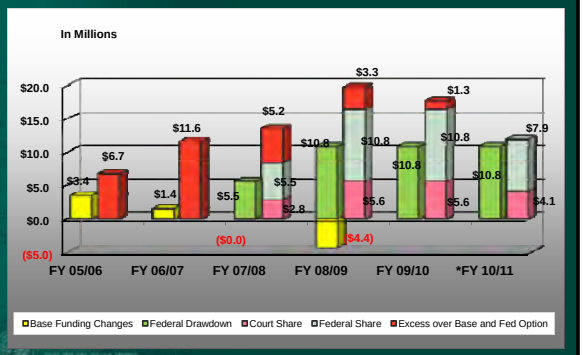
Program Funding History



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*Expenditures received to date and does not represent full Fiscal Year 10/11

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Expenditure Categories

- Expenditure categories are consistent for both the CSC and FLF Programs
  - Salaries
  - Benefits
  - Operating Expenses
  - Indirect

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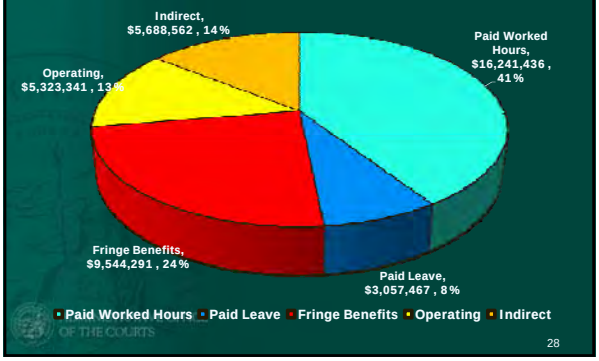
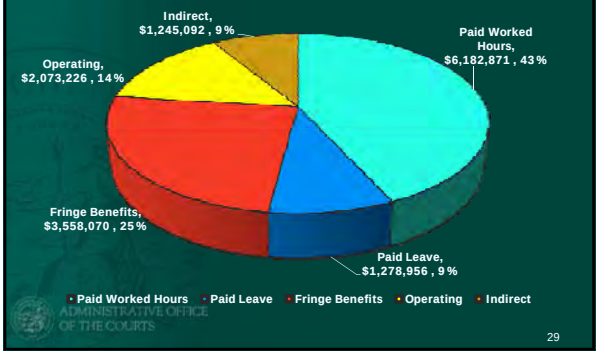
CSC Program Expenditures by Category FY 10/11



28

FLF Program Expenditures by Category FY 10/11



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AB 1058 Program Mid-Year Reallocation

- Annual Court Questionnaire
  - Assume current program level
  - Exclude program expansion
  - Exclude program enhancements and new facility leases
  - Expenditures to date (used to calculate funding for remainder of year)
- Review and evaluation by AOC committees with approval by Judicial Council
- AOC-Court contract amendment
- Continue reimbursement process using amended budget amounts

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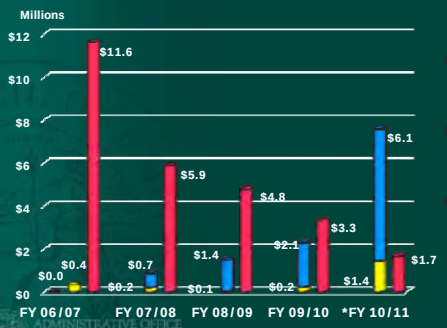
History of Remaining Funds



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AB 1058 Program Budget

- Budget Implications and Updates
  - Judicial branch budget reductions and impacts on the AB 1058 program
  - DCSS realignment
  - Cost saving strategies & best practices
    - **Assigned commissioners program**

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Significant Program Changes

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Program Changes

- Existing Reimbursement Process
- New Reimbursement Process - for Select Claims
- Contract Cycle
- AB1058 Funding Impacts

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Existing Reimbursement Process

Court incurs monthly expenses	July 1 – July 30
• Court summarizes data and invoices AOC	August 20th
• AOC receives invoice	August 24th (2-3 days)
• AOC grant accountant combines invoice with other invoices for review and approval	August 28th (1 week)
• AOC accounts payable unit processes and produces claim schedules	September 3rd (4-5 days)

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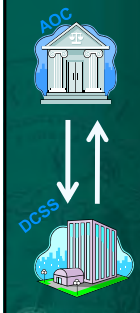
Existing Reimbursement Process



• AOC grant accountant summarizes transactions for the week and submit a request to DCSS for reimbursement	September 4th
• DCSS reviews and processes invoices	September 11th (1 week)
• DCSS sends reimbursement to AOC	October 2nd (3 weeks)

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Existing Reimbursement Process

- AOC releases claim schedules to State Controller's Office (SCO) — October 3rd
- SCO receives claim schedules and combines with claims from other agencies — October 7th (2-3 days)

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Existing Reimbursement Process

- SCO reviews claim schedules — October 14th (1 week)
- SCO processes check payments — October 21th (1 week)
- SCO sends checks to courts — October 23rd (2-3 days)
- Court receives payment — October 28th (2-3 days)

More than **THREE** months before court receives payment

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Existing Reimbursement Process

- Factors that may delay reimbursement:
  - Errors
  - Omissions
  - Late Submissions
  - Vacations
  - Monetary Thresholds
  - Budget Implications
  - Cash Implications
  - Contract Implications
  - Court Issues

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New Reimbursement Process

Court incurs monthly expenses — July 1 – July 30

- Court summarizes data and invoices AOC — August 20th
- AOC summarizes all invoices received and notifies Grantor — August 20th
- Grantor transfers funds to SCO — September 1st
- AOC processes and produces claim schedules — August 21st – September 15

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New Reimbursement Process

- AOC releases claim schedules to State Controller's Office (SCO) — September 1 - 15th
- SCO receives claim schedules and combines claims with other agencies — September 3 – 17th

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New Reimbursement Process

- SCO reviews claim schedules — September 10 - 24th (1 week)
- SCO processes check payments — September 17 – 30th (1 week)
- SCO sends checks to courts — September 19th – October 2nd (3 days)
- Court receives payment — September 21th - October 4th (3 days)

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New Reimbursement Process

- AOC advises Grantor of claims released from July cycle — September 20th
- AOC advises Grantor of claims received for August cycle — September 20th
- Grantor transfers net funds to SCO — October 1st

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New Reimbursement Process

Invoice Cycle Decreased by at least 60 days

* DSCC Allows 1 Billing per Month

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New Reimbursement Process

- Factors that may delay reimbursement:
  - All factors included in existing process
  - Missed deadlines
- All delayed claims revert to old processing method
- Advance funding is a one time opportunity

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New Reimbursement Process

- Priority given to complete accurate claims
- Claims with errors/ommissions reviewed after complete claims processed
- Priority given to claims submitted on time

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New Reimbursement Process

- Major Assumption With New Invoice Process
  - Audit of claims remains a Grantor requirement
  - Grantor will accommodate payments to claimants with history of no adjustments
  - New process only applies with Federal funds

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New Reimbursement Process

Process Treatment for Errors or Omissions

- Claims with simple and obvious errors will be adjusted and processed (Courts notified of adjustment by email at time of claim submission)
- Claims with missing or incomplete data will revert to standard process (Courts notified by email that claim is abayed until error or omission is cleared)

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New Reimbursement Process

Process Treatment for Errors or Omissions

- Claims submitted for payment are deemed complete once received by SCO
- No further payments can be made on a submitted claim

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New Reimbursement Process

• Total number of Contracts (FLF and CSC)	109 $ 55,171,367
• Total Contracts Not Received by August 20	36 or 33%
• Number of July Claims Received by August 20th	11 or 10%
• Claims Received with Outstanding Issues	2 or 2%
• Number of Claims Payable	9 or 8%
• Estimated Overall July Expenses	$ 4,597,614
• Expenses Reflected on Claims Received	$ 265,816 or 6%
Amount Received from Grantor on Sept 5th	
• Expenses Submitted to State Controller on Sept 9th	$ 136,780 or 3%
• Funds returned to Grantor	$ 129,036 or 49%

If deemed that JC/AOC retains unreimbursed funds, new reimbursement process will be discontinued

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New Contract Cycle Timeline

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New Contract Cycle Timeline

Summary of Key Deliverables

- Court program budget due prior to July 1 of grant fiscal year (for fiscal year 2013/2014, still had not received budgets mid July, approximately 10%)
- Contract approved between funder and AOC
- Business Services provides Court with final grant contract
- Court signs and returns contract to AOC
- AOC signs contract and submits to SCO
- State Controller receives signed contract (prior to due date of first payment, September of Grant Year)

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New Reimbursement Timeline

Contract Cycle Decreased by 2 to 7 Months

Initial Invoice Cycle Decreased by 2 to 7 Months

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New Reimbursement Timeline

Claims Received
On Time
Error Free

Funding Cycle Reduced by 28 days

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AB 1058 Funding Impacts

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AB 1058 Funding Impacts

- General fund decreased significantly
- Court reserves decrease significantly
- Grant funding decreased slightly
- Ability to float cash payments decreased

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AB 1058 Funding Impacts

- General fund decreased significantly
  - Reduce costs
  - Close courts
  - Furloughs
  - Reduce hiring
  - Other cost cutting

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AB 1058 Funding Impacts

- Court reserves decrease significantly
  - Increase cash flow
    - Advance receipts
    - Defer expenses

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AB 1058 Funding Impacts

- Grant Funding Levels Decreased Slightly
  - Overall furloughs have decreased labor, benefits and IC charges (Matching overall court changes)
  - Other labor costs surface
  - Other non-labor costs surface

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AB 1058 Funding Impacts

Grant Reimbursement Impacts

	Past Years
Total Grant Funds	100%
Labor and Loadings	45%
Security	25%
Other Courtroom	25%
Miscellaneous	5%
Total Reimbursements	100%

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AB 1058 Funding Impacts

Grant Reimbursement Impacts

	Past Yrs	Current Yr
Total Grant Funds	100%	Decrease
Labor and Loadings	45%	Increase
Security	25%	Decrease
Other Courtroom	25%	Increase
Miscellaneous	5%	Increase
Total Reimbursements	100%	Decrease

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AB 1058 Funding Impacts

- Impacts to the Grant Processing
  - More frequent claims submissions
  - More new charges
  - More audit items

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AB 1058 Funding Impacts

- Impacts to the Courts
  - Program audit requirements
  - Federal audit requirements
  - State audit requirements
  - DCCS audit require
  - Increase in processing time

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AB 1058 Funding Impacts

Examples of claim deficiencies

- AB1058 contract not active
- Invoice Form
  - Altered form
  - Contract number wrong or missing
  - Program period wrong
  - Court address wrong
  - Contact information wrong
- Timesheet Form
  - Not reporting 100% of time
  - Non program hours missing
  - Altered certification
  - Missing signatures
  - Program titles missing

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AB 1058 Funding Impacts

Examples of claim deficiencies

- Payroll summary form
  - Wrong pay period
  - Pay period not matching time sheets
  - Reported hours not matching time sheets
  - Altered formulas
  - Manual entry over-ride on formulas
  - Missing approver title and signature
  - Certification clause missing
- Summary form
  - Changing budget line items
  - Moving categories without approval
  - Altered forms
  - Missing court name

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AB 1058 Funding Impacts

Examples of claim deficiencies

- Missing expenses on operating recap form
- Claims in excess of amount on summary
- Excessive Documents
- Electronically Submitted
  - Cannot be used to Substantiate Claims
  - Network cannot support claims (storing/transmitting)
  - Blocked on entry

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Examples of operating Expenses Errors

- Publications
- Membership dues
- Bar/dues donations
- Child Support calculator
- Missing documentation
- Missing contracts
- Contractor activity log
- Non program training
- Phoenix Printouts
- Calculations wrong
- Duplicate indirect cost
- Expenses over $5k
- Missing Payment information
- No program benefit
- Avoidable Costs

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AB 1058 Program Reporting Forms

AB 1058 Grant Forms

- Timesheet
- Contractor Activity Log
- Payroll Summary Sheet
- Operating Recap Sheet
- Summary Sheet
- Invoice Face Sheet

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AB 1058 Timesheets

Employee Name: | Pay Period Start: | Pay Period End:

The electronic version of the timesheet is designed to automatically calculate the total hours worked by program.

A	B	C	D	E	F	G	H	I	J = (B thru I)	K	L = (J-K)
Date	TITLE IV-D HOURS	(Insert Program Name)	(Insert Program Name)	(Insert Program Name)	(Insert Program Name)	(Insert Program Name)	(Insert Program Name)	Other Hours	Total Hours Worked	Total PTO Used (vac/sick/holiday)	Total Hours Including Paid
Total Hours:											

I hereby certify under penalty of perjury that this time sheet accurately represents actual time worked and any leave time charged or authorized to any grant included does not exceed leave time earned while working on the grant.

Employee Signature | Date | Supervisor Signature | Date

PTO=Paid Holidays, vacation, sick leave, jury duty, etc. (excluding accrued vacation and sick leave).

AOC-4 TIMESHEET (REV 07/2008)

AB 1058 Timesheets

- Timesheet – Court employees (W-2)
- Contract Activity Log – Contractors (1099)
- Positive Reporting- account for 100% of time
- Increments of 15 minutes
- Furlough days not reported on timesheet
- Must be completed and signed by employee and reviewed approved by supervisor

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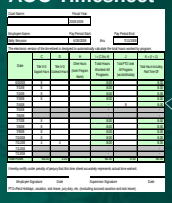
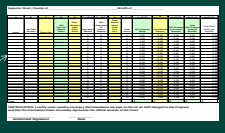
AB 1058 Payroll Summary Sheet

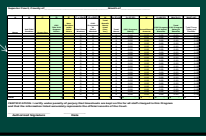
AB 1058 Payroll Summary Sheet

AOC Timesheet





Other Program Payroll Summary Sheet

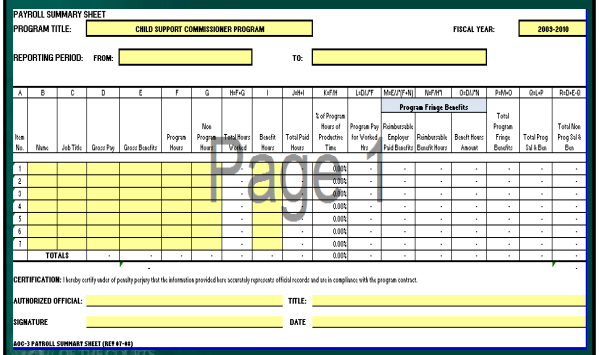


ADMINISTRATIVE OFFICE OF THE COURTS

AB 1058 Payroll Summary Sheet

- Salaries & Wages
  - Gross salary for the pay period
  - 100% of time distribution for the pay periods being reported
  - Proportional overtime wages related to Title IV-D matters
- Benefits Types
  - Fringe benefits: social security, employee insurance: life, health, unemployment, workers compensation, pension plan costs, and other similar benefits
  - Paid Leave: vacation, annual leave, sick leave, holidays, court leave, and military leave
  - Cannot bill more leave hours than earned while working on the program

AB 1058 Payroll Summary Sheet



PAYROLL SUMMARY SHEET

PROGRAM TITLE: CHILD SUPPORT COMMISSIONER PROGRAM FISCAL YEAR: 2009-2010

REPORTING PERIOD: FROM: TO:

A	B	C	D	E	F	G	H=F+G	I	J=H+I	K=F/H	L=D/F	M=E/(F+N)	N=F/M	O=D/N	P=N+O	Q=L+P	R=D+E-Q
Item No.	Name	Job Title	Gross Pay	Gross Benefits	Program Hours	Non Program Hours	Total Hours Worked	Benefit Hours	Total Paid Hours	% of Program Hours of Productive Time	Program Pay for Worked Hr	Program Fringe Benefits: Reimbursable Employer Paid Benefits	Program Fringe Benefits: Reimbursable Benefit Hours Amount	Total Program Fringe Benefits	Total Prog Sal & Ben	Total Non Prog Sal & Ben
1							-		-	0.00%	-	-	-	-	-	-
2							-		-	0.00%	-	-	-	-	-	-
3							-		-	0.00%	-	-	-	-	-	-
4							-		-	0.00%	-	-	-	-	-	-
5							-		-	0.00%	-	-	-	-	-	-
6							-		-	0.00%	-	-	-	-	-	-
7							-		-	0.00%	-	-	-	-	-	-
	TOTALS	-	-	-	-	-	-	-	-	0.00%	-	-	-	-	-	-

CERTIFICATION: I hereby certify under of penalty perjury that the information provided here accurately represents official records and are in compliance with the program contract.

AUTHORIZED OFFICIAL: TITLE:

SIGNATURE DATE

AOC-3 PAYROLL SUMMARY SHEET (REV 07-08)

AB 1058 Operating Recap Sheet

AB 1058 Operating Recap Sheet — Child Support Commissioner Program — FY 2009-2010

Superior Court, County of

100% Reimbursable Expenditures

Category	Vendor Name	Description	Invoice #	Check/Warrant #	Date Paid	Amount
ex: Contracted Commissioner	Jon Harris	Services for 7/1-7/30	123456	00000-0010548	8/1/09	2,500.00
ex: Interpreter	Mel Sims	Half day services for 7/29	12222	00000-0010550	8/2/09	150.00
ex: Training	Tracy Haggerty	CSDA Reg. Fee 7/28-7/30	71009	00000-0010551	7/1/09	175.00
					Sub-Total	$ 2,825.00

Partially Reimbursable Expenditures

Category	Vendor Name	Description	Invoice #	Check/Warrant #	Date Paid	Amount
ex: Office Supplies	Corporate Express	Office Supplies	15465	00000-0010547	8/1/09	100.00
ex: Rent	Greentown Leasing Co.	July Rent	15466	00000-0010548	8/1/09	2,500.00
ex: Perimeter Security	County Sheriff's Dept.	July Shared Perimeter Security Costs	15477	00000-0010549	8/1/09	
					Sub-Total	$ 2,500.00
				Reimbursable Operating %	54.82%	$ 1,346.50
				Total Operating Expenditures		$ 3,971.50

** Total reimbursable amount consist of 100% Reimbursable Expenditures + Adjusted total of partially Reimbursable Expenditures

100% Reimbursable Expenses

- Contracted Facilitators and Commissioners
- Contracted Temporary Employees
- Court Interpreter Expenses
- Bailiff Expenses (proportionate to Commissioner hrs)
- Travel expenses
- Pre-approved Training/Conferences (1 per year)
- Pre-approved memberships

ADMINISTRATIVE OFFICE OF THE COURTS

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Partially Reimbursable Expenses

- Perimeter security
- Rent
- Office Supplies
- Equipment

ADMINISTRATIVE OFFICE OF THE COURTS

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Pre-Approved Expenses

- Written prior approvals required:
  - Minor Remodeling
  - Equipment Purchases > $5,000

ADMINISTRATIVE OFFICE OF THE COURTS

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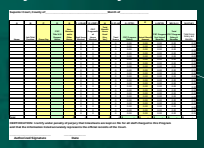
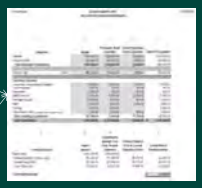
AB 1058 Summary Sheet

Payroll Summary Sheet



AB 1058 Summary Sheet



Operating Recap Sheet

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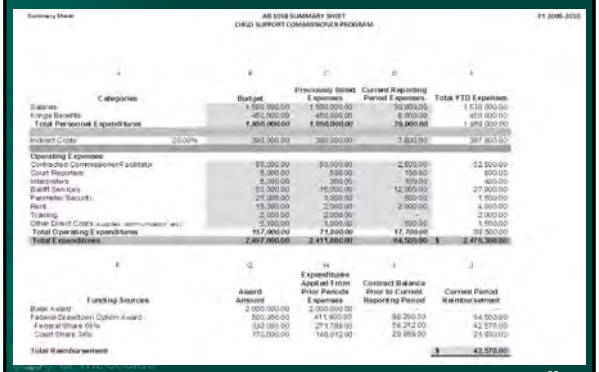
AB 1058 Summary Sheet



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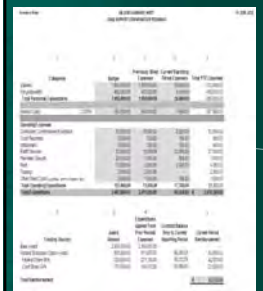
AB 1058 Invoice Face Sheet

AB 1058 Summary Sheet



Invoice Face Sheet

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AB 1058 Invoice Face Sheet

STATE OF CALIFORNIA
AOC-INVOICE (REV 07/09)

INVOICE

MAIL TO:

JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS
GRANT ACCOUNTING
455 GOLDEN GATE AVENUE, 7th FLOOR
SAN FRANCISCO, CA 94102

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

ADDRESS:

CONTRACT NUMBER:

BILLING PERIOD:

PROGRAM TITLE: Child Support Commissioner Program

PROGRAM PERIOD: July 1, 2009 - June 30, 2010

ACCOUNTING CONTACT:

E-MAIL ADDRESS:

PHONE NUMBER:

FAX NUMBER:

PROGRAM EXPENDITURES (FUND REQUESTED)

CATEGORY	AMOUNT
PERSONNEL (Salaries & Benefits)	29,691.00
OPERATING EXPENSES & EQUIPMENT	17,791.00
INDIRECT COSTS	7,809.00
TOTAL EXPENDITURES	64,591.00
TOTAL REIMBURSABLE AMOUNT	$ 42,571.00

CERTIFICATION: I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE AMOUNT BILLED ABOVE IS TRUE AND CORRECT IN ACCORDANCE WITH THE CONTRACT.

COURT OFFICIAL (NAME & TITLE):

SIGNATURE:

DATE:

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Administrative and Grants Reporting Requirements

ADMINISTRATIVE OFFICE OF THE COURTS

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Grant Reporting Requirements

- Codes of Federal Regulation
  - CFR Part 45, Subtitle B, Chapter III, Office of Child Support Enforcement (Child Support Enforcement Program)
- OMB Circular A-102 (Uniform Administrative Requirements for State and Local Govt. agencies)
- Cost Principles: 2 CFR 225 (formerly known as Circular A-87)
- Rules of Court
- Contractual Agreement between JCC and the Courts

ADMINISTRATIVE OFFICE OF THE COURTS

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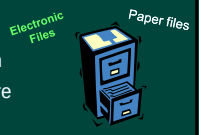
Grant Reporting Requirements

- Administrative Requirements
  - Financial and Accounting Records
    - Proper supporting documentation
    - Approval and Authorized signature
    - Recommended/Approved Forms
  - Record Retention and Access to Records
    - Access by Grantor & Auditors
    - Retained for 3 years



ADMINISTRATIVE OFFICE OF THE COURTS

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Costs Treatment

Direct vs. Indirect Costs

- **Direct Cost** are identified with a particular cost objective
- **Indirect Costs** are incurred for common or joint objectives of an organization and cannot be readily identified with a particular program objective

ADMINISTRATIVE OFFICE OF THE COURTS

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Direct / Indirect Determination

- Does the cost result in a direct benefit to a federal program?
- Can it be easily and accurately traced to the federal program?
- Does it benefit more than 1 federal program?
- Is it normally charged indirect?
- Have you calculated the proportional benefit?

ADMINISTRATIVE OFFICE OF THE COURTS

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Costs Allowability Requirements

- Allocable
- Necessary and Reasonable
- Treated Consistently
- Determined according to GAAP
- Net of applicable credits
- Not used for cost sharing/matching on another federal award
- Adequately documented
- Authorized under state/local laws & regulations
- Conforms to limits & exclusions in costs principles, federal laws and award T&C
- Consistent with recipient policies for federally and non-federally funded activities

ADMINISTRATIVE OFFICE OF THE COURTS

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Costs Allocability

- Must meet ONE of these criteria:
  - Incurred specifically for the program award
  - Benefits both program award and other work and can be distributed in reasonable proportion to benefits received
  - Necessary to organization's overall operation

ADMINISTRATIVE OFFICE OF THE COURTS

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Methods of Allocation

- Allocation Methods:
  - Full Time Employee (FTE)
  - Number of Child Support Cases
  - # of Court Departments
  - Other Approved Methods

ADMINISTRATIVE OFFICE OF THE COURTS

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Note:

A cost which is allocable to an award isn't necessarily **allowable** or **reasonable**

ADMINISTRATIVE OFFICE OF THE COURTS

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Administrative / Grant Reporting

- Sell-back, Cash out, unproductive time charges, workers compensation, etc.
- Furlough Reporting
- Bailiff/Security costs plans
- Post employment benefits
  - Retirement benefits
  - Medical benefits
  - Unemployment benefits

ADMINISTRATIVE OFFICE OF THE COURTS

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Miscellaneous Items

- Request for Program Modifications and Enhancements
- Invoicing Cycle
- Moodle
- General FAQ Session

ADMINISTRATIVE OFFICE OF THE COURTS

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Request for Program Modifications and Enhancements

Program versus Finance

Program	Finance
• Key Personnel changes	• Budget modifications
• Facility changes: lease and relocation	• Finance reporting inquiries
• Funding level changes	• Accounting Forms
• FLFED database reporting	• Leave charges: buy backs and cash outs
• Leave charges: buy backs and cash outs	• Reimbursement inquiries

ADMINISTRATIVE OFFICE OF THE COURTS

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Program Issues

- Creating new budget line item for material changes
- Moderate to high impact
- Affect other courts
- Changes not within funding level
- Approval process – long term
  - Program Manager
  - Finance Review
  - Committee Review
  - Judicial Review

ADMINISTRATIVE OFFICE OF THE COURTS

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Finance Issues

- Creating new budget line item for minor changes
- Budget category change
- Low impact
- Affect only one court
- Changes within funding level
- Approval process – short term
  - Program Manager
  - Finance Review

ADMINISTRATIVE OFFICE OF THE COURTS

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Grant Processing versus GL Accounting

Grant Processing

- AB 1058 Program Grant Accountant
- Allowability of program expenditures inquiries
- Program budget inquiries
- Reimbursement inquiries
- Reimbursements through SCO

GL Accounting

- SAP General Ledger Accountant
- Recording financial transactions
  - Accounts Receivable
  - Accounts Payable
  - General Ledger
- Payments through court specific accounts

ADMINISTRATIVE OFFICE OF THE COURTS

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AB 1058 Moodle Training Site

- What is Moodle?
  - AB 1058 Program Reporting training website
  - http://calcourts.moodle.com
- Why do you want to use it?
  - Provides training on the concepts and requirements for submitting claims for reimbursement for CSC and FLF Programs
  - Allows court employees to interact and have discussions by posting on forum
  - Satisfies the California Rule of Court, Rule 10.452 court staff training requirement

ADMINISTRATIVE OFFICE OF THE COURTS

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Supervising Accountant
Finance, Grant Accounting Unit
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E-mail: paul.fontaine@jud.ca.gov

ADMINISTRATIVE OFFICE OF THE COURTS

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Q&A

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TAB L

Plenary Session:
Case Law Update

Hon. JoAnn Johnson,
Hon. Dylan Sullivan &
Ms. Candace Goldman

Case Law Update

17th Annual Child Support Training Conference
September 26, 2013

Hon. Dylan Sullivan, Child Support Commissioner, El Dorado
Hon. JoAnn Johnson, Child Support Commissioner, Ventura
Candace Goldman, Family Law Facilitator, Alameda

ADMINISTRATIVE OFFICE OF THE COURTS

In re D.A.

(2012) 204 Cal.App.4th 811

- Mom stringing two men along, E.A. and C. R.
- C.R. attempts to be involved; requests paternity test; introduces child to his family. Mom is with E.A.

CPS case: Mom punches E.A., inadvertently hitting the child. CPS places child with E.A.

- Court finds E.A. is presumed father without analysis; no vol. dec. of paternity; no evidence publicly admitted paternity.
- C.R. = Bio. (DNA test); asks to be declared presumed father. Ct finds C.R. is bio only & places child with Mom and E.A.
- App. Court reverses: C.R. is presumed father under *Kelsey S.*

Adoption of A.S.

(2012) 212 Cal. App. 4th 188

- Ct. recognizes NY "filiation" order has same effect as CA paternity judgment.
- Paternity judgment (and VDOP) does not confer presumed parent status
- Presumed fathers can block adoption; must be more than Bio-Dad
- AC affirms TC decision Bio-Dad is not *Kelsey S.*

J.R. v. D.P et al,

(2012) 212 Cal.App.4th 374

- Classic 7612(b) case: Bio Dad v. Mom's husband (at hospital, Birth Cert. & VDOP); Bio-mom alienated Bio-Dad
- VDOP set aside because Mom knew Husband not Dad
- Biology is an appropriate factor (not req'd to rely), Ct. must give greatest weight to Child's "well-being"

In re D.M.

(2012) 210 Cal.App.4th 541

- Alleged Father knew not Bio
- Supported Mom during pregnancy; at Hospital, but no VDOP; child detained at hospital; appeared in Ct. -supervised visits
- Ct ordered sup visits do not create statutory presumption per 7611(d) or requisite familial bond per *Jerry P.*

In re Cheyenne B.

(2012) 203 Cal.App.4th 1361.

- Bio Dad's paternity judgment in DCSS case eliminates alleged father from asserting presumed father status per 7612(c);
- Bio Dad must still meet the criteria of 7611(d) to be presumed father
- Cheyenne B. left w/o second parent

In re D.S.

(2012) 207 Cal.App.4th 1088,

- Bio moms given preference
- FC § 7610 (a) – Bio trumps (for moms)
- FC § 7612 (b) only applies to moms in very limited situations
- Step-parent adoption = remedy

ADMINISTRATIVE OFFICE OF THE COURTS

L.M. v. M. G.

(2012) 208 Cal.App.4th 133

- Single Parent Adoption/Same-sex
- Mom #1 argues single parent adoption precludes Mom#2 from asserting presumed parent status
- Court: Mom#2 = Mom #2 citing *Elisa B.* and preference for 2 parents

ADMINISTRATIVE OFFICE OF THE COURTS

County of San Diego v. Mason

(2012) 209 Cal.App.4th 376

- No right to private DNA testing over county lab (Court can consider both tests/experts).
- Mason did not trust Gov't to properly handle the sample & refused to test.
- TC upheld paternity per FC 7551

ADMINISTRATIVE OFFICE OF THE COURTS

Kern County DCSS v. Camacho (2012) 209 Cal. App. 4th 1028

- Fa files to modify child support.
- Gets an unfavorable ruling.
- Moves to set aside.
- Claims he didn't know he could object to Commissioner.

- Commissioner heard set-aside and denied, finding:
  - Father had heard video before.
  - Forms provided notice.
  - Father asked for his motion to be heard with DCSS case.
  - Previously advised and consented to Commissioner hearing case.

- Father appeals - Affirmed.
- Substantial evidence Fa was aware.
- Where there is actual awareness, an error in the statutory notification is not jurisdictional and will only be reversed if prejudice shown.
- *Co. of Orange v Smith* (2002) 96 CA4th 955, 961

In re Marriage of Left, (2012) 208 Cal. App. 4th 1137

- 2/2007 - H pays W spousal support of $32,547 & child support of $14,590.
- 6/2008 Status only judgment.
- Property issues are reserved.
- 12/2008 W gets engaged to Todd.
- Wedding set for May 2009.

- Wife sends out invitations.
- Switches weekends so kids could go.
- Told school she would be away on honeymoon.
- She registers at Bloomingdales.
- Plans big event.

- Wife realizes remaining issues in disso with H will not be done.
- Doesn't want Todd entangled in the divorce.
- BUT – what to do about the wedding???
- W and Todd decide to go ahead with it anyway as a commitment ceremony.

- Everyone believed that they had witnessed a wedding.
- Wife wanted children to believe she was married.
- They signed a ketubah.
- Rabbi performed a ceremony.
- BUT – NO MARRIAGE LICENSE

ADMINISTRATIVE OFFICE OF THE COURTS

- 10/2009 H files to terminate spousal support on grounds W remarried.
- Denied - license missing
  - Consent (FC § 300)
  - License (FC § 300)
  - Solemnized (FC § 400)
  - Declare take as H & W (FC § 420)

ADMINISTRATIVE OFFICE OF THE COURTS

- H appeals asserting that a "ceremonial marriage" represents a remarriage - loses on this issue.
- Estoppel – loses again.
- Trial court did give him some relief by reducing spousal support.
- Did not retro to date of filing because H did not file I & E timely.

ADMINISTRATIVE OFFICE OF THE COURTS

Moore v. Bedard, (2013) 213 Cal. App. 4th 1206

- July 31, 2006, Moore files DV against Bedard.
- Included request for custody and support orders.
- August 22, 2006, parties enter into stipulation; DV dismissed.

ADMINISTRATIVE OFFICE OF THE COURTS

- 2009. Riverside DCSS files Notice Regarding Substitution of Payee and starts collection efforts.
- 2011 DCSS files to mod. support.
- T/ct finds that the entire case was dismissed in 2006, vacates all support orders.

ADMINISTRATIVE OFFICE OF THE COURTS

- DCSS appeals:
- Sole question is whether the court:

  "...continues to have jurisdiction to make child support orders even if the underlying restraining order hasn't been granted."

ADMINISTRATIVE OFFICE OF THE COURTS

- "If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order." (Family Code § 6340(a))
- The court has continuing jurisdiction even if DV dismissed.
- Reversed - Order should not have been vacated.

In re Marriage of Freitas, (2012) 209 Cal. App. 4th 1059

- April 2010, Wife files for Disso.
- Oct. 2010, T/ct awards temp. spousal support to H and temp. child support to W.
- Reserves jurisdiction to modify CS if H provides new info on W's income and sets another date.

- January, 2011, the *Gruen* decision came down.
- June 2011, T/ct determined that it had no jurisdiction to modify the CS order retroactively because of the *Gruen* decision.
- T/ct also terminated SS because of H's DV conviction.

- *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627.
- Temporary support order issued.
- Forensic hired to analyze income.
- Reports not in. OSC taken off calendar. No specific reservation.
- At subsequent proceedings, T/ct modified retroactively. Reversed.

- *Freitas* - H appeals:
  - *Gruen* does not apply because court reserved jurisdiction and set another date.
  - Did not violate FC § 3603.
  - DV conviction was known when the temp. SS order made therefore no change of circumstances shown to modify the order.

- The CA distinguished *Gruen* in that in *Gruen* the matter had gone off calendar. The order was immediately appealable because no pending hearing.
- In *Freitas*, the court specifically reserved jurisdiction and set other proceedings. Not an appealable order.

- Reversed as to CS.
- "...unlike in *Gruen*, the trial court specifically reserved jurisdiction to make such a determination"
  - Order must be specific.
  - Must be directly connected to a continued proceeding.
  - Can't go off calendar.

- Court of Appeal affirms the termination of spousal support due to H's DV conviction.
- Even though the court had issued a temporary order, the issue had not been litigated so no change of circumstances required.

In re Marriage of Barth, (2012) 210 Cal. App. 4th 363

- Parties lived in Ohio. Moved to CA in 2004.
- H had affair.
- Six weeks later, W and two children returned to Ohio.
- W filed in Ohio and H filed in CA.

- CA stayed its proceedings.
- H asserted Ohio had no jurisdiction.
- Litigation proceeded in Ohio for 31 months.
- Ohio issued a child support order for $1,295 then upped to $1,600.
- H continued to fight jurisdiction.

ADMINISTRATIVE OFFICE OF THE COURTS

- H finally prevailed in the Ohio Supreme Court.
- The Ohio order was vacated and the case went forward in CA.
- CA ordered H to pay CS ranging from $2,253 to $7,239 retro to date he filed in CA resulting in $171K in arrears.

ADMINISTRATIVE OFFICE OF THE COURTS

- H appeals. Affirmed.
- The plain language of FC § 4009 gives the trial court the legal authority to make an original order for child support "retroactive to the date of filing the petition, complaint, or other initial pleading as distinguished from a modification".

ADMINISTRATIVE OFFICE OF THE COURTS

- H also appealed imputation of income to him.
- Asserts *Bardzik* requires showing of ability and opportunity – not just last highest income.
- Affirmed.
- *Bardzik* doesn't apply because court found deliberate shirking and lack of credibility on H's part.

IRMO Lim and Carrasco (2013) 214 Cal.App.4th 768

- W is attorney. During marriage she earned $28K per month.
- Parties separated and Wife reduced her hours to 80%.
- Her income reduces to $22K.
- Support ordered based on her reduced income.

- Only issue at trial is whether court should use prior income or reduced income for Wife.
- W asserts 80% is in best interests of the children.
- H asserts it's a dangerous precedent to allow a parent to work less than his/her capability.

- Trial court found best interest of children to use the 80% schedule.
- H appeals. Affirmed.
- Relevant authorities do not support the proposition that the supporting spouse's income must be based upon an earning capacity that has been demonstrated by an onerous, excessive work regimen.

- Court followed *IRMO Simpson* (1992) 4 Cal.4th 225.
- Earning capacity generally should be based upon an objectively reasonable work regimen.
- The order was based on W's actual income for a reasonable work regimen and was in children's best interest.

IRMO Ficke (2013)
217 Cal. App. 4th 10

- W has custody of two kids (16 and 17) 95% of the time.
- H earns $8,088 from income and rentals. $1.7 to 2 million in assets.
- W earns $251 from start up business. $1 million in assets.

- T/ct imputed income to W at $13,333 per month.
- CS payable from H to W at $1,368.
- SS payable from W to H at $700.
- Result is net to W of $668.
- W appeals.

ADMINISTRATIVE OFFICE OF THE COURTS

- Wife made up to $700K as VP of marketing for a dental implant company until she was terminated in 2008 because the new CEO wanted to put a male in her position.
- She received one years pay as severance to give up civil rights claim.

ADMINISTRATIVE OFFICE OF THE COURTS

- 3 months after lay-off she received job offer for $125K per year.
- Turned down due to excessive travel.
- W alleges not in children's best interest for her to be away.
- Starts a pet insurance business she can work from home.

- CS: T/ct calculated CS based on imputed income to W but did not mention impact on children.
- SS: T/ct recited the FC § 4320 factors which described H as self-supporting but ordered SS to H based on imputed income to W.

ADMINISTRATIVE OFFICE OF THE COURTS

- CA reverses on support issues:
- As to CS, the trial court abused its discretion in imputing income to W without an "express finding supported by substantial evidence that the imputation would benefit the children".

ADMINISTRATIVE OFFICE OF THE COURTS

- As to SS, the trial court abused its discretion in making a SS award from W to H under the particular circumstances of this case.
- A spousal support award cannot *undercut the child support statutes.*

ADMINISTRATIVE OFFICE OF THE COURTS

- If there is an issue of imputation of income to the custodial parent:
  - Lim and Carrasco
  - IRMO Ficke (discusses *LaBass*)
- Make an express finding re: best interests of minor children.
- SS cannot undercut CS

ADMINISTRATIVE OFFICE OF THE COURTS

CASES UPDATE
RECENT TAX CASES

Armstrong v. Commissioner

(2012) 139 T.C. No. 18

George v. Commissioner

(2012) 139 T. C. No. 19

Moody v. Commissioner (2012) T.C.Memo.2012-268

OR: What About
8332
Did You Not Understand?

ADMINISTRATIVE OFFICE OF THE COURTS

MOODY v. COMMISSIONER (2012) T.C. Memo. 2012-268

- Court decree provided that the child dependency exemption would go to H for the initial year of decree and in subsequent years as long as he was current on child support at the end of the affected year. It also stated that if support was current, W "shall execute" the 8332 form.
- Neither party signed off on the decree.
- W had executed previous 8332's. H was current on support for the affected year.
- W did not execute the 8332 attached to the H's tax return for the affected year.

ADMINISTRATIVE OFFICE OF THE COURTS

MOODY – cont'd.

- A copy of the decree was not attached to H's tax return as evidence of alternative compliance with IRS requirements that would shift the dependency exemption and child tax credit to the NCP.
- However, the court also noted that at any rate the decree did not comply, on its own, with the alternative means of meeting the IRC § 151 requirements.

ADMINISTRATIVE OFFICE OF THE COURTS

MOODY cont'd.

- IRC § § 24(a), 24(c)(1), 151(c) and 152(e)(2) together define a "qualifying child", the factors for claiming the "dependency exemption" and what information must be included on Form 8332 or its equivalent when submitting a tax return.
- Since no conforming documentation was provided, no IRC § 151 dependency exemption could be granted. Since there was also no IRC § 24 compliance, no child tax credit could be given.
- Dad loses despite decree.

ADMINISTRATIVE OFFICE OF THE COURTS

ARMSTRONG v. COMMISSIONER (2012) 139 T.C. No. 18 (it gets better)

- Mr. Armstrong contested the denial of his claimed dependency exemption and resulting imposition of a tax penalty for underpayment of taxes.
- The court orders expressly stated that W was to release the exemption only if H was paid up on his support obligation.
- H was current. Surprise! W did not execute Form 8332.

ADMINISTRATIVE OFFICE OF THE COURTS

ARMSTRONG cont'd.

- The initial conditional court order (to be current on support in order to receive the dependency exemption) was later amended to provide that if H was current as of 12/31 of the affected year, W was directed to execute the 8332 by Jan. 31st.
- W signed off on the amended order. Was that o.k.?
- NO.
- If Form 8332 is not executed, a court order signed by the CP may satisfy IRC § 152(e)(2)(A) if it includes an unconditional statement that the CP "will not claim such child as a dependent for any taxable year beginning in such calendar year" or, "I agree not to claim (minor child's name) . . . for the tax year _____."

ADMINISTRATIVE OFFICE OF THE COURTS

ARMSTRONG cont'd.

- The tax court reasoned that in this instance, W's signature to the order stating she would comply was only affirming the terms under which she would NOT sign the release (i.e., H not current on support).
- Huh? That's what the dissent thought.
- Among other things, the dissent was very concerned that a unilateral refusal to sign a release by a party obligated by court order to do so would be used to prevent the other party from lawfully exercising their right to the exemption – and would upset the settled expectation of state courts that routinely make conditional orders. (They then launched into an exegetical discussion of what "attached" means when providing supporting documents for a tax return. Amusing reading.)
- The majority noted that 1984 amending language to IRC § 152 requiring a direct declaration that the CP will not claim the exemption was intended to add clarity, certainty and consistency. IRC Regs. amending Form 8332 to require an unconditional release comport with this aim. The tax court did not want to be re-determining state family law cases re compliance with orders or resolving factual disputes re same.
- The dissent did not think Form 8332 was law – the Code is.
- BUT – see the very next case.

ADMINISTRATIVE OFFICE OF THE COURTS

GEORGE v. COMMISSIONER (2012) 139 T.C. No. 19

- No matter where you live (in this case, Maryland, Connecticut and Virginia) or whether you have ongoing financial or jurisdictional litigation in the state family law courts, the federal tax rules on dependency exemptions are fixed in the firmament like the sun.
- Here, W executed an 8332 form in Jan. 2007 under threat of contempt by the Va. Courts. [**NB**: an earlier order for the release was conditional. Each party, if condition met, would claim one child. W asserted H was in arrears.]
- W subsequently filed 2007 & 2008 tax returns claiming the dependency exemption for both children and the child tax credit for the youngest (eldest was over 18).
- H, having the executed 8332, filed claiming the dependency exemption for the youngest child.

GEORGE cont'd.

- W was assessed a tax deficiency and petitioned for a redetermination per IRC § 6213(a). The tax commissioner moved for partial summary judgment per Rule 121 (no material facts in dispute; ruling required as matter of law).
- W asserted that 1) she signed the 8332 under duress; 2) the court order to sign was in error for lack of jurisdiction; 3) H had not paid child support, a condition precedent to signing the 8332, so she was entitled to the claim, not H.
- The court responded that 1) a court order to which a a litigant is legally bound does not constitute duress; 2) any alleged state court error may not give rise to a collateral attack in the tax court – even if error found, it does not necessarily make the actual order issued improper or wrongful; 3) a claimed failure to have paid cs does not invalidate an executed 8332. Form 8332 does not require a showing of which parent provided more than ½ the child's support for the year (see IRC § 152(e)).
- W LOSES. The Tax Court follows the statutes and requires strict adherence to the rules. (See also IRS Reg. § 1.152-4(e)).

ARMSTRONG cont'd.

- The court therefore disallowed the exemption and the tax credit since there was no qualifying child.
- But, the court did remove the penalty. IRC § 6662 defines the negligence and disregard standards for imposing the penalty, which is 20% of the portion of underpayment attributable to any substantial understatement of taxes. Understatement is "substantial" when the amount due exceeds the greater of $5,000 or 10% of the tax required as shown on the tax return.
- IRC § § 6662 and 6664 also set out circumstances when a penalty may not apply: if there is an adequate disclosure of the basis for the claim or reasonable basis for the the treatment asserted by the taxpayer.
- Mr. Armstrong was a truck driver. As such, the court reasoned his reliance on the court order and his compliance with it, combined with the documentation he provided the IRS, was reasonable.
- NO PENALTY.

PROP 8 and DOMA CASES

HOLLINGSWORTH, et al. v. PERRY, et al.
570 U.S. _____ (2013)(June 26, 2013)
(No. 12 – 144)

UNITED STATES v. WINDSOR, Executor of the ESTATE OF SPYER, et al.
570 U.S. _____ (2013)(June 26, 2013)
(No. 12 – 307)

HOLLINGSWORTH v. PERRY

- The Court briefly reviewed the history of the case, including certification of the standing question by the Ninth Circuit to the Cal. Supreme Court.
- Cal. Supreme Court found Prop. 8 proponents authorized under state law to assert the state's interest in the initiative's validity when public officials declined to do so.
- Ninth Circuit concluded, since the State had authority to determine who might assert it's interests, the federal court need only determine (a) if the *State* suffered a harm sufficient to confer standing and that (b) the party invoking jurisdiction was authorized to represent the State's interests.
- The Ninth Circuit said "yes," then ruled on the merits to uphold the District Court.
- The Supreme Court granted cert. to review "that determination."
- Proceeding to then ignore the substantive arguments of the "determination" of the Ninth Circuit, the Supreme Court narrowly ruled there was no Article III standing; therefore, the Ninth Circuit had no jurisdiction to consider the appeal and the Court vacated the appellate judgment and remanded for dismissal.

Hollingsworth v. Perry cont'd.

- To be fair, the Supreme Court did specifically request the parties to brief the standing issue under Art. III, Sec. 2 (568 U.S. ____ (2012).
- First, for Art. III jurisdiction, the Court stated there must actually be a "Case or Controversy" for which the party seeking redress has standing - meaning, in relation to the party, there is:

  a. concrete and particularized injury to the party;

  b. the injury is traceable to the challenged conduct; and

  c. the injury is likely to be redressed by a favorable judicial decision.
- The presence of a disagreement is not enough, on its own, to confer Art. III standing.

Hollingsworth v. Perry cont'd.

- Respondents (Perry) had standing as they had a direct, personal interest (marriage)in the result.
- Petitioners (Hollingsworth et al.) had no "direct stake" in the outcome, but only an interest in vindicating the validity of a law of general application. Their claim of a specialized role was limited to the process of enacting the law, as its proponents, but did not extend to enforcement; they had no more personal stake or official position in defense of Prop. 8 than the general interest of any other citizen in California.

ADMINISTRATIVE OFFICE OF THE COURTS

Hollingsworth v. Perry cont'd.

- This restriction, the Court stated, is a fundamental limitation on the Court's authority to rule on a matter. With very limited exception, even when permitted to assert the interests of a third party (here, the state), the litigant must still have suffered an actual injury that gives them a concrete interest in the outcome of the disputed issue.
- Addressing the Ninth Circuit ruling, the Court asserted its right to make an independent determination of the Art. III standing issue as a matter of FEDERAL law.

ADMINISTRATIVE OFFICE OF THE COURTS

Hollingsworth v. Perry cont'd.

- Petitioners argued that, per the Cal. Supreme Court ruling, they were authorized agents to pursue the state's interest in Prop. 8's validity.
- No, the Court reasoned, that ruling was only related to a right to argue in defense of Prop. 8 as a state matter. No court every actually described them as "agents of the people."
- For FEDERAL purposes, and as the Petitioners themselves argued in the District Court, there was no party that would adequately represent "*their interests* ***as official proponents***." Citing 1 Restatement (Third) of Agency, the Court enumerated the factors for agency and did not find Petitioners to meet the requirements.

ADMINISTRATIVE OFFICE OF THE COURTS

Hollingsworth v. Perry cont'd.

- The state may determine its own jurisdictional issues, where Article III does not apply.
- However, standing in FEDERAL court is a question of FEDERAL law, not state law, and with strict adherence to the requirement of a "case or controversy" in which a party has a particularized interest/injury, the Court respects its own proper, limited role: "Refusing to entertain generalized grievances ensures that . . . courts exercise power that is judicial in nature."
- HELD: NO STANDING TO APPEAL.

UNITED STATES v. WINDSOR et al.

- Background: New York residents Edith S. Windsor and Thea C. Spyer married in Canada in 2007, but continued to live in NY. Ms. Spyer died in 2009, leaving her estate to Ms. Windsor. Ms. Windsor claimed the estate tax exemption for a surviving spouse.
- Denied per DOMA provisions.
- Ms. Windsor paid the tax but brought suit challenging the constitutionality of the Sec. 3 of DOMA (federal recognition of marriage only between a man and a woman).
- Both the U.S. district and appellate courts ruled in Ms. Windsor's favor and ordered a refund. U.S. refused to pay. Cert. was sought and granted. Supreme Court AFFIRMS judgment in Ms. Windsor's favor.

ADMINISTRATIVE OFFICE OF THE COURTS

U.S. v. Windsor cont'd.

- FYI, unchallenged was DOMA, Sec. 2, which permits states to refuse to recognize same-sex marriages entered into in other states (NY recognized the Canadian marriage).
- The court did not address state rights to enact laws addressing state benefits; but noted that DOMA affects over 1,000 federal laws that relate to marital/spousal status.
- While tax suit pending, U.S.A.G. sent § 530D letter stating it would not defend constitutionality of DOMA Sec. 3. BUT: Exec. also stated it would continue to enforce.
- This maintained jurisdiction for the controversy and also allowed Congress to intervene if is so chose. Congress did.
- The District Court denied intervention as of right to BLAG (Bi-partisan Legal Advisory Group but permitted limited intervention as an interested party (Fed. Rule Civ. Proc. 24(a)(2)).

ADMINISTRATIVE OFFICE OF THE COURTS

U.S. v. Windsor cont'd.

- The initial questions presented again were:
  a. Is there a case or controversy remaining
  b. Does BLAG have standing?
- Clearly the taxpayer has standing.
- Does the U.S. since it did not disagree on the constitutionality issue? Normally, concurrence of the parties would stop the case. But here, because the U.S. both continued to enforce, and would suffer harm" if required to pay the refund, there was standing.
- BLAG, and many others, along with an appointed amicus on the standing issue, submitted briefs on both standing and the constitutionality of Sec. 3.

ADMINISTRATIVE OFFICE OF THE COURTS

U.S. v. Windsor cont'd.

- The Court reviewed two principles:
  a. the jurisdictional requirements of Art. III;
  b. the prudential limits of the Art. III exercise.
- Reiterating the standing requirements, the Court found, with refusal of U.S. to afford the relief sought, a justiciable issue remained. They did not address BLAG's standing, as they assumed "prudential" jurisdiction.
- Re the prudential rule, there still must be sufficient concrete adverseness that "sharpens the presentation of the issues" to permit the exercise of judicial authority to rule on an issue.
- Here, dismissal would likely result in extensive litigation, thousands of individuals would be affected, costs would be immense, and lower courts would have no precedential guidance on how to deal with the myriad federal statutes and regulations impacted by DOMA. Therefore, the Court would rule on the merits.

OF THE COURTS

U.S. v. Windsor cont'd.

- The Court then addressed the separation –of-powers issue: if the Executive could preclude judicial review by agreement with a plaintiff that a law is unconstitutional, the Court's role would be secondary to the President's. It is the Court's rule, however, to determine the law when legislation potentially conflicts with the Constitution (remember *Marbury?)*.
- Addressing the merits, the Court acknowledged Congress' authority, properly exercised, to pursue its goals and policies, and the administrative mechanisms to achieve those goals.
- However, here, the myriad federal statutes and regulations directly affect a class of persons 12 (at the time) states have sought to protect.

U.S. v. Windsor cont'd.

- The Court then reviewed the traditional authority of the States in regulating domestic relations, within constitutional bounds (see, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967).
- DOMA upsets the previous uniform application of federal law for similarly situated individuals within each state.
- State power to define marital relations is critical, but when FEDERAL law departs from legal history to impose "discrimination of an unusual character" the Court must use a heightened scrutiny to review that application (citing *Romer v. Evans*, 517 U.S. 620, 633 (1996).

ADMINISTRATIVE OFFICE OF THE COURTS

U.S. v. Windsor cont'd.

- Question: Is Sec. 3 of DOMA a deprivation of the liberty interest protected by the Fifth Amendment? (which NY sought to protect)
- The Court then recites a litany of ways in which regulations under DOMA interfere with the 5th Amendment Due Process clause.
- The Court also cites the House Report in support of passage of DOMA as a direct attack on a specified, discreet class of persons to deny them due process and equal protection under the 5th and 14th Amendments.

ADMINISTRATIVE OFFICE OF THE COURTS

U.S. v. Windsor cont'd.

- Citing both *Romer and Department of Agriculture v. Moreno,* 413 U.S. 528, 534-535 (1973), the Court reiterated that an "unusual deprivation" focused on "a bare congressional desire to harm a politically unpopular group" requires careful scrutiny in view of the Constitutional guarantee of equal treatment.
- Finding that under DOMA a specified class is visibly and publicly burdened and disabled in the face of various State protections of that same class, with no legitimate purpose except disparagement, DOMA Sec. 3 violates the 5th Amendment.
- HELD: Judgment of the 2nd Circuit court of Appeals affirmed. DOMA Sec. 3 is unconstitutional.
- Ruling limited to the referenced lawful marriages.

ADMINISTRATIVE OFFICE OF THE COURTS

OTHER NOTES

Other cases of note:

- ***Bipartisan Legal Advisory Group v. Gill*** (Petition for cert. filed), O. T. 2012, No. 12-13. (Massachusetts case re social security survivor benefits and DOMA)
- ***Adoptive Couple v. Baby Girl,*** No. 12-399 (Writ of mandate issued July 5, 2013 to So. Carolina Supreme Court re ICWA issue on parentage termination).
- ***IRMO*** **Greenway**, 6/3/13, 4 Civ G045949 (cert. for pub. 6/26/13)(capacity to end marriage similar to capacity to enter into it – based on ability to make reasoned decision to end marriage).
- ***Ceja v. Rudolph & Sletten, Inc.,*** 6/20/13, S193493, ___ Cal.4th ___ (194 *Adv.* Cal. App. 4th 584)(Cal. Supreme Court holds putative spouse status determined by subjective standard focusing on person's state of mind as to a good faith belief in validity of marriage – not the objective "reasonable person test" (disapproving Vryonis and progeny).

Resource Information:

- www.nclrights.org (FAQs on the Prop. 8 & DOMA cases)
  Tel. 415-392-6257

TAB M

Income Determination: Calculating Child Support/Advanced

TAB M

Income Determination– Calculating Child Support

Hon. Scott P. Harman &
Hon. Patrick J. Perry

Child Support and Income Determination

2013 AB 1058 Conference
LOS ANGELES, CA

Goal

- Ensure compliance with Federal regulations
- To provide consistency throughout the state ***where parties can not agree*** **!**
- To ensure children receive support consistent with the State's high standard of living and high cost of raising children compared to other states.
- To encourage settlements of conflicts and minimize litigation

A parents 1st & principal obligation above and beyond payment of their current debts and other monthly expenses is to support children according to their circumstances & station in life?

1. True
2. False

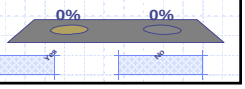
Principal Objectives

- Parents 1st & principal obligation to support child according to circumstances & station in life
- Both parents mutually responsible for support
- Considers each parents income and level of responsibility for children
- Children share the standard of living of both parents. Support may improve the standard of living of custodial household.
  - See Family Code Section 4053

Calculating Guideline Child Support

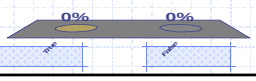
Is the calculation of guideline child support mandatory in all cases where child support is requested?

1. Yes
2. No



Bench Officer's can exercise discretion when calculating guideline child support?

1. True
2. False



Calculating Guideline Child Support

- It is not a guideline
  - Adherence is mandatory by the court!
- Presumptively correct
  - Rebuttable presumption
  - Exceptions will be discussed and agreements by parents are encouraged
    - Even if only on some points.

Rebuttable Presumption

- Guideline unjust or inappropriate because:
  - **Stipulate to different amount (FC 4065)**
  - Deferred sale of residence
  - Payor has extraordinary high income & GL amount exceeds needs of child
  - Party not contributing to needs of child consistent with custodial time
  - Application unjust or inappropriate due to special circumstances

Special Circumstances

- Include but not limited to:
  - Different custodial plans for different children
  - Substantially equal custodial time & one parent has higher or lower % of income used for housing
  - Children have special medical needs
- List is not exclusive !!

How is Child Support Calculated

- Family Code Section 4055
- CS=K[HN-(H%)(TN)]
- Components of Formula
  - Amount of each parents income allocated for CS
  - High wage earners net monthly disposable income
  - Approximate % high earner has child in their care
  - Total net monthly disposable income of both parents

Real World- How calculated

- Certified computer programs:
  - Guideline Calculator, Dissomaster, X-Spouse, Support-Tax, Cal Support and Cal Support PRO
- If calculating child support in a case involving the Dept of Child Support Services, the court must use:
  - Child Support Guideline Calculator-

Necessary Information

- Court order is only as accurate as the evidence received by the court !!
- While court is neutral, often requires bench officer to make inquiry of parties.
  - Frequently more hands on by bench officer in pro-per cases. Must balance with Canons.
- If you make inquiry of parties for inputs have clerk administer oath
  - # of children,
  - Parenting arrangement
  - Tax filing status- current as of year end.
  - Gross Income

Necessary Information (Con't)

- Deductions from Income
  - Taxes
  - Health Insurance (Pre or Post taxes)
  - Retirement Plans
  - Necessary job related expenses, union dues
- Mortgage Interest, Property Taxes, Charitable contributions
- Child Care expenses
- Statutory Hardships

Deductions which have tax effect

- Adjustments to income
  - IRA/ Pre-Tax 401K contributions
  - Pre-tax health insurance premiums or meet AGI threshold (uninsured costs)
  - Home Mortgage Interest
  - Property Taxes
  - Student Loan Interest
  - Charitable Contributions

Child Support Add-Ons

- Mandatory- FC4062
  - Child Care for employment or education
  - Uninsured health care costs.
    - Generally split equally, may also be proportional to net disposable income.
- Discretionary-
  - Education/Special Needs
    - Extra curricular activities
  - Visitation travel expenses

Responsibility for care

- Timeshare does not have to be exact-
  - Close approximation
  - Approved child support software programs have 'guideline' parenting time scenarios
  - Look to responsibility for care-
    - May be responsible for care even when child not with a particular parent (school).
  - Based upon what is actual arrangement, not necessarily what order says.

VOID CS Agreements

- Those agreements which deprive the court of jurisdiction, i.e. binding arbitration
  - IRMO Bereznak (2003) 110 CA4th 1062
- Waiver of arrears on a take it or leave it basis without good faith dispute as to amounts owed
  - IRMO Sabine & Toshio M. (2007) 153 Cal.App.4th 1203, 1213-1215

CS orders

- Always modifiable
  - Even Stipulated non–modifiable "floor", subject to modification.
    - IRMO Alter (2009) 171 Cal.App.4th 718
  - Different than spousal support!

Income is.....

- "..income from whatever source derived" IRC language--Mandatory: FC 4058(a)(1)
  - Commissions, salary, wages, bonuses
  - Royalties, rents, dividends, interest, gifts maybe if recurring **IRMO Alter** (2009) 171 CA4 718
  - Pensions, annuities, social security benefits
  - Workers' comp., unemployment, disability
  - Spousal support from another relationship
  - Tribal payments paid directly to member
    - ***M.S v O.S*** (2009) 176 CA4th 548

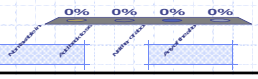
What is Income (con't)

- Gross income to business less operating expenses. FC 4058(a)(2)
  - Asfaw v. Woldberhan (2007) 147 CA4th 1407 Depreciation of rental property is not deductible in calculating child support under 4058 and 4059."

    Add-Backs—"was the expenditure necessary for the operation of the business"?

How do you generally treat depreciation when calculating income available for child support?

1. Non taxable income
2. Add back to self employment income as taxable
3. Neither of above but consider as factor for deviation
4. Any of the above depending on circumstances



HYPO

***F owns apt. complex. $200K/yr gross rental income and claims business expenses of $150K, $50K of which is depreciation. What is F's income* for CS?**

1. $50K taxable
2. $100K taxable
3. $50K taxable plus $50K non-tax
4. Something else

HYPO

F self employed & owns medical transcription business. $200K gross income, $150K business expenses, $50K of which is depreciation. ***What is F's S/E income***

1. $50K taxable
2. $100K taxable
3. $50K taxable plus $50K non tax
4. Whatever the tax return says
5. Possibly something else

What is Income (con't)

- Discretionary: FC 4058(a)(3) & (b)
  - Employment/self-employment benefits—consider benefit to employee, reduction in living expenses, other relevant factors
  - Earning capacity (less than 40 hour week not necessarily underemployed)

What is Income (con't)

- Overtime: Predictable overtime *must* be included unless:
  - Evidence that not likely to continue; or
  - Overtime subjects party to an "excessively onerous work schedule". Parent only required to work "objectively reasonable work regimen". See Co. of Placer v Andrade (1997)55 CA4th 1396; IRMO Simpson (1992) 4 Cal.4th 225.

What is Income (con't)

- Military Allowances
  - BAH—Basic Allowance for Housing
  - BAS—Basic Allowance for Subsistence
    - Although non taxable, federal pre-emption does not apply
    - BAH and BAS are non taxable income for child support
    - IRMO Stanton (2011) 190 CA4th 547

What is Income (con't)

- SEVERANCE PAY
  - Smith Ostler order in effect
  - "35% of all income in excess of $25,000/mo
  - Payor receives severance pay of $309K
  - 5 Components

What is Income (con't)

- Yrs of Service $100,000
- Lump sum in lieu of commissions $152,000
- Qualitative Compensation $ 35,000
- Healthcare payout $ 1,500
- Retirement benefits $ 3,422
  - TC ruling: % applies to all

What is Income (con't)

- Yrs of Service (limit 12 mo) $100,000
- Lump $ in lieu 6mo commissions $152,000
- Qualitative Compensation $ 35,000
- Healthcare payout $ 1,500
- Retirement benefits $ 3,422
  - TC ruling: % applies to all
  - CA: reverses---Allocate rationally

What is Income (con't)

- Allocation of Severance Pay
  - TC discretion
  - May follow allocation stated in plan or other reasonable allocation
  - May not allocate all to one month
  - IRMO Tong & Sampson (2011) 197 CA4th 23

What is NOT Income?

- Child support
- Public assistance (AFDC, SSI, TANF, Adoptive Assistance)
- Gifts (maybe)... But see ***IRMO Alter*** (2009) 171 CA4th 718
- Inheritances, life insurance
- Appreciation in value of primary residence ***IRMO Henry*** (2004) 126 CA4 111
- New mate income—exception in extraordinary circumstances (FC 4057.5)
  - ***IRMO Knowles*** (2009) 178 CA4th 35

What is NOT Income? (Con't)

- Loans
- Undifferentiated lump sum PI awards
- Annuity purchased from undifferentiated lump sum PI award.
- However, just because not income, some of these facts may be basis to deviate from G/L CS.

Calculating Gross and Net Income

- **Calculation of "Net Disposable Income" FC 4058 (gross) and 4059 (deductions).**
  - 12-month average. IRMO Riddle (2005) 125 CA4th 1075, at 1083, facts may dictate longer or shorter period.
  - Court can adjust support to account for seasonal or fluctuating income. FC 4060-4064.

Calculating Income (cont.)

- Percentage of fluctuating income as child support?
  - Better practice to set base CS and percentage of income (bonuses, incentive pay) over base level.
    - **IRMO Mosley** (2008) 165 Cal.App.4th 1375
  - Contra authority if bonuses/commissions are consistent.
    - See **Co of Placer v. Andrade,** supra.

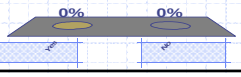
But Don't Forget.....

- Must consider appropriate deductions per FC 4059
  - Taxes
  - Health Insurance (Pre or Post tax)
  - Mandatory Retirement Plans (Pre or Post tax)
    - Vol. to extent ATI
  - Necessary job related expenses
  - Union dues
  - CS or SS
  - Hardship

Hardships

Must the court grant a hardship deduction to a parent who has a biological or adopted child from a different relationship in the home?

1. Yes
2. No



Allowable Deductions (con't)

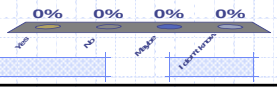
- Hardships
  - Extraordinary health expenses and uninsured catastrophic losses
  - Minimum basic living expenses for children residing with a parent for whom the parent has an obligation to support
    - Does not apply to step-children as there is no 'legal' duty of support owed.

HYPO

W works for State, tier 1 (e'ee contributes to mandatory retirement also subsidized by e'er). H works for HP and voluntarily contributes to 401K & matched by e'er. H has no other retirement.

Is H's 401K contribution an allowable deduction in calculating G/L Child Support?

1. Yes
2. No
3. Maybe
4. I don't know

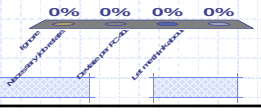


HYPO

Due to poor economy, F is laid off. Secures new wage employment but now commutes 100 miles each way to his office. F proves *increased* costs for commute $500/mo.

How do you treat the increased commute costs in the calculation of CS?

1. Ignore
2. Necessary job related expense
3. Deviate per FC 4057
4. Let me think about it



Beyond the Paycheck

- Section 4058 language is expansive but must limit application to money actually received or available; not appreciation of residence. IRMO Henry (2005) 126 CA4th 111, at 119, 23 CR3rd 707, at 712.
- IRMO Destein (2001) 91 CA4th 1385, 111 CR2nd 487, appreciation of real estate okay if investment asset, not residence.

Beyond the Paycheck con't

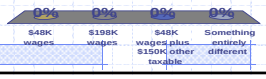
- Partnerships & S-Corps
  - K-1 vital
  - Need to understand various boxes.
  - Look not only to income but also to distributions- positive or negative

HYPO

F $48K W-2 from S-Corp. S-Corp also gives F a K-1 with $150K ordinary business income. M stay at home w/ twins- 6 months old.

For calculating G/L CS is F's income:

- $48K wages
- $198K wages
- $48K wages plus $150K other taxable
- Something entirely different

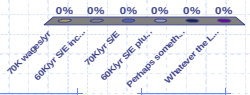


HYPO

Dad: General partner. Draw $60,000/yr. K-1 shows distribution of $70,000/yr.

For calculating G/L CS is Dad's income:

- 70K wages/yr
- 60K/yr S/E income
- 70K/yr S/E
- 60K/yr S/E plus 10K other taxable
- Perhaps something entirely different.
- Whatever the LCSA recommends



Stock Options

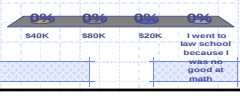
- Income when option exercised or sale of stock at a gain. IRMO Cheriton (2001) 92 CA4th 269, at 286, 111 CR2 755, at 767.
- Can option be income prior to being exercised? Murray v. Murray (1999) 128 Ohio App.3d 662, at 668-670, 716 NE2d 288, 293-295.

HYPO

W granted 20K options. Vest ratably 1/5 annually over 5 yrs. Price on grant date $10/share. 18 mo.'s later H files CS mod & req's. impute income on vested options. Price now $20/share.

What is income from stock options?

1. $40K
2. $80K
3. $20K
4. I went to law school because I was no good at math



Stock

- IRMO Pearlstein (2006) 137 CA4th 1361, 40 CR3rd 910 distinguishes stock *and cash* traded in sale of business—not income until stock sold or cash spent as opposed to reinvested—OK to impute reasonable rate of return
  - Stock options=compensation
  - Stock/cash sale of business=capital
  - Same result in IRC1031 exchange?

Inheritance

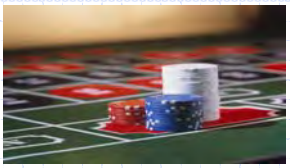
- County of Kern v. Castle (1999) 75 CA4th 1442, at 1453, 89 CR2 874, at 882.
- Corpus not income.
- Imputation of interest income to the corpus of the inheritance;
- actual rental income, plus reduction in living expenses, per FC 4058(a)(3)
  - Compare County of Orange v. Smith (2005) 132 CA4th 1434, at 1447-1448, 34 CR3rd 383, at 392-393.

Life Insurance

- Lump sum payment of life insurance benefits not income—may apply reasonable rate of return. IRMO Scheppers (2001) 86 CA4th 646,

Gambling Winnings

- Return on capital investment, include as income. IRMO Scheppers, supra, at 651 and 533.



Lottery Winnings

- County of Contra Costa v. Lemon (1988) 205 CA3rd 683, at 688, 252 CR2nd 455, at 459—AFDC case. Court held lottery winnings to be income and available for both AFDC reimbursement and ongoing child support.
  - See IRMO Scheppers, supra, at 651 and 533.

Benefits from Employment

- **Discretionary Add-ons**
  - **Automobile**. IRMO Schulze (1997) 60 CA4th 519, at 528, 70 CR2nd 488, at 494.
  - **Housing**. IRMO Schulze, supra, at 529 and 495.
  - **Meals**. Stewart v. Gomez (1996) 47 CA4th 1748, at 1756, 55CR2nd 531, at 536.

Annuity from Undifferentiated lump sum PI award

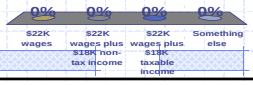
- IRMO Rothrock (2008) 159 Cal.App.4th 223, held annuity purchased from undifferentiated lump sum PI award not income.
  - BOP on person challenging
- IRMO Heiner (2006) 136 Cal.App.4th 1514 held undifferentiated lump sum PI award not income.

Imputing Income

- Gifts
- Earning Capacity
  - Unemployed/underemployed
- Assets
- Expense Theory
- New Mate Income
  - FC 4057.5

F receives gift of $18K every year from parents to pay his rent. F (NCP) wages $22K/yr. M (CP) wages $48K/yr. TS 0%. ***What is F's income for calculating G/L CS?***

1. $22K wages
2. $22K wages plus $18K non-tax income
3. $22K wages plus $18K taxable income
4. Something else



Would your answer to the previous question be different if the parents provided H free housing with an annual value of $18K instead of gifting him $18K?

1. Yes
2. No

Gifts

- One-time gifts are not includable as income unless failure to do so would provide inequitable result. IRMO Schulze, supra at 530 and 495.
  - Court has broad discretion to **deviate** *up or down* if in the best interests of the children. IRMO deGuigne (2002) 97 CA4th 1353, at 1361, 119 CR2nd 430, at 436.

Gifts (cont.)

- Recurring gifts may be treated as income for child support. IRMO Alter (2009) 171 CA4th 718
- IRMO Shaughnessy (2006) 139 CA4th 1225, held discretion to consider third party gifts in spousal support
  - [FC4057(b)(5)mentioned in dicta].

Earning Capacity

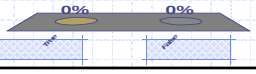
- FC4058(b) Discretion to consider in lieu of income if consistent with best interests
  - May consider EC along with parents receipt of disability benefits. Stewart v. Gomez (1996) 47 CA4th 1748
  - Burden on party seeking to impute to show ability (age, experience, health), and opportunity to work (job availability). IRMO Regnery (1989) 214 CA3rd 1367, 263 CR 243.

Earning Capacity (cont)

- Burden on responding party if employment terminated voluntarily. IRMO Ilas (1993) 12 CA3rd 1630; IRMO Padilla (1995) 38 CA4th 1212.
- Cannot 'automatically' impute to former level if termination involuntary, even if misconduct! IRMO Eggers (2005) 131 CA4th 695, 32 CR3rd 292.

Where a parent retires early & before normal retirement age when there are still minor children, the trial court must impute income as a matter of law to the pre-retirement level when calculating an initial guideline child support order?

1. True
2. False



Earning Capacity (cont)

- Retirement scenario
  - IRMO Bardzik (2008) 165 CA4th 292
    - Reiterates BOP on parent who seeks to modify CS order to show parent has ability and opportunity.
    - Retirement distinguished from voluntary termination (IRMO Ilas & Padilla, supra;) ?!?
    - However, perhaps consider viability on Stewart v. Gomez, *infra*, if in best interests to impute and evidence to do so

Earning Capacity (cont.)

- Court may impute to one who is unable to find employer willing to hire them so long as there is a substantial likelihood income can be produced utilizing marketable skills. IRMO Cohn (1998) 65 CA4th 923, at 930, 76 CR2nd 866 at 871.
  - Tangible evidence needed; cannot be "drawn from thin air." IRMO Cohn (lawyer case); Oregon v. Vargas (incarcerated parent) 70 CA4th 1123. Want ads enough. LaBass and Munsee (1997) 56 CA4th 1331.

Earning Capacity(cont.)

- What if earning capacity greater than actual earnings, i.e. underemployed?
  - Ability to pay standard—if earning capacity greater than actual earnings court may base order on ability so long as in the children's best interests—sound discretion of the court. Moss v. Superior Court (Ortiz) (1998) 17 C4th 396, at 4245; IRMO Simpson (1992) 4 C4th 225, at 233; IRMO Smith (2001) 90 CA4th 74, at 81.

Earning Capacity(cont.)

- Remarriage and quit job/reduced hours
  - IRMO Paulin (1996) 46 Cal.App.4th 1378
  - Lim & Carrasco (2013)—Parent reducing work to 80% FT Ok if in best interests of the children.
  - IRMO Ficke (2013)—must find imputation of income to be in children's best interests.

Imputing Income

- Can impute reasonable rate of return on non- income-producing assets. IRMO Dacumos (1999) 76 CA4th 150, at 154-155, 90 CR2nd 159, at 161; IRMO Destein (2001) 91 CA4th 1385, at 1393-1396, 111CR2nd 487, at 492-496; IRMO deGuigne, supra, at 1363 and 437-438.
  - Rate of return? Substantial evidence test on review; Risk free (6%)--Destein, legal rate (10%)—Scheppers, 4.3 or 4.5 government bond rate—IRMO Ackerman (2006) 146 CA4th 191 all acceptable. Common sense "Theoretical rate" 4.5% IRMO Berger (2009) 170 CA4th 1070

Imputing Income (cont.)

- Brothers v. Kern (2007) 154 CA4th 126 confirms trial court imputing reasonable rate of return on liquidated proceeds already paid to third party.
  - Court also **deviated** from guidelines—payor incarcerated- considered child's needs for above guideline award.

Imputing Income (con't)

- Expenses Theory
  - Calculate guideline
  - Make credibility finding if I&E or other evidence of unbelievable income vis a vis expenses
    - Rule out other sources for payments as show by evidence
  - Re-calculate with expenses as non tax income- no tax consid. as expenses are paid after tax.
  - See IRMO Loh (supra); IRMO Calcattera (2005) 132 CA4th 28

Imputing Income(cont.)

- Exceptions to imputing income:
  - CalWorks participant Mendoza v Ramos (2010) 182 CA4th 680
  - IRMO Williams (2007) 150 CA4th 1221 confirms that court cannot impute reasonable rate of return on home equity in primary residence.
  - IRMO Schlafly (2007) 149 Cal.App.4th 747, confirms cannot impute income on mortgage free housing (FRV?) of primary residence
  - But consider Kern v Castle, supra.
  - Also discussed "add-ons" FC 4062

As a result of investments after new marriage H and new spouse have passive investment income of $5,000/mo. H recently laid off and collecting UI benefits of $1,950/mo. What is H's income for CS?

1. $1,950
2. $6,950
3. $4,450

Imputing Income (cont.)

- Remarriage—May impute income to custodial parent who terminates employment to care for new children of remarriage (IRMO Hinman (1997) 55 CA4th 988, 64CR2nd 383) or remarriage to wealthy spouse (IRMO Wood (1995) 37 CA4th 1059, 44 CR2nd 236)
  - **CAUTION** re FC 4057.5
    - Need finding of that exclusion of NMI would result in extreme of severe hardship to child
  - IRMO Knowles (2009) 178 CA4th 35

Summary—Determining Income

- Income = gross income from all sources, including commissions, bonuses, overtime
- May include benefits
- Does not include aid, spousal support, etc.
- Average when fluctuating or seasonal
- Imputing income may be available

In 2008 F receives $319K from Tribe and reports same as taxable income on his tax return. $35K of this figure is for legal fees paid directly to his attorneys and $80K represents bi-annual bonuses. The balance is regular monthly disbursements. What is F's income for calculating G/L CS?

1. $319K
2. $284K
3. $204K

Deviating from Guideline

- "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"
  - Marriage of Fini (1994) 26 CA4th 1033
- .....It's true, we are not mere robots or potted plants!

Deviating from Guideline (cont.)

- FC 4056
  - If deviating, must state findings and guideline CS and state reasons for deviation on record.
- FC 4057(a)

  The amount of child support established by the formula presumed to be the correct amount of child support.

Deviating from Guideline (cont.)

- FC 4057(b)

  The presumption of 4057(a) rebuttable-- may be rebutted by showing that formula unjust or inappropriate, consistent with FC 4053, based on one or more identified factors, list is not exclusive.

Deviating from Guideline (cont.)

- Calculation of guideline
  - No statutory exception to requirement that court determine guideline before addressing deviation. IRMO Hubner supra, at 184 and 652.

Deviating from Guideline (cont.)

Stipulation of the parties. FC4057(b)(1)
Guideline calculation &
FC 4065 inquiry/advisement required.

Deferred Sale of Residence FC4057(b)(2)

Discretionary. IRMO Braud (1996) 45CA4th 797, at 819, 53 CR 2d 179, at 192

Deviating from Guideline (cont.)

- High Income & G/L exceeds C's needs. Burden on high earner to establish that formula is "unjust or inappropriate" and would exceed needs. FC 4053(b)(3). IRMO Cheriton, supra,, at 297 and 776.
- Substantial evidence test—opposite result may be supportable. IRMO Wittgrove (2004) 120 CA4th 1317, at 1326 and 1328, 16 CR3rd 489, at 495 and 497.

Deviating from Guideline (cont.)

- May avoid need to calculate guideline if parties stipulate that paying parent is extraordinary high earner and on what is an appropriate amount of child support. Estevez v. Superior Court (Salley) (1994) 22 CA4th 423, at 431, 27 CR2nd 470, at 475-476. Court makes "assumptions least favorable to the obligor."

Deviating from Guideline (cont.)

- Establishing needs of children
  - Varies with standard of living of parent, per FC 4053(f). IRMO Hubner (2001) 94 CA4th 175, at 187, 114 CR2nd 646, at 655; IRMO Wittgrove, supra, at 1329 and 498; IRMO Chandler (1997) 60 CA4th 124, at 129, 70 CR2nd 109, at 113.

Deviating from Guideline (cont.)

- Future financial security may be considered. IRMO Kerr (1999) 77 CA4th 87, at 97, 91 CR2nd 374, at 381.
- Consideration of alternative resources may not be appropriate. IRMO Cheriton, supra at 293-294 and 773 (trust not to be considered unless actually satisfying needs of children).

Deviating from Guideline (cont.)

- Court needs information based in fact concerning obligor's actual gross income. Johnson v. Superior Court (Tate) (1998) 66 CA4th 68, at 75, 77 CR2nd 624, at 628; IRMO Hubner supra at 186-187 and 654-655.

Deviating from Guideline (cont.)

Contribution not commensurate with parenting time. FC4057(b)(4)

Clothing, extra curricular, etc.

Deviating from Guideline (cont.)

Guideline child support would be "unjust or inappropriate." FC4057(b)(5)

Including *but not limited to*....

(A) Different time-share with different children,

(B) Substantially equal time but housing expense greater for one parent, and

(C) Special medical or other needs for the children.

Above language is not words of limitation

Deviating from Guideline (cont.)

- Other Examples:
  - Broad discretion given court, as list of circumstances are inclusive, not exclusive. County of Lake v. Antoni (1993) 18 CA4th 1102, at 1106, 22 CR2nd 804, at 806; IRMO Wood (1995) 37 CA4th 1059, at 1069, 44 CR2nd 236, at 242; IRMO deGuigne supra, at 1361 and 436.

Deviating from Guideline (cont.)

- Edwards v Edwards (2008) 162 Cal.App.4th 136. Where jurisdiction exists to award post age of majority CS, application of GL formula is unjust or inappropriate where neither parent retains primary physical responsibility for adult child for any period of time.

Deviating from Guideline (cont.)

- Assets. IRMO Dacumos supra154-155 and 161; IRMO Destein supra at 1393-1396 and 492-496; IRMO deGuigne supra at 1363 and 437-438.
- Lavish lifestyle. IRMO deGuigne supra at 1360-1366 and 435-440.
- Nontaxable benefits. IRMO Loh supra at 335-336 and 900.
- Salary Deferral combined with lavish lifestyle. IRMO Berger (2009) 170 Cal.App.4th 1070

Deviating from Guideline (cont.)

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

Federal Poverty Guideline

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

Summary—Deviating from Guideline

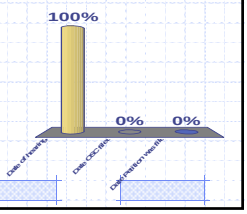
- Stipulation—findings required
- Deferred Sale of Residence
- Not Contributing commensurate with TS
- Extraordinarily High Income
- Guideline support unjust or inappropriate "catchall" clause

Putting it all together

- Now you have the framework to calculate Child Support
- Conceptually it's like graduating from law school and passing the bar.
- It's applying it in the real world that counts, and that's what has not been taught.

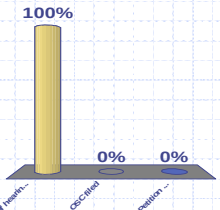
W files and 75 days later serves a Petition for DOM. Six (6) mo's later W files OSC for CS. To what date may the Court make the initial order retroactive to?

1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



W's OSC also seeks spousal support, to what date may the court make the SS order retroactive to?

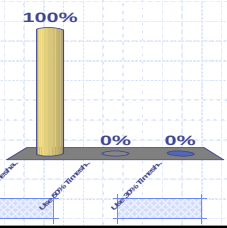
1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



M & D 50/50 Custody Order. D deploys overseas. M seeks CS mod with 0% timeshare. Child spends significant time with D's family including weekends and some overnights and various meals (approx. 30% timeshare).

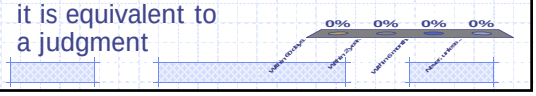
How do you calculate child support?

1. Use 0% Timeshare but deviate
2. Use 50% Timeshare & order G/L CS
3. Use 30% Timeshare & order guideline



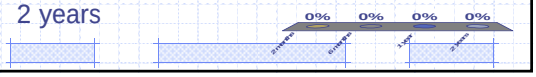
A voluntary declaration of paternity may be rescinded by either parent….

1. Within 60 days
2. Within 2 years
3. Within 6 months
4. Never, unless set aside by court as it is equivalent to a judgment



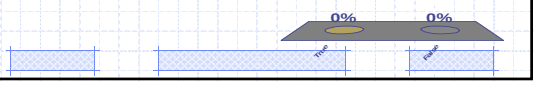
A motion to set aside a voluntary declaration of paternity must be filed within what period of time in relation to the child's birth?

1. 2 months
2. 6 months
3. 1 year
4. 2 years



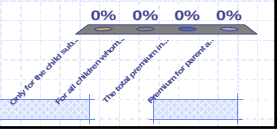
A person is entitled to a hardship deduction for the minimum basic living expenses of a natural or adopted child living in the home when calculating guideline CS?

1. True
2. False



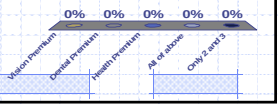
When calculating guideline child support the Court shall deduct from gross income of the parents the health plan premiums paid

1. Only for the child subject to the CS order
2. For all children whom their exists an obligation to support
3. The total premium including adults and children
4. Premium for parent and all children for whom their exists a legal obligation to support



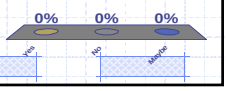
When calculating a party's net disposable income which of the following are considered health insurance deductions?

1. Vision Premium
2. Dental Premium
3. Health Premium
4. All of above
5. Only 2 and 3



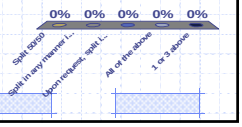
M has free child care to enable her to work. M chooses to put child, age 4, in early learning development program (ELDP) instead of free child care. Is the cost of the ELDP a mandatory child support add-on?

1. Yes
2. No
3. Maybe



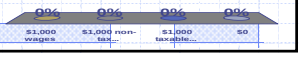
Assume the Court granted the ELDP costs in the previous question, how must the court allocate the costs between the parents?

1. Split 50/50
2. Split in any manner it chooses
3. Upon request, split in proportion to net disposable income if appropriate
4. All of the above
5. 1 or 3 above



Dad receives Social Security Disability Insurance benefits in the sum of $1,000 per month.
What is Dad's income for calculating guideline child support?

1. $1,000 wages
2. $1,000 non-tax as disabilty
3. $1,000 taxable disability
4. $0



How do you calculate guideline CS owed by parents who reside together for a caretaker on aid?

1. Add incomes together as NCP's and include caretaker income then proportionally allocate
2. Compute guideline separately for each parent
3. Add incomes together as NCP's, do not include caretaker income, proportionally allocate
4. Add incomes together as NCP's, do not include caretaker income, equally allocate.

DISCOVERY

- Limited discovery available without pending motion FC 3662 - 3663
- Discovery permitted to provide sufficient information to allow court to determine “net disposable income”-- extent of discovery is discretionary with the court. Johnson v. Superior Court (Tate) (1998) 66 CA4th 68, at 75-76.

TAB M

Income Determination–Advanced

Hon. Scott P. Harman &
Hon. Patrick J. Perry

Hypo 1

Mother CP with two children. Parties separated 2 years ago. Father claims to be unemployed and living with his girlfriend, who supports him. Mother testifies that father worked under the table the whole time they were together and filed no tax returns but earned $2,000 per month. Father denies ever having any income. What do you order?

Hypo 2

Mother and father share custody of their 3 children week on/week off (50% time share). Mother is on cash aid, Welfare to Work, and has no other income. Father works part time and earns $1,200 per month gross wages. Guideline child support is $273. What do you order and why? What if the children are in foster care, the parents live together, father still at the same job and mother not working, and they are actively participating in reunification services. Order? Why?

Hypo 3

Father was previously employed as a CFO of a major corporation earning $1,000,000 per year total compensation. A recent change in the custody arrangement, wherein he has gone from 14% time share to 50% time share has caused him to leave that position and invest in a start-up company in which he is the sole participant. The company has $2,000,000 in assets but income is being returned to the business to continue the growth of the business, resulting in no income to father. He is paying his bills with savings and credit cards until the business can start generating income. What is father's income for support purposes?

Hypo 4

Mother and Father have two children together, Julie (age 16) and John (age 12). They shared 50/50 custody until recently, when Julie had a falling out with her mother and she is now living with her father 100% of the time. In the custody proceedings the court has ordered conjoint counseling between Mother and Julie with a court date in three months to reevaluate the custody arrangement. Father's current order for guideline child support is a total of $574, $371 for John and $153 for Julie based upon his income of $5,000 per month and her income of $2,500 per month. Father also has arrears of $15,000. Father requests modification of child support. How do you rule?

Hypo 5

Mother has sole legal and physical custody of one minor child, no visitation to Father. Father is an independent contractor with a territory that requires him to do extensive driving. He is paid $4,000 per month from which he is required to cover his own costs and he claims for tax purposes, deductions for a home office, Internet and fax fees, auto insurance, office expenses, meals, bridge tolls, hotel expenses, and use of his automobile, for which he employs the IRS rate of $.595 per mile. He drives a vehicle that gets 16 mpg and pays on average $3.75 per gallon and over 5 months drove a total of 11,000 miles. What is available income for child support purposes?

Move Away Hypos

John and Sarah had been married 12 years when they separated in March 2011. They have 3 children, ages 5, 7 and 10. John is self employed as a consultant and sets his own hours. John's income has been stable over the last 3 years at $90,000 per year.

Sarah has requested permission to move to Virginia where she has been offered a job with National Institute of Health at $72,000 per year. The family law court has approved the move and ordered the following visitation:

- Every other Thanksgiving vacation
- 10 days each Winter Break
- Every Spring Break
- At any time for up to 5 days in Virginia, on one weeks advance notice
- 7 consecutive weeks in the summer

Assume airfare from LA to Virginia is $350 per person roundtrip. John says he will visit in Virginia at least 6 times per year and that he will incur hotel and rental car expenses. He states he will fly the children to California for School Recess visitation.

What is your order with respect to visitation expenses and why? What are your options?

John owns a consulting business doing Forensic Accounting. During 2013 the business expanded dramatically when he was hired to consult with an attorney on several very large divorce cases. John needed additional computer equipment to deal with the cases. He arranges for a small business loan to buy a new computer system and printers. He also purchases a new Mercedes sedan for $65,000. The computer system cost $35,000. John takes accelerated depreciation on both the computer system and the car. Normal depreciation on computer equipment is 5 year straight line depreciation. Straight Line Depreciation on automobiles is 5 years. How would you handle depreciation in the calculation of Guideline Child Support.

What if John leased the car and wrote off the cost of the lease? Would your analysis be the same or different? What if he leased the computer equipment rather than purchased it?

Jim and his new wife, Renee, own several community property apartment buildings. The net rental income from the apartments is $72,000 per year. Additionally, they own community stock that paid dividends last year of $10,000. They live in a large home at the lake and have monthly mortgage deductions of $3,500 and property taxes of $4,800 per year. They file joint tax returns. Jim's parenting time is from Friday at close of school until Monday morning return to school, every other week, split school holidays and 4 weeks in the summer.

Jim's W2 income is $90,000 per year and Renee's is $60,000 per year.

Susan, Jim's ex wife, has primary custody of their two children. She is remarried to a physician who earns $144,000 per year. She and her husband live in a home with a mortgage payment of $3,500 a month and property taxes of 3,000 per year. The home is owned by her husband as his separate property since he owned it prior to marriage. They file join tax returns.

What are your findings for a Guideline Child Support Order? What order would you actually make? Explain your thinking and analysis.

Would your findings be different if either filed Married Filing Separate with their new spouse. Explain your thinking.

Jim, the Primary Custodial Parent, is on TANF. He has two children, ages 13 and 11. He is unemployed at the present time but has a consistent work history earning between $1,400 and $1,800 per month.

Jane, his ex wife, earns $3,000 per month and has 15% time share. A Guideline Child Support Order will be high enough that Jim will not be eligible for aid. However, it will not go into effect until the month following the hearing.

Would you impute income and if so, When? What are the limitations on imputing income in this situation? If you do not impute income to Jim, what will be your order for the future?

What if Jim is in CalWorks and is attending school, but your child support order will eliminate TANF? Are there any circumstances where you would impute income to a Cal Works recipient?

What if the court changes custody of one of the children to Jane and Jim remains on TANF with the other child? Would your analysis re imputing income be different?

TAB N

Parentage Notwithstanding Genetics

Mr. Glen H. Schwartz

Parentage & Rebuttable Presumptions

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1

Which are you bringing to parents' night?
Biological, presumptive, or adoptive?

2

Hypothetical 1

H and W were married and had lived together for 5 years when they had a daughter.

Marital bliss broke down and W filed a petition to dissolve the marriage. In the Petition she alleged that the 1 ½ year old girl was not a child of the marriage.

3

Hypothetical 1

FC §7540
"…the child of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

ad lived
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W filed a
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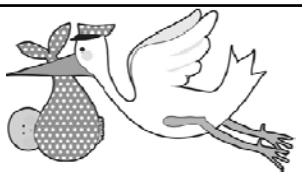
Hypothetical 2



After 3 years of marriage, W & H happily announced the joyous birth of their son.

As the child grew older, H began to notice that the child did not look 100% Swedish - like he and his W. But he simply thought this was part of the growth process.

7

Hypothetical 2 - Continued

When the child was 2 ½, H finally confronted W and she admitted the child was conceived during her affair.

H filed a petition to dissolve the marriage. In the petition he alleged there were no children of the marriage.

8

Hypothetical 3

After a 5 year marriage without children, W & H had an amicable divorce and went their separate ways. Unbeknownst to either, at the time of the divorce, she was pregnant by Boyfriend.

(Ex)H did not know she had a child until 13 years later when H was served by DCSS with a complaint for child support. DCSS alleged H was the father per the conclusive presumption.

9

Hypothetical 4

When Mom & B-Friend met, she was 8 months pregnant. When Mom gave birth, she did not ID any man as father.

One month after Joshua's birth, Mom & B-friend move in together. The never married – lived as a family unit for 5 ½ years.

10

Hypothetical 4, cont.

B-Friend told everyone – including church and school – he was Joshua's father. B-friend and Joshua established a quality father-son relationship.

At separation, Mom denied B-friend any contact with Joshua – because "Your're not his father." B-friend filed a parentage action.

11

Hypothetical 5

After Mom separated from Boyfriend, she and 5 ½ year old Joshua began living with Bio-Dad.

Bio-Dad & Mom changed church and school records to replace Boyfriend with Bio-Dad as Joshua's father. They told all of their friends & family that Bio-Dad is in fact Joshua's father.

Together Mom and Bio-Dad defend against Boyfriend's parentage action.

12

Hypothetical 6

Teri & Susan were in a relationship for several years, and decided they wanted to have a child.

Susan became pregnant by artificial insemination with the semen of an anonymous donor selected by her and Teri. When the child was born, her surname was hyphenated with Teri and Susan's respective surnames. Susan was a stay-at-home mom, and Teri was the primary breadwinner.

13

Hypothetical 6, cont.

Teri & Susan separated when the child was 4 years old. The relationship remained amicable, and Teri continued to regularly visit and financially support Susan and the child.

However, Susan stopped accepting Teri's support and no loner allowed her to visit with the child.

Teri files an action to establish her parental rights.

14

Hypothetical 7

Mary & Dawn began living together, and shortly thereafter became registered domestic partners. However, 2 years later they separated and dissolved their domestic partnership. During that separation, Mary was intimate with John and became pregnant.

Mary moved into John's home and lived with him during the first few months of her pregnancy. Then Mary reconciled with Dawn and moved from John's home to Dawn's home. The three of them remain friendly, sharing the joy of pregnancy and birth. No Declaration of Paternity was executed. Mary is the only parent named on the birth certificate.

15

Hypothetical 7, cont.

During the first year of the child's life, Mary, Dawn and John cooperatively shared the emotional and financial responsibilities of parenthood. From time-to-time, John would even take the child to his home so that Dawn and Mary could have quality alone time.

When the child was 15 months old, Mary & Dawn decided 3 parents was too confusing and ultimately cut off all of John's contact with the child.

John files a parentage action.

16

Hypothetical 8

Mom, an unmarried woman, gave birth at a local hospital to a bouncing baby girl. Mom is the only parent named on the child's birth certificate.

Within weeks after giving birth, Mom meets Boyfriend who immediately falls in love with Mom and her little girl; and within weeks the three of them are living together in Boyfriend's house. Boyfriend financially supports Mom and the baby, and tells everyone that he is the baby's father.

17

Hypothetical 8, cont.

After 20 months, Mom and her daughter move out of Boyfriend's house, and Mom denies Boyfriend any contact with her daughter. Boyfriend files a parentage action.

In the midst of that action, Mom and Bio-Dad went to the local child support agency office and signed a Voluntary Declaration of Paternity witnessed by an agency staff member. Mom filed a certified copy of the POP in defense of Boyfriend's action.

18

Hypothetical 9

During a dating relationship, *Mom told Boyfriend* ***she was pregnant by a stranger***. After the birth of her daughter, A[illegible]nda, Mom and Boyfriend began living together. Boyfriend b[illegible]g as Amanda's father in all common respects. [illegible] Boyfriend "Daddy". Boyfriend never objected or correc[illegible]nda

For the next 13 years, Bo[illegible] Amanda's father, referring to her [illegible] records, and to all friends and fa[illegible] "Daddy". Boyfriend never objec[illegible]s never told Boyfriend was not her[illegible]

Mom & Boyfriend broke [illegible]s, and DCSS pursued Boyfriend as Amanda's father for reimbursement.

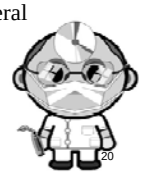
Version B:
…she was pregnant with his child.

19

Hypothetical 10

Deborah, who was unmarried, decided she wanted to have a child and asked her friend, Steven, to be her semen donor. Steven provided semen to a physician who stored it for Deborah's forthcoming procedures.

Before any of the insemination procedures, Deborah & Steven became intimate with each other and had sexual relations during the next several months. Deborah did not become pregnant.



20

Hypothetical 10, cont.

After ending their intimacy, without Steven's knowledge, Deborah was inseminated by her physician with Steven's stored semen. She became pregnant.

After Deborah gave birth, Steven filed an action claiming he is the child's father and requesting joint custody.

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Hypothetical 11

Mom tells Ex-Boyfriend that he is the father of her newborn baby. Mom receives benefits and DCSS sues Ex-Boyfriend to establish parentage and prospective child support.

Without consulting an attorney, Ex-Boyfriend waived his right to DNA tests and stipulated to a judgment of his parentage and child support.

Three years later, Ex-Boyfriend hears "through the grapevine" that Mom has told her friends he was not the father of her child.

Ex-Boyfriend then retained an attorney, and filed an action requesting DNA testing and set aside of the parentage judgment.

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Take-aways

1. California has a very unique & complicated statutory scheme of parentage.
2. This statutory scheme is not dependent on a biological relationship.
3. This statutory scheme is continuing to evolve and reflect today's social landscape.

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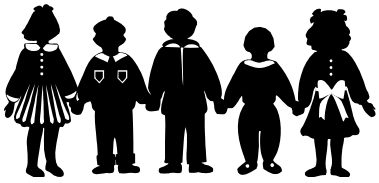
The End



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PARENTAGE LITIGATION

By

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[2013 Edition]

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PARENTAGE LITIGATION

By

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PARENTAGE LITIGATION

By

GLEN H. SCHWARTZ, Esq.

Table of Contents

I.
CALIFORNIA'S STATUTORY SCHEME OF PARENTAGE

The ***Uniform Parentage Act*** **(UPA)** was approved by the National Conference of Commissioners on Uniform State Laws in 1993. The UPA was inspired by a Texas law review article entitled "A Proposed Uniform Act on Legitimacy," and was encouraged by the United States Supreme Court decisions in ***Weber v. Aetna Casualty & Surety Company*** (1972) 406 U.S. 164 [92 S.Ct. 1400, 31 L.Ed.2d. 768] (Louisiana's worker's compensation statute, which relegated illegitimate children to the status of "other dependents," was held unconstitutional) and ***Gomez v. Perez*** (1973) 409 U.S. 535 [93 S.Ct. 872, 35 L.Ed.2d. 56] (a Texas court was reversed for denying substantial benefits to illegitimate children which were generally accorded to children). The UPA made a revolutionary change in the law by abolishing the incidents of illegitimacy and establishing legal equality of children without regard to the marital status of their parents. ***Uniform Parentage Act, Prefatory Note.***

The UPA was enacted by the California Legislature in 1975. A press release issued on October 2, 1975 described the new legislation this way: "The bill, as amended, would revise or repeal various laws which now provide for labeling children as legitimate or illegitimate and defining their rights and those of their parents accordingly. In place of these cruel and outdated provisions, [the bill] would enact the Uniform Parentage Act which bases parent and child rights on the existence of a parent and child relationship rather than on the marital status of the parents." Effective January 1, 1994, the UPA was incorporated into the California ***Family Code*** (***"FC"***) **section 7600 et seq.**, and the introductory provisions state:

> "'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." ***FC*** **§7601.**
>
> *And,*
>
> "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." ***FC*** **§7602.**

California's statutory scheme of parentage is not limited to the provisions of the UPA. Additional ***Family Code*** provisions which are relevant to establishing parentage are as follows:

FC **§7540 et seq.**, the conclusive presumption of paternity and its rebuttal provisions;

FC **§7550 et seq.**, the Uniform Act on Blood Tests to Determine Paternity;

FC **§7570 et seq.**, the establishment of paternity by voluntary declaration; and

FC **§17400 et seq.**, actions brought by local child support agencies.

II.
METHODS OF ESTABLISHING PARENTAGE

A. CONCLUSIVE PRESUMPTION

1. Family Code section 7540

The conclusive presumption of paternity is codified in ***Family Code*** **section 7540**:

> "[T]he child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

The conclusive presumption reflects the ancient principle that when a husband and wife are living together in matrimony, the integrity of their family should not be impugned, and the husband is deemed responsible for his wife's child.

Historically, the rule promoted the social policies of preservation of the integrity of the family, protection of the welfare of children by avoiding the stigma of illegitimacy and keeping them off welfare rolls, and insurance of the stability of title and inheritance. ***Estate of Cornelious*** (1984) 35 Cal.3d 461.

More recently, the courts have declared that the conclusive presumption promotes the social policies of identification of the child's father by establishing, as a matter of law, that the father is the man with whom the child has had an ongoing father and child relationship, even though the presumption may not comport with biological reality. ***Susan H. v. Jack S.*** (1994) 30 Cal.App.4th 1435.

2. Necessary Foundational Facts

The conclusive presumption applies only if the foundational facts of (1) marriage, (2) cohabitation, and (3) the husband's potency and fertility ***all co-exist*** at the time of conception. ***City and County of San Francisco v. Strahlendorf*** (1992) 7 Cal.App.4th 1911.

"Sterility" for purposes of ***Family Code*** **section 7540** is defined in its "strictest sense": it is limited to cases where a preponderance of the evidence shows that the husband could not produce live sperm at the time of conception; proof of only a low sperm count or impaired fertility is not sufficient to avoid the application of the presumption. ***In re Marriage of Freeman*** (1996) 45 Cal.App. 4th 1437.

3. *The Conclusive Presumption May Be Applied Against A Man Who Is Biologically Related To The Child*

a. *Michael H. v. Gerald D.*

The United States Supreme Court in ***Michael H. v. Gerald D.*** (1989) 491 U.S. 110 [109 S.Ct. 2333, 105 L.Ed.2d. 91] held by a plurality decision that California's conclusive presumption did not infringe upon the due process rights of a man who wished to establish paternity of a child born to another man's wife. The court stated that the conclusive presumption implements a substantive rule of law that declares it to be generally irrelevant for paternity purposes whether a child conceived during and born into an existing marriage was fathered by someone other than the husband.

Acting on the appeal of the alleged biological father and the child, the Second Appellate District affirmed the trial court's granting of the husband's motion for summary judgment on the grounds that he was the child's father by virtue of the conclusive presumption of paternity (***Michael H. v. Gerald D.*** (1987) 191 Cal.App.3d 995). The California Supreme Court denied review, and the United States Supreme Court granted hearing of the alleged biological father's claim.

The facts, which the plurality opinion labeled "extraordinary," are such that Carole and Gerald were married and commenced living together as husband and wife in 1976. While still married and living together as husband and wife, Carole conceived and in May 1981 gave birth to Victoria. Carole had had an extra-marital affair with Michael during the period she conceived Victoria. After Victoria was born, Carole told Michael she believed the child could be his. Carole, Michael and Victoria had blood tests performed at UCLA that showed there was a 98.07% probability that Michael was Victoria's biological father. Carole separated from Gerald in October 1981. Thereafter, Carole and Victoria stayed with Michael in the Virgin Islands for three months, after which Carole left Michael. Then Carole and Gerald reconciled. In November 1982, Michael brought his paternity action. In August 1983, Carole and Victoria again took up residence with Michael. They lived with Michael until April 1984. In June 1984, Carole again reconciled with Gerald and joined him in New York, where thereafter they continued to live in a family unit with Victoria and two other children subsequently born into their marriage.

b. *Michelle W. v. Ronald W.*

The California Supreme Court in ***Michelle W. v. Ronald W.*** (1985) 39 Cal.3d 354 held that the conclusive presumption of paternity did not deny due process to the alleged biological father who had not claimed paternity until he married the child's mother six years after the child's birth.

The facts were such that Judith and Ronald were married in May 1965 and lived together as husband and wife until their separation in 1977. In 1973, Judith and Donald began having sexual relations, although Judith and Ronald were married and living together. In October 1974, Judith gave birth to Michelle. Until their marital separation in 1977, Judith, Ronald, Michelle and older daughter Tamara lived together in a family unit. When Judith and

Ronald separated, they executed a marital settlement agreement wherein Judith was awarded custody of Michelle, Ronald was awarded rights of visitation, Ronald's obligation to provide child support for Michelle was described, and the issue of paternity was not raised. Thereafter, Ronald regularly and continually exercised his visitation rights with Michelle. In November 1980, Judith married Donald, and since that marriage, Michelle has lived in Donald's home and he has held her out to be his natural child.

In March 1981, a paternity action was brought by Donald and six- year-old Michelle, through her guardian ad litem. The trial court granted summary judgment establishing that Ronald was the father of Michelle, based upon the uncontradicted facts that Ronald and Judith were living together as a married couple at the time of Michelle's conception and birth, and that Ronald was neither impotent nor sterile. The California Supreme Court affirmed the trial court's ruling, holding that the conclusive presumption did not violate Donald's due process rights because "Donald's private interest in establishing a biological relationship in a court of law is overridden by the substantial state interests in familial stability and the welfare of the child." (*Id.* at p. 363) With respect to Michelle's claim, the Supreme Court questioned whether Michelle was the real actor behind this "child" paternity suit in that her guardian ad litem was a family friend of Donald and Judith, and was represented by the same attorney as Donald; the court reasoned, nonetheless, that Michelle's rights were no greater than those afforded to Donald.

4. *Marital Separation Or Dissolution Does Not Affect The Application Of The Conclusive Presumption*

Although the conclusive presumption can only arise in the context of a marital relationship, the presumption is not rendered inapplicable upon marital dissolution. The familial relationship between the presumed father and the child does not usually terminate upon dissolution of marriage. As the court in ***Susan H. v. Jack S.***, *supra,* 30 Cal.App.4th 1435 observed, "the state has a legitimate interest in the 'social stability of the dissolving family' and an interest in not only 'preserving an intact family, but preserving the integrity of the divorcing family.'"

Other examples of the application of the conclusive presumption notwithstanding dissolution of marriage include the conclusive presumption being invoked by the mother to obtain a support order against the husband in dissolution proceedings (***In re Marriage of B.*** (1981) 124 Cal.App.3d 524) by the husband to defend his relationship with the child even where the marriage had been dissolved (***Vincent B. v. Joan R.*** (1981) 126 Cal.App.3d 619); and, as discussed hereinabove, by the presumed father after the mother divorced him, obtained child support, and then married the biological father (***Michelle W. v. Ronald W.*** (1985) 39 Cal.3d 354).

5. *The Conclusive Presumption Will Not Be Applied If It Denies Due Process*

The conclusive presumption will not be applied if its application does not promote the social policies for which it was intended, and thereby offends due process. To determine whether a party is denied due process by being prevented from proving who is the biological

father, the court must weigh competing state and private interest. But, the state's interest of preserving and protecting the developed parent-child relationship will always outweigh a party's private interest of establishing biological parentage. Therefore, the courts have held that the conclusive presumption will be applied unless there is no existent parent-child relationship to preserve. For example:

a. The presumption was not applied to make the husband the father where the child's mother and her husband had died, the husband had never lived with the child, and the husband had renounced his paternity and relinquished the child for adoption. ***In re Lisa R.*** (1975) 13 Cal.3d 636.

b. The presumption was not applied to make the husband the father where the mother and child separated from the husband when the child was eight days old, the mother and child moved in with the biological father whom the mother then married, and the child was raised to perceive the biological father rather than the husband as her father. ***In re Melissa G.*** (1989) 213 Cal.App.3d 1082.

c. The presumption was not applied where the husband and wife separated before either of them knew she was pregnant, the husband remained unaware of the child's existence for the next 13 years, and the child knew the husband was not her father. ***County of Orange v. Leslie B.*** (1993) 14 Cal.App.4th 976 (given these facts, the application of the conclusive presumption leads to an "absurd result that defies reason and common sense").

d. The presumption was not applied to make the husband the father where the mother separated from the husband before the child was born, the husband never lived with the child, neither the husband nor child perceived themselves to be related, and the child was raised to believe another man was his father. ***Comino v. Kelley*** (1994) 25 Cal.App.4th 678.

6. The Conclusive Presumption Is Subject To A Limited Two Year Genetic Test Rebuttal Period

Family Code **section 7541** opens a limited window of opportunity for statutorily defined parties to request genetic tests in an effort to rebut the conclusive presumption of the husband's paternity:

a. The motion for genetic tests must be filed not later than two years from the child's date of birth.

b. The motion for genetic tests may only be filed by the following persons:

(1) The husband;

(2) The presumed father, within the meaning of ***FC*** **§§7611** and **7612**;

(3) The child through or by the child's guardian ad litem; and

(4) The mother of the child, if the child's biological father has filed an affidavit with the court acknowledging parentage of the child.

The requirements must be strictly adhered to if genetic tests are used to rebut the conclusive presumption. ***Miller v. Miller*** (1998) 64 Cal.App.4th 111 (private blood tests, not ordered by the court, performed more than two years after the child's birth had "no legal significance" and therefore could not rebut the conclusive presumption).

COMMENT: Prior to 1980, the conclusive presumption was, indeed, conclusive. It was not until 1980 that the legislature amended the presumption [then found in former ***Evidence Code*** **section 621**] to allow "blood tests" to be used to rebut a husband's paternity under the above-described limited circumstances. The term "blood tests" is still used in ***Family Code*** **section 7541**. However, in doing so, reference is made to ***Family Code*** **section 7555 et seq.** which therein uses the more technologically advanced term of "genetic tests", which term is used herein when referencing the tests of ***Family Code*** **section 7541**.

B. VOLUNTARY DECLARATION

The statutory scheme of establishing parentage by voluntary declaration (also known as a "POP", an acronym for Paternity Opportunity Program) is set forth in ***Family Code*** **section 7570 et seq.** Its purpose is to speedily identify the father of children born to ***unmarried mothers*** so that the children may know their medical histories, know their fathers, and receive the financial support and monetary benefits due them.

1. Signing Of The Voluntary Declaration

Although hospitals must try to obtain signed declarations before the infant born to the unmarried mother leaves the hospital, attesting parents may mail a notarized declaration to the Department of Child Support Services at any time after the child's birth. ***FC*** **§§7571(a)** and **7571(d)**. Additionally, attesting parents may sign a declaration in person at a local child support agency office where staff witnessing the parents' signatures must forward the signed declaration to the Department of Child Support Services. ***FC*** **§7571(f)**.

The voluntary declaration of paternity must be executed on a form developed by the Department of Child Support Services and must contain the information and admonishments set forth in ***Family Code*** **section 7574**.

2. The Voluntary Declaration Has The Same Force And Effect As A Judgment Of Paternity

The signing and filing of a voluntary declaration "shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support." ***FC*** **§7573**.

In ***Kevin Q. v. Lauren W.*** (2009) 174 Cal.App.4th 1557, the court held that the voluntary declaration is not a mere presumption to be weighed against parentage presumptions or otherwise subject to rebuttal. Unless and until the voluntary declaration is set aside, it trumps the ***Family Code*** **section 7611** rebuttable presumptions, and has the same force and effect of a judgment. (See **section II.C.** for a complete discussion of ***Family Code*** **section 7611** presumptions.)

The facts of ***Kevin Q.*** are such that Kevin, who for 20 months received Lauren's child into his home and openly held out that child as his natural child (unequivocally qualifying as a presumed father under ***Family Code*** **section 7611(d)**), brought an action to establish his parentage of that child. In response, Lauren and biological father (who had no previous relationship with the child) properly signed a voluntary declaration of paternity, and used that voluntary declaration to defend against Kevin's parentage action. The Court of Appeal reversed the trial court's adjudication of Kevin's paternity, holding that the voluntary declaration functioned as a judgment of paternity, and a judgment of paternity trumps the rebuttable presumption of paternity.

3. ***Birth Certificate Requirements***

Health & Safety Code ("H&SC") **section 102425(a)** sets forth the information that is required to be on a birth certificate, including the father's full name, birth place, and date of birth. 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 prepared. The birth certificate can be amended later to reflect the father's name only after paternity has legally been established.

Health & Safety Code **section 102767** authorizes an application to delete a father's name from a birth certificate after the rescission of a voluntary declaration of paternity under ***Family Code*** **section 7575(a)**.

4. ***Rescission/Setting Aside Of The Voluntary Declaration***

a. Rescission/Setting Aside Under *Family Code* section 7575

Paternity established by the voluntary declaration may be nullified in the following ways:

(1) The filing of a statutory prescribed rescission form with the Department of Child Support Services within 60 days of the date of the execution of the declaration by the attesting father or mother (unless a court order of custody, visitation, or child support has been entered in an action in which the person seeking to rescind was a party). ***FC*** **§7575(a)**.

(2) If, within the first two years of the life of the child, a motion for genetic blood tests is filed by either the local child support agency, the mother or the man who signed the voluntary declaration, and the blood test results establish that man is not the child's

father, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the request to set aside the voluntary declaration is in the best interest of the child taking into consideration all of the following factors:

- The child's age.

- The length of time since the execution of the voluntary declaration by the man who signed the declaration.

- The nature, duration, and quality of the relationship between the man who signed the declaration and the child.

- Whether the man who signed the declaration has requested the parent-child relationship continue.

- Whether the biological father has indicated that he does not oppose such a continued relationship.

- Whether it would be beneficial or detrimental to the child in establishing the biological parentage of the child.

- Whether the man who signed the declaration has made it more difficult to find or obtain support from the biological father.

- Additional factors that the court deems relevant to its determination of the best interest of the child. ***FC* §7575(b)**.

In ***Gabriel P. v. Suedi D.*** (2006) 141 Cal.App.4th 850, the trial court erred for setting aside the declaration without evaluating the relationship between the child and the man who signed the voluntary declaration.

(3) A motion to set aside the declaration may be brought by the mother or presumed father under ***Code of Civil Procedure* section 473** [mistake, inadvertence, or excusable neglect]. The **section 473** timetable begins to run on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support. ***FC* §7575(c)**.

In ***County of Los Angeles v. Sheldon P.*** (2002) 102 Cal.App.4th 1337 the appellate court affirmed the trial court's finding that the mother showed mistake, surprise, or excusable neglect when she signed a voluntary declaration of paternity naming her friend who was not the biological father under circumstances where she was asked to sign the declaration very shortly after giving birth, while she was taking pain medication, was not given the explanatory materials required by statute, and no one explained the document.

b. Rescission/Setting Aside Under *Family Code* section 7612(d)

Under ***Family Code* section 7612(d)**, within the first two years of the execution of a voluntary declaration, a person who is presumed to be a parent under ***Family Code* section 7611** may file a petition to set aside that voluntary declaration. The court's ruling on such a petition to set aside shall take into account:

(1) The validity of the voluntary declaration of paternity (as discussed hereinbelow).

(2) The best interests of the child based upon the court's consideration of the factors set forth in ***Family Code* section 7575(b)** (as set forth hereinabove).

(3) The best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship.

(4) In the event of any conflict between the presumption under ***Family Code* section 7611** and the voluntary declaration of paternity the weightier considerations of policy and logic shall control.

COMMENT: **Subsection (d)** of ***Family Code* section 7612** was added by the legislature effective January 1, 2012 in response to ***Kevin Q. v. Lauren W.*** (discussed hereinabove) which did not allow a presumed father to challenge the voluntary declaration executed by the mother and an absentee father. However, this new subsection does not result in ***Kevin Q. v. Lauren W.*** no longer being good law, rather it merely allows a presumed father, under certain circumstances, to challenge the voluntary declaration of paternity.

5. Invalid Voluntary Declaration

A voluntary declaration is ***invalid*** if, at the time the declaration was signed, any of the following conditions exist:

a. The child already had a presumed parent under ***Family Code* section 7540** (the conclusive presumption discussed hereinabove).

b. The child already had a presumed parent under subsection (a), (b), or (c) of ***Family Code* section 7611** (the rebuttable presumptions discussed hereinbelow).

c. The man signing the declaration is a sperm donor whose rights and obligations are controlled by ***Family Code* section 7613(d)** (discussed hereinbelow).

6. *Recognition Of Out-Of-State Voluntary Declaration*

A paternity affidavit signed by a man in another state which had the same force and effect as a judgment in that state is entitled to full faith and credit in California. ***In re Mary G.*** (2007) 151 Cal.App.4th 184 (the voluntary affidavit signed in Michigan confirmed presumed father status in California).

C. SECTION 7611 REBUTTABLE PRESUMPTIONS

1. *Establishing The Presumptions*

A man is a presumed father of a child if he meets any of the four following specified conditions:

a. If the child is born during the marriage of the mother and the man, or 300 days after termination of the marriage by death, annulment, declaration of invalidity, divorce, or judgment of separation. ***FC* §7611(a).**

In ***Lisa I. v. Superior Court [Philip V.]*** (2005) 133 Cal.App.4th 605, a husband qualified as a presumed father under ***Family Code* section 7611(a)** where the child was conceived more than a year and a half after the mother and her husband separated and the child was born more than six months after their divorce judgment was entered.

b. If before the child's birth, the man and the child's mother have attempted to legally marry each other, although the attempted marriage is or could be declared invalid, and either of the following is true: (1) if the attempted marriage could be declared invalid only by a court order, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity or divorce, or (2) if the attempted marriage is invalid without a court order, the child is born within 300 days after termination of cohabitation. ***FC* §7611(b).**

c. If after the child is born, the man and the child's natural mother have married, or attempted to legally marry, although the attempted marriage is or could be declared invalid, and either of the following is true: (1) with the man's consent, he is named as the child's father on the child's birth certificate, or (2) the man is obligated to support the child under a written voluntary promise or by court order. ***FC* §7611(c).**

d. If the man receives the child into his home and openly holds out the child as his natural child. ***FC* §7611(d).**

In ***Comino v. Kelley*** (1994) 25 Cal.App.4th 678, Paul Comino, a man not biologically related to the child, was found to be the child's presumed father based upon the following facts: a few weeks before the birth of the child, the mother moved into Paul's home; Paul and the mother attended La Maze childbirth classes together; Paul was present at the delivery and cut the umbilical cord; with the mother's consent, the child was named Joshua Paul Comino; Paul was identified as the father on the child's birth certificate which was signed by the

mother; the mother sent out birth announcements identifying Paul as the father; and for the next two and one-half years, Paul, the mother, and the child lived together as a family unit in all common respects.

It is the totality of both elements -- reception of the child into the man's home and public acknowledgement of the child as his natural child -- which reflects a commitment towards developing and maintaining a substantial father-child relationship that raises a man to the level of a ***Family Code*** **section 7611(d)** presumed father. See ***Miller v. Miller*** (1998) 64 Cal.App.4th 111 where a man did not become a presumed father by simply living with the mother and the child because he did not openly hold the child out as his natural child and there was no evidence that he was living with the child for any other reason than to be with her mother.

COMMENT: ***Family Code*** **section 7611(d)** does not contain any specific durational requirement; it merely requires the party seeking presumed parent status to have received the child into his or her home and openly held the child out as his or hers in a fashion that is "sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship, but need not be for any specific duration." ***Charisma R. v. Kristina S. (Charisma R. II)*** (2009) 175 Cal.App.4th 361 (living in a family unit during the child's first three months of life was sufficient to become a presumed parent given involvement throughout the insemination process, birth, and for those three months). However, the courts have declined to adopt the doctrine of constructive receipt of a child into a man's home. ***Dawn D. v. Superior Court (Jerry K.)*** (1998) 17 Cal.4th 932 (a man was found not to have met the statutory conditions for presumed fatherhood because he did not actually receive the child into his home, despite his considerable efforts to do so, including filing a complaint before the child's birth to establish parentage and requesting joint legal and physical custody).

2. ***Rebutting The Presumptions***

Family Code **section 7612** sets forth that the ***Family Code*** **section 7611** presumptions are rebuttable presumptions affecting the burden of proof and may be rebutted in the following two manners:

a. May be rebutted in an appropriate action by clear and convincing evidence, ***Family Code*** **section 7612(a)**.

b. The presumption is rebutted by a judgment establishing paternity of the child by another man, ***Family Code*** **section 7612(c)**.

COMMENT: ***Kevin Q. v. Lauren W.*** (2009) 174 Cal.App.4th 1557 reminds us that a properly executed voluntary declaration of paternity has the same effect as a judgment, and therefore rebuts a presumption under ***Family Code*** **section 7611**; also see ***In re Levi H.*** (2011) 197 Cal.App.4th 1279 ["... voluntary declaration trumps presumed father status under section 7611, subdivision (d) despite any inequities."]

3. *The Presumptions Are Not Necessarily Rebutted By Proof That The Presumed Father Is Not The Biological Father -- In re Nicholas H.*

In ***In re Nicholas H.*** (2002) 28 Cal.4th 56 the California Supreme Court held that a presumption arising under ***Family Code*** **section 7611** is not necessarily rebutted by clear and convincing evidence that the presumed father is not the biological father. The court pointed to the rebuttal language in ***Family Code*** **section 7612(a)** as evidence that the statute does not contemplate an automatic rule that biological paternity rebuts the **section 7611** presumption in all cases, without concern for whether rebuttal was "appropriate" in the particular circumstances.

Nicholas H. arises from a juvenile dependency proceeding in which the mother was attempting to deny the presumed father's parentage, even though there was no other man claiming parental rights to the child. The facts were such that when Kimberly was pregnant with Nicholas, she moved in with Thomas who was not Nicholas's biological father, as he admitted. Nevertheless, Thomas wanted to act as a father to Nicholas so he participated in Nicholas's birth, was listed on Nicholas's birth certificate as his father, and provided a home for Kimberly and Nicholas for several years. As the court observed, "Thomas lived with Nicholas for long periods of time, he has provided Nicholas with significant financial support over the years, and he has consistently referred to and treated Nicholas as his son. In addition, there is undisputed evidence that Nicholas has a strong emotional bond with Thomas and that Thomas is the only father Nicholas has ever known."

Given these facts, the Supreme Court found that this was not "an appropriate action" in which the presumption of Thomas's paternity "may" be rebutted, because the rebuttal of the ***Family Code*** **section 7611(d)** presumption will render Nicholas fatherless.

COMMENT: Thus, ***Nicholas H.*** firmly implanted the proposition that the lack of a biological connection with the child will not preclude a claim of parentage if the following questions are both proven true:

(1) Does the man qualify as a presumed father under ***Family Code*** **section 7611(d)** because:

- He received the child into his home; and
- He openly held out the child as his natural child?

(2) Are the facts of the case such that it is not "an appropriate" action in which the presumption may be rebutted (i.e., would rebutting the presumption leave the child without a second parent)?

4. *If There Are Two Or More Rebuttable Presumptions, The Weightier Presumption Will Control*

Family Code **section 7612(b)** provides that if two or more presumptions arise under ***Family Code*** **section 7611** which conflict, the presumption which on the facts is founded on weightier considerations of policy and logic will control.

a. *Steven W. v. Matthew S.*

In ***Steven W. v. Matthew S.*** (1995) 33 Cal.App.4th 1108, two men were presumed to be the child's father. The mother separated from Matthew and began living with Steven. The mother informed Steven that she was pregnant with his child, and together they told their friends, co-workers, and Steven's family the news. Steven attended childbirth classes and pre-natal doctor appointments with the mother, and he was present in the delivery room when the child was born. The mother named the child Michael, which is Steven's middle name, and identified Steven as his father on the birth certificate. For the next two and one-half years, Steven, the mother, and Michael lived together as a family unit. Thereafter, the mother and the child moved into Matthew's home, and Matthew thereafter also held the child out as his own. The mother and Matthew continued to permit Steven regular and continuing custodial time with the child.

The trial court found that both Matthew and Steven were presumed fathers [Matthew was a presumed because he was married to the mother when the child was born (***FC* §7611(a)**), he had taken the child into his home and held the child out as his own (***FC* §7611(d)**), and blood test results established that he was the child's biological father (***FC* §7555**); Steven was a presumed father because he had taken the child into his home and held the child out as his own (***FC* §7611(d)**)]. But, in light of the facts, the trial court found, and the appellate court affirmed, that the conflict between the presumptions weighed in favor of Steven, and therefore Steven was adjudged to be the father of the child.

b. *In re Jesusa V.*

In ***In re Jesusa V.*** (2004) 32 Cal.4th 588, the California Supreme Court extended its ***Nicholas H.*** holding to find that the lack of biological ties does not preclude a finding of presumed parentage where the presumed parent has a close relationship with the child. Whereas ***Nicholas H.***'s holding was based upon the fact that there was only one presumed father seeking to establish his parentage with no other candidate as a possible father, in ***Jesusa V.*** there were two presumed fathers (one of whom is biologically related) who were competing to be adjudged the father of the child.

The facts of ***Jesusa V.*** are such that Paul and Jesusa's mother had been married for 18 years and had five children together. During a three-year marital separation, Jesusa's mother became pregnant by her relationship with Heriberto giving birth to Jesusa. When Jesusa was less than two years old, Heriberto was arrested for raping and beating Jesusa's mother. At juvenile court proceedings following Heriberto's arrest, Paul promptly requested presumed father status. The trial court found that Paul has a substantial relationship with Jesusa; not only is Paul married to Jesusa's mother, he is the father of Jesusa's five siblings, all of whom live with him and have themselves established a close relationship with Jesusa; although Jesusa and her mother resided with Heriberto before his arrest and incarceration, they visited Paul at his home nearly every weekend; Paul provided shelter to Jesusa and her mother during periods of conflict between the mother and Heriberto, which periods sometimes lasted as long as a month.

Based on these facts, it was found that both Heriberto and Paul each could claim a presumption of fatherhood. And, applying the reasoning of ***Nicholas H.***, it was further found that this was "an appropriate action" in which the presumption of Heriberto's paternity could be rebutted notwithstanding that he was biologically related to the child. Thus, the California Supreme Court found no abuse of discretion in the fact that the juvenile court undertook to identify the presumption "which on the facts is found on the weightier considerations of policy and logic" and determined that Paul's presumption outweighed that of Heriberto's.

5. The Presumptions Are Applied On A Gender Neutral Basis

Family Code **section 7650** provides that "insofar as practicable" the provisions of the UPA apply to a determination of the existence or non-existence of a mother and child relationship.

a. *Elisa B. v. Superior Court (Emily B.)*

In ***Elisa B. v. Superior Court (Emily B.)*** (2005) 37 Cal.4th 108 the California Supreme Court held that a birth mother's former lesbian partner, who has no biological ties to the child, can establish a parent-child relationship under a gender neutral application of ***Family Code*** **section 7611(d)**. In that case, Elisa B. and Emily B. began living together in a lesbian relationship in August 1993. They later exchanged rings, established a joint bank account, and pooled their resources for household expenses. Both wishing to experience childbirth, they went to a fertility clinic together and underwent artificial insemination using sperm from the same anonymous donor so that their children would be biologically related. Elisa gave birth to a son in 1997, and Emily gave birth to twins in 1998. They gave their children hyphenated surnames by combining their last names and each cared for all three children at one time or another. Both moms breastfed all three children. By agreement, Emily was the stay-at-home mom caring for all three children, and Elisa was the primary breadwinner. In November 1999, Emily and Elisa separated, and until May 2001, Elisa continued to assist in the support of Emily and the twins, after which Emily began receiving AFDC for the twins. In June 2001, El Dorado County filed a complaint against Elisa to establish her parentage of the twins and for a child support order.

After granting review, the California Supreme Court found that Elisa is a presumed mother of the twins under ***Family Code*** **section 7611(d)** because (1) she received the children into her home and (2) she openly held them out as her natural children. And, having found that Elisa qualified as a presumed parent, applying the reasoning of ***Nicholas H.*** (discussed hereinabove), the court then found this is not an appropriate action in which to rebut that presumption with proof that she is not the children's biological mother because (1) she actively participated in causing the children to be conceived with the understanding that she would raise the children as her own together with the birth mother, (2) she voluntarily accepted the rights and obligations of parenthood after the children were born, and (3) there are no competing claims to her being the children's second parent.

In holding that Elisa could become the second parent of Emily's twins, ***Elisa B.*** disapproved those cases which had previously denied same-sex couples access to the judicial process for a determination of paternity/maternity. See ***Curiale v. Reagan*** (1990) 222 Cal.App.3d 1597, ***Nancy S. v. Michelle G.*** (1991) 228 Cal.App.3d 831, and ***West v. Superior Court (Lockrem)*** (1997) 59 Cal.App.4th 302.

COMMENT: Thus, in a same-sex case the analysis for determining whether the alleged parent is the second parent is as follows:

(1) Does the alleged parent qualify as a presumed parent under ***Family Code*** **section 7611(d)**, because:

- The alleged parent received the child into her home; and
- The alleged parent openly held the child out as her natural child?

(2) Are the facts of the case such that it is not "an appropriate" action in which the presumption may be rebutted with proof that the alleged parent is not biologically related, which is answered by the following questions:

- Did the alleged parent actively participate in causing the child to be conceived with the understanding she would raise that child as her own together with the other mother?
- Did the alleged parent voluntarily accept the rights and obligations of parenthood after the child was born?
- There are no competing claims that someone else is the second parent?

See ***E.C. v. J.V.*** (2012) 202 Cal.App.4th 1076 in which the court of appeal remanded to the trial court for it to analyze the facts with a clear understanding of the above criteria.

COMMENT: Whereas ***Elisa B.*** arose in a context of defending against a county's complaint to establish parentage for the purpose of collecting AFDC reimbursement and prospective child support, ***Charisma R. v. Kristina S. (Charisma R. I)*** (2006) 140 Cal.App.4th 301 was a private action in which the court found that a former lesbian domestic partner can affirmatively file a complaint to establish parental relationship with the child who was born to her former partner.

b. Registered Domestic Partners

Family Code **section 297 et seq.** permits domestic partners to register with the Secretary of State. The registered domestic partners are to be given the same rights,

protection, and benefits, and are subject to the same responsibilities, obligations, and duties under the law, as are granted to and imposed upon spouses. In particular, ***Family Code*** **section 297.5(d)** provides:

> "The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses."

Thus, if the partners register in conformity with the statute, the non-birth parent in an existing or former same-sex relationship will have the right to seek the rights and obligations of parentage with respect to a child born into the relationship as do spouses and former spouses.

6. The Presumptions Are Applicable In All Types Of Cases

Notwithstanding that ***Nicholas H.***, ***Jesusa V.***, and ***Elisa B.*** all arose from dependency proceedings, their holdings that under certain circumstances biology is not determinative of parentage are not limited to the dependency context. The reasoning of these three California Supreme Court cases are built upon the shoulders of non-dependency family law UPA cases, which are cited extensively throughout those Supreme Court opinions; and, indeed, dependency cases and family law UPA cases freely share the reasoning that under the appropriate circumstances biology should not be used to deprive a child of two parents to support and nurture him/her.

See ***Librers v. Black*** (2005) 129 Cal.App.4th 114, which arose as an action under the UPA, in which the court rejected the argument that ***Nicholas H.*** and ***Jesusa V.*** were not applicable but rather limited to the dependency context. The court stated that ***Family Code*** **sections 7611 and 7612** apply to determine parentage in adoptions, family law matters and UPA petitions, and in dependency cases.

D. PATERNITY BY EQUITABLE ESTOPPEL

An alleged parent's obligation to support a child may arise apart from the statutory presumptions and apart from whether the alleged parent is genetically related to the child.

1. Applies Only If The Alleged Father Knows The Truth That He Is Not Biologically Related To The Child.

A line of marital dissolution cases hold that the conduct of a husband with no biological ties to a child may nonetheless estop the husband from avoiding parental obligations

even after the husband's marriage to the child's mother is dissolved. ***Clevenger v. Clevenger*** (1961) 189 Cal.App.2d 658; ***In re Marriage of Valle*** (1975) 53 Cal.App.3d 837; ***In re Marriage of Johnson*** (1979) 88 Cal.App.3d 848.

The estoppel cases are based in large part on the same social policies that are promoted by the statutory presumptions of paternity:

> "The relationship of father and child is too sacred to be thrown off like an old sock, used and unwanted. We are dealing with the care and education of a child during his minority and with the obligations of the party who has assumed as a father to discharge it. The law is not so insensitive as to countenance the breach of an obligation in so vital and deep a relation, undertaken, partially fulfilled, and suddenly surrendered. [citing ***Clevenger***]" (***In re Marriage of Johnson***, *supra,* 88 Cal.App.3d at p. 852.)

All of the following elements must be satisfied to give rise to this equitable estoppel:

a. The putative father represented to the child that he was his/her father;

b. The child relied upon the representation by accepting and treating the putative father as his/her natural father;

c. The child was ignorant of the true facts; and

d. The representation was of such long duration that it frustrated the realistic opportunity to discover the natural father.

In ***In re Marriage of Valle*** and ***In re Marriage of Johnson***, the estoppel theory was applied to six-year parent-child relationships. The court in ***Johnson*** emphasized that no express representation of paternity is needed where such a representation can be implied from the husband's conduct: there, the mother's son, Jimmy, was born 10 days prior to the marriage of the mother and her husband; the husband had been present in the hospital at Jimmy's birth, held the baby, and participated in the name selection; the husband played a major role in the life of Jimmy for six years before the parties separated; and even after separation, until the dissolution proceeding commenced, the husband maintained a visitation schedule with Jimmy.

COMMENT: ***Valle*** was one of the early cases to open the possibility that if a husband is estopped to deny paternity for purposes of imposing the obligation to pay child support, "we perceive no good reason why the trial court should not have jurisdiction to award child custody when the parenthood is established by estoppel and when the issue is fairly and properly litigated with both parties present." (*Id.* at 842.)

In ***In re Marriage of Pedregon*** (2003) 107 Cal.App.4th 1284 it was held that a husband was obligated to pay child support based on parentage by estoppel given a 12-year parent-child relationship: the mother's son, David, was 10 months old when husband met the mother, 18 months old when husband moved in with mother and David, and 22 months old when husband married mother; husband treated David as his son, and David considers husband as his father; David used husband's last name as requested by husband, and calls husband "Daddy"; even at 12 years of age, David was unaware that husband is not his biological father; David has never met or heard of his biological father; and wife has not maintained contact with David's natural father.

2. *Does Not Apply If The Alleged Father Believes He Is The Child's Biological Father*

In ***Clevenger v. Clevenger***, *supra,* 189 Cal.App.2d 658 and its progeny, it was emphasized that the doctrine of equitable *estoppel* was narrowly limited to cases in which the alleged father represents to the child that he is the child's natural father, knowing that he was not, and the child believes him to be the natural father.

In ***County of San Diego v. Arzaga*** (2007) 152 Cal.App.4th 1336, it was found that the doctrine of paternity by estoppel did not apply to an alleged father where the factual circumstances established that he acted as the child's father believing that he was the child's biological father.

The facts of ***Arzaga*** were such that during an on-again/off-again relationship with Arzaga, Maria became pregnant and gave birth to a daughter. Maria told Arzaga he was the child's father. Although they never married, Arzaga and Maria (with the child) would stay at each other's houses several days a week; the child grew to address Arzaga as "Papi"; and, Arzaga was a constant father figure in the child's life. Even after Maria and Arzaga's relationship ended, Arzaga continued to visit with the child until she turned 14 years old, and until the child was 16 years old, she always believed Arzaga was her father. The trial court found that Arzaga believed he was the child's biological father and acted accordingly, and only stopped acting as her father when he received genetic tests. Based upon these facts, the trial court found that Arzaga was estopped from denying his parentage of the then 16-year-old child. The appellate court reversed, holding that the doctrine of parentage by estoppel did not apply to a man who mistakenly believed he was the child's biological father.

> "While we are sensitive to the emotional detriment that can result to a child who has relied upon conduct of a person who has held himself out as a father, it would be unfair, in our view, to apply the doctrine to an individual whose conduct was based on his *mistaken* belief that he actually was the child's natural father." (***County of San Diego v. Arzaga***, *supra,* 152 Cal.App.4th at p. 1348)

COMMENT: Even though ***Arzaga*** may have been correct in not applying the doctrine of equitable estoppel, it resulted in leaving a 16-year-old child fatherless. There is no discussion in the case as to why Arzaga was not found to have been the child's presumed father

under ***Family Code*** **section 7611(d)** and that it would not be an appropriate action in which to rebut that presumption because a 16-year-old child would be left fatherless.

E. GENETIC TESTS

1. Court Order For Genetic Testing

Family Code **section 7551** provides that in any civil action or proceeding in which paternity is a relevant fact, the court must order the mother, child, and alleged father to submit to genetic tests on the motion of any party to the action, so long as the motion is made at a time that does not unduly delay the proceedings. Additionally, the court may order such tests on its own motion, or on suggestion made by or on behalf of any person who is involved.

However, ***Family Code*** **section 7551** is not applicable to cases involving the application of the conclusive presumption of ***Family Code*** **section 7540** -- if the conclusive presumption can be rebutted by genetic tests, it must be done subject to the limitations of ***Family Code*** **section 7541**; if those limitations do not apply, and therefore the presumption cannot be rebutted, then paternity is no longer a relevant fact.

2. Presumption Of Paternity

a. There is a rebuttable presumption, affecting the burden of proof, of paternity if the results of genetic tests are that the alleged father cannot be excluded as a possible biological father, and that the paternity index is 100 or greater (probability of paternity of 99% or greater). ***FC*** **§7555**.

b. The statute does not specify what classes of evidence may be used to rebut the presumption, but cases have held that the presumption may be rebutted by means, including the following:

- Proof that the genetic testing was conducted improperly, or the wrong gene frequency table was used, or the opposing expert is biased, may demonstrate that the paternity index is not 100 or more, and therefore rebuts the presumption. ***County of El Dorado v. Misura*** (1995) 33 Cal.App.4th 73.

- Proof that the alleged father may be infertile or otherwise had no access to the mother during the period of conception would establish the prior probability of paternity is zero, and therefore shows non-paternity. ***City and County of San Francisco v. Givens*** (2000) 85 Cal.App.4th 51.

- Proof that another man who had access to the mother also has a high paternity index, which would raise a competing or inconsistent presumption (i.e., two related men could have access to the mother, or a woman may not know with which of two related men she had intercourse). ***County of El Dorado v. Misura,*** *supra,* 33 Cal.App.4th 73.

(See **section III.F.3.** for a complete discussion of use of genetic testing and tests.)

COMMENT: A presumption created by genetic tests is rebutted only by a preponderance of the evidence, whereas a presumption under ***Family Code* section 7611** requires the higher standard of clear and convincing evidence to rebut.

F. ARTIFICIAL INSEMINATION

1. Rights And Obligations Of The Husband

Family Code* section 7613(a)** provides that if a wife is artificially inseminated with semen donated by a man other than her husband, the husband is treated in law as the natural father of a child thereby conceived. Most understandably, the statute includes ***mandatory requirements to ensure that there is informed consent by the husband when the wife undergoes the artificial insemination procedure:

a. The husband's consent must be in writing and signed by him and his wife;

b. The physician and surgeon must certify the signatures of the husband and wife and the date of the insemination; and

c. The signed consent must be maintained as part of the medical record, where it shall be kept confidential and in a sealed file.

Although the statute does not explicitly so state, because the statute does require the physician to certify the date of the insemination, it would appear that the husband's written consent is required each time his wife is to undergo the artificial insemination procedure. Such a requirement is not burdensome and leaves no room for confusion on the part of the married couple or the physician regarding whether a consent previously given by the husband is still viable.

If all the requirements are met and a child is conceived as a result of the consented to artificial insemination, a conclusive presumption of the husband's paternity is created, and genetic tests may not be used to challenge that paternity at any time and under any circumstances. ***FC* §7541(e)**.

Even in the absence of strict compliance with ***Family Code* section 7613(a)**, a husband may be treated as if he is the natural father of a child born as a result of artificial insemination if he unequivocally agreed to the artificial insemination. ***In re Marriage of Buzzanca*** (1998) 61 Cal.App.4th 1410 (husband and wife agreed to have their genetically unrelated embryo implanted in a surrogate, but one month before the birth of the child, the husband filed a petition for dissolution of marriage and argued he was not the father of the child. Finding that the husband admitted that he agreed to the insemination and surrogacy, and even signed a consent form after insemination, the court applied ***Family Code* section 7613(a)** and found that the husband was estopped from denying that he was the father of the child).

2. *Rights And Obligations Of The Sperm Donor And Mother*

Family Code* section 7613(b)** provides that the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were ***not the natural father of a child thereby conceived, unless otherwise agreed to in writing signed by the donor and the woman prior to the conception.

In ***Jhordan C. v. Mary K.*** (1986) 179 Cal.App.3d 386, the court concluded that because there is no reference to marriage in **subsection (b)** of ***Family Code* section 7613**, it applies to all women, married or not:

> "Thus, the California Legislature has afforded unmarried as well as married women a statutory vehicle for obtaining semen for artificial insemination without fear that the donor may claim paternity." (***Jhordan C. v. Mary K.***, *supra,* 179 Cal.App.3d at p. 392.)

Family Code* section 7613(b)** does not make an exception for a known sperm donor whose claim of paternity will be denied so long as the semen was provided to a licensed physician for insemination of an unmarried woman. ***Jhordan C. v. Mary K., *supra,* 179 Cal.App.3d 386. And, even if there had been an intimate relationship between the man and the unmarried woman, his claim of paternity will also be denied so long as the child was conceived as a result of the man's semen being provided to a licensed physician for insemination in the unmarried woman. ***Steven S. v. Deborah D.*** (2005) 127 Cal.App.4th 319.

G. PROMISE TO FURNISH SUPPORT

An agreement in writing between an alleged or presumed father and the mother or child to furnish support for a child is enforceable according to its terms, and does not require any consideration. ***FC* §7614**. However, such an agreement to furnish support is subject to a parentage action to prove or disprove the parent-child relationship. ***FC* § 7632**.

III.
THE PARENTAGE ACTION

A. HOW THE ACTION MAY BE BROUGHT

1. Actions May Be Brought By Local Child Support Agency

a. Proceedings To Determine Paternity Incident To Obtaining Orders Of Child Support

The Department of Child Support Services ("DCSS") is charged with the duty to "administer all services and perform all functions necessary to establish, collect, and distribute child support." ***FC* §17200.** In carrying out its functions of establishing and enforcing child support orders, DCSS may bring an action in the name of the county on behalf of the child(ren) or a parent of the child(ren) to determine parentage/the appropriate child support payor. ***FC* §17404(a).**

***Family Code* section 17410** provides that in any action filed by the local child support agency where the minor child's paternity is in issue, before a hearing or trial of the paternity issue, the agency must provide the mother and the alleged father the opportunity to voluntarily acknowledge paternity by signing a paternity declaration as described in ***Family Code* section 7574** (see **section II.B.** for a complete discussion of the voluntary declaration of paternity). Additionally, ***Family Code* section 17414** provides that the court shall enter a judgment of paternity upon the filing of a written stipulation between the parties if that stipulation is accompanied by a written advisement and waiver of rights which is signed by the alleged father.

b. Determining Paternity Under The Uniform Interstate Family Support Act (UIFSA)

UIFSA (***FC* §§4900-4978**) is a procedural device designed to provide a simplified and inexpensive mechanism for enforcement of child and spousal support obligations of obligers located outside the jurisdiction in which the dependent spouse or children are present.

Although the provisions of UIFSA are most often used to enforce existing support orders, it does have a provision that in initiating or responding to a child support claim, the court of this state may adjudicate parentage as a prerequisite to the making or enforcing of a child support order. ***FC* §4965.** This parentage provision requires the court to apply the procedural and substantive laws of the ***Uniform Parentage Act,*** as adopted and applied by the State of California.

COMMENT: The various statutes, rules and procedures incident to governmental actions, including, but not limited to, constitutional rights to counsel, no attorney-client relationship created by the district attorney action, and attorney fees, are beyond the scope of this

reference guide. But, any private practitioner called upon to represent a client in such proceedings must be fully versed in all aspects of these district attorney proceedings.

2. *Actions May Be Brought Under The Domestic Violence Prevention Act*

Parentage may be determined in a Domestic Violence Prevention Act ("DVPA"), however, that determination is for the limited purposes of obtaining an order of no visitation to the restrained party in an action. If the court does determine parentage for purposes of making a DVPA order, it is without prejudice to any action to establish a parent and child relationship. ***Family Code* section 6323(b)(1).**

In a DVPA the court may accept a stipulation of paternity by the parties, if paternity is uncontested, and enter a judgment establishing paternity, subject to the set aside provisions of ***Family Code* section 7646. *FC* §6323(b)(2).** (See **section IV.D.** for a complete discussion of set aside provisions.)

3. *Actions May Be Brought Under The Uniform Parentage Act*

a. When There Is A Presumed Father

(1) To Establish Paternity

- Where a man qualifies as a presumed father under **subsection (a), (b)** or **(c)** of ***Family Code* section 7611** [i.e. where he married or attempted to marry the mother], an action to establish his paternity may be brought only by the child, the child's natural mother, or the presumed father. ***FC* §7630(a)(1).**

- Where a man qualifies as a presumed father under **subsection (d)** of ***Family Code* section 7611** [i.e. where he received the child into his home and held the child out as his own], an action to establish his paternity maybe brought by any interested party. ***FC* §7630(b).**

(2) To Establish Non-Paternity

- An action to establish the non-paternity of a man presumed to be the child's father under **subsections (a), (b)** or **(c)** of ***Family Code* section 7611** [presumed because the mother and man have married, or attempted to marry] may be brought only by the child, the child's natural mother, or the presumed father. ***FC* §7630(a)(2).**

- An action to establish the non-paternity of a man presumed to be the child's father under **subsection (d)** of ***Family Code* section 7611** [presumed because the man received the child into his home] may be brought by any interested party. ***FC* §7630(b).**

b. When There Is No Presumed Father

(1) To Establish Paternity

An action to establish paternity with respect to a child who has no presumed father, or whose presumed father is deceased, may be brought by (1) the child or personal representative of the child, (2) the state Department of Social Services, (3) the mother or the personal representative or parent of the mother if the mother has died or is a minor, or (4) a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. ***FC* §7630(c).**

(2) To Establish Non-Paternity

Family Code* section 7630(c)** speaks only of an action to establish paternity. But that does not mean a man who does not qualify as a presumed father lacks standing to bring an action to establish his non-paternity. In ***Said v. Jegan (2007) 146 Cal.App.4th 1375, the child's mother named a man as the father on the child's birth certificate, and years later the man brought an action to establish his non-paternity. It was undisputed that the man did not qualify as a presumed father under the marital presumptions [**subsections (a), (b),** and **(c)**]. However, the mother filed a declaration in the action alleging facts which the man disputed but, if true, would give rise to the "holding out" presumption of his paternity under **subsection (d)**. The court held that the man had standing to bring an action to establish his non-paternity as an "interested party" under ***Family Code* section 7630(b)** because "when an interested party seeks to prove he is not a child's father under [**§7611(d)**], ... he need only allege facts showing he *might* be the presumed father, then go on to disprove those facts at trial," ***Said v. Jegan***, *supra,* 146 Cal.App.4th at p. 1383 [emphasis in original].

COMMENT: ***Said*** leaves unanswered the question whether a man has standing to bring an action to establish his non-paternity where neither he nor the mother alleges that he qualifies as a presumed father under ***Family Code* section 7611**.

c. When There Is A Presumed Father And Another Man Claiming Paternity

(1) Dawn D. v. Superior Court (Jerry K.)

In ***Dawn D. v. Superior Court (Jerry K.)*** (1998) 17 Cal.4th 932, two men claimed to be the child's father: the mother's husband, whose paternity was presumed under ***Family Code* section 7611(a)**, and another man who alleged he was the child's biological father but admitted he did not qualify as a presumed father under any subsection of ***Family Code* section 7611**. Under these circumstances, the Supreme Court held that the man claiming to be the biological father lacked standing to bring an action to establish his paternity, and upheld the standing statute against the claim that it violates a biological father's fundamental liberty interest in establishing a relationship with his offspring. Relying on the United States Supreme Court case of ***Michael H. v. Gerald D.***, the court held that the interest of a man who impregnates another

man's wife in establishing a relationship with the child is not worthy of constitutional protection. In a concurring opinion, Justice Kennard sums up the social conscience of the court as follows:

> "A man who wishes to father a child and ensure his relationship with that child can do so by finding a partner, entering into a marriage, and undertaking the responsibilities marriage imposes. One who instead fathers a child with a woman married to another man takes the risk that the child will be raised within that marriage and that he will be excluded from participation in the child's life." (***Dawn D. v. Superior Court (Jerry K.)***, *supra,* 17 Cal.4th at 947.)

COMMENT: ***Dawn D.*** does not appear to overrule ***Michael M. v. Giovanna F.*** (1992) 5 Cal.App.4th 1272, where the court held that the UPA's standing provisions ***are*** unconstitutional if they preclude a biological father from bringing an action to establish his paternity where the mother was unmarried at the time of conception but then marries another man before the child is born.

(2) ***Craig L. v. Sandy S.***

Unlike the biological father in ***Dawn D.*** who had never developed a relationship with the child, in ***Craig L. v. Sandy S.*** (2004) 125 Cal.App.4th 36, the biological father alleged that since the child was born, he had assumed the paternal role in the child's life with the knowledge and consent of the mother and her husband: he signed a child support agreement and made the support payments; he and his wife took care of the child in their home three or four days a week when the mother went back to work shortly after birth; when the child was a few months old, the visits began including one overnight stay per week; and he held the child out to his family and friends as his son. Relying on these facts, the biological father brought an action to establish his paternity and his standing to do so was challenged in a motion to quash filed by the mother's husband. Reversing the trial court's order granting the motion, the appellate court held that the biological father had standing to bring the action as an interested party because he qualified as a presumed father under ***Family Code*** **section 7611(d)**.

d. To Determine A Mother And Child Relationship

Any interested person may bring an action to determine the existence or non-existence of a mother and child relationship. ***FC*** **§7650**. Persons who are "interested" include the woman claiming to be the child's mother, ***In re Salvador M.*** (2003) 111 Cal.App.4th 1353, and the child, ***In re Karen C.*** (2002) 101 Cal.App.4th 932.

B. WHEN THE ACTION MAY BE BROUGHT

1. No Statute Of Limitations

A paternity action may be brought at any time; there is no statute of limitations that limits the bringing of a paternity action, and laches may not be asserted as a bar to the action. ***Perez v. Singh*** (1971) 21 Cal.App.3d. 870. Indeed, actions to establish paternity have been brought by adults in an effort to establish their paternity to a man who is deceased. ***Estate of Cornelious*** (1984) 35 Cal.3d 461.

However, an action to establish the non-paternity of a man presumed to be the child's father under **subsections (a), (b)** or **(c)** ***Family Code*** **section 7611** must be brought, by the statutorily appropriate persons, within a reasonable time after obtaining knowledge of the relevant facts. ***FC*** **§7630(a)(2).** And, there are strict limitations relative to bringing an action to rebut the conclusive presumption of ***Family Code*** **section 7540** and an action to set aside the voluntary declaration of paternity. (See **sections II.A. and II.B.** for a complete discussion of the conclusive presumption and the voluntary declaration of paternity.)

2. Before Birth

An action to establish paternity may be brought before the birth of the child. ***FC*** **§7633.**

C. JURISDICTION AND VENUE

1. Subject Matter Jurisdiction And Venue

The superior court has jurisdiction in any proceedings brought under the ***Family Code FC*** **§200.**

A parentage action may be brought in any county in which the child resides or is found, or if the father is deceased, in any county in which the proceedings for probate of his estate have been or could be commenced. ***FC*** **§7620(b).**

2. Personal Jurisdiction

A person who has had sexual intercourse in this state which may have resulted in the conception of a child submits to the jurisdiction of the courts of this state concerning any action brought under the UPA, which embraces both parentage and support actions. ***FC*** **§7620(a).** Also see ***County of Humboldt v. Harris*** (1988) 206 Cal.App.3d 857 (in light of the predecessor of ***Family Code*** **section 7620(a)** the father's alleged act of sexual intercourse with the child's mother in California, together with the subsequent birth of the child in the state and financial support by public assistance, constituted the requisite minimum contacts sufficient to satisfy due process requirements for personal jurisdiction).

D. NOTICE OF THE ACTION

1. Notice To Respondents

Notice of the paternity action must be given to respondents by serving them with a copy of the Summons and Petition in compliance with the requirements of the ***Code of Civil Procedure*** for service of process in civil actions.

2. Notice To Non-Parties

Even if they are not parties to the action, the natural mother, each man presumed to be the father under ***Family Code*** **section 7611**, and each man alleged to be the natural father must be given notice of the action and an opportunity to appear. ***FC*** **§7635(b)**.

In ***Gabriel P. v. Suedi D.***, *supra,* 141 Cal.App.4th 850, the appellate court found that the trial court erred by entering judgment in favor of the biological father without joining the presumed father.

The notice to a non-party must be given in accordance with the provisions of the ***Code of Civil Procedure*** for service of process in a civil action, provided that publication or posting of the notice of the proceeding shall not be required. If a person who requires notice cannot be located, or his or her whereabouts are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person. ***FC*** **§7666(b)**.

COMMENT: Although there is no statutory provision as to who is required to give notice to a non-party, it would appear logical that the party who puts the non-party's paternity in issue would be required to give notice. For example, in an action brought by a woman naming a man as an alleged father, if that man raises an affirmative defense that a second man may be the natural father, the first man would be required to give the second man notice of the action.

3. Notice To The Child

A child(ren) 12 years of age or older, who is the subject of the action, ***must*** be made a party to the action and given notice. A child(ren) under 12 years of age ***may*** be made a party to the paternity action. ***FC*** **§7635**.

A minor who is a party to the paternity action must be represented by a guardian ad litem appointed by the court, whether the minor is the child whose paternity or non-paternity is sought to be established, or is a party in any other context. If the guardian ad litem is a relative of the child, that guardian ad litem need not be represented by counsel. ***FC*** **§7635**.

E. PENDENTE LITE ORDERS

1. Child Support

a. Payment of Support

The court has the discretion to make child support orders, in addition to ordering a father to pay the reasonable expenses of the mother's pregnancy and confinement. ***FC* §7637.**

Before the court may order a party to pay pendente lite support, the requesting party must prove by a preponderance of the evidence that the party who is requested to pay support is the father of the child. ***Carbone v. Superior Court of Napa County*** (1941) 18 Cal.2d 768.

In that the law does not distinguish between children born out of wedlock and children born in a marriage, the factors that determine the amount of child support under the Statewide Uniform Guideline apply upon proof of paternity. ***FC* §4050 et seq.**

b. Limitation On Discovery Of Financial Information

Although ***Family Code* section 3552** requires parents to produce income tax returns for the purpose of awarding child support, that code section does not apply in a paternity action until the issue of paternity is finally adjudicated. ***Thomas B. v. Superior Court (Sherry H.)*** (1985) 175 Cal.App.3d 255 (the court reasoned that the requirement to produce tax records applies only to "parents", and the legislature did not intend that they apply before parentage is conclusively established).

With respect to pendente lite support, the court in ***Thomas B.*** held that no financial records are discoverable until a prima facie showing of paternity has been made.

Thus, strict compliance with ***Thomas B.*** would require that the trial court bifurcate the issue of paternity from the issue of support at the pendente lite order to show cause. For example, where a mother is claiming that a man is the natural father of her child, and seeking pendente lite child support, that man need not produce any financial records until after the mother establishes his paternity by a preponderance of the evidence.

COMMENT: As a practical matter, in many parentage cases, it is very easy for the mother to establish the prima facie case of paternity. In such a case, the alleged father's insistence upon a bifurcated hearing of paternity before the production of his financial records may be seen as a dilatory tactic resulting in the alleged father being assessed attorney fees therefor.

2. Custody and Visitation

The court also has the discretion to make custody and visitation orders directed to the parties of the proceeding. ***FC* §7637.**

As in the support context, proper proof of paternity for custody and visitation rights requires a showing of parentage by a preponderance of the evidence. ***Gadbois v. Superior Court*** (1981) 126 Cal.App.3d 653 (since pendente lite support can be ordered to be paid by a man alleged to be the father, equity demands that with proper proof of paternity, an alleged father may be afforded the same consideration for pendente lite custody and visitation rights).

In a case involving the conclusive presumption of paternity (***FC* §7540**), the court can make orders of pendente lite custody and visitation only if the presumption is timely rebutted by genetic tests pursuant to ***Family Code* section 7541**, and the custody or visitation order would be in the best interest of the child. ***FC* §7604**.

3. ***Attorney Fees***

The court may order pendente lite attorney's fees, expert fees, and other costs of the proceeding, including blood tests. ***FC* §§7640** and **7605**. (See **section III.F.7.** for a complete discussion of attorney fees in actions brought under the UPA).

F. TRIAL ISSUES

1. ***Right To Jury Trial?***

The courts have traditionally recognized that paternity is a legal issue to be tried by a jury, and remaining issues, such as support and custody/visitation, should be tried by the court without a jury. ***Van Buskirk v. Todd*** (1969) 269 Cal.App.2d 680. However, several appellate court cases have held that there is no right to a jury trial to determine paternity in actions that were brought by the District Attorney under the former ***Welfare and Institutions Code* ("*W&IC*") *Sections*** (now actions brought by the local child support agencies pursuant to ***Family Code* section 17400 et seq.**).

County of El Dorado v. Schneider (1987) 191 Cal.App.3d 1263 (no constitutional right to a jury trial in an action brought under former ***Welfare and Institutions Code* section 11350**, after the alleged father refused to submit to blood tests); ***County of Butte v. Superior Court (Filipowicz)*** (1989) 210 Cal.App.3d 555, 559 ("Code of Civil Procedure section 592 does not provide a jury trial as a matter of right in a paternity action arising under Welfare and Institutions Code section 11350."); ***County of Sutter v. Davis*** (1991) 234 Cal.App.3d 319 (the right to a jury trial is measured by the common law of England, and paternity defendants had no right to a jury trial under English common law as it existed then, and therefore, the California Constitution does not provide paternity defendants the right to a jury trial).

Although there is no case denying the right of a jury trial to an alleged father in a private paternity case (not brought by the local child support agencies), most counties in the state have applied the non-jury policy in both private and governmental paternity actions.

2. *Standard Of Proof*

The mother has the burden of proving, ***by a preponderance of the evidence***, that the identified man is the father of her child. ***Walsh v. Palma*** (1984) 154 Cal.App.3d 290. The uncontradicted testimony of the mother that she had sexual relations with only the alleged father is sufficient to meet her burden of proof. ***Huntingdon v. Crowley*** (1966) 64 Cal.2d 647.

The burden of proof may be stronger or shifted by the effect of the presumptions of paternity. For example, if a man is a presumed father by virtue of a rebuttable presumption under ***Family Code*** **section 7611**, the burden is on the party opposing the application of the presumption to rebut it by clear and convincing evidence. ***FC*** **§7612**. Similarly, the party seeking to rebut the conclusive presumption of ***Family Code*** **section 7540** has the burden of doing so under the strict limitations of ***Family Code*** **section 7541** (only statutorily identified parties may bring a motion within the first two years of the life of the child for blood and genetic testing to rebut the presumption of the husband's paternity).

3. *Use Of Genetic Tests*

As discussed hereinabove (**section II.E.**), except in limited circumstances, on its own motion or the motion of any party to the action, the court must order the mother, child, and the alleged father to submit to genetic tests. There is a rebuttable presumption, affecting the burden of proof, of paternity if the results of genetic tests are that the alleged father cannot be excluded as a possible biological father, and that the paternity index is 100 or greater (probability of paternity of 99% or greater). ***FC*** **§7555**.

a. Refusal To Submit To Court-Ordered Blood And Genetic Testing

If, after an order is made to do so, a party refuses to submit to the blood test, the court may resolve the issues of paternity against the refusing party, without a trial on the merits. ***FC*** **§7551**. ***County of El Dorado v. Schneider*** (1987) 191 Cal.App.3d 1263. Additionally, a party's refusal to submit to court-ordered blood and genetic testing is admissible into evidence in any proceeding to determine paternity. ***FC*** **§7551**.

COMMENT: Good practice would dictate that if a party is refusing to submit to court- ordered blood tests, a motion to compel compliance should first be brought, and then, if the party still refuses, summary adjudication of the issue of paternity would be appropriate.

b. Types Of Genetic Tests

Family Code **section 7551** does not name any particular genetic test or specify which test may be ordered, but does define "genetic tests" as "any genetic test that is generally acknowledged as reliable by accreditation bodies designated by the United States Secretary of Health and Human Resources."

In years past, the HLA (Human Leukocyte Antigen) Test was the widely used parentage valuation blood test, and had been approved in many cases. However, DNA (Deoxyribonucleic acid) testing which can be less intrusive than HLA testing, has become commonplace in paternity evaluation testing.

c. Exclusionary And Probability Test Results

The paternity evaluation blood and genetic test results can conclusively exclude a particular person as the biological parent of the child, and therefore yield results in terms of whether a man is excluded as the biological father of a child. ***County of El Dorado v. Misura*** (1995) 33 Cal.App.4th 73. Thus, if the results exclude the man as the biological father, the issue of paternity must be resolved accordingly. ***FC* §7554.**

The same tests, however, cannot conclusively establish paternity. ***County of El Dorado v. Misura,*** *supra,* 33 Cal.App.4th 73. But, since the test results are exclusionary, if a man is not excluded as the biological father, the tests will yield a "probability of paternity" result, which is the statistical finding that there is a given numerical probability that the man is actually the child's father. *Ibid.* If the paternity index is 100 or greater (usually represented as a probability in excess of 99%), that man is legally presumed to be the child's biological father. ***FC* §7555.**

d. Genetic Test Results Are Admissible Only Upon Laying A Foundation As To Their Authenticity And Accuracy

Even if blood and genetic test results are relevant, they are not automatically admissible into evidence. The admissibility of those results depends on establishing the foundation for their admissibility, as follows:

(1) Live Testimony

An authorized custodian of records or other qualified employee of the laboratory at which the blood and genetic testing were performed may be called as a witness to testify as to the authenticity and accuracy of the test results.

(2) Declaration Under ***Family Code section 7552.5***

The necessity for live testimony to lay the foundation and authenticate the test results is alleviated by following the procedure set forth in ***Family Code* section 7552.5**. This section permits the blood and genetic test results to be admitted into evidence at a hearing or trial to establish paternity, without the need for foundation testimony of authenticity and accuracy, if all of the statutorily defined requirements are met.

The statutory requirements of ***Family Code* section 7552.5** are that no later than 20 days before any hearing in which the test results may be admitted into evidence, a copy of those results were served upon all parties by any method of service authorized under ***Code of***

Civil Procedure* section 1010 et seq.** The test results ***must be accompanied by a declaration under penalty of perjury stating in substance each of the following:

- The declarant is the duly authorized custodian of the records or other qualified employee of the laboratory, and has the authority to certify the records.

- A statement which establishes in detail the chain of custody of all genetic samples collected, including the date on which the sample was collected, the identity of each person from whom a genetic sample was collected, the identity of the person who performed or witnessed the collecting of the genetic samples and packaged them for transmission to the laboratory, the date on which the genetic samples were received by the laboratory, the identity of the person who unpacked the samples and forwarded them to the person who performed the laboratory analysis of the genetic sample, and the identification and qualifications of all persons who performed the laboratory analysis and published the results.

- A statement which establishes that the procedures used by the laboratory to conduct the tests for which the test results are attached are used in the laboratory's ordinary course of business to ensure accuracy and proper identification of genetic samples.

- The genetic tests were prepared at or near the time of completion of the tests by personnel of the business qualified to perform genetic tests in the ordinary course of business.

(3) Objection To Declaration Under Family Code section 7552.5

Any party served with blood and genetic test results and a declaration under ***Family Code* section 7552.5** may file written objections no later than five days prior to the hearing at which paternity is at issue. ***FC* §7552.5(b).** If the written objection is timely filed and served, an authorized custodian of records or other qualified employee of the laboratory must be called as a witness to testify as to their findings and be subject to cross-examination.

COMMENT: It would appear that the party objecting to the declaration, and forcing the live testimony of the expert, must have a very good reason to do so. Otherwise, that party can expect to be assessed the cost of the expert as well as attorney fees for requiring a hearing on the subject.

*4. **Defenses***

a. Legal Defenses

(1) Presumptions

The presumptions of ***Family Code* sections 7540** and **7611** can be used at trial as a defense to the claim of parentage. (See **sections II.A** and **II.C.** for a complete discussion of said presumptions.)

In ***Susan H. v. Jack S.*** (1994) 30 Cal.App.4th 1435, Susan brought an action against Jack alleging he was the biological father of her child. Because Susan was married and living with her husband at the time of conception, Jack successfully invoked the conclusive presumption of ***Family Code*** **section 7540** as a defense to Susan's action.

(2) Estoppel

Given all the elements of estoppel, one can be estopped from denying his or another's paternity. (See **section II.D.** for complete discussion of equitable estoppel.)

Additionally, estoppel can be used as a defense against another man's legal claim of paternity. In ***Guardianship of Ethan S.*** (1990) 221 Cal.App.3d 1403, a consolidated guardianship and paternity action, a husband sought to establish that he was the father of a child born to his wife during their marriage (relying upon the conclusive presumption). However, until he had filed his paternity action, the husband had represented to that child that another man, the biological father, was his father, and the child grew up believing these representations to be true. Applying the equitable estoppel of ***Clevenger***, ***Valle***, and ***Johnson***, the court found that the policy of preserving an existing father and child relationship between the child and his biological father is served by the estoppel and, therefore, held that the husband was estopped from denying the biological father's paternity.

(3) Sperm Donor

Family Code **section 7613(a)** provides that if a wife is artificially inseminated with the sperm donated by a man other than her husband, with the husband's consent, the husband is treated in law as the natural father of the child thereby conceived. Therefore, that section provides a defense for the husband and wife against a sperm donor who might seek to establish his parentage; and provides a defense to a sperm donor against a claim of parentage by the husband and/or wife.

Family Code **section 7613(b)** provides that the donor of sperm provided to a licensed physician for use of artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of the child thereby conceived. Therefore, that section provides a defense for a woman against a sperm donor who might seek to establish his parentage; and provides a defense to a sperm donor against a claim of parentage by the woman. (See **section II.F.** for a complete discussion of parentage by way of artificial insemination.)

(4) Genetic Testing

In most cases, unless a party chooses to attack the scientific validity of the genetic test results, a high paternity index and corresponding probability creates a rebuttable presumption which may be dispositive. (See **section III.F.3.** for a complete discussion of genetic tests.)

Proof that the alleged father may be infertile or otherwise had no access to the mother during the period of conception would establish the prior probability of paternity is zero, and therefore shows non-paternity. ***City and County of San Francisco v. Givens*** (2000) 85 Cal.App.4th 51.

COMMENT: Remember, no matter how high the paternity index may be, if the blood and genetic test results are not properly introduced into evidence, they cannot establish paternity or non-paternity. ***Comino v. Kelley*** (1994) 25 Cal.App.4th 678.

b. Factual Defenses

(1) Impotence And Sterility

The inability to inseminate, whether due to sterility or impotence, may constitute a defense. However, a low sperm count does not preclude insemination but merely makes it less likely, and therefore may not be a defense. ***In re Marriage of Freeman*** (1996) 45 Cal.App. 4th 1437.

(2) SODDI

"Some other dude did it."

Evidence is admissible to affirmatively prove that the mother had sexual intercourse with another man, or other men, during the possible period of conception. ***Huntingdon v. Crowley*** (1966) 64 Cal.2d 647. However, if genetic test results have been introduced creating a rebuttable presumption of a man's paternity, his proof of the mother's sexual intercourse with another man is not sufficient to rebut his presumption without blood and genetic test evidence not excluding the other man. ***County of El Dorado v. Misura,*** *supra,* 33 Cal.App.4th 73.

(3) Timing

The putative father may acknowledge intercourse with the mother, but deny that the intercourse occurred during the period in which the mother most likely conceived.

Judicial notice can be taken that the normal gestation period is between 270 and 280 days. ***Louis v. Louis*** (1970) 7 Cal.App.3d 851.

(4) No Sexual Intercourse

Again, unless the trier of fact finds that there was sexual intercourse between the mother and the alleged father within the time period of possible conception, the genetic test results have no probative value and may be disregarded. ***City and County of San Francisco v. Givens,*** *supra,* 85 Cal.App.4th 51.

5. *Confidentiality Of Hearing And Records*

The hearing or trial may be held in closed court without admittance of any person other than those necessary to the action or proceeding. ***FC* §7643(a)**.

Even though it is not mandatory for the proceeding to be closed, it is common practice that if either party so moves the court, it will be ordered.

All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any public agency or elsewhere, are subject to inspection only upon an order of the court for good cause shown. ***FC* §7643(a)**. However, all papers and records pertaining to the action or proceeding are subject to inspection by the parties to the action, their attorneys, and agents acting pursuant to written authorization from the parties to the action or their attorneys. ***FC* §7643(b)**.

6. *Display of Child*

The court has discretion to view the child, or a photograph of the child, for comparison to the alleged father. ***Gallina v. Antonelli*** (1963) 220 Cal.App.2d 63. However, absent unusual circumstances, the court may refuse to view the child if it does not believe the viewing would be probative. ***Evidence Code* ("*EvC*") section 352**.

7. *Attorneys Fees*

***Family Code* section 7640**, which in 1994 was incorporated into the **Family Code** as part of the UPA, provides that the court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests. These fees and costs may be ordered paid by the parties, excluding any governmental entity, in proportions and at times determined by the court.

As part of 2004 California Legislation relative to attorney fees, ***Family Code* section 7605** was created which provides that in a proceeding under the UPA to establish physical or legal custody of a child or a visitation order, and in any proceeding subsequent to entry of a related parentage judgment, the court shall ensure each party's access to legal representation by making an attorney fee order based on income and need assessments. (***Family Code* section 7605** includes the authority for an award of attorney fees in a post-judgment custody/visitation proceeding.)

In ***Kevin Q. v. Lauren W. [Kevin Q. II]*** (2011) 195 Cal.App.4th 633, after noting that ***Family Code* section 7605** was part of a legislative package that also amended ***Family Code* section 2030** the court held that a trial court's analysis in making an award of attorney fees under ***Family Code* section 7605 *is the same as the court's analysis in making an award of fees under Family Code* section 2030.**

COMMENT: ***Kevin Q. II*** is a "must read" for its excellent discussion of the requisite considerations in making an attorney fee order whether under ***Family Code* section 2030**

or ***Family Code*** **section 7605**. (Even the effect upon an award of attorney fees due to reoccurring gifts from the litigant's parent is discussed.)

Notwithstanding ***Family Code*** **section 7640** or ***Family Code*** **section 7605**, in an action brought by the county, an alleged parent is not entitled to attorney's fees even though the establishment of parentage may be a prerequisite to liability. ***County of Santa Barbara v. David R.*** (1988) 200 Cal.App.3d 98. However, in ***City and County of San Francisco v. Ragland*** (1987) 188 Cal.App.3d 1375, the court awarded the defendant attorney's fees in a particularly egregious set of circumstances in which the district attorney's office, among other things, hid evidence, knew at various times the complaining witness had said she did not know who the father was, and had changed her mind.

IV.
THE PARENTAGE JUDGMENT

A. EFFECT OF JUDGMENT

1. Determinative For All Purposes

The judgment or order of the court determining the existence or non-existence of the parent and child relationship is determinative for all purposes except for actions brought for child neglect under ***Penal Code*** (**"*PenC*") section 271. *FC* §7636.**

Robert J. v. Leslie M. (1997) 51 Cal.App.4th 1642 held that under the doctrine of res judicata, an adjudicated father's action to establish his non- paternity was barred in light of his prior stipulation to paternity, even though blood tests established that he was not the child's biological father.

The facts were such that, fearful that a paternity lawsuit would hurt his chances of getting a deputy sheriff's job, Robert stipulated to a district attorney's judgment without seeking genetic tests or consulting counsel. Robert paid child support and arranged to have his parents care for the child. Four years later, the mother finally agreed to genetic tests, which excluded Robert as the biological father. Robert then filed an action to establish his non-paternity of the child.

The court held that re-litigating the issue of paternity would not serve "the ends of justice." The child's interest in continuing to receive financial support from Robert, and emotional support from Robert's parents, as well as the state's interest in preserving the finality of support judgments, outweighed Robert's interest "in avoiding the financial consequences" of the paternity judgment:

> "If there is one class of judgments where the doctrine of res judicata should be scrupulously honored, it is a paternity judgment." (***Robert J. v. Leslie M.***, *supra,* 51 Cal.App.4th at p. 1647.)

Guardianship of Claralyn S. (1983) 148 Cal.App.3d 81 held that a judgment establishing paternity, entered in an action brought by the county for reimbursement of public assistance, could not be challenged in a later guardianship proceeding brought by the child's grandparents, notwithstanding two blood tests excluded the purported father. The court reasoned that even though the doctrines of res judicata and collateral estoppel may not be invoked against the grandparents because they were not parties to the prior paternity action, there is "the public policy of maintaining parent-child relationships and insuring the finality of paternity judgments." (*Id.* at p. 85)

2. *May Be Challenged By A Child Not A Party To The Action*

A prior paternity judgment may not be binding on the child if the child was not joined and made a party to the action.

In ***Everett v. Everett*** (1976) 57 Cal.App.3d 65 [***Everett I***], the mother arranged a lump sum settlement of a paternity claim and entered into a stipulated judgment that Chad Everett was not the father of the child. After the stipulated judgment of non-paternity, the child was not estopped from bringing its own paternity action against Chad Everett through a guardian ad litem.

In ***Ruddock v. Ohls*** (1979) 91 Cal.App.3d. 271, a mother and her husband adjudicated non-paternity in their dissolution proceeding. The mother and husband were estopped from re-litigating the issue of paternity in a subsequent proceeding, but the judgment was not binding upon the child who was not joined and made a party in the dissolution action.

B. PROVISIONS AND ORDERS

In addition to determining parentage, ***Family Code*** **section 7637** provides that the judgment or order may contain any other provision directed against the appropriate party to the proceedings, concerning:

1. The duty of support;

2. The custody of the child;

3. Visitation privileges with the child;

4. The furnishing of bond or other security for the payment of the judgment;

5. Any other matter in the best interest of the child; and

6. Directing the father to pay the legal expenses of the mother's pregnancy and confinement.

C. CHANGE OF NAME OF CHILD

If the paternity petition had included a request for change of the child's name, the judgment may include a provision changing the child's name. ***FC*** **§7638.** If the judgment or order is at variance with the child's birth certificate (i.e., a judgment of paternity of a man different than that listed on the birth certificate), the court must order a new birth certificate be issued. ***FC*** **§7639.**

D. SETTING ASIDE JUDGMENT OF PATERNITY

Family Code* section 7645 et seq.** sets forth a special procedure for setting aside or vacating paternity judgments if genetic testing indicates that the previously established father of a child is not the biological father. The procedure applies to judgments that establish paternity, including those determinations made pursuant to **sections 300, 601,** or **602** of the ***Welfare & Institutions Code or a voluntary declaration of paternity. However, this procedure does not apply to a judgment in any action for marital dissolution.

1. Time Period For Bringing Motion

***Family Code* section 7646(a)** authorizes that a motion to set aside or vacate a judgment if brought by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons within two years after:

a. The previously established father having learned or should have learned about the paternity proceedings or judgment, whichever occurred first; or

b. The birth of the child if paternity was established by a voluntary declaration of paternity.

The trial court must not order genetic testing to determine whether to set aside a paternity judgment if the two-year time period for bringing the motion has expired. ***County of Orange v. Superior Court (Rothert)*** (2007) 66 Cal.Rptr.3d 689.

COMMENT: The ***Family Code* section 7646(a)** time limits do not affect any rights under ***Family Code* section 7575(c)** to set aside a voluntary declaration of paternity on grounds of mistake, inadvertence, surprise, excusable neglect.

2. Conditions Of Granting Motion

***Family Code* section 7648** gives the court discretion to deny the motion if it finds that such a ruling would be in the child's best interests, considering all relevant factors including (1) the child's age, (2) the length of time since the paternity judgment, (3) the nature, duration, and quality of the relationship between the previously established father and the child, (4) whether the previously established father has requested the parent-child relationship continue, (5) whether the biological father has indicated that he does not oppose such a continued relationship, (6) whether it would be beneficial or detrimental to the child in establishing the biological parentage of the child, and (7) whether the previously established father has made it more difficult to find or obtain support from the biological father.

***Family Code* section 7645 et seq.** does not impair a party's rights to seek to set aside a judgment pursuant to ***Code of Civil Procedure* section 473** [mistake, inadvertence, or excusable neglect].

E. ENFORCEMENT AND MODIFICATION OF THE JUDGMENT

If the existence of a father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated, the obligation of the father may be enforced in the same or other proceedings by (1) the mother, (2) the child, (3) the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral, or (4) any other person, including a private agency, to the extent the person has furnished or is furnishing these expenses. ***FC* §7641.**

The court has continuing jurisdiction to modify a paternity judgment or order. Therefore, child support orders incorporated into a paternity judgment are modifiable as is any other child support order. ***FC* §7642.**

TABLE OF AUTHORITIES

Cases

Statutes

TAB O

The Basics of Mindfulness for Self-Care and Stress Management

Dr. Marvin Gary Belzer

Introduction to Mindfulness for Self-Care and Stress Management

Marvin G. Belzer, Ph.D.
mbelzer@mednet.ucla.edu
UCLA Mindful Awareness Research Center
marc.ucla.edu

Mindfulness meditation

Mindfulness meditation

To begin

Mindfulness meditation

To begin

- Attention to a neutral home base to develop calmness, clarity of mind, concentration

Mindfulness meditation

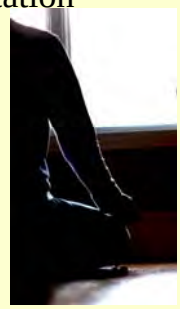
neutral home base

Mindfulness meditation

neutral home base
- sounds

Mindfulness meditation

neutral home base
•sounds
•body



Mindfulness meditation

neutral home base
•sounds
•body
•breath

Mindfulness meditation

neutral home base

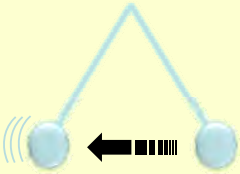
whatever

Mindfulness meditation

neutral home base

whatever.. experiential inquiry

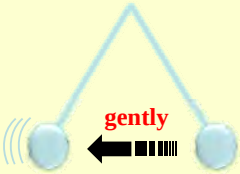
Mindfulness meditation "redirecting"



neutral home base

whatever

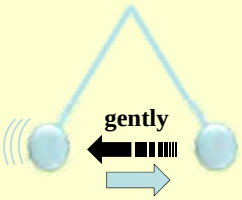
Mindfulness meditation "redirecting"



neutral home base

whatever

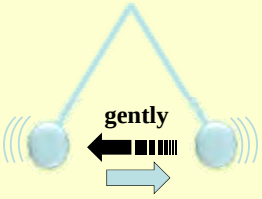
Mindfulness meditation



neutral home base

whatever *"face to face" with it*

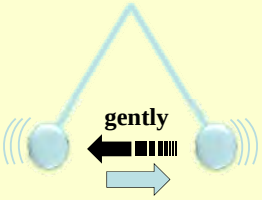
Mindfulness meditation



neutral home base

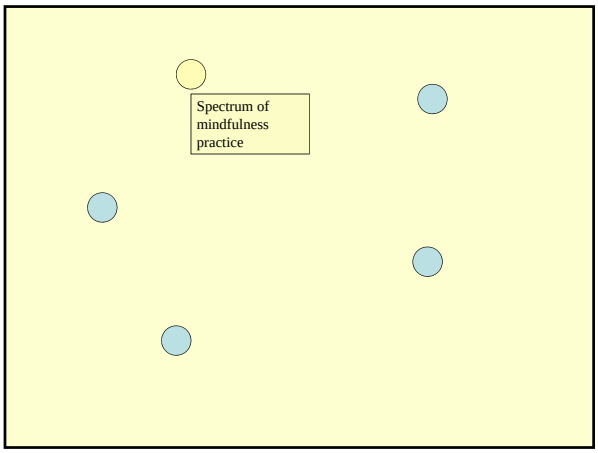
physical pain

Mindfulness meditation



neutral home base

emotions-- feel bodily sensations



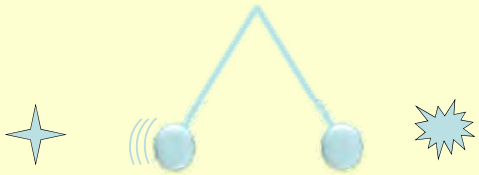
Spectrum of mindfulness practice

Spectrum of mindfulness practice

Spectrum of mindfulness practice

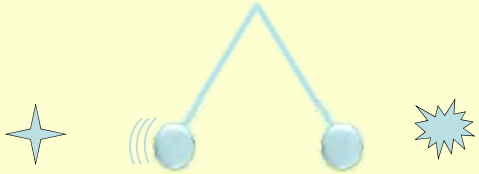
concentration

Spectrum of mindfulness practice



concentration

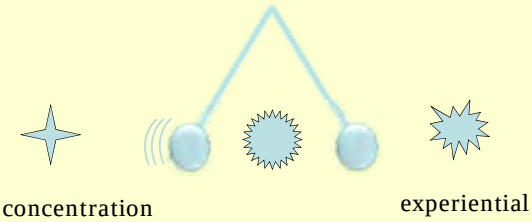
Spectrum of mindfulness practice



concentration

experiential inquiry

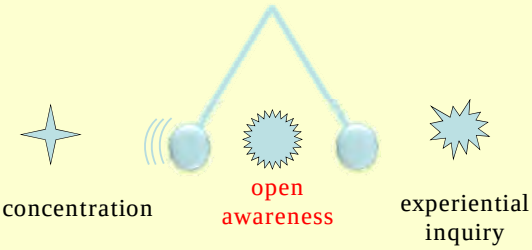
Spectrum of mindfulness practice



concentration

experiential inquiry

Spectrum of mindfulness practice

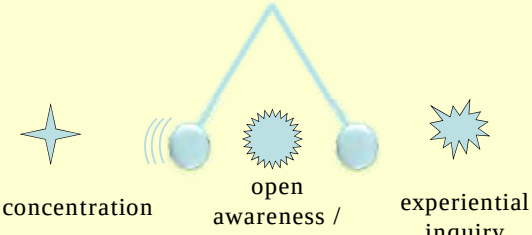


concentration

open awareness

experiential inquiry

Spectrum of mindfulness practice

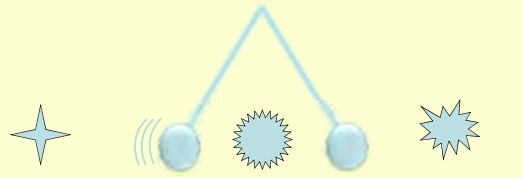


concentration

open awareness / choiceless

experiential inquiry

Spectrum of mindfulness practice

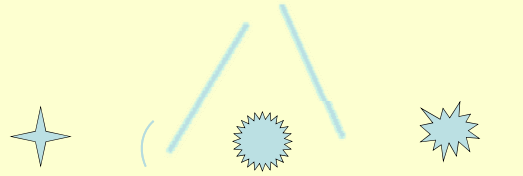


concentration

open awareness / choiceless / narrative unravels

experiential inquiry

Limits of pendulum model

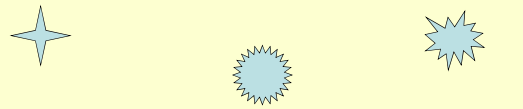


concentration

open awareness / choiceless / narrative unravels

experiential inquiry

Limits of pendulum model



concentration

open awareness / choiceless / narrative unravels

experiential inquiry

concentration

open awareness / narrative unravels /choiceless

experiential inquiry

Skillful mindfulness practice depends on finding one's own balance moment by moment within this spectrum.

concentration

open awareness / narrative unravels /choiceless

experiential inquiry

Mindfulness can be also practiced in the midst of daily life.

Mindfulness can be also practiced in the midst of daily life.

STOP

STOP

(not the best acronym but ..)

STOP

(not the best acronym but ..)

***S**top*

STOP

(not the best acronym but ..)

***S**top*

***T**ake a breath*

STOP

(not the best acronym but ..)

- ***Stop***
- ***Take a breath***
- ***Observe***

STOP

(not the best acronym but ..)

- ***Stop***
- ***Take a breath***
- ***Observe***
- ***Proceed***

STOP

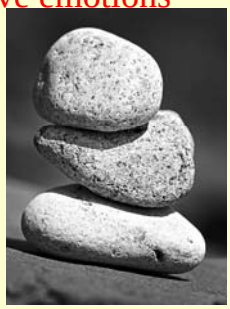
(not the best acronym but ..)

- ***Stop***
- ***Take a breath***
- ***Observe***
- ***Proceed***

Ten seconds is enough time to do this

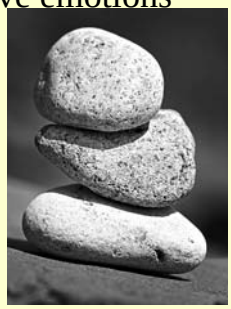
Cultivating positive emotions

Cultivating positive emotions



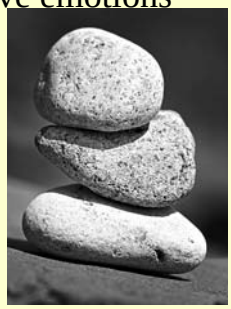
Cultivating positive emotions

- Gratitude



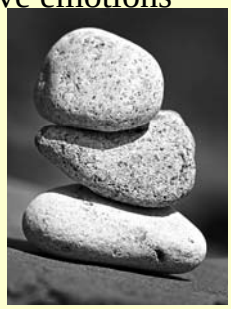
Cultivating positive emotions

- Gratitude
- Kindness



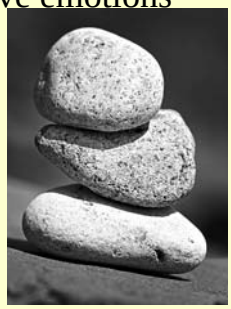
Cultivating positive emotions

- Gratitude
- Kindness
- Joy



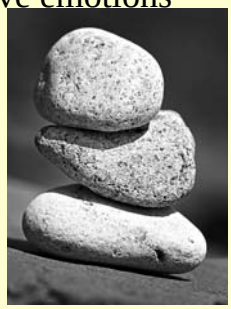
Cultivating positive emotions

- Gratitude
- Kindness
- Joy
- Forgiveness



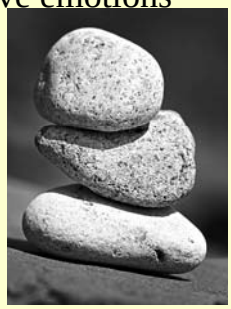
Cultivating positive emotions

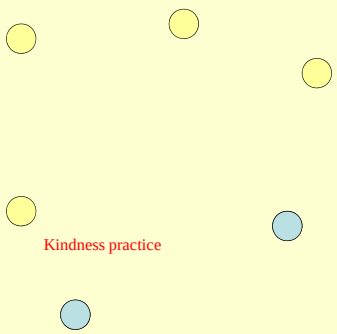
- Gratitude
- Kindness
- Joy
- Forgiveness
- Compassion



Cultivating positive emotions

- Gratitude
- Kindness
- Joy
- Forgiveness
- Compassion
- Equanimity





Kindness practice

home base:
image of "easy" person
or animal

Kindness practice

home base:
image of "easy" person
or animal;
reflection on what you like

Kindness practice

home base:
image of "easy" person
or animal;
reflection on what you like;
wishing them well

Kindness practice

home base:
appreciation of
goodness

Kindness practice

whatever

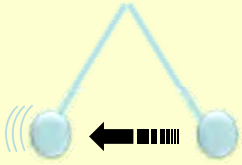
home base:
appreciation of
goodness

includes mindfulness practice

whatever
experiential
inquiry

home base:
appreciation of
goodness

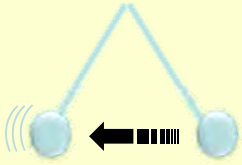
includes mindfulness practice



home base: appreciation of goodness

whatever

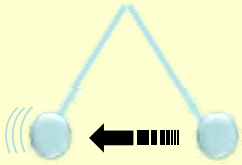
also an *option within* mindfulness practice ("replacing")



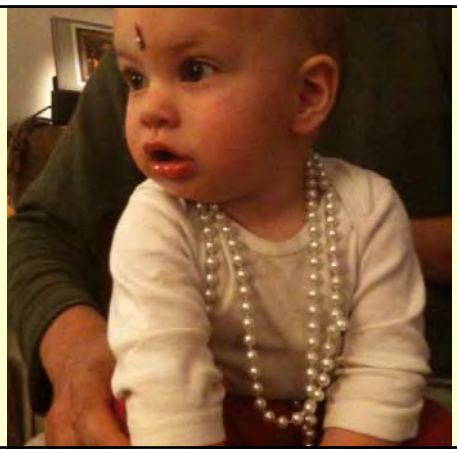
home base: appreciation of goodness

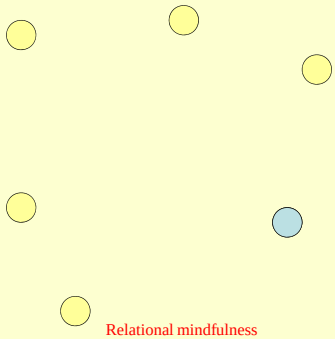
pain, other difficult states

Kindness practice as mindfulness practice with beings in mind



whatever





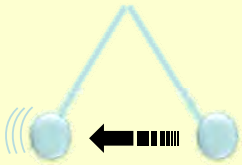
Relational mindfulness

home base:
another person

Relational mindfulness

home base:
another person
(real live person!)

Relational mindfulness



home base:
another person

whatever

- **Teen Retreat**
- **Daily Schedule**

- 6:30am . . . Wake Up
- 7:00 . . . . . Sitting Meditation
- 7:30 . . . . . Breakfast
- 8:00 . . . . . Dana Jobs (work and cleaning practice)
- 8:30 . . . . . Free Time (music playing, walks, swimming pool, etc.)
- 9:15 . . . . . Sitting Meditation
- 9:45 . . . . . Meditation Q & A
- 10:00 . . . . Walking Meditation
- 10:30 . . . . Sitting Meditation
- 11:00 . . . . Walking Meditation
- 11:30 . . . . Small Groups (groups divided by age)
- 12:30pm . . Lunch
- 1:00 . . . . . Free Time
- 2:15 . . . . . Mindful Movement (yoga, chi gong, stretching, etc.)
- 3:00 . . . . . Sitting Meditation
- 3:30 . . . . . Workshops (writing, painting, nature walks, etc.)
- 5:00 . . . . . Dinner
- 5:30 . . . . . Free Time
- 6:30 . . . . . Metta Sitting (Love/Friendship meditation)
- 7:00 . . . . . Metta Walk
- 7:30 . . . . . Dharma Talk
- 8:30 . . . . . Small Groups again
- 9:30 . . . . . Sitting Meditation
- 10:00 . . . . Bed Prep
- 10:30pm . . Lights out

  - Blue times are talking periods
  - Black times are silent periods

- **Teen Retreat**
- **Daily Schedule**

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- 7:00 . . . . . Sitting Meditation
- 7:30 . . . . . Breakfast
- 8:00 . . . . . Dana Jobs (work and cleaning practice)
- 8:30 . . . . . Free Time (music playing, walks, swimming pool, etc.)
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- 9:45 . . . . . Meditation Q & A
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- 11:30 . . . . Small Groups (groups divided by age)
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- 3:00 . . . . . Sitting Meditation
- 3:30 . . . . . Workshops (writing, painting, nature walks, etc.)
- 5:00 . . . . . Dinner
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- 6:30 . . . . . Metta Sitting (Love/Friendship meditation)
- 7:00 . . . . . Metta Walk
- 7:30 . . . . . Dharma Talk
- 8:30 . . . . Small Groups (groups divided by age)
- 9:30 . . . . . Sitting Meditation
- 10:00 . . . . Bed Prep
- 10:30pm . . Lights out

  - Blue times are talking periods
  - Black times are silent periods

Relational mindfulness

Relational mindfulness

We all can get better at giving attention to each other, and receiving attention from each other.

Relational mindfulness

We all can get better at giving attention to each other, and receiving attention from each other.

And it is fun to do this.

Introduction to Mindfulness for Self-Care and Stress Management

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