

2024 EDITION

CHILD SUPPORT ATTORNEY SOURCEBOOK



CSDA

Published by the
Child Support Directors Association of California

© 2024 • Child Support Directors Association

All rights reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, storage in an information retrieval system, or otherwise, without the prior written consent of the Child Support Directors Association.

This sourcebook has been published to aid child support attorneys, investigators, prosecutors, and others in the subject matter covered. It is sold with the understanding that CSDA is not rendering legal or other professional services. Readers are advised not to rely on this publication in substitution for their own professional judgment and legal research.

 **Editor's Note:** Throughout this publication the popular abbreviation "IRMO" for "In re Marriage of" has been utilized. Unless otherwise noted, all statutes cited are California statutes.

Cover and design by Dawn Dais

Child Support Directors Association
2150 River Plaza Dr., Suite 420, Sacramento, CA 95833
(916) 446-6700 telephone
www.csdaca.org

Printed in the United States of America

ACKNOWLEDGMENTS

The Executive Editor of the 2024 edition of the Child Support Attorney Sourcebook is Kimberly Dunworth, Supervising Attorney of Solano County DCSS. Special acknowledgment is given to the following child support professionals who have contributed significantly to the content and editing of the 2024 Child Support Attorney Sourcebook:

Contra Costa County DCSS: Mary Lindelof and Boyd Tarin, Child Support Attorneys; **Fresno County DCSS:** Michael Varin and Christeena Zauss, Child Support Attorneys; **Imperial County DCSS:** Liza Barraza, Director, and Guillermo Fernandez, Administrative Services Manager; **Kern County DCSS:** Jonathan Shugart, Child Support Attorney; **Los Angeles County DCSS:** Norma Andrade and Nancy Ruffolo, Child Support Attorneys; **Merced/Mariposa Regional DCSS:** David D. Haycraft, Chief Attorney; **Monterey County DCSS:** Tara Edria, Child Support Attorney; **North Coast Regional DCSS:** Stephanie Kretz, Child Support Attorney; **Riverside County DCSS:** James Armstrong, Samantha Larkin, and Krystle White, Child Support Attorneys; **San Bernardino DCSS:** Orsi Sabado, Child Support Attorney; **San Diego County DCSS:** Kevin O'Keefe and Shannon Welton, Child Support Attorneys; **Tulare County DCSS:** Christopher Miguel, Child Support Attorney; **Ventura DCSS:** Michael Marcelo, Child Support Attorney; **Yolo County DCSS:** Anne Glanzer, Child Support Attorney; **California DCSS:** Shannon Richards, Attorney III.

Ongoing acknowledgement and appreciation are extended to all attorneys and child support professionals who have worked on this and previous editions of the Sourcebook. It is through their efforts that this publication continues to be a valuable resource for child support professionals.

INTRODUCTION BY KIMBERLY DUNWORTH

Welcome to the 2024 edition of the Child Support Attorney Sourcebook. We are happy to be able to offer this edition to child support attorneys and professionals.

Steven Eldred, retired Director of Orange County DCSS, created the Sourcebook in 1997 as a small pocket reference guide for the DA child support attorneys to have statutory and case law easily accessible in court. Over the years, the little pocket reference book grew into the densely substantive volume you have today. Child support attorneys at every level of practice and experience use this book for training, to jump start research, or for a quick overview of a topic or procedure. Our IV-D commissioners and Family Law Facilitators use it too.

This book is written by child support attorneys, for child support attorneys and other child support professionals. A group of working LCSA attorneys research, update, edit, and offer practice pointers for each of the 17 substantive sections of the book. Some years see vast changes in the laws applicable to our practice; other years like this one are relatively quiet. The work remains the same. Contact me if you are interested in joining the Sourcebook group as an editor or cite checker!

Kimberly B. Dunworth is the current supervising attorney of Solano DCSS and was previously a staff attorney for Contra Costa DCSS.

SECTIONS

ACKNOWLEDGMENTS.....	I
INTRODUCTION BY KIMBERLY DUNWORTH.....	II
SECTIONS	III
TABLE OF CONTENTS.....	IV
ACRONYM KEY.....	XX
I. DEPARTMENT OF CHILD SUPPORT SERVICES	1
II. ESTABLISHMENT AND CIVIL PROCEDURE IN IV-D CASES.....	11
III. PARENTAGE	28
IV. SUPPORT.....	62
V. RELIEF FROM JUDGMENT.....	105
VI. ENFORCEMENT	116
VII. ARREARS	141
VIII. CONTEMPT AND CRIMINAL ENFORCEMENT	152
IX. REAL PROPERTY LIENS	168
X. WORKERS' COMPENSATION	176
XI. COLLECTING FROM ESTATES & TRUSTS	198
XII. BANKRUPTCY	205
XIII. INTERJURISDICTIONAL CASES	221
XIV TRIBAL CASES.....	261
XV. MILITARY CASES.....	271
XVI. ANALYZING TAX RETURNS	280
XVII. EVIDENCE AND OBJECTIONS.....	306
INDEX	314
TABLE OF CASES	328
TABLE OF STATUTES	338

ACKNOWLEDGMENTS	I
INTRODUCTION BY KIMBERLY DUNWORTH	II
SECTIONS	III
TABLE OF CONTENTS	IV
ACRONYM KEY	XX
WEBSITE RESOURCE INDEX	XXII
I. DEPARTMENT OF CHILD SUPPORT SERVICES	1
A. TITLE IV-D OF THE SOCIAL SECURITY ACT	1
1. IV-D	1
B. DEPARTMENT OF CHILD SUPPORT SERVICES ("THE DEPARTMENT")	1
1. California Department of Child Support Services	1
2. California Parent Locator Service	2
C. LOCAL CHILD SUPPORT AGENCY ("LCSA")	2
1. LCSA	2
2. Case Initiation	2
3. Filing Fees	2
4. Digital Signatures	3
5. Standing	3
6. Procedure When Support Has Already Been Established	3
7. Spousal Support Enforcement	4
8. No Below-Guideline Stipulations	4
9. No Attorney-Client Relationship	4
D. LCSA AS AN INDISPENSABLE PARTY	4
1. Public Assistance Cases	4
2. Non-Aided Cases	5
3. Stipulation	5
E. INDEPENDENT ACTIONS - FC § 17404(f)	5
1. General	5
2. Independent Enforcement Actions	5
3. Independent Modification Action	6
F. CONFIDENTIALITY	6
1. General	6
2. Exceptions	6
3. Domestic Violence Issues	8
4. UPA Court Files	8
5. Social Security Numbers	8
6. Juvenile Court Files	8
7. Welfare Information	9
8. Discovery Requests for LCSA Records	9
G. ATTORNEY'S FEES AWARDS AND SANCTIONS	9
1. General	9
2. Bad Faith Actions May Result in Sanctions	9
H. CONSOLIDATION OF ACTIONS - FC § 17408	9
1. General	9
2. Initial requirements	10
3. Procedural requirements	10

II. ESTABLISHMENT AND CIVIL PROCEDURE IN IV-D CASES.....	11
A. JURISDICTION.....	11
1. Personal Jurisdiction Generally.....	11
2. Subject Matter Jurisdiction	12
3. IV-D Court	12
B. VENUE IN IV-D ACTIONS OR PROCEEDINGS.....	14
1. General	14
2. Effect of Relocation of a Child.....	15
3. Court Appearances	15
4. Change in Venue Motion.....	15
C. INITIAL PLEADINGS	15
1. Summons and Complaint.....	15
2. Amended Summons and Complaint.....	15
3. Supplemental Summons and Complaint	15
4. Summons and Petition (S&P)	16
D. ESTABLISHING JUDGMENTS.....	16
1. Default Judgment.....	16
2. Amended Proposed Judgment (FC § 17430(c)).....	17
3. Motion for Judgment.....	17
4. Stipulation for Judgment.....	18
5. Appointment of Guardian ad Litem for Minor or Incompetent Party	19
6. Service more than 90 days after filing.....	19
E. INTRASTATE REGISTRATION.....	19
1. General	19
2. Filing Requirements	19
3. Notice Requirements	19
4. Motion to Vacate Registration.....	20
F. OTHER PARTY JOINDER.....	20
1. Joinder by Operation of Law	20
2. Joinder by Court Order	20
G. SERVICE OF PLEADINGS	21
1. Pleadings in General	21
2. Special Service Considerations	22
3. Timelines for Service	23
4. Service of Motions on the Other Party in IV-D Cases	25
H. POWER OF ATTORNEY	26
1. Definition.....	26
2. Legal Requirements.....	26
3. Confidentiality.....	26
4. Unauthorized Practice of Law	27
5. Servicemembers Civil Relief Act (SCRA) Cases	27
III. PARENTAGE.....	28
A. GENERAL CONSIDERATIONS	28
1. Legal Obligation	28
2. Applicable Law	28
3. Parentage Judgment.....	28
4. More Than Two Parents	28
5. Establishment of Parentage.....	28
6. Analyzing Parentage Presumptions.....	29

B. THE VOLUNTARY DECLARATION OF Parentage	29
1. Voluntary Declarations of Parentage (VDOP).....	29
2. Effect of VDOP	31
3. Full Faith and Credit	31
4. Challenges to VDOP	32
C. PARENTAGE THROUGH THE COURT PROCESS	36
1. Identifying Parentage Presumptions	36
2. Competing Presumptions	36
D. CONCLUSIVE MARITAL PRESUMPTION	36
1. Establishing the Presumption	36
2. Rebutting the Presumption	37
3. Application to Registered Domestic Partners.....	39
E. REBUTTABLE PRESUMPTION RAISED BY GENETIC TEST RESULTS	39
1. General	39
2. Privacy Rights and DNA.....	39
3. Establishing the Presumption	40
4. Rebutting the Presumption	40
5. Court-Ordered Testing.....	40
6. Administratively Ordered Testing	41
7. Admission of Genetic Testing	41
8. Refusal to Comply	41
9. Required Judicial Admonitions.....	42
F. THE 7611(d) PRESUMPTION – HOLDING THE CHILD OUT AS HIS/HER CHILD.....	42
1. Establishing the Presumption	42
2. Rebutting the Presumption	43
3. Parentage by Estoppel	44
G. OTHER 7611 PRESUMPTIONS	45
1. General	45
2. Establishing the Presumption	45
3. Rebutting the Presumption	46
H. CONFLICTING PRESUMPTIONS	46
1. Policy and Logic	46
2. FC § 7611 Parent Petition to Set Aside VDOP	46
3. No Automatic Preference.....	47
I. JUVENILE COURTS AND PARENTAGE CASE LAW	47
1. Duty to Establish Parentage	47
2. Presumed, Biological, and Alleged Fathers.....	48
J. SAME-SEX PARTNER CASES	49
1. Mother and Child Relationship	49
2. VDOPs and same sex cases.....	50
3. Estoppel	50
K. ASSISTED REPRODUCTION	50
1. Definitions.....	50
2. Surrogacy	51
3. Sperm Donors	52
4. Statutory Forms	54
L. APPOINTMENT OF GUARDIANS AD LITEM IN PARENTAGE PROCEEDINGS.....	55
1. Guardian	55

M. PARENTAGE DISESTABLISHMENT	55
1. Using Biology to Vacate Parentage Judgments.....	55
2. Standing	55
3. Statute of Limitations	56
4. Contents of the Motion (FC § 7647)	57
5. Venue	57
6. Service of the Motion.....	57
7. Appointment of Guardian Ad Litem	57
8. Genetic Testing.....	57
9. Setting Aside the Judgment	58
10. Reimbursement.....	58
11. Limits to Set Aside on Equitable Grounds	58
12. Stipulated Termination of Parental Rights	59
N. NEW EVIDENCE	59
1. Res Judicata.....	59
IV. SUPPORT.....	62
A. DOES A SUPPORT OBLIGATION EXIST?	62
1. Parents' Legal Duty to Support Child.....	62
2. Duration of Support	66
3. Death of a Parent.....	67
4. Unique Aid Cases.....	68
5. Support of Adult Disabled Child.....	72
6. Order Commencement.....	73
B. GUIDELINE CALCULATION	73
1. Guideline	73
2. Guideline Calculator.....	74
3. Principles	74
4. Multiple Parents	75
5. Aid Status is Relevant	75
6. Adult Disabled Child.....	76
7. Child's Income.....	76
C. REBUTTING THE GUIDELINE AMOUNT.....	76
1. Factors for Deviating	76
2. Written Findings.....	77
3. Burden of Proof.....	77
4. Special Circumstances.....	78
5. Guideline Exceeds Public Assistance Grant.....	78
6. Relocation	78
7. Discretion Limited	78
D. STIPULATED AGREEMENTS FOR CHILD SUPPORT	78
1. LCSA Signature Necessary	78
2. Welfare Stipulations.....	79
3. Non-Welfare Stipulations	79
4. Change of Circumstances.....	80
E. INCOME AND SOURCES OF INCOME	80
1. Definition of Income Generally.....	80
2. Not Income	81
3. Fluctuating Income.....	82
4. Overtime.....	82
5. Bonus Income	82
6. Deferred Income.....	83
7. Employment Benefits.....	83

8. Self-Employment Income	83
9. Social Security Retirement or Disability (Title II Benefits).....	85
10. Military Pay.....	88
11. Veteran's Disability Benefits	88
12. Rental Income	91
13. New Spouse Income	91
14. Monetary Gifts	91
15. Personal Injury Settlements.....	92
16. Investment Income.....	92
17. Lottery Awards.....	92
18. Educational Loans.....	93
19. Life Insurance Benefits	93
20. Inheritances	93
21. Trusts and Trust Income	94
22. Capital Assets	94
23. Non-Taxable Income.....	95
F. EARNING CAPACITY/IMPUTING INCOME	95
1. General	95
2. Evidence	96
3. Bad Faith Showing Unnecessary.....	96
4. Misconduct Resulting in Termination.....	96
5. Credibility	97
6. Imputing Income to the Custodial Parent	97
7. Imputing Income to Noncustodial Parent Caretaker of Other Children.....	97
8. Imputing Income to Public Assistance Recipients.....	97
9. Welfare-to-Work Participant.....	98
10. Reasonable Work Regimen.....	98
11. Incarceration.....	98
G. TAX STATUS	99
1. Filing Status	99
2. State of Domicile	99
3. Dependency Exemptions.....	100
4. New Spouse Income for Tax Purposes	100
H. OTHER GUIDELINE FACTORS	100
1. Timeshare	100
2. Deductions.....	101
3. Hardships.....	101
4. Written Findings for Hardships	102
5. Low-Income Adjustment	102
6. Additional Child Support.....	103
I. MODIFICATIONS	103
1. Change of Circumstances.....	103
2. Impermissible Reasons for Change of Circumstances.....	104
V. RELIEF FROM JUDGMENT.....	105
A. GENERAL CONSIDERATIONS RE: SERVICE	105
1. Quash Service.....	105
2. Presumption	105
3. General Appearance.....	105
4. "Doe" as Person Served	105
5. Time for Service	106
6. False Proof of Service	106

B. MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLECT – CCP § 473(b)	106
1. Rule	106
2. Deadline	107
3. Proposed Answer	107
4. Judicial Officer.....	107
C. CLERICAL MISTAKES AND VOID JUDGMENTS – CCP § 473(d)	107
1. Clerical Mistakes.....	107
2. Void Judgment	108
D. LACK OF ACTUAL NOTICE – CCP § 473.5	108
1. Rule	108
2. Deadline	108
3. Affidavit and Proposed Answer.....	108
E. ACTUAL FRAUD, PERJURY, OR LACK OF NOTICE RELIEF – FC § 3691	108
1. Authority to Grant Relief	108
2. Required Findings.....	108
3. Bases for Relief.....	109
4. Deadline	109
5. Form	109
6. Limits on Set Aside.....	109
F. DISESTABLISHMENT OF PATERNITY	110
G. PRESUMED INCOME DEFAULT – FC § 17432	110
1. Presumed Income Set Aside.....	110
2. Substantial Difference	110
3. Deadline	110
4. Duty of the LCSA	111
5. Court Considerations	111
H. MISTAKEN IDENTITY – FC § 17433	111
1. Judicial Relief.....	111
2. Administrative Review	111
I. RELIEF IN DISSOLUTION ACTIONS.....	112
1. Rule	112
2. Required Findings.....	112
3. Deadlines.....	112
4. Limits on Set Aside.....	112
J. EQUITABLE RELIEF	113
1. Equitable Relief.....	113
2. Elements	113
3. Equitable Defenses	113
4. Extrinsic and Intrinsic Fraud	113
5. Family Code.....	114
K. INADEQUATE GROUNDS FOR RELIEF	115
1. Pro Per Litigants	115
2. Ignorance of the Law	115
VI. ENFORCEMENT	116
A. PRIORITY OF PAYMENTS.....	116
B. COMPETING CLAIMS TO CHILD SUPPORT FUNDS	116
C. EMPLOYERS AND Earnings ASSIGNMENTS	116
1. Employer and Earnings	118

2. Timeframe	118
3. Priority	118
4. Proration	119
5. Administrative Arrears Payments.....	119
6. Maximum Withholding Limits	119
7. No Credit Unless Payment is Received.....	121
8. Penalties for Failure to Honor Earnings Assignment.....	121
D. LICENSE SUSPENSION OR DENIAL.....	122
E. BANK LEVIES	123
1. Orders to Withhold (OTW)	123
2. Automatic Exemption.....	124
3. Claim of Exemption (COE).....	124
4. No Levy for Obligors Receiving SSDI.....	125
5. No Court Order Authorizing Levy Necessary	125
F. QUALIFIED DOMESTIC RELATIONS ORDERS	126
1. Defined Contribution Plans and Lump-Sum QDROs.....	126
2. Defined Benefit Plans.....	126
3. Alternate Payee(s)	127
4. ERISA-Exempt Government Retirement Plans	127
5. Request for Employer Information.....	127
6. QDRO Form	128
7. Tax Consequences	129
8. Limitations on QDROs.....	130
9. Caution - Potential Property Division Issues	130
10. PERS Intercept.....	130
11. Individual Retirement Accounts (IRAs).....	130
G. DEBTOR'S EXAMINATIONS	131
1. Turnover Order	131
2. Self-Incrimination.....	132
H. ORDERS FOR DEPOSIT OF MONEY OR ASSETS	132
1. Child Support Security Deposits	132
2. Order for Deposit of Assets.....	132
3. Good Cause for Reasonable Security	132
I. WRIT OF EXECUTION / ADMINISTRATIVE NOTICE OF LEVY	133
1. Writ of Execution	133
2. Administrative Notice of Levy.....	133
J. LIEN ON PENDING CIVIL ACTION.....	134
1. Priorities	134
2. Medical Lien.....	134
K. LABOR UNION MEMBERS	135
L. COMMUNITY PROPERTY ASSETS	135
M. FRAUDULENT CONVEYANCES	135
N. PASSPORT DENIAL	136
1. Withdrawal of Passport Denial.....	136
2. No Jurisdiction for Court Review	136
O. EVASION OF SUPPORT.....	136
P. PERSONAL PROPERTY LIENS	137
Q. VETERAN'S BENEFITS	137
1. Military Retirement Pay.....	137
2. VA Disability Compensation (service-connected)	138
3. VA Disability Pension (non-service connected)	140

R. PRIVATE CHILD SUPPORT COLLECTORS.....	140
VII. ARREARS	141
A. NO RETROACTIVE MODIFICATION	141
1. Reservation of Jurisdiction	141
2. Interest on Arrears.....	141
3. Incarceration	141
4. Child Care Expenses.....	141
B. LACHES	142
C. EQUITABLE CREDIT TOWARDS ARREARS	142
1. Siblings	142
2. Reconciliation.....	143
D. REFUND OF SUPPORT OVERPAYMENT	143
E. OVERPAYMENT CAUSED BY LUMP SUM PAYMENT OF DERIVATIVE BENEFITS	143
F. AGREEMENT TO WAIVE NON-WELFARE ARREARS...144	
G. INTEREST ON ARREARS	144
1. Effective Date	144
2. No Estoppel.....	144
3. Installment Judgment.....	145
4. Bankruptcy	145
5. Military	145
H. MOTION TO DETERMINE ARREARS	145
I. PRIORITY OF APPLICATION OF PAYMENTS AND TAX RETURNS.....	145
1. Payments Received Before January 1, 2009.....	145
2. Payments Received on or After January 1, 2009.....	146
J. CHILD SUPPORT DEBT REDUCTION PROGRAM	146
K. EFFECT OF RECONCILIATION OR MARRIAGE / REMARRIAGE OF PARTIES ON THE ORDERS	147
1. Orders Nullified During Reconciliation.....	147
2. Orders Terminated During Marriage/Remarriage.....	147
L. ESTOPPEL	147
1. Estoppel Against a Party.....	147
2. Elements of Estoppel.....	148
3. Estoppel Against the County.....	148
M. FAILURE TO IMPLEMENT CUSTODY OR VISITATION RIGHTS and CONCEALMENT	148
1. Interference with Visitation	148
2. Concealment of Child.....	148
3. No Defense when Concealment Terminates During Child's Minority	149
4. Equitable Discretion.....	149
N. ARREARS COLLECTION UPON DEATH OF PARENT	149
1. Death of Parent Receiving Support.....	149
2. Death of Parent Paying Support.....	149
O. INCARCERATED OBLIGORS	150
1. Administrative Suspension of Support FC § 4700.5.....	150
2. Exceptions.....	150
3. Adjustments Under Prior Versions of FC § 4007.5.....	151

VIII. CONTEMPT AND CRIMINAL ENFORCEMENT	152
A. CIVIL CONTEMPT VS. CRIMINAL CONTEMPT	152
B. CIVIL CONTEMPT.....	153
1. Different Statutes	153
2. Statute of Limitations	153
3. Standing	153
4. CCP § 1209.5 Elements.....	154
5. CCP § 1209 Elements.....	155
6. Penalty (CCP § 1218(c)).....	156
C. PROBATION CONDITIONS AND LIMITATIONS	156
1. Other Requests	157
2. Amended Affidavit.....	158
3. Jury trial.....	158
4. Right to Counsel	158
5. The Final Rule – Guideline to Follow Pursuant to 45 CFR § 303.6(c)(4).....	158
6. Bankruptcy	160
7. Appeal.....	160
D. DEFENSES TO CIVIL CONTEMPT	161
1. Inability to Comply	161
2. Employer Contempt	163
E. CRIMINAL ENFORCEMENT	163
1. Criminal Contempt – Misdemeanor.....	163
2. Failure to Provide – Misdemeanor or Felony	164
3. Failure to Maintain Child under 14.....	165
4. Federal Criminal Non-Support Prosecutions	166
IX. REAL PROPERTY LIENS	168
A. CREATING THE LIEN	168
1. Methods of Creation.....	168
2. Satisfaction or Release Necessary	168
3. Electronic Real Property Liens.....	168
4. Facsimile Signatures	168
5. Social Security Numbers	169
B. PROPERTY SUBJECT TO THE LIEN	169
1. Lien Attaches to All Real Property Interests	169
2. Subsequently Acquired Property.....	169
C. AMOUNT OF LIEN	169
1. Lien Amount is Amount Required to Satisfy the Judgment.....	169
2. Lien Extends to Modifications	170
D. DURATION OF LIEN AND EFFECT OF TRANSFER	170
1. Duration.....	170
2. Laches Against the State	170
3. Transfer or Encumbrance	170
4. Joint Tenancy/Rights of Survivorship	171
E. PRIORITIES AND SUBORDINATION	171
1. Priorities	171
2. Deeds of Trust.....	172
3. Tax Liens	172
4. Subordination.....	172
F. SATISFACTION OF JUDGMENT LIENS	173
1. Acknowledgment of Satisfaction of Judgment).....	173

2. Obligor's Demand.....	173
3. Title or Escrow Company's Demand.....	173
4. Full Satisfaction	173
5. Matured Installment	173
6. Partial Satisfaction of Judgment.....	174
G. RELEASE OF JUDGMENT LIEN	174
1. Release of Judgment Lien (DCSS 0240)	174
2. Types of Releases	174
H. INTERSTATE LIENS	174
1. Notice of Lien.....	174
X. WORKERS' COMPENSATION.....	176
A. INTRODUCTION TO THE WCAB SYSTEM	177
B. TERMINOLOGY	179
C. TYPES OF WORKERS' COMPENSATION BENEFITS ...	179
1. Temporary Disability (TD)	180
2. Permanent Disability (PD).....	180
D. COLLECTING FROM TD AND PD	182
1. Order/Notice to Withhold Income for Child Support (IWO)...	182
2. Permanent Disability Advances (PDA)	183
3. Child Support Lien against Permanent Disability.....	184
E. TYPES OF WORKERS' COMPENSATION SETTLEMENT	187
1. Two Options.....	187
2. Special Rules for Lump-Sum Payment of Lien.....	189
3. Special Consideration for Petition for New and Further Disability after a Stipulation and Award Only	190
4. Failure of Insurer to Satisfy Support Lien.....	191
F. DISMISSAL OF LIENS (8 CCR § 10888)	192
G. MISCELLANEOUS ISSUES	193
1. Electronic Adjudication Management System.....	193
2. Collecting from an Injured Worker After Settlement.....	193
3. General Considerations re: Evidentiary & Procedural Rules...	194
4. Other Physical Appearances by Lien Claimants	195
5. Discretionary Appearances by Lien Claimants	195
6. State-Wide List of WCAB Coordinators.....	196
XI. COLLECTING FROM ESTATES & TRUSTS	198
A. CHILD SUPPORT OBLIGATIONS ENFORCEABLE AFTER DEATH.....	198
1. Obligation Survives Death.....	198
2. Modification	198
B. PROBATE ESTATES OF DECEASED OBLIGORS	198
1. Creditor Claim.....	198
C. TRUST ESTATES OF DECEASED OBLIGORS	200
1. Claim.....	200
D. OBLIGOR AS THE BENEFICIARY OF A PROBATE ESTATE	201
1. File a Notice of Lien	201
2. Avoidance of Support Obligations	201
E. OBLIGOR AS A BENEFICIARY OF A TRUST ESTATE	202
1. Support is Payable from Beneficiary's Interest.....	202

2. Spendthrift Provision	202
3. Petition to Enforce Money Judgment.....	203
4. Trustee Liability.....	203
5. Court Discretion	203
F. CUSTODIAL PARTY AS DECEDENT	203
1. Ongoing Support Order Continues.....	203
2. Child Support is an Estate Asset.....	204
G. OTHER TRANSFER VEHICLES	204
XII. BANKRUPTCY	205
A. TERMINOLOGY	205
1. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)	205
2. Debtor	205
3. Creditor	205
4. Domestic Support Obligation (DSO).....	205
5. Automatic Stay.....	205
6. Bankruptcy Estate.....	205
7. Property of the Estate	205
8. Plan.....	205
9. Discharge.....	206
B. TYPES OF BANKRUPTCY	206
1. Bankruptcy Code Chapters	206
2. Chapter 7 “Liquidation Bankruptcy”	206
3. Chapter 13 “Wage-Earner Plan” or “Reorganization”	206
4. Chapter 11	207
C. REQUEST FOR NOTICE	208
1. Written Notice	208
2. Request for Notice	208
D. APPEARANCE OF CHILD SUPPORT CREDITOR.....	208
1. Admission	208
2. Exception.....	208
3. Form	209
E. AUTOMATIC STAY	209
1. Generally.....	209
2. Permissible Support Enforcement Actions	209
3. Enforcement Actions that Violate the Automatic Stay	212
4. Sanctions for Violations of the Automatic Stay	212
F. EFFECT OF CONFIRMATION ORDER	213
1. Confirmation Order Is Binding on All Creditors.....	213
2. Permissible Actions Dictated by Terms of Confirmation Order	213
3. Sanctions	215
G. OBJECTION TO CONFIRMATION	215
1. Objection to Confirmation.....	215
H. PROOF OF CLAIM	217
1. Proof of Claim.....	217
2. Chapter 13	217
3. Chapter 7	218
I. OBJECTION TO CLAIM BY DEBTOR	219
1. Objection.....	219
2. Exempt.....	219
3. Grounds.....	219

4. Cause	220
J. DISCHARGEABILITY OF SUPPORT DEBTS AND INTEREST ACCRUAL	220
1. Discharge.....	220
2. Interest.....	220
XIII. INTERJURISDICTIONAL CASES	221
A. UIFSA AND FFCCSOA BASICS	221
1. Uniform Interstate Family Support Act (UIFSA)	221
2. Full Faith and Credit for Child Support Orders Act.....	222
3. Interstate Recognition and Enforcement.....	222
4. State IV-D Agency Services in Intergovernmental Cases.....	222
B. CHOICE OF LAW ISSUES	223
1. Issuing State's Law.....	223
2. Statute of Limitations (SOL) on Enforcement of Arrears.....	223
3. Forum State's Law.....	224
C. PROCEDURAL RULES	224
1. Case Initiation	224
2. Tribunal	225
3. Federally Mandated Forms.....	225
4. Supplemental Judicial Council forms.....	225
5. Standing	225
D. LCSA SERVICES	226
1. Services upon Request.....	226
2. Non-Disclosure of Identifying Information.....	226
3. Custodian of Records.....	227
E. APPEARANCE, DISCOVERY, AND EVIDENTIARY RULES	228
1. Appearance.....	228
2. Sworn Document.....	228
3. Certified Payment Record	229
4. Means of Transmission.....	229
5. Privileges	229
6. Financial.....	229
7. Enforcement of Multiple Orders	230
8. Attorney Fees and Costs.....	230
9. Evidence Abroad.....	230
F. JURISDICTION TO ESTABLISH SUPPORT ORDER WHEN PLEADING IS ALSO FILED OUT-OF-STATE: SIMULTANEOUS PROCEEDINGS	236
1. After Pleading Filed in Another State	237
2. Before Pleading Filed in Another State	237
3. No Pleading in Home State	237
G. JURISDICTIONAL CONFLICTS.....	238
1. Spousal Support.....	238
2. Child Support.....	238
3. Jurisdiction to Modify.....	240
4. Exceptions to the "Play Away" Rule.....	241
5. Required Attachment to Orders.....	243
6. Loss of CEJ.....	243
H. MULTIPLE ORDER ISSUES	243
1. Rules of Priority	243

2. Determining Controlling Order (DCO)	244
3. Reconciliation of Arrears (ROA).....	245
4. Validity of Order	245
5. CEJ.....	245
I. ENFORCEMENT OF OUT-OF-STATE SUPPORT ORDER WITHOUT REGISTRATION	246
1. Direct Income Withholding Orders (IWOs).....	246
2. Administrative Enforcement through LCSA	246
J. ENFORCEMENT BY REGISTRATION WITH CA COURT	247
1. Registration.....	247
2. Required Documents	247
3. Seeking Affirmative Relief.....	247
4. Enforceable as CA Order	248
5. Notice to "Nonregistering Party"	248
6. "Nonregistering Party's" Right to Challenge Registered Order	248
7. Defenses to Registration	249
8. Disposition of Contest.....	250
9. If No Challenge, Order Confirmed	250
10. Arrears Determinations.....	250
K. MODIFICATION AFTER REGISTRATION	252
1. Registration Prerequisite.....	252
2. Modification Shifts Exclusive Jurisdictional Situs.....	252
3. Governing Law.....	252
4. Filing Copy of Modified Order with Tribunals in Other States.....	253
5. Compare—CA Recognition of Modifications by a Tribunal in Another State	253
L. INTERNATIONAL	254
1. The 2007 Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance	254
2. Reciprocity.....	258
3. No UIFSA.....	259
4. Notarization Alternatives	259
5. New Definitions.....	259
6. Comity.....	260
XIV TRIBAL CASES	261
A. IN GENERAL	261
1. Tribal Sovereignty.....	261
2. Public Law 280	261
B. JURISDICTION.....	261
1. LCSA Obligation.....	261
2. State Court Jurisdiction.....	261
3. Tribal Court Jurisdiction	262
C. TRIBAL COURTS.....	263
1. Tribal Courts Generally	263
2. Applicable Laws	263
3. Appearances	264
D. TRIBAL IV-D	264
1. Tribal IV-D Generally	264
2. Yurok Tribe	265

3. Requirements	265
4. Paternity Establishment.....	265
5. Enforcement of Tribal Orders	265
6. Enforcement of In-Kind Orders (Non-Monetary)	266
7. Information Sharing.....	266
8. Differences Between Tribal IV-D and State IV-D Programs....	266
9. Transfer of IV-D Cases Between State and Tribal Court.....	267
E. ESTABLISHMENT AND MODIFICATION	268
1. Service of Process.....	268
2. Trust Money as Income	268
3. Modification	269
F. ENFORCEMENT	269
1. Exempt Indian Money	269
2. Income Withholding Orders.....	269
3. Options if an IWO is not Honored.....	269
4. Individual Indian Monies (IIM).....	270
5. Per Capita.....	270
G. HEALTH INSURANCE	270
XV. MILITARY CASES	271
A. SERVICE OF PROCESS (SOP) ON MILITARY MEMBERS.....	271
1. Access.....	271
2. Voluntary Acceptance of Service.....	271
B. MILITARY INCOME	272
1. Leave and Earnings Statement (LES)	272
2. Income	272
3. Taxation	273
4. Entitlements.....	273
5. Reserves and National Guard	273
6. Internet Resources.....	274
7. State of Domicile	274
C. SERVICEMEMBERS CIVIL RELIEF ACT (SCRA).....	274
1. Military Service Protections	274
2. Active Duty Servicemember.....	274
3. Proceedings.....	274
4. Active Duty Service Members Protected from Default.....	274
5. Staying the Action or Proceeding	276
6. Military Requirements for Support	278
7. Reduced Interest Rate for Pre-Active Duty Debt.....	278
XVI. ANALYZING TAX RETURNS	280
A. ACCESS TO TAX RETURNS	280
1. Prior to Commencing a Proceeding	280
2. The Family Code Requires Attachment of Tax Returns to The Income and Expense Declaration	280
3. After A Motion is Filed: Production and Discovery of Tax Returns.....	281
4. Confidentiality of Tax Returns	281
5. Refusal to Comply	281
B. REVIEWING TAX RETURNS	282

1. Tax Return Income Presumptively Correct as to a Parent's Income.....	282
2. Rebutting the Presumption	282
3. Multiple Years.....	282
C. FORM 1040: OVERVIEW	283
1. Schedules.....	283
2. Reportable Income and Allowed Deductions	284
D. SCHEDULE A - ITEMIZED DEDUCTIONS.....	285
1. Analysis	286
E. SCHEDULE B - INTEREST AND ORDINARY DIVIDENDS	286
F. SCHEDULE C - BUSINESS INCOME AND EXPENSES	286
1. General Assessment.....	287
2. Income Available for Child Support	287
3. Part I – Income	288
4. Part II - Expenses	288
5. Part III – Costs of Goods Sold	292
6. Part IV – Business Use of a Vehicle.....	293
7. Net Profit.....	294
8. Business Records	294
9. Earning Capacity	294
G. SCHEDULE D – CAPITAL GAINS AND LOSSES	294
1. Form 8949	295
2. Sale of a Business.....	295
3. Increased Equity in Home	295
4. Deferring Compensation.....	296
5. Selling a Profitable Business	296
H. SCHEDULE E-SUPPLEMENTAL INCOME AND LOSS	296
1. Analysis	296
2. Adding Back	296
3. Depreciation.....	297
4. Reasonable Rate of Return	297
5. Primary Residence.....	297
6. "Special Circumstances"	297
I. SCHEDULE F – PROFIT OR LOSS FROM FARMING	298
1. Depreciation.....	298
J. BUSINESS ENTITY TAX RETURNS	298
1. Compensation	298
2. Forms and Schedules	299
K. THE CORPORATION AND FORM 1120.....	299
1. Personal Income	300
2. Analysis	300
3. Discovery of Corporate Returns.....	300
L. THE S CORPORATIONS: FORM 1120 S AND PASS-THROUGH TAXATION	300
1. Section 1: Income.....	301
2. Section 2: Deductions	301
3. Schedule K-1 and Ordinary Business Income	301
M. THE LIMITED LIABILITY COMPANY: IS IT A PARTNERSHIP OR A CORPORATION?	302
N. QUALIFIED BUSINESS INCOME DEDUCTION	302
O. SCHEDULE K – PARTNERSHIP TAX RETURN	304

1. Discovery	304
2. Cash Distribution	304
3. Analysis.....	304
4. Privacy Rights of Partner	305
XVII. EVIDENCE AND OBJECTIONS	306
A. EVIDENCE	306
1. Formal Proceedings.....	306
2. Testimony	306
3. Exceptions to Live Testimony Requirement	306
4. Declarations	307
5. Non-Party Witness List.....	308
6. Offers of Proof.....	309
7. Birth Certificates.....	310
8. Genetic Test Results.....	310
9. Credibility.....	310
B. OBJECTIONS GENERALLY	310
1. Reasonable Control	310
2. Court Discretion	310
3. Objections at Trial.....	311
4. The Hearsay Rule.....	311
C. LIST OF COMMON OBJECTIONS.....	312
INDEX	314
TABLE OF CASES	328
TABLE OF STATUTES	338

ACRONYM KEY

The following acronyms are used throughout this publication:

AFDC	Aid to Families with Dependent Children
AKA	Also Known As
APJ	Amended Proposed Judgment
ACH	Automated Clearing House
B/C	Birth Certificate
GT	Genetic Test (Buccal Swab)
NSF	Bounced Check/Non Sufficient Funds
CCR	California Central Registry
CCSAS or CSE	CA Child Support Automated System
CIIP	California Insurance Intercept Project
CalWin/C-IV	IV-A/Social Services System
CI	Charging Instructions
CCC	Child Care Costs
CS	Child Support
CSENet	Child Support Enforcement Network
COAP	Compromise of Assigned Arrears
CEJ	Continuing Exclusive Jurisdiction
COLA	Cost of Living Adjustment
DOI	Date of Injury
DFAS	Defense Finance and Accounting Services
DPC	Direct Payment Credit
DV	Domestic Violence
DVQ	Domestic Violence Questionnaire
EW	Eligibility Worker
FTA	Failure to Appear
FVI	Family Violence Indicator/Family Violence Flag
FFC	Federal Foster Care
FIPS	Federal Information Processing Standard
FTB	Franchise Tax Board
I&E	Income and Expense Declaration
IJ	Initiating Jurisdiction
IWO	Income Withholding Order
J/S	Job Search
KinGAP	Kinship Guardian Assistance Program
LDOC	Legal Date of Collection
LCSA	Local Child Support Agency
MSA	Marriage Settlement Agreement
MFG	Maximum Family Grant
MEDS	Medi-Cal Eligibility Data System
MNO	Medically Needy Only
MSO	Monthly Support Obligation
NDNH	National Directory of New Hires
NMSN	National Medical Support Notice
NA	Never Assigned Arrears
NCP/CP	Non Custodial Parent /custodial Parent
NW	Non Welfare
NNR	Non Needy Relative
NAR	Notice of Acknowledgment of Receipt
NOM	Notice of Motion
NRPS	Notice Regarding Payment of Support
OAH	Order After Hearing

OSC	Order to Show Cause
ONTW	Order/Notice to Withhold Income
OJ	Other Jurisdiction
OP	Other Parent
O/P	Overpayment
PIF	Paid in Full
PPS	Parent Paying Support
PRS	Parent Receiving Support
PAR	Participant
POP	Parent Opportunity Program (formerly Paternity)
PA	Permanently Assigned Arrears
POS	Proof of Service
PJ	Proposed Judgment
PP	Putative Parent
QDRO	Qualified Domestic Relations Order
ROFO	Registration of Foreign Order
RJ	Responding Jurisdiction
R&A	Review and Adjustment
RFO	Request for Order
SCRA	Service Members Civil Relief Act
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI/SSP	Supplemental Security Income
SAT	State Audit Tool
SDU	State Disbursement Unit
SLMS	State Licensing Match System
S&C	Summons and Complaint
TANF	Temporary Aid to Needy Families
TRO	Temporary Restraining Order
UCHCC	Uncovered/Unreimbursed Health Care Costs
UIB	Unemployment Insurance Benefit
UIFSA	Uniform Interstate Family Support Act
URESA	Uniform Reciprocal Enforcement of Support Act
UAP	Unreimbursed Assistance Pool
VPA/Alt Pay	Voluntary Payment Agreement/Alternate Plan
VDOP	Voluntary Declaration of Parentage
WA	Wage Assignment
WIBR	Worker Initiated Balance Regeneration
WCAB	Workers Compensation Appeals Board

WEBSITE RESOURCE INDEX

ABC Legal Services INC https://www.abclegal.com/	235
Bureau of Labor Statistics (BLS) https://www.bls.gov	294
California Child Support Central https://central.dcss.ca.gov	196
California Courts – Child Support FAQs http://www.courts.ca.gov/8933.htm	102
California Courts Judicial Council UIFSA Forms http://www.courts.ca.gov/forms.htm?filter=IA	225
California Department of Child Support Services https://dcss.ca.gov/	74
California Department of Child Support Services Calculate Child Support https://childsupport.ca.gov/calculate-child-support/	303
California Department of Child Support Services Policy Resources https://dcss.ca.gov/policies/	1
California Department of Industrial Relations Workers' Compensation Appeals Board (WCAB) https://www.dir.ca.gov/dwc/WCGlossary.htm	179
California Department of Industrial Relations - Electronic Adjudication Management System (EAMS) https://www.dir.ca.gov/dwc/eams/eams.htm	193
California Employment Development Department (EDD) http://labormarketinfo.edd.ca.gov	294
California Tribal Courts Directory https://www.courts.ca.gov/14400.htm#panel14773	263
Defense Finance and Accounting Service (DFAS) - Military Pay and Benefits Resources https://www.dfas.mil/MilitaryMembers/	274
Defense Finance and Accounting Service (DFAS) – Tax Information https://militarypay.defense.gov/Pay/Tax-Information/	273
Hague Convention – Child Support http://www.hcch.net/en/instruments/conventions/specialised-sections/child-support	254
Hague Convention - Letters of Request to Obtain Evidence Abroad https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65	231
Hague Convention Forms https://www.acf.hhs.gov/css/form/hague-child-support-convention-forms	225, 254
Hague Convention List of Signatory Countries https://www.hcch.net/en/instruments/conventions/status-table/?cid=82	232
Hague Convention Model Forms https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65	231

Hague Convention Publications	
https://www.hcch.net/en/publications-and-studies/details4/?pid=6546&dtid=42	236
Internal Revenue Service (IRS) – Publication 463 – Travel, Entertainment, Gift and Car Expenses	
https://www.irs.gov/pub/irs-pdf/p463.pdf	293
Internal Revenue Service (IRS) – Publication 550 – Investment Income and Expenses https://www.irs.gov/pub/irs-pdf/p550.pdf	295
Internal Revenue Service (IRS) – Tax Form 1040 Individual	
https://www.irs.gov/pub/irs-pdf/f1040.pdf	287
Salary https://www.salary.com/	294
UIFSA Forms	
https://www.acf.hhs.gov/css/form/intergovernmental-child-support-enforcement-forms	225
US Department of State – Embassies and Consulates Listing	
https://www.usembassy.gov	233
US Dept of Health & Human Services Administration for Children & Families (ACF) http://www.acf.hhs.gov	136

I. DEPARTMENT OF CHILD SUPPORT SERVICES

A. TITLE IV-D OF THE SOCIAL SECURITY ACT

1. IV-D

IV-D (“Four-D”) is the term used for the federal legislation requiring States to create child support programs, as set forth in Title IV, Part D of the Social Security Act (SSA). (**42 USC § 651 et seq.**).

B. DEPARTMENT OF CHILD SUPPORT SERVICES (“THE DEPARTMENT”)

1. California Department of Child Support Services

The Department is the California state agency created under **FC § 17200** and designated to “...administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity.” (**FC § 17202**).

a. Coordinating Services

To coordinate delivery of child support services throughout the state, each county or group of counties has a Local Child Support Agency (LCSA) dedicated solely to child support services. (**FC § 17304**).

b. Accessibility

The Department must ensure that LCSA offices are reasonably accessible, and that the public is informed of LCSA services and operations. (**FC § 17210**). This includes a requirement through Department policy direction that bilingual or interpreter services be provided when necessary. (CSS Letter 16-05). Refer to this link for Department policy resources:
<https://dcss.ca.gov/policies/>

c. Uniformity

The Department is responsible for developing uniform forms, policies, and procedures for LCSAs and determining best practices for the establishment, enforcement, and collection of child support statewide. (**FC § 17306**).

2. California Parent Locator Service

The Department collects and disseminates information to authorized agencies to quickly locate noncustodial parents and their assets. (**FC § 17506(a)**). County welfare agencies and probation departments are entitled to this information to identify, locate, and notify parents of children of juvenile court proceedings to establish parental relationships, assess the appropriateness of child placement with a noncustodial parent, and locate adult relatives of children for possible placement. (**FC § 17506(c)**).

C. LOCAL CHILD SUPPORT AGENCY (“LCSA”)

1. LCSA

LCSA is the term used for the county (or multiple county) department of child support services responsible for securing child and spousal support, medical support, and determining paternity. (**FC § 17000(h)**).

2. Case Initiation

The LCSA shall take action if the child is receiving public assistance, including Medi-Cal, and, if requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal. (**FC § 17400(a)**). A case is initiated with the LCSA in one of three ways:

- a. An application for services from the custodial parent (CP) or noncustodial parent (NCP);
- b. A request from another Title IV-D Agency; or
- c. A referral from the local Health and Human Services Agency.

3. Filing Fees

The LCSA and case participants are not required to pay fees to file any pleading or document on issues relating to parentage or support in a case in which a Title IV-D child support agency is providing services under **FC § 17400**. (**GC § 6103**, **GC § 6103.9** and **GC § 70672**).

4. Digital Signatures

The LCSA may substitute original signatures with any form of electronic signature on pleadings, except those required to be signed under penalty of perjury. (**FC § 17400(b)(2)**). A substituted signature used by a LCSA has the same effect as an original signature. (*Ibid.*)

LCSAs may electronically file pleadings signed under penalty of perjury by also executing an original signed version prior to, or on the same day as, the day of the electronic filing. The LCSA may maintain the original signed pleading by uploading and imaging the document to CSE. (**FC § 17400(b)(3)**).

CRC 2.257(b) specifies that a "...document is deemed to have been signed by that person if filed electronically" if either: (1) the declarant has signed the document using an electronic signature and declares under penalty of perjury that the information submitted is true and correct or (2) the declarant, before filing, has physically signed the printed form of the document.

5. Standing

Because the LCSA is required to provide services regardless of whether the family is receiving aid (**FC § 17400(a)**), the LCSA has standing to appear even in non-aid cases. (**IRMO Dade** (1991) 230 Cal.App.3d 621).

6. Procedure When Support Has Already Been Established

If an order for support already exists, generally the LCSA will file a substitution of payee (Notice Regarding Payment of Support (NRPS) – JCF FL-632) and enforce the existing order. If, however, there is no existing order, the LCSA will initiate its own action by filing a summons and complaint or noticed motion.

a. A Notice Regarding Payment of Support (NRPS) (formerly Substitution of Payee) provides notice that payments made pursuant to a judgment or order for support should be made to a designated individual or Title IV-D agency other than what was originally specified in the judgment or order for support. (FC § 4204).

7. Spousal Support Enforcement

LCSAs will enforce spousal support, in addition to child support, if appropriate. (FC § 17400(a)).

8. No Below-Guideline Stipulations

The LCSA shall not stipulate to a child support order below the guideline amount if the children are receiving public assistance under the CalWORKs program, or an application for public assistance is pending. (FC § 4065(c); *See also* CSS Letter 15-09 regarding K-1 and 3F designations).

9. No Attorney-Client Relationship

There is no attorney-client relationship between the LCSA attorney and a recipient of its services. The LCSA represents the public interest in establishing, modifying, and enforcing support obligations. (FC § 17406(a); *Jager v. County of Alameda* (1992) 8 Cal.App.4th 294).

➲ **PRACTICE POINT:** If during a court proceeding, the judicial officer or any other party refers to a case participant as the “client” of the LCSA, the LCSA attorney should immediately clarify the record so that the case participant is not under the mistaken assumption that the LCSA represents her or him.

D. LCSA AS AN INDISPENSABLE PARTY

1. Public Assistance Cases

The LCSA is an indispensable party to any action for support where one of the case participants is receiving public assistance for the subject children. (W&I § 11477; CCP § 389(a)). The county is not bound by orders if no notice was given to the county and aid was being paid to one of the participants.

(*IRMO Mena* (1989) 212 Cal.App.3d 12, mod. Aug. 15, 1989).

2. Non-Aided Cases

The LCSA is arguably an indispensable party in non-aided cases where the LCSA is providing services. An “order for support that is entered without the [LCSA] having received proper notice shall be voidable upon the motion of the [LCSA].” (**FC § 4251(f)**). Additionally, per **FC § 17404(e)(4)**, the LCSA controls the support and parentage litigation and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the [LCSA] close his or her case, and the case has been closed in accordance with state and federal regulation or policy.

3. Stipulation

In a case in which the LCSA is providing services, a stipulated agreement is not valid unless the LCSA has joined in the stipulation by signing it. (**FC § 4065(c)**).

E. INDEPENDENT ACTIONS – FC § 17404(f)

1. General

Parties may bring independent actions to modify and enforce child support obligations while IV-D services are being provided. (**FC § 17404(f)(1)** and **FC § 17404(f)(2)**).

2. Independent Enforcement Actions

a. Advance Notice Requirement

A party bringing an independent enforcement action is required to provide written notice to the LCSA at least 30 days prior to filing the action. (**FC § 17404(f)(2)**; *See JCF FL-645*).

b. LCSA Responsibilities

Within 30 days of receiving notice, the LCSA must provide written consent or provide notice

of objection to the independent action. The LCSA can only object if currently using an administrative or judicial enforcement method, or if the independent action would interfere with an LCSA investigation. (**FC § 17404(f)(2)**; *See* JCF FL-646).

c. Failure to Respond

If the LCSA does not respond, then it shall be deemed to have given consent to the action. (**FC § 17404(f)(2)**).

3. Independent Modification Action

A party bringing an independent modification action is required to serve the LCSA with notice of the action and to provide the LCSA with a copy of the modified order within 15 calendar days after the order is issued. (**FC § 17404(f)(1)**).

F. CONFIDENTIALITY

1. General

All files, applications, papers, documents, and records established or maintained by the LCSA pursuant to the administration and implementation of the child and spousal support enforcement program are considered confidential and cannot be disclosed "...for any purpose not directly connected with the administration of the child and spousal support enforcement program." Further, disclosure of information is prohibited unless expressly authorized. (**FC § 17212(b)(1)**).

a. Proofs of Service

A proof of service filed by the LCSA shall not disclose the address where service of process was accomplished. (**FC § 17212(b)(3)**).

2. Exceptions

The LCSA may release certain information as follows:

a. The address where service was accomplished if the party served requests that information. (**FC§ 17212(b)(3)**).

- b.** All files and papers to a public entity for all civil, criminal, or administrative investigations or proceedings conducted in connection with the administration of the program, and to the welfare department administering a Title IV-A, IV-B or IV-E program. (**FC § 17212(c)(1)**).
- c.** A document requested by the person who wrote, prepared, or furnished the document to the LCSA may be disclosed to that person or to his/her designee. (**FC § 17212(c)(2)**).
- d.** The payment history may be released to the court, the obligor, the support recipient, or that person's designee. (**FC § 17212(c)(3)**).
- e.** Income and expense declaration of either parent to the other parent, for purpose of establishing or modifying a support order. (**FC § 17212(c)(4)**).
- f.** Public records subject to disclosure under the Public Records Act. (**FC § 17212(c)(5); GC § 6250 et seq.**).
- g.** Pursuant to court order after noticed motion, any disclosure required by due process of law. (**FC § 17212(c)(6)**).
- h.** Information indicating the existence or imminent threat of a crime against a child, or the location of a concealed, detained, or abducted child, or the location of a person concealing, detaining, or abducting such child, to any district attorney, law enforcement agency, or state or county child protective agency, or in judicial proceedings to prosecute the crime or protect the child. (**FC § 17212(c)(7)**).
- i.** The social security number, most recent address, and the place of employment of the absent parent, to an authorized person as defined in **42 USC § 653(c)**, if the authorized person filed a request for the information and the information has been provided to the California Parent Locator Service (PLS) by the federal PLS

pursuant to **42 USC § 653**. (FC § 17212(c)(8)).

j. A parent's name, social security number, most recent address, telephone number, place of employment, or other contact information may be released to a county welfare agency or county probation department pursuant to FC § 17506(c). (FC § 17212(c)(9)).

3. Domestic Violence Issues

Information shall not be released if a protective order has been issued, a good cause claim has been made under **W&I § 11477.04**, or if there is reason to believe that the release of the information may result in physical or emotional harm to the party or the child. (FC § 17212(b)(2)).

4. UPA Court Files

Except for a final judgment, papers and records contained in the court file in actions filed under the Uniform Parentage Act (UPA) (FC § 7600 et seq.) are confidential and, absent a court order, are subject to inspection only by parties to the action and their attorneys. (FC § 7643).

EXCEPTION: any LCSA has full access to inspect and copy all papers and records in a UPA court file for purposes of establishing parentage and child support orders, and enforcement of same. (FC § 7643(b)(2)).

5. Social Security Numbers

In an action for dissolution of marriage, nullity of marriage, or legal separation, the petitioner or respondent may redact social security numbers from any pleading or written document filed with the court. (FC § 2024.5).

6. Juvenile Court Files

LCSAs have the right to access otherwise confidential juvenile court files "for the purpose of establishing paternity and establishing and enforcing child support orders." (W&I § 827(a)(1)(N)). Information or documents obtained may not be disseminated and may not be used as an "attachment to any other documents" without the prior approval of the

presiding judge of the juvenile court.” (W&I § 827(a)(4)).

7. Welfare Information

Welfare records and information relating to any form of public social services shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of the welfare program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. (W&I § 10850(a)).

8. Discovery Requests for LCSA Records

The LCSA “...has a privilege to refuse to disclose official information...if the privilege is claimed by a person authorized by the public entity to do so and either... (1) disclosure is forbidden by an act of...Congress...or a statute...[or] (2) Disclosure...is against the public interest....” Additionally, all records maintained pursuant to the IV-D program shall be confidential and shall not be disclosed. (EC § 1040; FC § 17212(b); *County of San Diego v. Mason* (2012) 209 Cal.App.4th 376, 382).

G. ATTORNEY'S FEES AWARDS AND SANCTIONS

1. General

Attorney's fees cannot be assessed against governmental agencies in Family Law actions except when sanctions are appropriate pursuant to CCP § 128.5 or FC § 271. (FC § 273 and FC § 3652).

2. Bad Faith Actions May Result in Sanctions

Individual attorneys can still be liable for fees under CCP § 128.5 and CCP § 128.7 for improper behavior. Motions for sanctions must be heard by the IV-D Commissioner who presided over the proceedings from which the sanctions motion arose. (*Orange County DCSS v. Superior Court* (2005) 129 Cal.App.4th 798).

H. CONSOLIDATION OF ACTIONS – FC § 17408

1. General

FC § 17408 authorizes the LCSA to request the court consolidate actions upon noticed motion under certain circumstances.

2. Initial requirements

- a.** LCSA must be seeking to enforce both orders;
- b.** Child(ren) involved must have the same mother and father; and
- c.** Venue for all actions must be proper.

3. Procedural requirements

A motion for consolidation is made in the court case that will be the primary case file. (**FC § 17408(a)**). Upon consolidation, the LCSA is required to file a notice of the consolidation in the subordinate court action(s). (JCF FL-920). *See CRC 5.365* for additional requirements, including priority of consolidation.

II. ESTABLISHMENT AND CIVIL PROCEDURE IN IV-D CASES

A. JURISDICTION

1. Personal Jurisdiction Generally

A California court may exercise jurisdiction on any basis not inconsistent with the Constitutions of California or of the United States. (**CCP § 410.10**).

a. Personal Jurisdiction over a Resident

A California court has jurisdiction where the defendant is domiciled in California. (*Milliken v. Meyer* (1940) 311 U.S. 457).

b. Personal Jurisdiction over a Non-resident

A California court can exercise personal jurisdiction over a non-resident under the following circumstances: (**FC § 5700.201(a)**).

The individual is personally served with notice within this state. (**FC § 5700.201(a)(1); Burnham v. Superior Court of California** (1990) 495 U.S 604).

1) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a response. (**FC § 5700.201(a)(2); IRMO Torres** (1998) 62 Cal.App.4th 1367, 1380-81) Note that a general appearance of a party is the equivalent to personal service. (**CCP § 410.50(a)**).

2) The individual engaged in sexual intercourse in California and the child may have been conceived by that act. (**FC § 5700.201(a)(6); County of Humboldt v. Harris** (1988) 206 Cal.App.3d 857).

3) The individual has filed a California voluntary declaration of paternity/parentage (VDP). (**FC § 5700.201(a)(7)**).

4) There is any other basis consistent with the constitutions of California and the United States for the exercise of personal jurisdiction.

(*Int'l Shoe Co. v. State of Wash.*, *Office of Unemployment Comp. & Placement* (1945) 326 U.S. 310, 316 [defendant must have sufficient "minimum contacts" such that the exercise of jurisdiction would not offend "traditional notions of fair play and substantial justice"]; see also *IRMO Lontos* (1979) 89 Cal.App. 3d 61).

c. When Acquired

Jurisdiction is acquired over a party from the time the summons is properly served. (**CCP § 410.50(a)**).

d. Duration

Jurisdiction over the parties continues throughout subsequent proceedings in an action. (**CCP § 410.50(b)**).

2. Subject Matter Jurisdiction

The California Superior Court has jurisdiction in proceedings or actions under the Family Code. (**FC § 200**) (*See also* Section XIII – Interjurisdictional Cases)

3. IV-D Court

All cases in which the LCSA provides enforcement services "shall" be referred to a Title IV-D Child Support Commissioner. Title IV-D Commissioners automatically sit as temporary judges unless the LCSA or a party timely object. (**FC § 4251(b)**).

a. Authority of IV-D Commissioners

Pursuant to **FC § 4251(d)-(e)**, Title IV-D Commissioners shall:

- 1) Review and determine ex parte applications for orders and writs;**
- 2) Take testimony; Establish a record, evaluate evidence and make recommendations or decisions;**
- 3) Enter judgments or orders based upon voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid;**

- 4) Enter default orders and judgments;
 - 5) Order all parties to submit to genetic testing if parentage is at issue;
 - 6) Join issues of custody and visitation in the LCSA's actions upon application of any party.
- a) After joinder, the commissioner shall refer parents for mediation, accept stipulations regarding custody and visitation, and refer contested issues concerning custody and visitation to a judge or another commissioner.

➲ **PRACTICE POINT:** In some counties, local rules may restrict custody and visitation proceedings to family law courts.

- b) IV-D Commissioners may only hear contested custody and visitation issues if the court has adopted procedures to segregate the costs for these hearings.

b. IV-D Court Notice Requirements

1) The Title IV-D commissioner is required to advise parties prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. (FC § 4251(b)).

2) However, failure to notice the parties of the right to object prior to each hearing is not prejudicial where the party was aware of the right to object. (*IRMO Djulus* (2017) 10 Cal.App.5th 1042, 1049-50 [where despite a party's participation in a hearing before a commissioner, failure to obtain consent for the commissioner to hear the case rendered the resulting dissolution of judgment void])

c. Objection to IV-D Commissioner

Pursuant to FC § 4251(c), a party may object to the Commissioner acting as a temporary judge in

the following manner:

- 1) The objection must be made prior to the matter being heard. Consent may be implied; (*Kern County DCSS v. Camacho* (2012) 209 Cal.App.4th 1028)
- 2) If a party timely objects to the Commissioner sitting as a temporary judge, the commissioner may still hear the matter and issue recommended findings of fact and a recommended order; (See JCF FL-665)
- 3) Within ten court days, a judge shall ratify the order unless: (1) a party objects to the recommended order; or (2) the recommended order is in error. If the party objects or the recommended order is in error, the judge shall schedule a de novo hearing;
- 4) A party may waive his or her right to the review hearing at any time. (**FC § 4251(c)**).

B. VENUE IN IV-D ACTIONS OR PROCEEDINGS

1. General

Venue for an initial IV-D action or proceeding is determined per **FC § 17400(n)** as follows:

- a. In the superior court in the county that is currently expending public assistance;
- b. If public assistance is not currently being expended, in the superior court in the county where the child who is entitled to current support resides or is domiciled;
- c. If current child support is no longer payable through or enforceable by the LCSA, in the superior court in the county that last provided public assistance for actions to enforce welfare arrears;
- d. If a-c does not apply, then in the superior court in the county of residence of the support obligee;
- e. If a-d do not apply, and the support obligee does not reside in California, in the superior court of the county of residence of the obligor.

2. Effect of Relocation of a Child

If a child becomes a resident of another county after an action has been filed, venue may remain in the county where the action was filed until the action is completed. (FC § 17400(n)(2)).

3. Court Appearances

In IV-D actions or proceedings, an LCSA of one county may appear on behalf of an LCSA of another county. (FC § 17400(o)).

4. Change in Venue Motion

A party may file a motion to change venue per CCP § 397.

C. INITIAL PLEADINGS

1. Summons and Complaint

The LCSA will commence an action for parentage and/or support by filing a summons and complaint. (CCP § 411.10, FC § 17400, and FC § 17404; See JCF FL-600).

2. Amended Summons and Complaint

A summons and complaint may be amended once without leave of court at any time before an answer is filed. (CCP § 472) The time in which to file an answer to the complaint is computed from the date of service of the amended complaint. (*Id.*).

3. Supplemental Summons and Complaint

FC § 17428, FC § 2330.1, and CCP § 464 allow an LCSA to file a supplemental complaint for additional children of the same parents in an existing action, with the relief sought for each child. It may be filed at any time without leave of court, whether before or after the initial final judgment. The clerk will issue a new summons on the supplemental complaint, which must be served in the same manner as an original complaint.

➲ **PRACTICE POINT:** The supplemental complaint may be used in any action (except domestic violence cases), including actions not originally initiated by the LCSA.

4. Summons and Petition (S&P)

In a UIFSA action, the action is commenced by the filing of a Summons and Uniform Support Petition. (**FC § 5700.301**; *see* JCF FL-510 (UIFSA Summons); *see* OMB 0970-0085 (Uniform Support Petition) Federal forms created by OCSS must be used for UIFSA actions; Hague Convention forms must be used for actions filed pursuant to that treaty. (**FC § 5700.311(b)**; *see* OMB 0970-0488).

D. ESTABLISHING JUDGMENTS

1. Default Judgment

After service of the summons and complaint and the proposed judgment, the defendant has 30 days in which to file an answer. If the defendant fails to file an answer, the LCSA, after filing a proof of service, may request entry of a default judgment. (*See* JCF FL-620 and JCF FL-697) Upon the request to enter default by the LCSA, a judgment shall be entered without hearing, or other evidence, or further notice to the defendant. (**FC § 17430(a)**; *County of Yuba v. Savedra* (2000) 78 Cal.App.4th 1311; *County of Lake v. Palla* (2001) 94 Cal.App.4th 418, 428).

a. Proposed Judgment Conformed to Final Judgment

If the obligor has defaulted, the proposed judgment filed with the original summons and complaint shall be conformed by the court as the final judgment. (**FC § 17430(b)**). The terms of the judgment cannot exceed that sought in complaint. (**CCP § 580(a)**).

b. Procedure upon Entry of Judgment

The court clerk is required to provide a conformed copy of the judgment to the LCSA. The LCSA is required to mail a Notice of Entry of

Judgment by Default and a copy of the judgment to the defendant at the address where the defendant was served with the summons and complaint, and the last known address if different from that address. (FC § 17430(d)).

2. Amended Proposed Judgment (FC § 17430(c))

After the obligor has been served, but has not yet filed an answer, if the LCSA becomes aware of additional financial information within 30 days of service of the complaint and proposed judgment, and that information would result in a support order different than that in the initial proposed judgment, the LCSA is required to file a declaration setting forth the additional information and an amended proposed judgment and serve it on the obligor within the parameters of CCP § 1013. (See JCF FL-616).

a. Extension of Time to Answer

The time to file an answer is extended an additional 30 days from service of the declaration and amended proposed judgment. (FC § 17430(c)) The time to file an answer is shall be extended by time for mailing pursuant to CCP § 1013(a) (*see* Timeliness for Service section for explanation of impact of location of place of address or mailing.).

3. Motion for Judgment

If the defendant files an answer to the summons and complaint, the LCSA will seek to establish a judgment by way of noticed motion. (FC § 17404(b); see JCF FL-680 (Notice of Motion) and JCF FL-684 (Request for Order and Supporting Declaration)).

a. Time limits for filing motion

Absent a Stipulation for Judgment, the LCSA shall file a motion within 90 days of defendant filing an Answer. If the LCSA fails to file a motion within the time limits specified, the LCSA

shall be barred from obtaining a judgment of reimbursement for any support provided for the period between the date the time limit expired and the date the motion was filed. (FC §17400(g)(4)).

b. Response to Motion

The defendant or responding party may file a responsive declaration seeking affirmative relief different than that requested by the LCSA in its motion for judgment, on the same issues raised by the LCSA. (FC § 213(a)).

c. Motion Hearing

If the defendant appears at the hearing on the motion, the court is required to inquire if the defendant desires to subpoena evidence and witnesses, whether the defendant requests genetic testing if parentage is at issue and genetic tests have not already been conducted, and whether the defendant requests a trial. If the defendant makes such a request, the court is required to grant a continuance not to exceed 90 days from the date of service of the motion. The court can issue orders for temporary support during the pendency of the continuance. (FC § 17404(b)(2)).

► **PRACTICE POINT:** When parentage is not at issue, it is recommended that a temporary order for child support be requested whenever the Motion for Judgment hearing is continued for more than 30 days. In a situation where there is a Voluntary Declaration of Parentage (VDP) in place, defendant's request for genetic testing does not invalidate the VDP and the court may proceed with a temporary order.

4. Stipulation for Judgment

The court is vested with authority to enter a judgment based on the stipulation of the parties. (CCP § 664.6; *see* JCF FL-615 (Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)).

5. Appointment of Guardian ad Litem for Minor or Incompetent Party

A party to the action who is a minor, an incompetent person, or for whom a conservator has been appointed, shall appear either by a guardian, conservator, or a guardian ad litem (GAL) appointed by the court. (**CCP § 372(a)**). However, a minor parent may appear in court without a GAL in family court, dependency, guardianship, and child support proceedings. (**CCP § 372(c)(1)**) If the court finds that the minor parent is unable to understand the proceedings, the court shall, upon motion, appoint a guardian ad litem. (**CCP § 372(c)(2)**).

6. Service more than 90 days after filing

See Part G. Service of Pleadings for service of initial complaints more than 90 days after filing. (See also FC § 4009).

E. INTRASTATE REGISTRATION

1. General

If the LCSA is responsible for enforcing a support order, it may register a support order issued in another county in the superior court in the county where the LCSA is located. (**FC § 5601**).

⌚ **PRACTICE POINT:** Unless a court order is registered in another county, jurisdiction remains in the county that last had a legal action.

2. Filing Requirements

Pursuant to **FC § 5601(a)(1)-(3)**, the LCSA is required to file all the following:

- a. An endorsed filed copy of the most recent support order or a copy thereof;
- b. A statement of arrearages; and
- c. A statement of registration. (See JCF FL-650).

3. Notice Requirements

The registration occurs when the required documents are filed with the court. (**FC § 5601(b)**).

⌚ **PRACTICE POINT:** While it may not be required, it is helpful if all court orders regarding support are registered, not just the most recent order. This will save time if there is a future request to determine arrears.

- a. The LCSA is required to serve the obligor with copies of all filed documents. (**FC § 5601(c)**).
- b. The clerk of the court is required to forward a notice of registration to the courts in the other counties and states in which the original order and any modifications were issued or registered. (**FC § 5601(e)**). At that point, no further proceedings regarding support shall be filed in other counties. (*Id.*).

4. Motion to Vacate Registration

The obligor has 20 days after service of the Statement of Registration (**JCF FL-650**) to file a motion to vacate the registration. The defenses are limited to identity, validity of the underlying order, or the amount of unpaid support. If obligor does not file a motion within 20 days, the registered order and other documents are confirmed. (**FC § 5603(a)**). This also confirms the arrears per the documentation provided by the LCSA.

F. OTHER PARTY JOINDER

1. Joinder by Operation of Law

In an action brought by the LCSA after December 31, 1996 pursuant to **FC § 17400** et seq., the parent who has requested or who is receiving support enforcement services from the LCSA becomes a party to the action after a support order, including medical support, has been entered. (**FC § 17404(e)(2)**).

2. Joinder by Court Order

In actions brought prior to January 1, 1997, or in an action where the other parent has not been previously joined, the LCSA may request joinder of the other parent by way of:

- a. Ex Parte request;
- b. Noticed Motion or OSC (**JCF FL-680**); or
- c. Stipulation and Order for Joinder (**JCF FL-663**);
see FC § 17404(e)(2).

G. SERVICE OF PLEADINGS

1. Pleadings in General

a. Summons and Complaint

Must be served by:

- 1) Personal delivery; (**CCP § 415.10**);
- 2) Substitute service; (**CCP § 415.20**;
Trackman v. Kenney (2010) 187 Cal.App.4th 175 [proof of service is not facially invalid simply because it lists “John Doe, co-resident” as the person served]);
- 3) Mail and Notice and Acknowledgment of Receipt; (**CCP § 415.30**); or
- 4) Publication (court order required). (**CCP § 415.50**).

b. LCSA Notice of Initial Hearing

The LCSA is required to provide written notice to recipients of IV-D provided services pursuant to **FC § 17400** as to the initial date, time, and purpose of every hearing in a civil action for paternity or support. (**FC § 17406(f)(1)(A)**).

c. Motions Generally

Motions are typically served by mail. (**CCP § 1005**, **CCP § 1012**).

d. Post-Judgment Motions

A post-judgment motion to modify child support may be served by first-class mail. For any party served by mail, the proof of service must include an address verification. (**FC § 215(b)**; **JCF FL-686**).

☛ **PRACTICE POINT:** Even if the party is represented by counsel, he/she must still be served with the motion. Service upon the attorney of record is not sufficient. (**FC §215(a)**).

e. Order for Examination (OEX)

An order to show cause for a judgment debtor's exam must be personally served on the obligor not less than 10 days before the date of the examination. (CCP § 708.110(d)).

f. Order to Show Cause (OSC)

An OSC for contempt must be served by personal delivery for the court to have jurisdiction to proceed. (*Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281).

⌚ **PRACTICE POINT:** An OSC for contempt or Order for Examination (OEX) may be mail served, but if the party fails to appear, there is no recourse. One option is to serve OSCs/OEXs by mail to attempt to get the party to appear without the expense of personal service. If the party fails to appear, another OSC/OEX can be filed and then personally served.

2. Special Service Considerations

a. Out-of-State Service

Service can be accomplished as provided for under California law (above), or as prescribed by the law of the place where the person is served. (CCP § 413.10(b)). A summons or motion can be served on a person outside California by registered or certified mail, return receipt requested. (CCP § 415.40; CCP § 465).

b. Out-of-Country Service

Service can be accomplished as provided for under California law (above), or by any other method authorized by the jurisdiction in which the person is to be served, provided the method is reasonably calculated to give actual notice. (CCP § 413.10(c)).

⌚ PRACTICE POINT: Be aware of The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters serves as a limitation on foreign service. The treaty limits methods of service in signatory countries. In those jurisdictions, best practice is to obtain a “Request for Service Abroad” from the U.S. Marshall. For a country with reciprocal arrangements with either California or the United States, you may wish to ask for assistance with Hague-approved service from the Central Authority of that country.

c. Service on Minors

Service on a minor is accomplished by serving the parent, or guardian, or if none can be located after reasonable efforts, any other person having care or control of the minor, or with whom the minor resides, or by whom the minor is employed. If the minor is 12 or over, an additional copy must be served on the minor. (**CCP § 416.60**).

d. Service on Incarcerated Individuals

Service can be accomplished by leaving a copy of the papers or pleadings with the jailer. (**PC § 4013**; **CCP § 416.90**; *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858, rev. den. (Jul 29, 2009)).

e. Service of Process on Indian land

See Section XIV – Tribal Cases.

f. Service on Military Members

See Section XV – Military Cases.

g. Consent to Receive Service Under the Vehicle Code

Any person providing the DMV with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process at the mailing address. (**VC § 1808.21(c)**).

3. Timelines for Service

a. Summons and Complaint Service

The Summons and Complaint must be served upon the defendant within 3 years after the action is filed.

(CCP § 583.210(a)). A proof of service of the summons is required to be filed within 60 days after the 3-year period expires. (CCP § 583.210(b)).

1) Intentional Evasion of Service

An original order for child support may be made retroactive to the date of filing the complaint. However, if a parent is not served with the complaint within 90 days after filing and the court finds the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service. (FC § 4009). Note that this relief is not available to the respondent in a default proceeding and is not a permissible reason for the court to refuse to conform a default judgment to the proposed judgment. (FC § 17430(b)).

b. Service of Motions

Most motions are to be filed and served at least 16 court days prior to the hearing. (CCP § 1005(b)).

- 1) If service is by mail, and both the place of mailing and the address for service are within California, time for service is extended by 5 calendar days; (CCP § 1005(b)).
- 2) If service is by mail, and either the place of mailing or the address for service is outside California, but within the United States, time for service is extended by 10 calendar days; (CCP § 1005(b)).
- 3) If service is by mail and either the place of mailing or place of address for service is outside the United States, time is extended by 20 calendar days; (CCP § 1005(b)).
- 4) If service is accomplished via facsimile transmission, express mail, or another method of delivery providing for overnight delivery, time for service is extended by 2 calendar days. (CCP § 1005(b)).
- 5) **Electronic Service - See CCP § 1010.6 for**

electronic service rules. A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter. Please refer to your court's local rules.

c. Responses and Replies

Responsive declarations must be filed and served at least 9 court days prior to the hearing. Replies must be filed and served at least 5 court days prior to the hearing. (**CCP § 1005(b)**).

d. Debtor's Examination

A debtor's examination requires personal service at least 10 calendar days prior to the scheduled exam date. (**CCP § 708.110(d)**).

e. Court Exception

The court may prescribe a shorter time for service. (**CCP § 1005(b)**).

f. Counting Days

In calendaring the days, do not count the first day, but do count the last. (**CCP § 12**).

4. Service of Motions on the Other Party in IV-D Cases

a. General

After both parents are parties to the action and IV-D services are being provided, the LCSA is required to mail to the non-moving party all pleadings relating solely to the support issue that have been served on the LCSA, within 5 days of receipt. (**FC § 17404(e)(3)**).

b. Presumption of Service on the Non-Moving Party

There is a rebuttable presumption that valid service on the LCSA constitutes valid service on the non-moving party. Note that if service upon the non-moving party is accomplished via this procedure, the pleading is required to be served on the LCSA not less than 30 days prior to the hearing. (**FC §**

17404(e)(3)).

c. Service of Custody or Visitation Motions

The LCSA is generally not required to serve or receive service of papers, pleadings, or documents relating to issues of custody or visitation, nor is the LCSA generally required to attend any hearing or proceeding relating to issues of custody or visitation. (**FC § 17404(e)(4)**).

1) Release of Address Information

In cases involving custody and visitation issues, the moving party may file a motion pursuant to **FC § 17212(c)(6)** requesting the court find that disclosure of the other parent's address is required by due process of the law. Only after the court makes such a finding and orders the release of the address can the LCSA provide the information.

H. POWER OF ATTORNEY

1. Definition

"Power of attorney" (POA) means a written instrument that is executed by a natural person (principal) having the capacity to contract and that grants authority to an "attorney-in-fact" (AIF) – a person granted authority to act for the principal. (**Prob. Code § 4014** and **Prob. Code § 4022**).

2. Legal Requirements

A POA is legally sufficient if it includes: (1) the date of its execution; (2) the principal's signature or the principal's name signed by another adult in the presence and at the direction of the principal; (3) and an acknowledgement before a notary public or the signature of at least two adult witnesses (other than the AIF). (**Prob. Code § 4121** and **Prob. Code § 4122**).

3. Confidentiality

An AIF should be treated as a "designee" for the purpose of releasing information under **FC §**

17212(c)(2) (person who wrote, prepared, or furnished a document) and FC § 17212(c)(3) (payment history). In addition, the AIF is also entitled to other information available to a designee, such as the other party's income and expense declaration (FC § 17212(c)(4)) - since statutory law entitles the AIF to be treated as if he or she were the principal. (**Prob. Code § 4300**; *see also Prob. Code § 4000 et seq.*).

4. Unauthorized Practice of Law

"A power of attorney does not permit an agent to act as an attorney at law." (*People v. Malone* (1965) 232 Cal.App.2d 531, 536; see also *Drake v. Superior Court* (1994) 21 Cal.App.4th 1826). Therefore, an AIF should not appear in court or negotiate a case on behalf of the principal.

5. Servicemembers Civil Relief Act (SCRA) Cases

The SCRA states that whenever the term "servicemember" is used in the SCRA, the term includes the servicemember's legal representative, which includes an AIF. (**50 USC § 3920**). Thus, the AIF is entitled to assert the limited protections afforded a servicemember through the SCRA. For example, the AIF may assert: (1) the right to request a stay of proceedings per **50 USC § 3932**, and (2) the right to request an interest rate reduction per **50 USC § 3937**. (*See* Section XV – Military Cases for more information on the SCRA).

III. PARENTAGE

A. GENERAL CONSIDERATIONS

1. Legal Obligation

A legal determination of parentage creates a binding obligation to financially support a child in the manner suitable to the child's circumstances (FC § 3900).

2. Applicable Law

An LCSA will normally bring a parentage/support action under FC § 17400 et seq. but is also authorized to bring a parentage action under the UPA. (FC § 7634(a)).

3. Parentage Judgment

The judgment or order of the court determining the existence or non-existence of the parent-child relationship is determinative for all purposes except for actions brought pursuant to PC § 270. (FC § 7636).

4. More Than Two Parents

A court may find that more than two persons with a claim to parentage are parents. (FC § 7601(c)). For a child to have more than two parents, the court must find that recognizing only two parents would be detrimental to the child after considering all relevant factors. (FC § 7612(c); In Re Donovan L., JR. (2016) 244 Cal.App.4th 1075; *Martinez v. Vaziri* (2016) 246 Cal.App.4th 373 (discussing "appropriate action" for application of FC § 7612). Indeed, with the right facts, more than two parents may be found even when the conclusive marital presumption exists within an intact family. *C.A. v. C.P.* (2018) 29 Cal App.5th 27.

► PRACTICE POINT: Make sure the court determines whether the person seeking third parent status can establish a claim under the UPA before deciding on detriment to the child. (In Re M.Z. (2016) 5 Cal.App.5th 53).

5. Establishment of Parentage

There are several ways to establish parentage, which

will each be discussed in this section:

- a. Voluntary Declaration of Parentage;
- b. Conclusive Marital Presumption;
- c. Genetic Testing Presumption;
- d. FC § 7611; and
- e. FC § 7613.

6. Analyzing Parentage Presumptions

Resolution of a parentage dispute may require the court to determine factual and legal issues including:

- a. Whether a parentage presumption applies;
- b. Whether an applicable presumption of parentage has been rebutted;
- c. Whether an applicable parentage presumption is outweighed by a competing presumption;
- d. Whether the action in which a presumption applies is an appropriate action in which to rebut the presumption; and
- e. Whether it would be detrimental to the child to recognize only two parents. (*See In re M.R.* (2017) 7 Cal.App. 5th 886, where the court determined a conclusive marital presumption under FC § 7540 did not outweigh a presumed parentage claim of a third party, and *C.A. v. C.P.* (2018) 29 Cal.App.5th 27, where the court determined that a presumed parentage claim of a third party did outweigh a marital presumption under FC §7540.) Keep in mind when reviewing cases that in a dependency proceeding, various factors may be weighed differently than in a support or family law proceeding.

B. THE VOLUNTARY DECLARATION OF PARENTAGE

Effective 1/1/2020, terminology is changed from "paternity" to "parentage", the persons who may sign a VDOP expanded and the challenges to VDOPs changed considerably.

1. Voluntary Declarations of Parentage (VDOP)

There is a compelling state interest in establishing

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

a. FC § 7570(a)(2) declares that a “simple administrative system allowing for establishment of voluntary parentage will result in a significant increase in the ease of establishing parentage, a significant increase in parentage establishment, an increase in the number of children having greater access to child support and other benefits, and a significant decrease in the time and money required to establish parentage...”

b. Who May Sign a VDOP Pursuant to FC § 7573
VDOPs may be signed by:

- (1) an unmarried birth parent and another person who is a genetic parent; or
- (2) a woman who gave birth (married or unmarried) and an intended parent pursuant to **FC § 7613** of a child conceived through assisted reproduction.

➲ **PRACTICE POINT:** Biologically only women can give birth. As **FC § 7573** requires a birth parent to sign the VDOP same sex female parents are eligible to sign, but same sex male parents are not.

c. Effective Date:

(1) The effective date of the VDOP is the date the VDOP is filed with the Department of Child Support Services, unless one or both signatories to the VDOP were minors at the time of signing. **FC § 7573(c).**

(2) Minor Signatory(ies): The effective date is 60 days after both signatories have reached 18 years of age or emancipated, whichever first occurs. **FC § 7580.**

2. Effect of VDOP

Signed by Adult(s):

a. Except as provided in FC §§ 7573.5 (Void), 7575 (Rescission), 7576 (challenges) or 7580 (signed by a minor signatory), a VDOP executed by the parents and filed with the Department shall establish parentage of a child is equivalent to a judgment of parentage of the child and confers on the declarant all rights and duties of a parent. FC § 7573(d).

1. A valid VDOP has the force of a judgment and prevails over other presumptions of paternity. (FC § 7612(d); *Kevin Q. v. Lauren W.* (2009) 175 Cal.App.4th 1119 [VDOP prevailed over other man's FC § 7611(d) presumption]; *In re Levi H.* (2011) 197 Cal.App.4th 1279 [Note, the court in *In re Brianna M.* (2013) 200 Cal.App.4th 1025 disagreed with the court's conclusion in *In re Levi H.* as applied in the dependency context]). (Both cases were decided prior to the enactment of the current FC § 7573).

➲ **PRACTICE POINT:** VDOPs may be VOID under certain provisions. See FC § 7573.5 and Section 4. Challenges to VDOPs, below.

b. Minor Signatories

A VDOP signed by a minor creates a rebuttable presumption for or against parentage until 60 days after both signatories have reached 18 years of age or emancipated, whichever occurs first. (FC § 7580(a) and (c)).

A VDOP signed by a minor is admissible evidence in a civil action to establish parentage of the minor named in the declaration, but shall not be admissible in a criminal prosecution for violation of Section 261.5 of the Penal Code. (FC § 7580 (d) and (e)).

3. Full Faith and Credit

a. **Paternity Declarations:** An out-of-state paternity declaration is entitled to full faith and credit and has the same effect as a parentage determination made in California. (FC § 7573(e);

In re Mary G. (2007) 151 Cal.App.4th 184 [a Michigan paternity acknowledgment was entitled to full faith and credit decided prior to the enactment of FC § 7573(e) under former FC § 5604.

b. **Parentage Declarations:** Judgments of Paternity are entitled to full faith and credit in all states. [42 U.S.C. 666 (a)(5)(C)(iv)], but there is no similar statute related to parentage judgments. The Supreme Court found that parents, regardless of gender, should be treated equally for listing on a birth certificate in *Pavan v. Smith* (2017) 137 S. Ct. 2075; so it is likely that VDOPs will be provided full faith and credit, but this is still an open question.

⌚ **PRACTICE POINT:** In some states and countries, a signature on a birth certificate has the same effect as signing a California VDOP. Be sure to check on the pertinent law in other jurisdictions.

4. Challenges to VDOP

a. Rescission

The VDOP may be rescinded by either parent within 60 days of execution of the last signature, unless an order for support, custody, or visitation was entered in any action in which the person seeking to rescind was a party. (FC § 7575(a)). If the signatory was a minor at the time of signing, that signatory may rescind the VDOP at any time up to 60 days after that signatory reaches the age of 18 years, or emancipates, whichever occurs first. (FC § 7580(c)).

b. Set Aside

1) By Signatories

A signatory to a VDOP may set it aside if:

- a) They can show fraud, duress, or material mistake of fact;
- b) The challenge is made after the time for Rescission, but not later than two years from the VDOP effective date. **(FC § 7576(a) or (b))**

2) By Non-Signatories

a) Standing:

i. An alleged parent who is not a donor under **FC § 7613**, a presumed parent under **FC § 7611**, or any person who has standing under **FC § 7630**. (**FC § 7577(a)**).

ii. The petition must be supported by a declaration under oath alleging specific facts to support standing. (**FC § 7577(b)**).

iii. The court may hold a hearing on standing on an expedited basis. If the person challenging the VDOP is an alleged genetic parent genetic testing must be ordered on an expedited basis. (**FC § 7577(c)**).

b) Timing: Unless the VDOP is void pursuant to **FC § 7573.5**, the action must be filed not later than two years after the effective date of the VDOP. (**FC § 7577(d)**).

c) Notice: Must be provided to the signatories and any person entitled to notice under **FC § 7635**. (**FC § 7577(e)**).

d) Burden of Proof: The challenging party bears the burden of proof by a preponderance of the evidence. (**FC § 7577(f)**).

e) Grounds: A court may grant the petition to set aside only if it finds setting aside the VDOP is in the best interest of the child after considering the following

factors:

- Age of the child
- Length of time since the effective date of the VDOP
- Nature, duration and quality of any relationship between the person who signed the VDOP and the child, including the duration and frequency of any time periods during which the child resided in the same household or enjoyed a parent and child relationship.
- The request of the person who signed the VDOP that the parent and child relationship continue.
- Additional factors deemed by the court to be relevant to its determination of the best interest of the child. **FC § 7577(g)(subdivisions (1)-(4) and (6)).** If the VDOP was signed by an unmarried woman and another genetic parent (pursuant to **FC § 7573(a)(1)**), the court must also consider all the following:
 - Notice by the genetic parent of the child that the genetic parent does not oppose preservation of the relationship between the person who signed the VDOP and the child.
 - Whether any conduct of the person who signed the VDOP has impaired the ability to ascertain the identity of, or obtain support from, the genetic parent **FC § 7577(g)(5)(A) and (B).**

If the VDOP is challenged by a presumed parent under **FC § 7611(d)**, the court's ruling must, in addition to the factors in **7577(g)(above)**, also take into account the nature and quality of the relationship between the petitioning party and the child and the benefit or detriment to the child of continuing that relationship. (**FC § 7577(h)**).

➲ **PRACTICE POINT:** In responding to a motion to set aside a VDOP, always ensure that the VDOP has been filed with the California Department of Child Support Services.

3) Void VDOP:

- a)** Pursuant to FC § 7573.5 a voluntary declaration of parentage is void if, at the time of signing, any of the following are true:
- i. A person other than the woman who gave birth to the child or a person seeking to establish parentage through a voluntary declaration of parentage is a presumed parent under FC § 7540 or subdivision (a), (b), or (c) of FC § 7611.
 - ii. A court has entered a judgment of parentage of the child.
 - iii. Another person has signed a valid voluntary declaration of parentage.
 - iv. The child has a parent under FC § 7613 or FC § 7962 other than the signatories.
 - v. The person seeking to establish parentage is a sperm or ova donor under subdivision (b) or (c) of FC § 7613.
 - vi. The person seeking to establish parentage asserts that he or she is a parent under FC § 7613 and the child was not conceived through assisted reproduction.
- b)** In an action in which a party is seeking a determination that a voluntary declaration of parentage is void, notice shall be provided pursuant to FC § 7635.

➲ **PRACTICE POINT:** If the set aside motion only deals with a VDOP (and not a Judgment), ensure that your motion addresses child support paid and arrearages accrued based on the VDOP. FC §7648.4 addresses what happens when setting aside a Judgment, but there is no similar statute relating to the pure set aside of a VDOP, so reimbursement should be addressed in the motion and decided by the court at the time of the set aside hearing.

C. PARENTAGE THROUGH THE COURT PROCESS

1. Identifying Parentage Presumptions

There are various categories of statutory parentage presumptions and each category is based on the facts giving rise to the presumption:

- a. Conclusive Marital Presumption (FC § 7540 et seq.);
- b. 7611 Presumptions (FC § 7611 et seq.) and
- c. Genetic Testing Presumption (FC § 7555 et seq.).

2. Competing Presumptions

When two or more competing presumptions arise, a court must determine which presumption prevails based upon the weightier considerations of policy and logic. (FC § 7612(b)). There is no judicial bright line to determine which presumption is based on the weightier policy or logic. The analysis is fact-intensive and conducted on an individual case basis. (*Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36; *J.R. v. D.P.* (2012) 212 Cal.App.4th 374).

➲ **PRACTICE POINT:** A VDOP is not a presumption; it has the force and effect of a parentage judgment. Therefore, the FC § 7612(b) analysis is not appropriate if parentage was determined by VDOP.

D. CONCLUSIVE MARITAL PRESUMPTION

1. Establishing the Presumption

Except as provided in FC § 7541, the child of spouses who cohabited at the time of conception and birth is conclusively presumed to be a child of the marriage.

a. Cohabitation

To invoke this presumption, the spouses must be cohabiting both when the child is conceived and when the child is born. *In re Elijah V.* (2005) 127 Cal.App.4th 576, 586). The presumption is not applied where there has been no substantive cohabitation and where the policies underlying the presumption (integrity of the family unit) are not furthered. (See *Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198). [Presumption not applied where, although child conceived while mother was cohabitating with husband, mother and husband were separated at time of child's birth, husband did not deliberately step forward to assert his interests, and another man had developed a substantial parent-child relationship with the child].

b. Sterility

The conclusive presumption does not apply if the court determines that the husband of the woman who gave birth was impotent or sterile at the time of conception and the child was not conceived through assisted reproduction. (**FC § 7540(b)**). Sterility is defined in its strictest sense and 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 low sperm count alone is insufficient to avoid application of the presumption. (*IRMO Freeman* (1996) 45 Cal.App.4th 1437).

2. Rebutting the Presumption**a. Genetic Testing**

If a motion requesting genetic testing is timely filed by a person authorized to do so, then the conclusive presumption of the spouse's parentage can be rebutted by test results showing that the spouse who is a presumed parent under §7540 is not a genetic parent of the child. (**FC § 7541(a)** and **FC § 7541(b)**). The motion must be filed and

served within two years of the child's birth. (FC § 7541(b)).

 NOTE: A motion pursuant to FC § 7541 is not available to challenge:

- (1) Cases which reached final judgment of parentage on or before September 30, 1980, or
- (2) The parentage of a spouse who is an intended parent pursuant to FC § 7962 or § 7613(a), unless the challenge is whether the child was conceived through assisted reproduction. (See FC § 7541(d)).

b. Standing

Persons authorized to file the motion are either spouse, a presumed parent under FC § 7611, or the child through a guardian ad litem. *C. A. v. C. P.* (2018) 29 Cal.App.5th 27 where the court found that a child can have 3 parents. [Mother had affair with biological father. Mother and husband raised the child. For the first 3 years of the child's life, child visited with biological father and biological father paid child support to mother and husband. When biological father sought to legally confirm relationship with child, mother and husband asserted conclusive presumption. The court determined that FC § 7612(c) allowed for more than two parents if depriving the child of one of the parents would be detrimental to the child.]

c. Court-Ordered Testing

- 1) If genetic testing is used to rebut the presumption, rules regarding court-ordered genetic testing must be strictly followed. (*IRMO Miller* (1998) 64 Cal.App.4th 111, 119 [Private, non-court ordered genetic testing, performed more than two years after the child's birth lacked any "legal significance" and therefore could not rebut the conclusive marital presumption]).

2) Genetic testing may not be used to rebut the presumption in cases that reached final judgment of parentage on or before September 30, 1980, or cases challenging FC § 7551.

A court “shall upon motion of any party to the action … order the woman who gave birth, child, and alleged genetic parent to submit to genetic tests.” (FC §7551; *County of Riverside v. Michael Estabrook* (2019) 30 Cal.App.5th 1144) [The court affirmed the plain language of FC § 7551, that an order for genetic testing is mandatory when a motion for genetic testing is filed by a party where paternity is a relevant fact].

3. Application to Registered Domestic Partners

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. (FC § 297.5(d)).

E. REBUTTABLE PRESUMPTION RAISED BY GENETIC TEST RESULTS

1. General

In a typical LCSA action, where parentage is disputed in a non-marital relationship, a mother alleges that a person is the parent of her child, that person denies parentage, and genetic testing is conducted. The genetic testing will determine whether the tested persons and child share genetic markers. Based on the absence of these markers, biological non-parentage can be conclusively established. From the presence of these markers, a statistical probability of parentage is converted to an index – that is, since the person was not excluded, the likelihood that the alleged parent is the biological parent of the child, as compared to a random person, is determined.

2. Privacy Rights and DNA

The government has a recognized interest in establishing parentage. (FC § 7570(a)) The

government also has a right to choose its own laboratory and select its own expert to present parentage testing results. (*County of San Diego v. Mason* (2012) 209 Cal.App.4th 376, 383). The named defendant does not have a constitutional privacy right to choose an alternate private laboratory to conduct DNA testing in lieu of the government's designated facility. (Id. at 384).

3. Establishing the Presumption

Genetic test results list both a percentage probability and a "Probability of Parentage." A Combined Relationship Index of 100 or greater creates a rebuttable presumption of genetic parentage. (FC § 7555). However, biological parentage does not establish legal parentage. (*Michael H. v. Gerald D.* (1989) 491 U.S. 110 [A biological father does not have a liberty interest that would give rise to due process rights to establish parentage of a child born during her mother's marriage to another man] Additionally, a person who is not the biological parent may be the legal parent. (*In re Nicholas H.* (2002) 28 Cal.4th 56; *Librers v. Black* (2005) 129 Cal.App.4th 114, 123).

4. Rebutting the Presumption

A person who has been identified as a genetic parent through genetic testing pursuant to FC § 7555(a) may challenge the test results only by other qualified genetic testing that either excludes the challenger as a possible genetic parent of the child or identifies another person (not the woman who gave birth) as a possible genetic parent. (FC § 7555(b)).

When a person contests the results of the initial testing, the court or local child support agency shall order additional genetic testing. (FC § 7560).

5. Court-Ordered Testing

When parentage is a relevant fact, the court may order the woman who gave birth to the child, the child and alleged genetic parent to submit to genetic testing. (FC § 7551; *In re Emma B.* (2015) 240

Cal.App.4th 998 [presumed father was not entitled to genetic testing because biological paternity was not a relevant fact]). Note that the person requesting genetic testing must have standing to make the request. (*See, e.g., FC § 7541 and FC § 7630*).

6. Administratively Ordered Testing

When the LCSA is providing services and parentage is a relevant fact, the LCSA may issue an administrative order for genetic testing requiring the mother, child, and alleged father to submit to testing under certain conditions. (**FC § 7558**).

7. Admission of Genetic Testing

After genetic testing have been performed as ordered by the court or by administrative order, **FC § 7552.5** requires a copy of the results be served on all parties no later than 20 days prior to the hearing in which the results may be admitted. Results must be accompanied by a declaration of the custodian of records regarding the chain of custody and mode, manner, and method of preparation.

Results will be admitted without foundational testimony of authenticity and accuracy unless a written objection is filed with the court and served on all parties no later than five days prior to the hearing/trial where parentage is at issue. If a timely objection is filed and served, experts appointed by the court will be called by the court as witnesses to testify to their findings. (**FC § 7552.5**).

8. Refusal to Comply

If a party refuses to submit to genetic testing pursuant to an order of the court, the court may resolve the question of parentage against that party or enforce its order if the rights of others and the interests of justice so require. A party's refusal to submit to genetic testing is admissible in evidence in any proceeding to determine parentage. If two or more persons are subject to court-ordered genetic testing, the court may order that the testing be completed concurrently or sequentially. Genetic

testing of a woman who gave birth to a child is not a condition precedent to the testing of the child and a person whose genetic parentage of the child is being determined. (**FC § 7551**) The same rules apply regarding administrative orders for genetic testing. (**FC § 7558**).

9. Required Judicial Admonitions

A court must inform an alleged father who appears in court of his right to genetic testing; and of his right to move to vacate a judgment within two years of the date he received notice of the action subject to **FC § 7646**. The court must further inform the man that after the two years expire, the man may not move to vacate the parentage judgment regardless of whether genetic testing shows that the man is not the biological father of the child. (**FC § 7635.5**).

F. THE 7611(d) PRESUMPTION – HOLDING THE CHILD OUT AS HIS/HER CHILD

1. Establishing the Presumption

A presumed parent who receives a child into his or her home and openly holds out the child as his or her natural child is presumed to be the child's parent. (**FC § 7611(d)**).

a. Duration

"[R]eceipt of [a] child into the home must be sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship but need not continue for any specific duration." (*Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 374 [child in the home for 13 weeks was sufficient duration to establish the child was received in the home; disapproved on unrelated grounds by *Reid v. Google Inc.* (2010) 50 Cal.4th 512, 532, fn. 7.])

b. Holding Out

Even if a person performs all parental responsibilities for the child, if the person does not hold the child out as his or her own child, the

presumption does not apply. (*In re Bryan D.* (2011) 199 Cal.App.4th 127 [where grandmother did not hold the child out as her son (rather than as her grandson), she was not a presumed parent, even though she acted as the child's mother]).

c. Factors

The court must consider all the circumstances when determining whether a person demonstrated a parental relationship, such as the person's provision of physical and/or financial support for the child and the breadth and unequivocal nature of the person's acknowledgment of the child as his/her own. (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 774; *S.Y. v. S.B.* (2011) 201 Cal.App.4th 1023, fn. 10 [a person does not need to show a certain list of factors is satisfied to be considered a presumed parent]). In one recent case, physical presence of child in man's home was insufficient to establish presumed parenthood. (*W.S. v. S.T.* (2018) 20 Cal.App.5th 132).

2. Rebutting the Presumption

A presumption raised under FC § 7611(d) affects the burden of proof and may be rebutted only by clear and convincing evidence in an appropriate action. **FC § 7612(a)** [Note: The statute says the presumption "may be rebutted," not "is rebutted"].

a. Judgment Establishing Parentage of Another
Unless the court has made a finding for multiple parents pursuant to FC § 7612(c), the presumption is rebutted by a judgment establishing parentage of the child by another person. (**FC § 7612(d); In re Cheyenne B.** (2012) 203 Cal.App.4th 1361, 1376 [one man's judgment regarding parental obligations as to child rebutted another man's FC § 7611(d) presumption.]). This includes a VDOP, which has the same force and effect as a judgment, and therefore has the same force and effect as the presumption under **FC §**

7540. (FC §§ 7576, 7581); *Kevin Q. v. Lauren W.* (2009) 175 Cal.App.4th 1119, 1139, rev. den. (Oct 14, 2009); *Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 858).

b. "Appropriate Action" Limitation

A FC § 7611 presumption may be rebutted, but only in an appropriate action. (FC § 7612(a)). If rebutting the presumption would render the child with less than two parents, then a court will likely find that the action is not an appropriate action in which to rebut the presumption. (*In re Nicholas H.* (2002) 28 Cal.4th 56 [only potential father admitted he was biologically unrelated to a child for whom he had provided a home for several years]; *In re J.O.* (2009) 178 Cal.App.4th 139 [man's failure to keep in contact with and support his family does not rebut his FC § 7611(d) presumption]; *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 122 [this rationale applies to same-sex couples]; *L.M. v. M.G.* (2012) 208 Cal.App.4th 133 [even though one of the parties adopted the child as a single parent, it was not an "appropriate action" to rebut the other partner's presumption]).

3. Parentage by Estoppel

This presumption is a codification of the common law equitable estoppel defense in the parentage context. (*Clevenger v. Clevenger* (1961) 189 Cal.App.2d 658, 670-75). Parentage by estoppel cannot be applied to an individual whose conduct (acting as the child's biological father) was based upon his mistaken belief he was the child's biological father. (*County of San Diego v. Arzaga* (2007) 152 Cal.App.4th 1336 [man doubted that he was child's father but was told so by the mother; man never knew that he was not the child's biological father and therefore could not be estopped from denying parentage of the teenage child]). Instead, conduct where the putative parent represents expressly or by implication to the child that they are the natural

parent, the representation is of a long and continuous nature, and the child believes the person to be their natural parent, then parentage by estoppel can result in child support payable by the putative parent. (*IRMO Pedregon* (2003) 107 Cal. App.4th 1284)

G. OTHER 7611 PRESUMPTIONS

1. General

There are four other presumptions found in FC § 7611. The 7611 presumptions are the only statutory parentage presumptions whose enabling language is found in the UPA (FC §§ 7600-7730). The other statutory parentage presumptions (Genetic Testing Presumption, Conclusive Marital Presumption, and Pre-1997 Paternity Declaration Presumption) are referenced in the UPA but are derived from other parts of the Family Code.

2. Establishing the Presumption

A rebuttable presumption of parentage arises under the UPA where:

- a. The presumed parent and child's natural mother have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated or judgment of separation is entered (FC § 7611(a));
- b. Before the child's birth, the presumed parent and the child's natural mother attempted to marry each other, and the child was born during the attempted marriage, or within 300 days after the attempted marriage is terminated or cohabitation ends (FC § 7611 (b)) ;
- c. After the child's birth, the presumed parent and the child's natural mother married or attempted to marry each other, and the presumed parent consented to have their name placed on the child's birth certificate, or is obligated to support the child under a written voluntary promise of support or by court order (FC § 7611(c)); or

d. The child is in utero after the death of the decedent and the conditions set forth in Prob. Code § 249.5 are satisfied (FC § 7611(e)).

3. Rebutting the Presumption

A presumption raised under FC § 7611 affects the burden of proof and may be rebutted only by clear and convincing evidence in an appropriate action. (FC § 7612(a)).

H. CONFLICTING PRESUMPTIONS

1. Policy and Logic

If two or more presumptions conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. (FC § 7612(b)).

a. Biology

Biological parentage by a competing presumed parent does not necessarily defeat a non-biological parent's presumption of parentage. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 604 [the Supreme Court resolved a conflict between the biological father's FC § 7611(d) presumption and the husband's FC § 7611(a) and FC § 7611(d) presumptions in favor of husband, concluding that biology is a relevant but not determinative factor in weighing these presumptions. (See also, *J.R. v. D.P.* (2012) 212 Cal.App.4th 374, 391 – the court may consider biology as a factor in weighing conflicting presumptions)].

2. FC § 7611 Parent Petition to Set Aside VDOP

A presumed parent pursuant to FC § 7611 who is not a signatory to the VDOP may file a petition to set aside a VDOP within 2 years of the VDOP's effective date, unless the VDOP is void pursuant to FC § 7573.5. Courts will look to the validity of the VDOP and the best interest of the child, based on the petitioning party's relationship with the child, the child's age, the nature and duration of the relationship, and the impact to the child of

continuing the relationship. If there is a conflict between a presumption under FC § 7611 and the VDOP, weightier considerations of policy and logic shall control. (FC § 7612(e)). [See non-signatory challenges to VDOPs, above].

3. No Automatic Preference

No FC § 7611 presumption has a per se preference over any other FC § 7611 presumption. (*Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36 [husband's FC § 7611(a) presumption must be weighed against another man's FC § 7611(d) presumption.]).

I. JUVENILE COURTS AND PARENTAGE CASE LAW

⦿ **PRACTICE POINT:** Juvenile courts consider parentage differently than Title IV-D courts. A primary focus of the juvenile courts is to determine whether reunification services should be provided to a presumed father and whether to afford the presumed father the right to counsel. In juvenile courts, only mothers and presumed parents have legal status as parents and the right to reunification services. While LCSAs do not consider who among possible fathers would make a “good” father, the juvenile courts are very interested in that determination, and many decisions affecting the child and the presumed father revolve around that determination. Unfortunately, this allows for the scenario where a man has been told he has no custody or visitation rights in the juvenile court, but he has been established as the “child support father” in the Title IV-D court.

1. Duty to Establish Parentage

CRC 5.635 authorizes the juvenile court to establish parentage. The juvenile court has a duty to inquire about and, if not otherwise determined, to attempt to determine the parentage of each child who is the subject of a petition filed under **W&I § 300, 601, or 602**. The juvenile court may establish and enter a judgment of parentage.

➲ **PRACTICE POINT:** Contact with the LCSA is often not a priority with juvenile courts. If there is any indication of ongoing juvenile proceedings, the LCSA should be pro-active in learning if there is already a determination of parentage.

2. Presumed, Biological, and Alleged Fathers

Courts (especially juvenile courts) often use terms of art to identify a parent's status in relation to the subject child. Although some of these terms are not used as frequently in Title IV-D cases, they are defined below to aid one's understanding when conducting legal research regarding parentage presumptions.

a. Rights

In juvenile court proceedings, a presumed father possesses far greater rights than an alleged or biological father. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449). Only a presumed, not a mere biological, father is entitled to receive reunification services, and only a presumed father is entitled to custody of his child. (Id. at 451; *In re E.O.* (2010) 182 Cal.App.4th 722, 726).

b. Presumed Parent

To become a “presumed” parent, a person must fall within one of several categories enumerated in FC § 7611 (*In re E.O.* (2010) 182 Cal.App.4th 722, 726). Under FC § 7611, a person who has neither legally married nor attempted to legally marry the child’s natural mother cannot become a presumed parent unless he or she receives the child into their home and openly holds out the child as their natural child. (*Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1050-51).

c. Biological Parent

In contrast, a “biological”, “genetic” or “natural” parent is one whose biological parentage has been established, but who has not achieved presumed parent status as defined in FC § 7611. A biological parent who is not a presumed parent

has no statutory right to block the adoption of the child unless they first prove that it is in the child's best interest. (*Adoption of Michael H.*, supra, at 1051-52).

d. Alleged Parent

An “alleged” parent refers to a person who may be the parent of a child, but whose biological parentage has not been established, or, in the alternative, has not achieved presumed parent status. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15).

e. Effect of Judgment Issued by Child Support Court

A judgment issued by the child support court is not determinative of presumed status. (*In re E.O.* (2010) 182 Cal.App.4th 722, 727 [stating a paternity judgment for financial support did not entitle the father to presumed status]; *In re Cheyenne B.* (2012) 203 Cal.App.4th 1361 [while the legal father’s paternity judgment rebutted another man’s FC § 7611(d) presumption, it did not require the juvenile court to find that the legal father had presumed father status]).

f. Effect of VDOP – Dependency Cases

A VDOP does not entitle the person who signed the VDOP to a presumed parent status in dependency proceedings. (*In re Jovanni B.* (2013) 221 Cal.App.4th 1482).

J. SAME-SEX PARTNER CASES

1. Mother and Child Relationship

An action may be filed to determine the existence or nonexistence of a mother/child relationship, and the UPA provisions regarding the father/child relationship apply. (FC § 7650(a)). Therefore, the FC § 7611(d) presumption is gender-neutral and a child can have two parents, both of whom are women. (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108 [A woman who agreed to raise children with her

lesbian partner, supported her partner's artificial insemination, and received the resulting twin children into her home and held them out as her own, is the presumed parent of the children]. Likewise, a woman who is genetically related to the children is their parent, even though she was not the gestational mother. (*K.M. v. E.G.* (2005) 37 Cal.4th 130 [a woman who donated her ovum to her lesbian partner and agreed to raise the children in their joint home was the parent of the children]).

2. VDOPs and same sex cases

With the passage of AB 2684 (chaptered 9/28/2018), many provisions of the family code were revised, to create a more gender-neutral code. Indeed, VDOPs are no longer limited to unmarried birth parents. All proposed parents, even married ones and same-sex couples, may use the VDOP, when the child was conceived through assisted reproduction and one of the signing parties is the birth parent. **FC § 7573(a)(2)** Note: If neither parent is the birth parent, the parents may not utilize the VDOP, as that process requires a birth mother. Same-sex parents not eligible for the VDOP may still establish parentage by other means including the application of legal presumptions and/or surrogacy agreements.

3. Estoppel

A pregnant mother who stipulates to a parentage judgment establishing her lesbian partner as the second parent of her unborn child is later estopped from challenging the validity of the parentage judgment. (*Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156).

K. ASSISTED REPRODUCTION

1. Definitions

- a. **FC § 7606** defines "assisted reproduction" as conception by any means other than sexual intercourse. It further defines "assisted reproduction agreement" as a written contract

that includes a person who intends to be the parent of a child born through assisted reproduction and that defines the terms of the relationship of the parties to the contract. Note that the assisted reproduction agreement could be completed at the fertility clinic and does not need to be a separate agreement signed by the parties.

b. FC § 7613, however places limits on those persons who can be an intended parent by defining the “assisted reproduction” as conception with semen, ova, or embryos donated by a donor not the spouse of the woman who gave birth, and with consent of another intended parent.

NOTE: It is this definition that is utilized for purposes of eligibility for signing a VDOP under **FC § 7573 (a)(2)**.

2. Surrogacy

A “surrogate” is a woman who bears and carries a child for another through medically assisted reproduction and pursuant to a written agreement.

FC § 7960(f). A notarized assisted reproduction agreement for gestational carriers signed by all parties, with attached declarations of independent attorneys for each party, and lodged with the superior court shall rebut parentage presumptions as to the surrogate, her spouse, or partner being a parent of the child or children. Upon the petition of any party to the agreement, the court shall issue a judgment establishing the parental relationship of the intended parents and establish that the surrogate, her spouse, or partner have no parental rights or duties with respect to the child or children. **FC § 7962(f).**

a. Intention

While a mother/child relationship may be established either by a biological relationship or by giving birth to a child, when two women claim a right to parentage, the woman who intended to

procreate the child is considered the legal mother. (*Johnson v. Calvert* (1993) 5 Cal.4th 84) This case has been distinguished by the ruling of another state since this case was decided solely on the language of the UPA and believes that this holding has been abrogated by the California domestic partnership statutes. (See *Chatterjee v. King* (N.M. Ct. App. 2010) 2011 NMCA 12, 149 N.M. 625, 253 P. 3d 915, reversed by the N.M. Supreme Court at 2012-NMSC-019, 280 P.3d 283.)

b. Non-Genetically Related Child

When a married couple uses non-genetically related embryo and sperm implanted into a surrogate intended to procreate a child, they are the “legal parents” of the resulting child, despite their lack of a biological or other relationship. (*IRMO Buzzanca* (1998) 61 Cal.App.4th 1410).

c. Inadvertent Implantation

When a fertility clinic mistakenly implanted married couple’s fertilized ova (created from an anonymous ovum donor and the husband’s sperm) into a woman who asked for anonymous ova, the appellate court held that the husband is child’s father, birth mother is mother, and the father’s wife has no rights. (*Robert B. and Denise B. v. Susan B.* (2003) 109 Cal.App.4th 1109, review denied Sept 10, 2003).

3. Sperm Donors

FC § 7613(b) provides that a donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in assisted reproduction by a woman other than the donor’s spouse is not the natural parent of a child thereby conceived, unless otherwise agreed to in writing. Similarly, even if the donation was not to a physician/surgeon as above, the donor is not the natural parent of the child conceived if the donor and woman giving birth signed an agreement prior to the conception that the donor would not be a parent.

a. Intimate Relationship Notwithstanding

In *Steven S. v. Deborah D.* (2005) 127 Cal.App.4th 319, the donor filed a petition to establish a parental relationship. The court held that there can be no parentage claim from a sperm donor who is not married to the woman who becomes pregnant so long as the sample was provided to a licensed physician. The court applied the strict language of FC § 7613 and the intentions of the individuals were not considered.

b. A Sperm Donor Can Be a FC § 7611(d) Parent

In *Jason P. v. Danielle S.* (2014) 226 Cal.App.4th 167, the court held that FC § 7613(b) only precludes a sperm donor from establishing parentage based upon his biological connection to the child; the sperm donor may still establish that he is a presumed parent under FC § 7611(d) based on a demonstrated familial relationship. Upheld on appeal from remand *Jason P. v. Danielle* (2017) 9 Cal.App.5th 1000.

In *County of Orange v. Brian Jeffrey Cole* (2017) 14 Cal.App.5th 504, Cole (father) voluntarily underwent sperm extraction to have a child with the mother, provided monetary support and openly held the child as his own to some. In affirming the lower court's orders for parentage and child support, the appellate court concluded that even though Cole did not include the child in the life he had with his wife and their children, the statute does not require that he hold out the child as his own in every situation and it does not protect fathers who live double lives.

c. Not a “True Egg Donation” Situation

Even if FC § 7613(b) applies to women who donate ova, when a woman provides her ova to impregnate her partner in a lesbian relationship to produce children who will be raised in their joint home, she is the legal parent, despite having

executed an ovum donation form waiving her parental rights. (*K.M. v. E.G.* (2005) 37 Cal.4th 130)

d. Provider of Donated Embryo

Similar to ova, the provider of embryo(s) for use in assisted reproduction to an intended parent who is not the spouse or nonmarital partner of the provider is not the natural parent unless a court finds by satisfactory evidence that the intended parent intended for the provider to be a parent. FC § 7613(d).

e. Renouncing Parentage of Embryos

Effective 1/1/2024 unmarried persons who share legal control over the disposition of embryos may enter into a written agreement where one renounces all legal interest in the embryo, despite any prior oral or written agreements, or legal judgments to the contrary. Once the renouncement occurs, the renouncing person is treated in law as a donor, and the other person retains sole right to control disposition of the embryos, including the right to conceive a child therewith. Either party may file the agreement with a court and the court must issue an order establishing the nonparentage of the donor. FC § 7613(e)(1)

 **NOTE:** Married persons may sign such an agreement, but it is only binding upon the entry of the final decree of dissolution that incorporates the agreements, and thereafter the presumptions of FC 7540 and 7611(a)-(c) do not apply. FC § 7613(e)(2).

4. Statutory Forms

FC § 7613.5 sets forth four separate statutory forms for use in assisted reproduction matters. The forms are for optional use, satisfy the writing requirements specified in FC § 7613 and are “designed to provide clarity regarding intentions, at the time of conception, of intended parents using assisted reproductions.” The forms do not affect any

presumptions of parentage under FC § 7611 and do not preclude a court from considering any other claims of parentage. The forms are not for use with gestational carriers (person giving birth is genetically unrelated to the embryo/child) or surrogacy agreements.

L. APPOINTMENT OF GUARDIANS AD LITEM IN PARENTAGE PROCEEDINGS

agreements.

1. Guardian

FC § 7635(a) provides that in contested parentage proceedings, if the child is under the age of 12, the court may, and if over the age of 12, the court shall, make the child a party to the action. If the court orders the child added as a party to the action, the court shall appoint a guardian ad litem to represent the child.

☛ **PRACTICE POINT:** Court practice in this area varies. Many courts do not make children over 12 a party to the action in contested parentage proceedings.

M. PARENTAGE DISESTABLISHMENT

1. Using Biology to Vacate Parentage Judgments

Some parentage judgments may be set aside upon motion (FC § 7646(a)), including juvenile court judgments. (FC § 7645(b)).

Judgments that cannot be set aside pursuant to FC § 7646 include dissolution, legal separation, and nullity judgements (FC § 7645(b)); parentage judgments established in another state (FC § 7648.3(a)); parentage judgments based on pre-judgment genetic testing (FC § 7648.3(b)); and parentage judgments where the child was conceived by assisted reproduction or pursuant to a surrogacy agreement (FC § 7648.9). Similarly, FC § 7646 does not affect any obligation of an adoptive parent. (FC § 7648.8).

2. Standing

a. Judgments

A motion to set aside a judgment establishing

parentage may be filed by the previously established parent, child, or the legal representative of any of these persons if genetic testing indicates that the previously established father is not the genetic father of the child. (FC § 7646(a)).

b. VDOPs

Standing to Set Aside a VDOP is separated into two sections: Those who signed the VDOP and those who did not. See Section B 4, Challenging VDOPs, above.

A motion to set aside the VDOP pursuant to CCP § 473 may be filed by a non-donor alleged genetic parent, a presumed parent under FC § 7611 or any person with standing under FC §7630. (FC § 7577(k)).

☛ **PRACTICE POINT:** In responding to a motion to set aside a voluntary declaration of parentage, always ensure that the declaration has been filed with the California Department of Child Support Services.

3. Statute of Limitations

a. Generally

A motion to set aside must be filed by the earlier of: within two years of the date the previously established father knew or should have known of the parentage judgment; or within two years of the date the previously established father knew or should have known of the existence of an action to adjudicate the issue of parentage. (FC § 7646(a)(1)).

b. Voluntary Declarations of Parentage

See Challenges to VDOPs, section B 4, above.

c. CCP § 473(b) Motions – Mistake, Inadvertence, Surprise, or Excusable Neglect

For motions to set aside a VDOP brought pursuant to FC § 7577(k) under the rubric of CCP § 473(b), the six-month time to file the motion begins to run from the date that the court makes a finding of paternity in an action for

custody, visitation or child support based upon a VDOP. (*County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 1346, review denied January 15, 2003).

4. Contents of the Motion (FC § 7647)

The motion must allege all the following, if known:

- a.** The child's legal name, age, county of residence, residence address.
- b.** The names, mailing addresses, and counties of residence of the following persons: the previously established parents, the alleged father, the guardian of the child, if any, the person with physical custody of the child, and the guardian ad litem of the child, if any.
- c.** A factual declaration in support, alleging the previously established father is not the genetic father, specific reasons for this belief and a request that relief be granted, and
- d.** A declaration that the marital presumption of FC § 7540 does not apply and that the action is not barred by FC § 7630(a)(2).

5. Venue

The motion must be filed in a court of proper venue. (FC § 7647(a)(1)).

6. Service of the Motion

The motion must be served on the parties to the action resulting in the judgment of parentage including any involved LCSA. (FC § 7647.5).

7. Appointment of Guardian Ad Litem

A guardian ad litem may be appointed for the child to represent the best interests of the child. (FC § 7647.5).

8. Genetic Testing

The court shall order genetic testing on its own motion or at the request of any person authorized to make a motion to set aside or vacate. Genetic testing supporting the motion must be conducted according to FC §7552. (FC § 7647.7).

9. Setting Aside the Judgment

The motion cannot be granted unless genetic testing indicates the previously established father is not the child's genetic parent. (**FC § 7647(a)(3)**); *County of San Mateo v. Clark* (2008) 168 Cal.App.4th 834).

Even if genetic testing excludes the previously established father as a genetic parent, the court may deny the motion if it determines that denial of the motion is in the best interest of the child. *See FC § 7648* for a list of factors to be considered.

a. Motion denied

If the court denies a motion pursuant to **FC § 7648**, it must state on the record the basis for the denial. (**FC § 7648.1**).

b. Motion granted

If the court grants a motion to set aside, it "shall vacate any order for child support and arrearages issued on the basis of that previous judgment of paternity." (**FC § 7648.4**).

10. Reimbursement

There is "no right of reimbursement for any amount of support paid prior to the granting of the motion." (**FC § 7648.4**; *County of Los Angeles v. James* (2007) 152 Cal.App.4th 253).

➲ **PRACTICE POINT:** If the set aside motion only deals with a VDOP (and not a Judgment), ensure that your motion addresses child support paid and arrearages accrued based on the VDOP. FC §7648.4 addresses what happens when setting aside a Judgment, but there is no similar statute relating to the pure set aside of a VDOP, so reimbursement should be addressed in the motion and decided by the court at the time of the set aside hearing.

11. Limits to Set Aside on Equitable Grounds

"In light of this comprehensive statutory scheme for setting aside a judgment of parentage when otherwise established procedural rules would not permit relief, it must be concluded that section 7645

et seq., vitiates *County of Los Angeles v. Navarro* (2004) 120 Cal.App.4th 246. The amorphous equitable considerations and general policies relied on in Navarro must give way to the later enacted detailed procedure." (*County of Fresno v. Sanchez* (2005) 135 Cal.App.4th 15, 19-20; *County of Orange v. Superior Court* (Rothert) (2007) 155 Cal.App.4th 1253).

12. Stipulated Termination of Parental Rights
Post-birth agreements to terminate parental rights, where adoption of the child is not imminent, are against public policy. (*Kristine M. v. David P.* (2006) 135 Cal.App.4th 783 [the court distinguished this UPA case from pre-conception surrogacy agreements]).

N. NEW EVIDENCE

1. Res Judicata

The issue of parentage is res judicata where there is an existing parentage judgment in any type of case, except for actions brought pursuant to Penal Code § 270. (**FC § 7636**). Outside the parameters of **FC § 7646** relief, judgments must be set aside before genetic testing can be ordered or other evidence (birth certificates, declarations of vasectomies, affairs, etc.) can be considered. (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061; *Robert J. v. Leslie M.* (1997) 51 Cal.App.4th 1642).

New evidence (genetic testing) cannot be used to set aside a parentage judgment unless the case meets the requirements of **FC § 7646**. (*County of Orange v. Superior Court* (Rothert) (2007) 155 Cal.App.4th 1253; *City and County of San Francisco v. Stanley* (1994) 24 Cal.App.4th 1724; *De Weese v. Unick* (1980) 102 Cal.App.3d 100).

PATERNITY JUDGMENTS

	Voluntary Declaration of Parentage (VDOP) FC § 7571 7573.5 7580	Court Judgment FC § 7646	Conclusive Marital Presumption FC § 7540
ELEMENTS	<ol style="list-style-type: none"> 1. Signed by unmarried woman who gave birth and only other genetic parent OR 2. Signed by Woman who gave birth (married or unmarried) and intended parent of a child conceived through assisted reproduction] 	<ol style="list-style-type: none"> 1. Court order adjudicating parentage 	<ol style="list-style-type: none"> 1. Marriage 2. Cohabitation 3. Need both elements at both the time of conception and birth 4. Conclusive presumption does NOT apply if husband was impotent or sterile and child was not conceived through assisted reproduction
TIME LIMITS FOR CHALLENGE	<ol style="list-style-type: none"> 1. Rescission – within 60 days from signature, unless signed as a minor; then 60 days from the earlier of emancipation or reaching the age of 18 years. 2. Void – No time Limit 	<ol style="list-style-type: none"> Within 2 years of the date the previously established father knew or should have known of the judgment or of the action to adjudicate the issue of parentage, whichever is first 	<ol style="list-style-type: none"> Within 2 years of child's birth (action must be filed and served prior to the child's 2nd birthday)
PERSONS WITH STANDING	<ol style="list-style-type: none"> 1. Signatories to the VDOP may Rescind, or challenge 2. Nonsignatory if they are (a) non donor alleged genetic parent (b) presumed parent under 7611 or (c) has standing under 7630 3. LCSA – only as to Void VDOPs 	<ol style="list-style-type: none"> 1. Previously established parent 2. Child 3. Legal representative of one of the above 	<ol style="list-style-type: none"> 1. Either Spouse 2. Presumed parent 3. Child/child's GAL
ADDITIONAL INFORMATION	<ol style="list-style-type: none"> 1. Signatories may only challenge based on Fraud, Duress or Mistake of Fact 2. Non-signatories may challenge based on Genetic testing plus the best interest of child analysis. 	Only if genetic testing shows previously established father is not the genetic father of the child.	Note that this is a conclusive presumption, not a judgment. However, like a judgment, this presumption can only be rebutted during the first 2 years of the child's life. The presumption does not apply if parentage renounced per FC §7613(e)(2).

PARENTAGE PRESUMPTIONS					
	Genetic Testing	Marriage before child's birth	Attempt to marry before child's birth	Marriage or attempt to marry after child's birth	Holding Out Child as His or Her Own
AUTHORITY	FC § 7555	FC § 7611(a)	FC § 7611(b)	FC § 7611(c)	FC § 7611(d)
PRESUMPTION	Genetic testing results with at least a 99 percent probability of parentage and a Combined Relationship Index of at least 100 to 1.	Child born within a marriage or within 300 days after the parents' marriage is terminated	Child born within 300 days after parents' attempt to marry	Parents marry or attempt to marry after the child's birth, AND presumed parent is named on birth certificate or is obligated to support the child under a written promise	Person holds child out as their own AND brings the child into their home
REBUTTING THE PRESUMPTION		Presumption does not apply if parentage renounced per FC § 7613(e)(2)			A presumption raised under FC § 7611 affects the burden of proof and may be rebutted by clear and convincing evidence in an appropriate action. <p style="margin-top: 20px;">The presumption is rebutted by a judgment establishing parentage of the child by another man, including a voluntary declaration of parentage unless a court finding that multiple parents are appropriate in the case pursuant to FC 7612(c)</p>

IV. SUPPORT

A. DOES A SUPPORT OBLIGATION EXIST?

1. Parents' Legal Duty to Support Child

a. Equal Duty

Parents have an equal responsibility to support their child(ren). (FC § 3900) In the case of multiple parents (FC § 7601), each parent's respective support obligation shall be determined pursuant to the statewide uniform guideline. (FC § 4052.5)

b. Agreements Notwithstanding

Any agreement between the parents cannot abridge a child's right to support. (*Armstrong v. Armstrong* (1976) 15 Cal.3d 942). Agreements terminating a child support obligation are void (void order) as against public policy. (*IRMO Lambe and Meehan* (1995) 37 Cal.App.4th 388; *Kristine M. v. David P.* (2006) 135 Cal.App.4th 783) A court is not bound by an agreement between parents that support is not modifiable. (*IRMO Alter* (2009) 171 Cal.App.4th 718). A support order may be modified by the court even if the order is based upon an agreement between the parties. (FC § 3651(e)).

c. Support Obligation Survives Loss of Custody and Control

Even when a child is declared a dependent of the juvenile court and removed from the parents' custody, the duty to support does not end. (*Ventura v. Gonzales* (2001) 88 Cal.App.4th 1120, 1122). Additionally, a support obligation does not automatically terminate upon the death of the custodial parent; rather, the custodial parent's death may provide a basis for the obligor to seek modification or termination of the support order. (*IRMO McCann* (1994) 27 Cal.App.4th 102; *see also Helgestad v. Vargas* (2014) 231 Cal.App.4th 719 for a good explanation of McCann). Note that a

judicial declaration of freedom from parental custody and control pursuant to FC § 7800 terminates parental rights and responsibilities; in this instance the support obligation is terminated.

d. Limitation – Voluntary Support

FC § 3951(a) bars a parent or relative from seeking compensation from a parent for the “voluntary support” of the child absent an agreement for compensation. (*Plumas County Child Support Services v. Rodriguez* (2008) 161 Cal.App.4th 1021, as modified on denial of rehearing (April 22, 2008). [provides that a non-parent caretaker has no legal duty to support the child and therefore, support is “voluntary” and absent an agreement for compensation, the parent is not required to provide child support]). A father who agreed to pay guideline child support to the child’s stepfather could not later withdraw his agreement to compensate the stepfather; he was only able to assert FC § 3951(a) as a bar to any child support order in the original request for child support to be paid to stepfather. (*IRMO Schopfer* (2010) 186 Cal.App.4th 524).

- 1) Pursuant to *County of San Diego Child Support Services v. C.A.* (2019) 34 Cal.App.5th 614, the word “voluntary” as used in FC § 3691, means a relative must be supporting the child of his or her own accord or by free choice. Once a court awards that relative full legal physical custody of the child, his or her support is no longer “voluntary.”
- 2) “Private parties are free to enter into written agreements for compensation in exchange for care giving. Such contracts may be enforced under the provisions of the Civil Code. However, DCSS has no authority to enforce caregiver agreements and a written caregiver agreement does not establish a guardianship for the child. Accordingly, DCSS should not open

a child support case based on the application of a third-party caregiver with a written agreement, unless the caregiver is a guardian of the person for the child." (CSS Letter 10-04)

3) Redirecting Payments: "In instances where there is an existing order involving the parents as parties to the case but the child is living with a non-parent third-party caregiver, child support payments may be redirected to the caregiver. To redirect payments, the CP, as court-designated payee, must provide written authorization for DCSS to forward payments received to the non-parent caregiver. The authorization must be signed by the CP and notarized unless the parent verifies his/her identity and signs the agreement in the presence of the LCSA representative." (CSS Letter 10-04)

✍ NOTE: There is an exception to ***Plumas*** which states that if the non-parent/third-party caregiver is receiving welfare assistance or Medicaid for the minor child(ren), the LCSA shall open a case for welfare recoupment against the parent(s) even absent an agreement between the parent(s) and the third party. The third-party caregiver can continue to receive LCSA services after assistance has ended, unless the recipient requests the case be closed. (**FC § 17402(b) and CSS Letter 10-04**).

e. Legal Guardian Entitled to Support

If the court appoints a legal guardian or orders custodial placement with a non-parent caretaker, the guardian/caretaker's support of the child is not "voluntary," and that person may request support or enforcement services. The parents are still obligated to support their minor children unless legally excused from that burden. "Otherwise, they may become public charges." (*Fagan v. Fagan* (1941) 43 Cal.App.2d 189, 198; *see also IRMO Gregory* (1991) 230 Cal.App.3d

112 [a child support order does not terminate by operation of law with the death of the custodial parent and the LCSA may enforce the support order on behalf of the grandparent guardians even after public assistance is no longer being provided]).

f. No Automatic Termination of Support Order When Child Resides with Non-Parent

Additionally, an order requiring the payment of child support is not terminated under FC § 3951(a) because the child resides with a non-parent caretaker. The support obligor cannot unilaterally terminate his court-imposed child support obligation. “[T]he state’s interest in protecting the welfare of children dictates that the time for termination of court-ordered child support be determined by the court, an impartial third party, and not by the obligor parent.” (*IRMO McCann* (1994) 27 Cal.App.4th 102, 107; see also *IRMO Wilson* (2016) 4 Cal.App.5th 1011 [in which the court retained equitable power to deny enforcement of support arrears owed to the mother for a period when the child lived with grandparents. In this case, the NCP father paid support to the grandparents and the custodial parent mother did not contribute to the child’s support.]).

g. Domestic Violence Case

A support order entered in a domestic violence restraining order action survives termination of the order or dismissal of the underlying action. (FC § 6340(a); see also *Moore v. Bedard* (2013) 213 Cal.App.4th 1206, 1210).

h. Juvenile Dependency Court Case

At the end of a juvenile dependency court case when the court enters its final judgment, the dependency court issues an exit order terminating its jurisdiction and will also issue a new family law court case number if no prior one exists for the

parties and the minor child(ren). This confers or returns jurisdiction to the family court, allowing parties a venue to modify custody or visitation, and/or to seek/modify support. (**California Rules of Court Rule 5.475**) When there is a finding of a “presumed parent” in the juvenile court’s final judgment, the LCSA can use the companion family law case to establish a support order against or for that presumed parent. (**California Rules of Court Rules 5.475 and 5.635**)

i. Liability of the State

Parent’s duty to support a child is not relieved when a state, county, or other government entity provides support for the child. (**FC § 3951(c)**)

2. Duration of Support

Child support continues until an unmarried child is 18 years old and up to the child’s 19th birthday if the child is still a full-time high school student (unless excused due to a medical condition documented by a physician that prevents full-time school attendance) and not self-supporting. (**FC § 3901(a)(1) and (2)**). Effective January 1, 2019, child support can continue for a minor child attending high school **on a part-time basis** due to a physician documented medical condition which prevents full-time high school attendance. Full-time has the same meaning as set forth in **Education Code § 48200**.

(IRMO D.H. and B.G. (2023) 87 Cal.App.5th 586) A supported child does not need to make a good faith effort to graduate from high school as soon as possible for child support to continue. (**IRMO Hubner (2001) 94 Cal.App.4th 175**)

“Dependent child” is further defined under **FC § 17000(f)(2)** as “[a]ny unmarried person who is at least 18 years of age but who is not reached 19 years of age, is not emancipated, and is a student regularly attending high school or a program of vocational or technical training designed to train that person for gainful employment.”

a. Emancipated Minor

A person under the age of 18 years is an emancipated minor if the person has entered into a valid marriage, has established a valid domestic partnership, is on active duty with the armed forces, or has received a declaration of emancipation from the court. (**FC § 7002**). An emancipated minor is considered an adult for the purpose of the minor's right to support by the minor's parents. (**FC § 7050(a)**).

b. Termination of Parental Rights Ends Support Obligation

A termination of parental rights also terminates all parental duties, including the duty to pay child support. However, any arrears owed up to the date the Court terminates the parental rights are not extinguished. (*County of Ventura v. Gonzales* (2001) 88 Cal.App.4th 1120).

☞ **NOTE:** **W&I § 366.26** provides that parental rights may be reinstated for a child who is no longer likely to be adopted, subject to specified conditions. This may create a situation where a parent was relieved of the support obligation, and then the obligation is reinstated.

☞ **PRACTICE POINT:** A termination of parental rights is not the same as a parent signing an adoption consent form. Be sure there is an order terminating parental rights pursuant to section **W&I § 366.26** before enforcement of ongoing support is stopped.

3. Death of a Parent

A child support obligation survives the death of either parent (custodial or noncustodial). (*IRMO Gregory* (1991) 230 Cal.App.3d 112, 115). A child support order survives as a charge against a noncustodial parent's estate or living trust. (*IRMO Perry* (1997) 58 Cal.App.4th 1104).

4. Unique Aid Cases

Minor Parents, Foster Care, and Juvenile Hall.

a. Minor Parent on Aid

A minor who is pregnant or has a dependent child may receive aid only if the minor and child live in the home of an adult relative or guardian, who acts as the payee.

(**W&I § 11254(a)(1)-(2)**) There are exceptions if the minor does not have an available parent or legal guardian, the health or safety of the minor or minor's child would be jeopardized by living with the adult, or the minor lived apart from his/her parent or legal guardian for more than a year. (**W&I § 11254(b)**).

1) Grandparents Not Obligated to Pay Support

"A parent does not have the duty to support a child of the parent's child." **FC § 3930** and **W&I § 11254** all but eliminate the issue addressed in *County of San Diego v. Lamb* (1998) 63 Cal.App.4th 845, where the court found that a mother did not have an obligation to reimburse the County for aid benefits that her minor daughter received for her baby (the mother's grandson).

b. Foster Care Cases

A parent of a child in foster care is obligated to pay support for the child. (**FC § 17402(a)**). If the parents reside together, the guideline is calculated by combining the parents' incomes and using zero income for the caretaker. The respective support order for each parent shall be apportioned based on their net monthly incomes. (**FC § 17402(c)(2)**). If the parents reside apart, guideline is calculated separately for each parent by treating each parent as noncustodial parent. (**FC § 17402(c)(3)**).

1) Best Interests of the Child

The child welfare department does not refer cases to the LCSA if it determines a referral would not be in the child's best interests (e.g. a child support order would compromise the parents' ability to reunify with the child). (**FC § 17552**). Effective January 1, 2023, CDSS issued new policy stopping the accrual process on active foster care cases and stopping future referrals to LCSAs, unless the single income exception is met. (**ACL 23-09 and CSSI Letter 23-10**).

2) Special Education Placement

In rare cases, a child is placed in foster care based on educational needs. If the placement is a result of an individualized education plan pursuant to the Individuals with Disabilities Education Act (**20 USC § 1400 et seq.**), the LCSA should not seek reimbursement. (*County of Los Angeles v. Smith* (1999) 74 Cal.App.4th 500).

➲ **PRACTICE POINT:** The LCSA should request a copy of the individualized education plan (IEP) drafted for the child's placement to verify that the placement began due to educational needs. If placement began due to some other basis (e.g., delinquency) and the IEP was secondary, the LCSA should pursue support.

c. Juvenile Court Cases

W&I § 903 sets the procedure and limits for support when a child is placed pursuant to a juvenile court order. **W&I § 903(c)(4)** mandates the use of the guideline to set support. *County of Los Angeles v. Ralph V.* (1996) 48 Cal.App.4th 1840 states that the County is obligated to ascertain the actual, reimbursable costs of support because funds in excess of a certain amount per day must be held for the minor's future needs or paid directly to the minor (with the probation officer's approval).

1) Parent as Crime Victim

W&I § 903(e) precludes the entry of a foster care support order where the child committed a crime against the obligor and the crime is the reason for the commitment. This code section does not apply if a crime was committed against the obligor's family member (such as another child of the obligor). (*Yolo County DCSS v. Lowery* (2009) 176 Cal.App.4th 1243).

d. Aid Codes K1 and 3F (CSS Letter 15-09)

Effective October 1, 2013, CDSS implemented aid codes K1 and 3F to move qualified families from the federally funded Temporary Assistance to Needy Families program (TANF) into state-only funded programs such as California Work Opportunity and Responsibility for Kids (CalWorks). As such, K1 and 3F aided cases are not subject to certain federal requirements.

1) "Child-Only Case"

a) Qualification: At least 1 child continues to qualify for CalWorks but adults in the home are unwilling/unable to qualify for the TANF WPR (Work Participation Rate) requirements - i.e. timed out from a grant, long term sanctioned, ineligible for cash assistance (immigration status), drug felon or fleeing felon cases. (**CSS letter 15-09**)

2) Non- Recoupable and Non-Referable

a) Because solely funded through state General Fund (CalWorks). (*Supra*)

3) Considered "Assisted" and "Formerly-Assisted" in Certain Scenarios

a) "Assisted" for purposes of:

- i. Income which will not be used in guideline calculations (considered "needs-based") but other sources of

income not from public assistance can be used. (*Supra*)

- ii.** Required to report all child support payments received. (*Supra*)
- iii.** Support must be pursuant to guideline. LCSAs prohibited from agreeing to below guideline support. If CP wishes to stipulate to an amount other than guideline support, s/he must go before the court to have both the current support and arrears reviewed. (**FC § 4055, 4065(c) and CSS Letter 15-09**).
- iv.** Inability to waive permanently assigned arrears – including those accrued during K1 and 3F aided periods. (**CSS letter 15-09**)

b) “Formerly-Assisted” for purposes of:

- i. Child support payment distribution
- ii. Case closure at the request of CP only if there are no permanently assigned arrears. Although any arrears accrued under K1 or 3F are not “permanently assigned,” they cannot be waived as they accumulated when the family unit was on public assistance. (*Supra*)
- iii. All stipulations must be signed by the CP (*Supra*)

e. Half or Step-Sibling of Aided Child

Effective November 1, 2018, a CalWorks recipient has the option of receiving child support payments for a half and step-sibling of an aided child in lieu of cash aid. State Bill (SB) 380 allows a CalWORKs recipient eligible to receive the full child support collection for a half or step-sibling, under the following conditions (in addition to their family

grant for the aided child):

- The stepsibling(s) or half-sibling(s) lives with at least one eligible child who remains on the grant.
- Proof of an existing, paying, court order for support of the child(ren).
- The amount of current child support received each month for that child(ren) is greater than the cash aid amount the family would receive for the specified child(ren).
- The recipient has requested in writing that the half or step-sibling(s) not be included in the number of needy persons used to calculate the Maximum Aid Payment (MAP).

State Bill (SB) 380 exempts these child support payments as income in determining the eligibility or proposed grant amounts. A decrease in the amount or collection of the court ordered support disqualifies the family from the SB 380 program.

✍ NOTE Recent CSSI Letter: 22-06 requires the continuation of IV-D services upon the termination or ineligibility of public assistance under the IV-A, Medi-Cal or IV-E programs – including KinGAP and the Approved Relative Caregiver Program (ARC) - absent a written request from the family requesting case closure. (**FC § 17415(e)**).

Continuation of IV-D services is not applicable when aid termination is due to emancipation of the minor child, closure for other reasons, good cause has been claimed or granted, or is a non-IV-D case.

5. Support of Adult Disabled Child

Parents are equally responsible for supporting an adult disabled child to the extent of their ability. (**FC**

§ 3910; see *IRMO Drake* (1997) 53 Cal.App.4th 1139, 1154 [father had a duty to support adult disabled child despite income from trust established by mother for the adult child]). To establish that an adult disabled child support order is appropriate, the court must find that the child is both unable to be self-supporting (incapacitated) and “without sufficient means” (likely to become a public charge). (*IRMO Cecilia and David W.* (2015) 241 Cal.App.4th 1277). The child’s disability must be verified to have occurred prior to the age of majority which may be in the form of, but is not limited to, a court finding, disability benefit assessments, medical records, or special educational need assessments (CSSP Letter 19-07). Because a parent’s duty to support an incapacitated adult child runs to the child, it may be appropriate under certain circumstances for adult child support payments to be made directly to the child. (*IRMO Drake* (2015) 241 Cal.App.4th 934).

✍ NOTE: A disabled child’s own benefits do not relieve a parent’s duty to pay child support and shall not be used as income for either parent in the calculation of support.

6. Order Commencement

An original child support order may only be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent was not served within 90 days after filing and the court finds that the parent was not intentionally evading service, support shall be effective no earlier than the date of service. (FC § 4009). Note that this restriction is not applicable on default judgments.

B. GUIDELINE CALCULATION

1. Guideline

California has implemented a “statewide uniform guideline” for determining child support according to a complex algebraic formula based on the parents’

incomes and custodial time with the child. (**FC § 4055**).

2. Guideline Calculator

The California DCSS website includes a public guideline calculator. (<https://dcss.ca.gov/>).

3. Principles

The general principles underlying the guideline formula are listed in **FC § 4053** and include:

a. First and Principal Obligation

A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. (**FC § 4053(a)**).

b. Mutual Responsibility

Both parents are mutually responsible for the support of their children. (**FC § 4053(b)**).

c. Income

The guideline accounts for each parent's actual income and level of responsibility for the children. (**FC § 4053(c)**).

d. Ability

Each parent should pay for the support of the children according to his or her ability. (**FC § 4053(d)**).

e. Interests of Children

The guideline seeks to place the interests of children as the state's top priority. (**FC § 4053(e)**).

f. Standard of Living

Children should share in the standard of living of both parents. Child support may appropriately improve the standard of living of the custodial household. (**FC § 4053(f)**). In one appellate case, a father was ordered to pay temporary child and spousal support of \$13,488 per month and \$30,000 per month, respectively, to allow the minor children to share in the standard of living of both parents. (*IRMO Wittgrove* (2004) 120 Cal.App.4th 1317).

4. Multiple Parents

In any case in which a child has more than two parents, the statewide uniform guideline, as required by federal regulations, shall be applied to determine the respective parent's support obligation. (**FC § 4052.5(a)**). "The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent pursuant to Section 4053." (**FC § 4052.5(a)**).

5. Aid Status is Relevant

a. The court may inquire of the parties' aid **status** (currently receiving or intends to apply) for purposes of determining their respective sources of income and verifying assignment of support rights to the County as an indispensable party. (**FC § 4004**)

b. Aid **amount** is confidential and irrelevant since it is not considered income, has no impact to the calculation of guideline support, and not a factor allowing deviation from guideline support. (**FC § 4058(c)**, see *County of Alameda v. Johnson* (1994) 28 Cal.App.4th 259, 263-264 [The fact that the monthly public assistance payment is less than the guideline amount is not a special circumstance warranting deviation.]; *County of Nevada v. Kinicki*, (1980) 106 Cal. 3d 357, at 360 [Appellate court refrained from ruling on the appellant's discovery requests for disclosure of family grant amounts but specifically ruled solely on the issue of paternity, "[W]e consider here only the plaintiff's claims that its welfare records relating to paternity are privileged from disclosure under the provisions of Welfare and Institutions Code section 10850 and Evidence Code section 1040, subdivision (b)(2). We shall conclude that the records are not privileged and are subject to subpoena for use in the paternity action."]

c. AFDC holds the privilege and confidentiality of its records and the information contained therein –

including family grant amounts. (**Welfare & Institution Code §10850(a)**). LCSA should only disclose aid *status* of the parties who can voluntarily provide the amount themselves if they desire to disclose – i.e, on the I&E. (**Welfare & Institution Code, supra**)

6. Adult Disabled Child

Although the statute for adult disabled child support does not specify, case law provides that the statewide uniform child support guidelines apply to determining support for adult disabled child. (**FC § 3910(a)**; *IRMO Drake* (1997) 53 Cal.App.4th 1139).

7. Child's Income

Parents bear the primary obligation to support their child and may only use the child's own resources if the parents are financially unable to fulfill the obligation themselves. (**FC § 3902**, *see Armstrong v. Armstrong* (1976) 15 Cal.3d 942 [a child's independent income does not impact the noncustodial parent's duty to support the child]).

C. REBUTTING THE GUIDELINE AMOUNT

1. Factors for Deviating

The amount of child support established by the guideline calculator is presumed to be correct. (**FC § 4057(a)**). Pursuant to **FC § 4057(b)**, the guideline amount may be rebutted by showing its application would be unjust or inappropriate in a particular case because one or more of the following factors:

- a.** Stipulation of the parties (which requires declarations pursuant to **FC § 4065(a)**);
- b.** Deferred residence sale order;
- c.** Amount would exceed the needs of the children because of the extraordinarily high income of the obligor (in conflict with **FC § 4053(f)** and see conflicting case law: *S.P. v. F.G.* (2016) 4 Cal.App.5th 921 and *Y.R. v. A.F.* (2017) 9 Cal.App.5th 974);

- d. A party's contribution is not in line with timeshare; or,
- e. Special circumstances, including different timesharing arrangements for different children, substantially equal timeshare and great difference in income used for housing, special medical or other needs of the children, or the child has more than two parents. (*See IRMO Rodriguez* (2018)23 Cal.App.5th 625 for a discussion on the trial court's 'considerable' discretion to consider the unique special circumstances presented in each case).

✍ NOTE: Even where one or more of the listed circumstances is present, deviation from guideline must remain consistent with the broad principles set forth in **FC § 4053**. (**FC § 4057(b)**).

2. Written Findings

If the court orders non-guideline support, it must state in writing or on the record the following information pursuant to **FC § 4056**:

- a. The guideline amount of support (*IRMO Hubner* (2001) 94 Cal.App.4th 175, 184);
- b. The reasons the amount ordered differs from guideline; and,
- c. The reasons the amount ordered is in the best interests of the children

✍ NOTE: The required findings must be made *sua sponte* and are not dependent on a specific request by either party. (*Rojas v. Mitchell* (1996) 50 Cal.App.4th 1445; *IRMO Hall* (2000) 81 Cal.App.4th 313). Court's failure to state on the record reasons for deviation caused reversal of order. (*see Y.R. v. A.F., supra*).

3. Burden of Proof

The party seeking deviation from guideline support bears the burden of proving the formula is unjust or inappropriate. (**FC § 4057(b)**; *IRMO Ackerman* (2006) 146 Cal.App.4th 191).

4. Special Circumstances

FC § 4057 does not specify all the special circumstances in which the guideline amount would be inappropriate; courts have broad discretion to determine when such circumstances apply. (*IRMO de Guigne* (2002) 97 Cal.App.4th 1353; *see also IRMO Cryer* (2011) 198 Cal.App.4th 1039 [deviation to \$8,000 per month, instead of the guideline \$1,141 per month, was appropriate in the unique circumstances of the case]).

5. Guideline Exceeds Public Assistance Grant

The fact that the monthly public assistance payment is less than the guideline amount is not a special circumstance warranting deviation. (*County of Alameda v. Johnson* (1994) 28 Cal.App.4th 259, 263-264).

6. Relocation

A custodial parent's relocation to another state and resultant increase in visitation expenses for the noncustodial parent might justify a reduction in the guideline amount. (Compare *Wilson v. Shea* (2001) 87 Cal.App.4th 887 with *IRMO Gigliotti* (1995) 33 Cal.App.4th 518).

7. Discretion Limited

"[I]n reviewing child support orders we must also recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule." (*IRMO Butler and Gill* (1997) 53 Cal.App.4th 462, 465).

D. STIPULATED AGREEMENTS FOR CHILD SUPPORT

1. LCSA Signature Necessary

"A stipulated agreement for child support is not valid unless the [LCSA] has joined in the stipulation by signing it in any case in which the [LCSA] is providing services...." (FC § 4065(c)). Further, "[a]ny order obtained by a parent prior to support

enforcement services being terminated in which the local child support agency did not receive proper notice pursuant to [FC § 17404] shall be voidable upon the motion of the local child support agency.” (FC § 17404(f)(3)).

2. Welfare Stipulations

“The [LCSA] shall not stipulate to below guideline child support if the children are receiving assistance under the CalWORKs program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.” (FC § 4065(c)).

⌚ **PRACTICE POINT:** In 2013, California Department of Social Services implemented aid codes K1 and 3F, state-only funded programs, which are not referable to or recoupable by the child support program. Although any arrears accrued under K1 or 3F are not permanently assigned, they cannot be waived as they accumulated when the family unit was on public assistance. (CSS Letter 15-09).

3. Non-Welfare Stipulations

If non-welfare parties wish to stipulate to a below-guideline amount, make sure that a FC § 4065(a) waiver is executed or put on the record. The elements are:

- a. The parties are fully informed of their rights concerning child support.
- b. The order is being agreed to without coercion or duress.
- c. The agreement is in the best interests of the children involved.
- d. The needs of the children will be adequately met by the stipulated amount.
- e. The right to support has not been assigned to the county pursuant to W&I § 11477 and no public assistance application is pending.

PRACTICE POINT: Because there is no assignment of rights for K1 and 3F custodial parents, the signature of the party receiving aid is necessary for any stipulation to guideline child support. If a K1 or 3F custodial parent wants to stipulate to below-guideline child support, the case must go to court for a determination that the agreement is in the best interests of the children and the needs of the children will be adequately met by the stipulated amount. (CSS Letter 15-09).

4. Change of Circumstances

No change of circumstances need be shown for modification of a below-guideline stipulated order. (**FC § 4065(d)**). However, an above-guideline stipulated order cannot be modified downward unless the obligor presents admissible evidence of changed financial circumstances. (*IRMO Laudeman* (2001) 92 Cal.App.4th 1009).

E. INCOME AND SOURCES OF INCOME

1. Definition of Income Generally

Income is broadly defined for the purpose of calculating guideline child support under **FC § 4058**. It includes, but is not limited to, commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, spousal support, income from proprietorship of a business, employee benefits, and self-employment benefits.

Income is further defined as the gain or recurrent benefit derived from labor, business, property, or from any other investment of capital. (*IRMO Scheppers* (2001) 86 Cal.App.4th 646).

⌚ **PRACTICE POINT:** Income tax returns are presumptively correct as to a parent's income for purposes of calculating child support. (*IRMO Loh* (2001) 93 Cal.App.4th 325, 332) However, federal tax law is not conclusive as to whether a specific source of funds is "income" for child support. (*M.S. v. O.S.* (2009) 176 Cal.App.4th 548, 560 [parent rebutted the presumption that an attorney fees benefit included in federal income tax return should be included for purpose of calculating child support]). Further, the presumption does not apply to tax returns of a self-employed parent who controls the reporting of income and business expenses. (*IRMO Hein* (2020) 52 Cal.App.5th 519; *Swan v. Hatchett* (2023) 92 Cal.App.5th 1206).

2. Not Income

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

a. SSI and SSP (Title XIV Benefits)
Supplemental Security Income (SSI – Federal) and State Supplemental Program (SSP – California) are need-based programs and cannot be reached or considered in setting child support. (*Elsenheimer v. Elsenheimer* (2004) 124 Cal.App.4th 1532).

✍ **NOTE:** Service members may also qualify for a need-based, non-service connected disability payment, which should be treated the same as receipt of SSI. (See also paragraph 11 Veteran's Disability Benefits.)

➲ **PRACTICE POINT:** SSI benefits are exempt and paid on the 1st of the month. Verify the payment date on award letters or payment stubs to determine whether or not the benefits are exempt as income or from enforcement.

➲ **PRACTICE POINT:** Mandatory motion to modify support is required within 30 days of receipt of verification from the obligor or any other source that the obligor is receiving SSDI or SSI/SSP before closing the case. (FC § 17400.5 and California Code of Regulations (CCR) Title 22, Section 118203(a)(5)(D)).

3. Fluctuating Income

If a party has fluctuating income, income must be calculated using a representative time period, which usually means at least a 12-month average. (FC § 4064; FC § 4060; *IRMO Riddle* (2005) 125 Cal.App.4th 1075 [court abused its discretion by using only two months of income]).

4. Overtime

A court should use an obligor's past overtime and bonus pay in calculating annual income unless evidence suggests it is not likely to recur. (*County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393). In *IRMO Simpson* (1992) 4 Cal.4th 225, the court held that an obligor who had worked excessive hours during the marriage was not obligated to continue extraordinary overtime after separation.

5. Bonus Income

Bonus income is considered income for purposes of calculating support. (FC § 4058). However, when no future bonus income is guaranteed, support should be determined using base salary income and bonuses should only be considered when actually received. (*IRMO Scheppers, supra*, 86 Cal.App.4th 646). Alternatively, a portion of future bonuses should be allocated by way of a percentage. (*IRMO Ostler and Smith* (1990) 223 Cal.App.3d 33; *IRMO Mosley*

(2008) 165 Cal.App.4th 1375).

6. Deferred Income

a. An obligor's practice of "deferring" his salary in order to protect his investment in his business warranted including that salary as current income for purposes of FC § 4058(a) or, in the alternative, as a "special circumstance" under FC § 4057(b)(5) that would justify treating the deferral salary as current income for purposes of child support. (See *IRMO Berger (2009)* 170 Cal.App.4th 1070)

7. Employment Benefits

If a benefit is received from an employer as compensation for services, it is "income" and should be included in the guideline. (FC § 4058(a)(3); see also *Stewart v. Gomez* (1996) 47 Cal.App.4th 1748 [disability benefits, subsidized housing, and a meal allowance all considered income for child support]; see also *IRMO Schulze* (1997) 60 Cal.App.4th 519 [employer-provided auto and housing benefits were properly considered income for support purposes]). Not all sources of free housing can be used as income. However, such benefits may be considered for deviation from guideline under FC § 4058. (*IRMO Schlaflly* (2007) 149 Cal.App.4th 747).

8. Self-Employment Income

Independent contractors, sole proprietors, "gig economy" workers and business owners are all terms referring to self-employed individuals. Methods for recording/reporting their incomes have evolved over the years and may include Schedule C or corporate tax returns, profit and loss statements, 1099-NEC (non-employee compensation), 1099-MISC (miscellaneous income for fees, rents, and royalties), or 1099-K (report of third-party network or card transactions).

a. Self-employment Income in General

Self-employment is income from the proprietorship of a business, generally

calculated as gross business receipts reduced by *expenditures required for the operation of the business*, as well as other self-employment benefits, including reduction in living expenses. (FC § 4058(a)(2); FC § 4058(a)(3)). “*Expenditures required for the operation of the business*” means ordinary and necessary business expenses directly related to or associated with the active, day-to-day conduct of the business; (*Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407, 1425).

b. Business Expenses and Deductions

The depreciation of a business asset should not be subtracted because it is neither required for the operation of the business nor is it an actual expenditure. (*Asfaw v. Woldberham, supra*, at 1423.)

The reasoning in Asfaw has been extended to claimed depreciation for motor vehicles used as business assets. (*IRMO Rodriguez, supra*, 23 Cal.App.5th 625.)

Similarly, Section 179 elections to expense assets up front (as opposed to depreciating them overtime) should be added back in when calculating income used for support. (*IRMO Hein* (2020) 52 Cal.App.5th 519, 533 (certified for partial publication)).

On the other hand, one court held that funds spent diversifying a company are reasonable expenses properly chargeable to the business and should not be included in the calculation of income for spousal support purposes. (*IRMO Blazer* (2009) 176 Cal.App.4th 1438).

A parent who owns a business can structure income and payment of expenses to depress income; therefore, a court may rely on information stated on a loan application to determine income. (*IRMO Chakko* (2004) 115 Cal.App.4th 104). When an income and expense declaration doesn’t “add up,” a trial court may

draw adverse inferences in modifying child support. (*IRMO Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28)

➲ **PRACTICE POINT:** Determining self-employment income may require review of profit and loss statements and/or federal and state tax returns, particularly Schedule C (see Section XVI - Analyzing Tax Returns, for further discussion on this topic.)

9. Social Security Retirement or Disability (Title II Benefits)

Social Security benefits may be paid as disability, retirement, survivor, or needs-based benefits. Disability, retirement and survivor benefits are based on past earnings history and, therefore, can be considered as income in setting support and are subject to collection for child support through wage assignment. (FC § 4058(a)(1) and FC § 5206).

a. Social Security Disability Insurance (SSDI)

SSDI is paid to individuals who have a medical condition that meets the SSA's definition of disability and have worked in jobs where they paid into social security. Upon reaching full retirement age, the SSDI benefits automatically convert to retirement benefits, but the amount generally remains the same.

i. SSDI is generally nontaxable but may be taxable if the benefit amount in addition to other income exceeds a certain amount.

ii. A mandatory motion to modify support is required within 30 days of receipt of verification from the obligor or any other source that the obligor is receiving SSDI. (FC § 17400.5)

➲ **PRACTICE POINT:** SSA and SSDI benefits are not exempt from enforcement and are usually paid on the 3rd of the month. Verify the payment date on award letters or payment stubs to determine what types of benefits are being paid.

b. SSA Retirement and Survivor Benefits

A recipient, who is 62 years or older, has worked

in a job that contributed to social security taxes for 10 or more years, becomes eligible for social security retirement benefits.

A recipient may still become eligible for survivor benefits if he/she/they have not contributed to social security based upon a current or prior spouse's work history.

Retirement benefits are generally taxable and subject to enforcement of support payments.

c. Derivative Benefits

With SSA benefits, children and step-children of a recipient may be eligible for direct benefits based on the supporting person's award. **FC § 4504(a)** requires the custodial parent or obligee to apply for derivative benefits after notification of possible eligibility.

i. Credit Against Support Obligation

a) Any derivative benefits received by the obligee because of the obligor's benefits must be credited toward the support obligation. (**FC § 4504(b)**; *IRMO Hall and Frencher* (2016) 247 Cal.App.4th 23).

IRMO Daugherty (2014) 232 Cal.App.4th 463 further clarified **FC§ 4504(b)**, holding that derivative benefits paid to the custodial parent on behalf of the minor children of a disabled obligor are not considered income for purposes of determining the support order. Instead, those payments are to be credited against the obligor's support order. Therefore, no credit is applied if the derivative benefits were considered by the court in determining the amount of child support to be paid, because they are already credited in the order, offsetting the current support amount. (**FC § 4504(b)**).

b) Payments are first credited against current support, then against any principal amount outstanding, then against accrued

interest. There will be no refund if the derivative benefits are higher than guideline support and there are no arrears to which to apply the excess. However, an overpayment can occur if the LCSA continues to collect from other income sources. There will be no overpayment if credits are solely from derivative benefits.

► PRACTICE POINT: Derivative benefits are NOT the same as funds received based upon the child's disability. Those funds are the child's separate estate and are not relevant to the determination of support and, therefore, are not to be credited to the obligor's account.

ii. Custodial Parent Noncompliance

If a custodial parent refuses to apply for derivative benefits or fails to cooperate to complete the application of payments, but the child is otherwise eligible to receive the benefits, the noncustodial parent shall be credited with the amount that the child would have received for that month had the custodial parent completed the application. The noncustodial parent must provide evidence to the LCSA indicating the amount the child would have received. (FC § 4504(c)).

iii. Lump-Sum Retroactive Payments

a) A custodial parent will often receive a lump sum retroactive payment for derivative benefits. It is usually for the interim period between when the obligor begins receiving his own benefits and when the custodial parent begins receiving derivative benefits for the minor child(ren). The lump sum payment will be paid directly to the custodial parent even if the child was aided during the months that the lump sum payment covers. The obligor gets credit for the lump sum payment towards the

monthly court-ordered amount even though it did not reimburse welfare funds. There will be no overpayment if credits are solely from derivative benefits.

b) Application of derivative benefits received as a lump-sum was recently addressed in a case of first impression in California, *Y.H. v. M.H.* (2018) 25 Cal.App.5th 300. In *Y.H.*, the Court of Appeal affirmed the trial court's ruling that FC § 4054(b) permits retroactive child support credit from a lump-sum derivative benefit payment, even where there is no arrearage owed. According to the Court in *Y.H.*, the proper application of payments is to first credit the derivative benefit for each month represented in the lump-sum benefits paid, and then credit any child support payments made by the obligor from other sources in each corresponding month. This will properly determine the arrears balance, if any, or any resulting overpayment. The additional source of payment (not the derivatives) may be the possible source of overpayment. From a public policy standpoint, the Court in *Y.H.* recognized that "the aim of the legislature [in enacting CCP § 695.221 regarding payment distribution hierarchy] was to broaden how a lump-sum payment could be credited to a noncustodial parent's child support obligation, not narrow it."

➲ **PRACTICE POINT:** Note that derivative benefits credit is not available in every state (e.g., Oregon).

10. Military Pay

See the Section XV – Military Cases.

11. Veteran's Disability Benefits

Veteran's disability benefits may be considered income for calculating and enforcing support. *Rose v.*

Rose (1987) 481 U.S. 619, 630 (“[T]hese benefits are not provided to support appellant alone.”] They are issued based upon retirement, service-connected disability, non-service-connected disability, financial need, or any combination of these. The primary factors in determining whether veteran’s benefits are income are whether 1) paid as remuneration for employment and 2) whether the veteran has waived any portion of retirement pay in order to receive VA benefits. The LCSA must contact the regional VA office to determine the waiver of retirement pay. (*See, DCSS PI Letter 02-61 (09/26/2002)*.

a. Non-Service-Connected Permanent Disability

i. Also known as “veteran’s pension,” it is not incurred in the line of duty. This is a distinct benefit issued to a veteran of a war who is totally and permanently disabled and is considered “needs-based.” Veteran’s pension does not qualify as income and is exempt from enforcement, qualifying the case for closing if the servicemember has no other income or assets.

b. Military Retired Pay

i. Retired pay is paid for retirement from active service and is generally taxable income available for support. It is also subject to garnishment. An exception applies when the veteran is eligible for disability compensation and waives a portion of retirement pay in exchange for service-connected disability pay (see above).

c. Service-connected Permanent Disability

i. Incurred in the line of duty, service-connected disability is compensation for future lost wages or opportunities due to a disability incurred or aggravated during military service. It is generally non-taxable but may be considered as income for support and is

subject to enforcement (although not by way of garnishment). (38 CFR 3.450 and 451; 38 U.S.C. § 101. See, *Rose v. Rose* (1987) 481 U.S. 619, 630 [Affirmed state court's jurisdiction to hold a disabled veteran in contempt for failing to pay child support, where the veteran's only income was his service-connected permanent disability benefits.])

ii. Exempt from garnishment: The Veterans Affairs will not honor a state's income withholding order garnishing a servicemember's service-connected permanent disability benefits (38 U.S.C. 5301(a)(1)) but, "[w]hile it may be true that these funds are exempt from garnishment or attachment while in the hands of the Administrator, we are not persuaded that, once these funds are delivered to the veteran, state court cannot require that veteran to use them to satisfy an order of child support." *Rose v. Rose* (1987) 481 U.S. 619, 635.

iii. When a servicemember waives military retirement pay (taxable) in lieu of receiving disability compensation (non-taxable), the benefits may be attached up to the payment amount of military retirement waived. That waived portion is subject to levy (i.e., garnishment). (38 U.S.C. § 5301(d) and (e)(1))

d. Apportionment for Dependents

i. "All or any part of the pension, compensation, or emergency officers' retirement... of any veteran may be apportioned if ... the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.". (38 CFR 3.450(a)(1)(ii) and 451). Submit VA Form 21-4138 *Statement in Support of Claim* to Dept. of

Veteran's Affairs.

☞ **NOTE:** Inasmuch as these benefits are not subject to income withholding orders; the payor must remit payments on his or her own.

12. Rental Income

Rental income to the obligee from any source is income for support. **FC §4058(a)**. from a sublease of a room may be included as additional income to calculate support. (See also, *County of Orange v. Smith* (2005), 132 Cal.App.4th 1434, where the additional rent from a sublease of a room was appropriately included in calculating support.) The court may consider deductions for rental- related expenses (see IRS Form 1040, Schedule E) as it deems appropriate.

13. New Spouse Income

New spouse income can be considered only as an additional source of support in cases where it can be shown to be an “extraordinary case,” leading to “extreme and severe hardship” to any child if the income is not considered. (**FC § 4057.5(a); IRMO Knowles** (2009) 178 Cal.App.4th 35). An extraordinary case may include a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or underemployed and relies on a subsequent spouse’s income. (**FC § 4057.5(b)**). Discovery of the spouse’s income shall be based on W2 and 1099 income tax forms. (**FC § 4057.5(c)**)

➲ **PRACTICE POINT:** If a parent files taxes jointly, a new spouse’s income should be included in the calculation to accurately estimate the parent’s tax obligations. (**FC § 4059(a); County of Tulare v. Campbell** (1996) 50 Cal.App.4th 847, 854).

14. Monetary Gifts

Monetary gifts can be considered income for purposes of child support when the gift is paid on a regular and periodic basis. **IRMO Alter** (2009) 171

Cal.App.4th 718, 731 [finding that a mother's payment of \$6000 monthly to her obligor son, with no evidence that he would ever have to pay it back, was properly considered as income.] (*See also IRMO Smith* (2015) 242 Cal.App.4th 529.) However, the gifts may not be considered income once the gifts to the parent have ceased without a reasonable indication they will resume. (*IRMO Williamson* (2014) 226 Cal.App.4th 1303); but *see Anna M. v. Jeffrey E.* (2017) 7 Cal.App.5th 439 [a trial court declined to consider non-cash gifts, such as direct payment of expenses by a third-party, as income to mother]).

15. Personal Injury Settlements

Undifferentiated lump sum personal injury awards and undifferentiated personal injury annuity settlement awards are not considered income for determining child support. It is the burden of the parent seeking inclusion to prove that some component of the payment was compensation for lost wages. (*IRMO Rothrock* (2008) 159 Cal.App.4th 223). The portion of a personal injury award specifically allocated for lost income may be considered income, but this is a fact-driven determination left to the discretion of the court. (*IRMO Heiner* (2006) 136 Cal.App.4th 1514, 1524).

16. Investment Income

The trial court has the discretion to charge a reasonable rate of return to an investment. (*IRMO Destein* (2001) 91 Cal.App.4th 1385, 1394). *See also IRMO Schlafly* ((2007) 149 Cal.App.4th 747, 754) holding that the "earning capacity" doctrine also applies to the earning capacity of capital owned by the obligor.

17. Lottery Awards

Courts have considered lottery winnings as income. (*County of Contra Costa v. Lemon* (1988) 205 Cal.App.3d 683; *but see County of Kern v. Castle*

(2001) 75 Cal.App.4th 1442 [indicating that use of lottery winnings as income may be limited to cases in which public aid benefits are being expended and failure to use the winnings as income would result in an order below the aid grant].

18. Educational Loans

A student loan that must be repaid is not considered income for purposes of child support. (*IRMO Rocha* (1998) 68 Cal.App.4th 514). However, if a parent is capable of attending school, consider whether it would be appropriate to impute income (below). An obligor who wishes to pursue a different lifestyle or endeavor must consider child support as a financial obligation which must be paid first before any other expenses. (*IRMO Ilas* (1993) 12 Cal.App.4th 1630).

19. Life Insurance Benefits

Life insurance benefits received by a parent are not income for support purposes. (*IRMO Scheppers* (2001) 86 Cal.App.4th 646). But, effective January 2020, life insurance proceeds are subject to child support intercepts (liens). So, NCPs who are beneficiaries to life insurance claims will be subjected to a lien, absent the exceptions stated in the Insurance Code. “An insurer shall identify and report a claimant to the Department of Child Support Services if the claim seeks an economic benefit for an obligor who owes past-due child support. (1) An “economic benefit” under a life insurance policy, disability income insurance policy, or annuity means a payment totaling at least one thousand dollars (\$1,000) ...” (Insurance Code Article 8 Section 13550).

20. Inheritances

An inheritance is not income for child support purposes, but interest, rents, or dividends actually earned from an inheritance corpus are income. The trial court has broad discretion to assign a reasonable

rate of return to the assets after taxes, as if they were invested, and may consider decreased living expenses. (*County of Kern v. Castle* (1999) 75 Cal.App.4th 1442). If a parent chooses to leave employment and live off the inheritance proceeds, consider arguing income should be imputed (see below).

21. Trusts and Trust Income

A beneficiary's income from a trust is considered income for child support purposes. (FC § 4058(a)(1); see *Pratt v. Ferguson* (2016) 3 Cal.App.5th 102 [court has discretion to order distribution from trust beneficiary/obligor's interest for payment of support despite spendthrift or "shutdown" clause in the trust]).

22. Capital Assets

a. Generally

Capital assets are not income for child support purposes. Income from capital assets, whether realized or based on an assigned reasonable rate of return, can be income for support purposes. (*IRMO Sorge* (2012) 202 Cal.App.4th 626) There is a strong public policy in favor of providing adequate child support such that imputing investment earnings to non-income-producing assets is a factor but not an abuse of discretion. (*IRMO Destein* (2001) 91 Cal.App.4th 1385. Stock options granted as part of a parent's compensation may also be included in income. (*IRMO Cheriton* (2001) 92 Cal.App.4th 269, 286; but see *IRMO Pearlstein* (2006) 137 Cal.App.4th 1361 [the market value of unsold shares of stock received by a business owner in connection with the sale of a business is generally not income for child support purposes]).

b. Equity in Real Property

Untapped equity in a primary residence is

generally not income for support purposes. (*IRMO Henry* (2005) 126 Cal.App.4th 111, 119). However, the court may find special circumstances to deviate upward from the guideline support calculation if an obligor has extensive property holdings that do not produce income. (*IRMO de Guigne* (2002) 97 Cal.App.4th 1353; *IRMO Williams* (2007) 150 Cal.App.4th 1221).

23. Non-Taxable Income

Many individuals, especially self-employed, do not pay federal or state income taxes. In those cases, it is inappropriate to account for tax liability in determining the person's net disposable income. Therefore, if the obligor does not file taxes, the income should be non-taxable. Once the parent pays that tax, he/she can move to modify support. (*IRMO McQuoid* (1991) 9 Cal.App.4th 1353).

➲ **PRACTICE POINT:** Many obligors artificially inflate the expense section of their Income and Expense Declarations to look poor. Use the amount of the exaggerated expenses to show how much money they have each month for their household needs. This can be used as evidence of the amount of non-taxable income the person may have available each month.

F. EARNING CAPACITY/IMPUTING INCOME

1. General

The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's actual income, consistent with the best interest of the children. (**FC § 4058(b)**). To determine earning capacity, the court must consider a parent's ability and opportunity to earn. (*IRMO Berger* (2009) 170 Cal.App.4th 1070; *IRMO McHugh* (2014) 231 Cal.App.4th 1238). Earning capacity has also been defined as the income the person is reasonably capable of earning based upon the person's "age, health, education, marketable skills, employment history, and the availability of employment

opportunities." (*IRMO Simpson* (1992) 4 Cal.4th 225, 234).

2. Evidence

IRMO Bardzik (2008) 165 Cal.App.4th 1291 discusses appropriate evidence of earning capacity, including the party's resume, want ads matching the party's credentials, opinion testimony that someone with the party's credentials could secure employment, and pay scales for the positions for which the party qualifies. Newspaper want ads are admissible as non-hearsay evidence of offers of employment. (*IRMO LaBass and Munsee* (1997) 56 Cal.App.4th 1331).

3. Bad Faith Showing Unnecessary

A showing that the obligor acted in bad faith in reducing income is no longer necessary. (*IRMO Padilla* (1995) 38 Cal.App.4th 1212; *see also IRMO Stephenson* (1995) 39 Cal.App.4th 71 [voluntary retirement case]; *Moss v. Superior Court* (1998) 17 Cal.4th 396, 424). "Once persons become parents, their desires for self-realization, self-fulfillment, personal job satisfaction, and other commendable goals must be considered in the context of their responsibilities to provide for their children's reasonable needs. If they decide they wish to lead a simpler life, change professions, or start a business, they may do so, but only when they satisfy their primary responsibility: providing for the adequate and reasonable needs of their children." (*IRMO Padilla* (1995) 38 Cal.App.4th 1212, 1220).

4. Misconduct Resulting in Termination

If the party is unemployed due to their own misconduct, the court must still find ability and opportunity to work before imputing income. (*IRMO Eggers* (2005) 131 Cal.App.4th 695). However, if the parent left or otherwise lost the job in a manner reflecting a voluntary and deliberate divestiture of financial resources required to pay

child support, the court may impute income based on the prior job without evidence the parent has the current opportunity to earn at the same level. (*IRMO McHugh* (2014) 231 Cal.App.4th 1238).

5. Credibility

When the credibility of one parent is questionable, the court may resort to imputing income because it finds financial statements are misleading and unreliable. (*IRMO Barth* (2012) 210 Cal.App.4th 363, 376-377).

6. Imputing Income to the Custodial Parent

Courts will impute income to custodial parents. In *IRMO LaBass and Munsee* (1997) 56 Cal.App.4th 1331, the court imputed full-time teacher earnings to a custodial parent with teaching credentials who chose to be a student and part-time worker. In *IRMO Paulin* (1996) 46 Cal.App.4th 1378, the court imputed ability to earn according to the custodial parent's last earnings when she voluntarily terminated her position.

✍ NOTE: If the trial court imputes income to a custodial parent, the imputation must be supported by substantial evidence that the imputation is in the children's interest. (*IRMO Ficke* (2013) 217 Cal.App.4th 10).

7. Imputing Income to Noncustodial Parent Caretaker of Other Children

In *IRMO Hinman* (1997) 55 Cal.App.4th 988, the court imputed income to a non-custodial parent who declined to work in order to care for her young children from her new family.

8. Imputing Income to Public Assistance Recipients

Courts are split as to whether income can be imputed to an obligor who receives public assistance for another child. (*County of Yolo v. Francis* (1986) 179 Cal.App.3d 647 [court found obligor was able to earn

income despite the obligor's receipt of public assistance benefits]; but see *County of Yolo v. Garcia* (1993) 20 Cal.App.4th 1771 [trial court had no discretion to impute income on an aided obligor caretaker of another child]).

9. Welfare-to-Work Participant

Imputation of income to a parent on CalWORKs would be contrary to public policy. (*Mendoza v. Ramos* (2010) 182 Cal.App.4th 680). Furthermore, a parent in compliance with his or her welfare-to-work plan cannot be ordered to seek work. (*Barron v. Superior Court* (2009) 173 Cal.App.4th 293.)

10. Reasonable Work Regimen

Earning capacity generally should not be based upon an extraordinary work regimen, but instead upon an objectively reasonable work regimen; excessive hours or continuous, substantial overtime are generally extraordinary. (*IRMO Simpson* (1992) 4 Cal.4th 225 [obligor was not required to continue to work two or three jobs each day, sometimes 16 hours per day; the court held that obligor's earning capacity should be based on an objectively reasonable work regimen]). In *IRMO Lim and Carrasco* (2013), 214 Cal.App.4th 768, a trial court support award based on a law firm partner attorney's actual reduced income because she chose an 80% work schedule (rather than imputing full-time income) was affirmed; the mother still worked many hours, the schedule allowed her to spend more time with the children, and her income remained high.

11. Incarceration

People in prison usually have a limited opportunity to work, and income cannot be imputed unless there is the opportunity to work. (*IRMO Smith* (2001) 90 Cal.App.4th 74; *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123). However, if an incarcerated individual has actual income (wages, trusts, investments, real estate income), the court may use

that income to set support. **PC § 2717.8(4)** provides a statutory basis to garnish income earned by inmates, upon such terms as may be determined by the Director of Corrections. Court may not deny modification of support on the grounds that the incarcerated obligor committed a crime against a family member. (*IRMO Smith* (2001) 90 Cal.App.4th 74).

➲ **PRACTICE POINT:** At least one court has found that it was proper to impute interest income on assets available to an incarcerated individual that could have been reasonably earned but was not actually earned. (*Brothers v. Kern* (2007) 154 Cal.App.4th 126).

G. TAX STATUS

1. Filing Status

When determining support, state and federal taxes credited in the Guideline shall be those actually payable (not necessarily current withholding). (**FC § 4059(a)**). The court must calculate child support based on actual tax status, not what might be more advantageous for the parties. (*IRMO Carlton and D'Allessandro* (2001) 91 Cal.App.4th 1213). [Obligor did not have married filing jointly status available to him because both parties must consent to such filing]. However, if a party has a true choice of tax status or tax treatment of an asset, the court should calculate support based on the best option.

2. State of Domicile

To properly determine taxable income, the tax settings on the guideline calculation may need to be adjusted if the parent files taxes in a state other than California. Taxes are most often filed in the state which the parent resides. In certain situations, particularly with military members, the parent files taxes in his/her state of domicile (rather than residence). (**Servicemembers Civil Relief Act (SCRA) 50 USC § 4001**).

➲ **PRACTICE POINT:** Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming have no state income tax. In New Hampshire and Tennessee, taxes are imposed on dividends and interest income only.

3. Dependency Exemptions

Exemptions for dependent children may be transferred to the other parent by written agreement. IRS Form 8332 must be executed and filed with the return for each year the exemption is transferred. (*Thomas v. Commissioner of Internal Revenue* (2010) 99 T.C.M. (CCH) 1051). The trial court has the authority to allocate dependency exemptions between the parties and to order the parties execute and deliver the documents necessary to transfer the exemption to the other party. (*Rios v. Pulido* (2002) 100 Cal.App.4th 359).

4. New Spouse Income for Tax Purposes

Be sure to check each party's filing status and new spouse income. Adding the spouse's income (for tax purposes only) creates a more accurate picture of the supporting parent's true tax liability and is not contrary to FC § 4057.5. (*County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847).

H. OTHER GUIDELINE FACTORS

1. Timeshare

The guideline calculation considers the approximate percentage of time each party has "primary physical responsibility" for the children. (FC § 4055(a)(1)(D)). If a parent wants credit for time that the child is not physically with the parent, the parent has the burden of producing admissible evidence demonstrating he or she is primarily responsible for that child during those challenged times. (*DaSilva v. DaSilva* (2004) 119 Cal.App.4th 1030 [factors include who provides transportation, who is designated to respond to emergencies, who pays for school expenses, and who participates in school-

related functions]; see also *IRMO Schopfer* (2010) 186 Cal.App.4th 524 [stepfather received credit for child's time in boarding school because stepfather had physical "responsibility" for the child, even though he did not have physical "custody"]). The court should not only consider which parent bears the financial burden, but the "practical reality of day-to-day responsibility for a child." (*IRMO Whealon* (1997) 53 Cal.App.4th 132, 145). See also *County of San Diego v. P.B.* (2020) 55 Cal.App.5th 1058, 1069, wherein the trial court's attribution of timeshare not actually exercised by Father in the guideline calculation was reversible error.

2. Deductions

To determine the net disposable income of each parent, the following amounts are deducted from the gross income (**FC § 4059**):

- a.** State and federal income tax liability, FICA, and state disability insurance premiums;
- b.** Mandatory union dues and retirement benefits;
- c.** Health insurance or health plan premiums for the parent and for any children the parent has an obligation to support;
- d.** Any child or spousal support actually paid (for other children and spouses);
- e.** Necessary job-related expenses, if allowed by the court;
- f.** Hardships (explained below).

3. Hardships

The court may allow income deductions if a parent is experiencing "extreme financial hardship due to justifiable expenses" because of:

- a.** Extraordinary health expenses for which the parent is financially responsible (**FC § 4071(a)(1)**);
- b.** Uninsured catastrophic losses (**FC § 4071(a)(1)**); and

c. The minimum basic living expenses of the parent's natural or adopted children whom the parent has an obligation to support who reside with the parent. (FC § 4071(a)(2)).

1) The maximum hardship for other children may be equal to, but shall not exceed, the support allocated each child subject to the order. (FC § 4071(b)).

a) Note that a parent cannot obtain a hardship for step-children, parents, or siblings. (*Haggard v. Haggard* (1995) 38 Cal.App.4th 1566; *County of San Diego v. Sierra* (1990) 217 Cal.App.3d 126; *IRMO Butler and Gill* (1997) 53 Cal.App.4th 462).

4. Written Findings for Hardships

If the court grants a hardship deduction, the court must:

- a. State the reasons for the hardship in writing or on the record;
- b. Document the amount of the deduction and the underlying facts and circumstances; and
- c. If possible, specify the duration of the deduction. (FC § 4072). Failure to make the requisite hardship findings pursuant to FC § 4072 is reversible error unless evidence exists in the record from which findings can be implied. (*IRMO Carlsen* (1996) 50 Cal.App.4th 212).

5. Low-Income Adjustment

FC § 4055(b)(7) provides a rebuttable presumption that the low-income adjustment applies if the obligor's net disposable monthly income is less than \$1,500. This amount is adjusted annually by the Judicial Council for cost-of-living increases. (See <http://www.courts.ca.gov/8933.htm> for FAQs on how the LIA is determined).

As of January 1, 2024, the low-income adjustment

applies if the obligor's net disposable monthly income is less than \$2,137.00. In these cases, the court shall presume the obligor is entitled to the low-income adjustment unless it would be unjust and inappropriate in the particular case.

6. Additional Child Support

The amounts below shall be considered additional support for the children and shall be divided one-half to each parent, unless proration based on each parent's net disposable income is appropriate. (FC § 4061).

a. Mandatory Additional Child Support

- 1) Childcare costs related to employment or to reasonably necessary education or training for employment skills. (FC § 4062(a)(1)).
- 2) Reasonable uninsured health care costs for the minor children. (FC § 4062(a)(2)).

b. Discretionary Additional Child Support

- 1) Cost related to educational or special needs of the children. (FC § 4062(b)(1); *IRMO Schlaflly* (2007) 149 Cal.App.4th 747).
- 2) Travel expenses for visitation. (FC § 4062(b)(2); compare *IRMO Gigliotti* (1995) 33 Cal.App.4th 518 [error to reduce support by travel expenses incurred by obligor which, instead, can only be considered under FC § 4062] with *Wilson v. Shea* (2001) 87 Cal.App.4th 887 [noting travel expenses may also be a reason to deviate from guideline under FC § 4057(b)]).

I. MODIFICATIONS

1. Change of Circumstances

A threshold issue in any request for modification of child support is whether there is a showing of change of circumstances. (*IRMO Rosenfeld and Gross* (2014) 225 Cal.App.4th 478, 490). In any case with a

stipulated below-guideline order, pursuant to **FC § 4065(d)**, no change in circumstances need be shown to bring an upward modification motion. However, if the case has an above-guideline stipulated order, the moving party must show a change of circumstance to lower the order to guideline. (*IRMO Laudeman* (2001) 92 Cal.App.4th 1009).

✍ **NOTE:** The court always retains jurisdiction to modify child support if there is a change in circumstances; parents cannot, by agreement, prevent the court from modifying support. (*IRMO Alter* (2009) 171 Cal.App.4th 718).

2. Impermissible Reasons for Change of Circumstances

Voluntary underemployment or divestiture of earning ability cannot be used as a change of circumstance for modification purposes because the court may impute income based on earning capacity. (*IRMO Ilas* (1993) 12 Cal.App.4th 1630; *IRMO Padilla* (1995) 38 Cal.App.4th 1212; *IRMO McHugh* (2014) 231 Cal.App.4th 1238).

V. RELIEF FROM JUDGMENT

➲ **PRACTICE POINT:** You may want to request a Statement of Decision pursuant to **FC § 3654** when responding to this type of motion to make a record for de novo hearings or to appeal the court's ruling. If you request it, the court must issue a statement. (*IRMO Sellers* (2003) 110 Cal.App.4th 1007; *IRMO Shimkus* (2016) 244 Cal.App.4th 1262. See also CCP § 632 regarding restrictions and timeframes).

A. GENERAL CONSIDERATIONS RE: SERVICE

1. Quash Service

Defendant can move to quash an improperly served summons only on or before the last day to plead. (CCP § 418.10(a)) Filing a motion under this provision does not constitute a general appearance. (CCP § 418.10(d)).

2. Presumption

"The return of a process server...establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (EC § 647) This means the defendant must prove defective service first, subject to cross-examination, before the process server testifies. (But see below regarding false proofs of service.)

3. General Appearance

A general appearance by a party is equivalent to personal service of summons on such party. (CCP § 410.50(a)) A defendant appears in an action when the defendant answers. (CCP § 1014)

A general appearance made after entry of judgment has the effect of curing any defect arising from the lack of jurisdiction due to the failure to serve or notify a person of the proceedings. (*Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239)

4. "Doe" as Person Served

A proof of service is not facially invalid simply because it lists "John Doe, co-resident" as the person served. (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175)

5. Time for Service

The summons and complaint must be served within 3 years after the complaint is filed, or the action will be dismissed. (**CCP § 583.210** and **CCP § 583.250**) Time is tolled, however, when the validity of service is the subject of litigation. (**CCP § 583.240(c)**)

6. False Proof of Service

A court has the inherent power to set aside a default judgment obtained based on a fraudulent proof of service where the judgment is void for violating fundamental due process. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215 [defendant was incarcerated when “personally served” at home]; but see *Yolo County DCSS v. Myers* (2016) 248 Cal.App.4th 42 [defendant’s self-serving statement that he had not lived at the address where substitute service was effectuated was insufficient to rebut the presumption of valid service]). Actual notice of the action is not a substitute for proper service and does not confer jurisdiction. (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383 [the proof of service described defendant as Asian with black hair, while defendant was in fact not Asian with brown/grey hair]; but see **FC § 3691**, infra in Part J. Equitable Relief).

✍ **NOTE:** *Zara* involved a motion to quash based on fraudulent service in non-support litigation and does not implicate the provisions of **FC § 3691** regarding set aside (see below).

➲ **PRACTICE POINT:** If the defendant raises a challenge to service (e.g. alleging no service or substitute service was improper), consider re-serving the defendant if he/she visits the LCSA or appears in court.

B. MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLECT – CCP § 473(b)

1. Rule

A judgment, dismissal, order, or other action may be set aside because of mistake, inadvertence, surprise or

excusable neglect. (**CCP § 473(b)**). The party seeking relief bears the burden of proof. (*IRMO Kieturakis* (2006) 138 Cal.App.4th 56, 88) The statute does not offer relief from mandatory deadlines deemed jurisdictional in nature. (*Maynard v. Branden* (2005) 36 Cal. 4th 364).

2. Deadline

Application for relief must be made within a reasonable time, not to exceed 6 months after the judgment, dismissal, order, or other action was taken. (**CCP § 473(b)**; *County of Alameda v. Risby* (1994) 28 Cal.App.4th 1425; *Northridge Financial Corp. v. Hamblin* (1975) 48 Cal.App.3d 819, 824-825 [stating an application for relief filed 5 days prior to the expiration of the statutory six-month period was not within a reasonable time]; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 529 [stating the unexplained delay of three months after full knowledge of entry of the order before requesting relief was not reasonable]) The motion must be filed and served within the six-month period. (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 341-342 [where a § 473(b) motion filed within six-months was untimely because it was not served within six-months.]).

3. Proposed Answer

Application for relief must be accompanied with a proposed answer or other pleading. (**CCP § 473(b)**).

4. Judicial Officer

The motion to set aside pursuant to **CCP § 473** should be heard by the same judicial officer that rendered the challenged judgment or order. (*Kern County DCSS v. Camacho* (2012) 209 Cal.App.4th 1028).

C. CLERICAL MISTAKES AND VOID JUDGMENTS

– CCP § 473(d)

1. Clerical Mistakes

A court may, upon motion of a party or on its own motion, correct clerical mistakes in judgments or orders that have been entered to conform to the judgment or order that was directed. (**CCP § 473(d)**).

2. Void Judgment

A judgment that is void on its face may be set aside at any time. (CCP § 473(d); *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36).

D. LACK OF ACTUAL NOTICE – CCP § 473.5

1. Rule

When service of a summons has not resulted in actual notice in time to defend an action, and a default judgment has been entered, a party may file a motion to set aside the default judgment and for leave to defend the action. (CCP § 473.5(a)).

2. Deadline

The motion must be filed and served within a reasonable time, not to exceed the earlier of:

- a. two years after entry of the default judgment, or
- b. 180 days after service of a written notice that the default has been entered. (CCP § 473.5(a)).

3. Affidavit and Proposed Answer

The motion must be accompanied with a sworn affidavit that the lack of notice was not caused by their avoidance of service or inexcusable neglect and must be accompanied by a proposed pleading. (CCP § 473.5(b)).

E. ACTUAL FRAUD, PERJURY, OR LACK OF NOTICE RELIEF – FC § 3691

1. Authority to Grant Relief

The court may, on any terms that may be just, relieve a party from a support order, or any part or parts thereof, after the six-month time limit of Section 473 of the Code of Civil Procedure, based on the grounds, and within the time limits, provided in this article. (FC § 3690(a)).

2. Required Findings

Before granting relief, the court is required to find that the facts alleged as grounds for relief materially affected the original order and that the moving party would materially benefit from the relief. (FC § 3690(b)).

3. Bases for Relief

a. Actual Fraud

A party was kept in ignorance or fraudulently prevented from fully participating in the proceeding. (**FC § 3691(a)**).

b. Perjury

The party committed perjury to obtain the order. (**FC § 3691(b)**)

c. Lack of Notice

Service of a summons has not resulted in notice to a party in time to defend the action for support, and a default judgment has been entered. (**FC § 3691(c)(1)**) The motion must be accompanied by an affidavit that the lack of notice was not caused by the party's avoidance of service or inexcusable neglect and a copy of the answer, motion, or other pleading proposed to be filed in the action. (**FC § 3691(c)(2)**).

4. Deadline

Motions must be filed no later than 6 months after the date on which the party discovered or reasonably should have discovered the fraud or perjury. (**FC § 3691(a) - FC § 3691(b)**) For lack of notice, the motion must be filed and served within a reasonable time, not to exceed 6 months after the party obtains or reasonably should have obtained notice of:

- a. the support order, or**
- b. that the party's income and assets are subject to attachment pursuant to the order. (**FC § 3691(c)(1)**).**

5. Form

An application to set aside a support order under **FC § 3691** must be made on JCF FL-360. (*IRMO Zimmerman* (2010) 183 Cal.App.4th 900, 909).

6. Limits on Set Aside

If service of the summons was accomplished in accordance with existing requirements of law regarding service of process, then the court is prohibited from setting aside an order or otherwise

relieving a party from a support order based upon lack of notice. (**FC § 3691(c)(3)**).

A support order may not be set aside simply because a court finds that it was inequitable when made, nor because subsequent circumstances have caused the support amount ordered to become excessive or inadequate. (**FC § 3692**).

If a court determines that the relief is appropriate, then it shall only set aside the provisions materially affected by the circumstances leading to the decision to grant relief. However, a court has discretion to set aside the entire order for equitable considerations. (**FC § 3693**).

F. DISESTABLISHMENT OF PATERNITY – FC § 7645 et seq.

See Section III.M – Parentage.

G. PRESUMED INCOME DEFAULT – FC § 17432

1. Presumed Income Set Aside

If a judgment or order for support was based upon presumed income as specified in **FC § 17400(d)** and the obligor's income was substantially different during the period of time the order was effective compared to the obligor's presumed income, the court may set aside the support portion of the judgment and recalculate support according to current guidelines with the same commencement date as set forth in the default judgment. (**FC § 17432(c)** and **FC § 17432(i)**).

2. Substantial Difference

Substantial difference is defined as the amount of income that would result in an order for support that deviates from the order entered by 10% or more. (**FC § 17432(c)**) The obligor must file an Income and Expense Declaration or other income information for relevant years. (**FC § 17432(d)**).

3. Deadline

A motion for relief must be filed within 1 year of the first collection. (**FC § 17432(f)**).

4. Duty of the LCSA

If an order was established using presumed income, the LCSA is required, within 3 months of the date of the first collection, to check appropriate income sources and determine whether the order qualifies for set aside. If the LCSA determines the order qualifies for set aside, it must file a motion for relief. (**FC § 17432(g); County of San Diego v. Gorham** (2010) 186 Cal.App.4th 1215, 1232 [reiterating that this is a mandatory duty]).

5. Court Considerations

Before granting relief, the court is required to consider the amount of time that has passed since entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child(ren), the caretaker parent, and the defendant, and other equitable factors. (**FC § 17432(h)**).

H. MISTAKEN IDENTITY – FC § 17433

1. Judicial Relief

If a defendant can establish that he or she was mistakenly identified in a default judgment or order as the person having an obligation to provide support, the court is required to relieve the defendant from the judgment or order. (**FC § 17433**)

2. Administrative Review

A person alleging mistaken identity can seek an administrative review pursuant to **FC § 17530**. The LCSA must address the issue using the complaint resolution time frames. (**FC § 17800**). If the LCSA rejects the claim, the claimant may seek a judicial determination. (**FC § 17530(d)**).

➲ **PRACTICE POINT:** When responding to a motion alleging mistaken identity, pay close attention to the moving party's allegation that he or she is not the support obligor if the motion is based solely on the fact that the moving party's name is different than the name of the support obligor. The support obligor could have legally changed his or her name after the support judgment was entered. (See, e.g., **FC § 298.6** and **FC § 306.5**)

I. RELIEF IN DISSOLUTION ACTIONS – FC § 2120 et seq.

1. Rule

In dissolution or legal separation actions, the court may set aside judgments based upon actual fraud, perjury, duress, mental incapacity, or mistake of law or fact. (FC § 2122)

2. Required Findings

Before granting relief, the court is required to find that the facts alleged as grounds for relief materially affected the original order and that the moving party would materially benefit from the relief. (FC § 2121(b)).

3. Deadlines

For actual fraud and perjury, the party must request relief within 1 year after the date on which the party discovered or should have discovered the fraud or perjury. (FC § 2122(a) - FC § 2122(b)) If a party is requesting relief based upon duress or mental incapacity, the party must file an action or motion within 2 years after the date of entry of judgment. (FC § 2122(c) - FC § 2122(d)) If a party is requesting relief based upon mistake of law or fact, the party must file an action or motion within 1 year after the date of entry of the judgment. (FC § 2122(e); *IRMO Thorne and Raccina* (2012) 203 Cal.App.4th 492).

4. Limits on Set Aside

A judgment may not be set aside simply because a court finds that it was inequitable when made, nor because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate. (FC § 2123; *IRMO Rosevear* (1998) 65 Cal.App.4th 673).

If a court determines that relief is appropriate, then it shall only set aside the provisions materially affected by the circumstances leading to the decision to grant relief. However, a court has discretion to set aside the entire judgment for equitable considerations. (FC § 2125).

J. EQUITABLE RELIEF

1. Equitable Relief

If statutory relief is unavailable, courts may exercise equitable powers to set aside judgments under limited circumstances. Equitable relief may be available where a party can show extrinsic mistake or extrinsic fraud. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975; *IRMO Park* (1980) 27 Cal.3d 337).

2. Elements

Pursuant to *IRMO Stevenot* (1984) 154 Cal.App.3d 1051, a moving party must demonstrate:

- a.** A meritorious case;
- b.** A satisfactory excuse for not defending (the extrinsic factor); and
- c.** Diligence in seeking relief once the judgment was discovered.

3. Equitable Defenses

When a party seeks to invoke the court's equitable powers, equitable defenses such as equitable estoppel apply and may bar relief. (*Id.*)

4. Extrinsic and Intrinsic Fraud

Under traditional principles, a party may seek relief based upon extrinsic fraud, but not intrinsic fraud. (*Id.*)

a. Extrinsic Fraud

Extrinsic fraud occurs when one party deprives the other of the opportunity to present his claim or defense to the court (i.e. not giving notice or convincing the other party the matter will not proceed). (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061).

1) Wrong Defendant

Plaintiff's act of obtaining a default judgment after learning he had either named or served the wrong person amounts to extrinsic fraud or mistake. (*Manson v. Black* (2009) 176 Cal.App.4th 36).

b. Intrinsic Fraud

"[F]raud is intrinsic and not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so." (*City and County of San Francisco v. Cartagena* (1995) *supra*, 35 Cal.App.4th 1061, 1067, citing *IRMO Stevenot*, *supra*, 154 Cal.App.3d 1051, 1069).

5. Family Code

FC § 3691 appears to be a codification of the equitable grounds of extrinsic fraud (FC § 3691(a)), intrinsic fraud (FC § 3691(b)) and defective service (FC § 3691(c)). Therefore, courts have held that traditional equitable relief is now unavailable because FC § 3690 et seq. is the exclusive set-aside remedy. (See *IRMO Zimmerman* (2010) 183 Cal.App.4th 900; but see *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215 [under the "unique circumstances of this case" the court found that notwithstanding FC § 3690 et seq., equitable relief is available]).

➲ **PRACTICE POINT:** In equity cases, look first to see when the party obtained actual knowledge of the judgment. Evidence might include contact with the LCSA, or payments made on the judgment. If the obligor did not act quickly, "equity" should not be available because of the undue delay (unclean hands, laches) and resulting prejudice to the county or custodial parent (e.g., had the party filed his motion soon after discovery – even if granted – the LCSA or custodial parent could have established a new order). If the party has been paying on the judgment over a substantial period of time, consider equitable estoppel. For example, due to the party's conduct of paying on the judgment (treating the judgment as valid), the party should be equitably estopped from now challenging the validity of the judgment. (*IRMO Valle* (1975) 53 Cal.App.3d 837; *IRMO Pedregon* (2003) 107 Cal.App.4th 1284).

K. INADEQUATE GROUNDS FOR RELIEF

1. Pro Per Litigants

A self-represented party is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975) Self-represented litigants must follow the rules of civil procedure. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247).

2. Ignorance of the Law

A defendant is charged with knowledge of the law. (*County of LA v. Salas* (1995) 38 Cal.App.4th 510; *Stiles v. Wallis* (1983) 147 Cal.App.3d 1143 [An Australian citizen's claimed lack of familiarity with California law was not sufficient for relief]).

VI. ENFORCEMENT

A. PRIORITY OF PAYMENTS

Payment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors. (**FC § 4011**) “Payment of child support ordered by the court shall be made by the person owing the support payment before payment of any debts owed to creditors.” (*Brothers v. Kern* (2007) 154 Cal.App.4th 126 [incarcerated father could not direct all his resources to his attorney, leaving none for child support]). However, former wife’s child support order did not have priority over victim restitution in a “freeze and seize” where the frozen assets were derived from the defendant’s criminal conduct. (*People v. Mozes* (2011) 192 Cal.App.4th 1124).

B. COMPETING CLAIMS TO CHILD SUPPORT FUNDS

Child support payments are intended to enable the child to be adequately supported. This purpose would be frustrated if the payments were intercepted to satisfy other debts, effectively depriving the child of support, so such interceptions and liens are not allowed. For example, attorneys may not attach child support payments to satisfy a noncustodial parent’s attorneys’ fees. (*Hoover-Reynolds v. Superior Court of San Diego* (1996) 50 Cal.App.4th 1273). Likewise, support payments cannot be intercepted to pay restitution to a custodial parent’s victims in criminal proceedings. (*United States v. Dann* (9th Cir. 2011) 652 F.3d 1160).

C. EMPLOYERS AND EARNINGS ASSIGNMENTS

An earnings assignment is a statutory procedure by which a portion of the obligor’s earnings is ordered to be paid by the obligor’s employer directly to the obligee to satisfy a support obligation. (**FC § 5208(a)**). Prior to January 1, 1994, an “earnings assignment” was known as a “wage assignment.” (see former **CC § 4390(a)** and **4390.3(a)**).

When a court orders a party to pay an amount for support or orders a modification of the amount of support to be paid, the court shall include in its order an earnings assignment order for support to pay the amount ordered by the court for support plus an additional amount to be paid toward the liquidation of any arrearage. (FC § 5230(a)).

All earnings assignment orders for support shall be issued on the mandated Federal form. (FC § 5208(b)). In lieu of an earnings assignment order signed by a judge, a LCSA may serve on the employer a notice of assignment. (FC § 5246(b)). The LCSA shall use the federally mandated form, Income Withholding Order/Notice for Support (IWO). (FC § 5246(c)). The distinction here is that the same form has to be used in both IV-D and non IV-D actions, but the form in a IV-D action does not need to be signed by a judicial officer.

► PRACTICE POINT Compare an Earnings Withholding Order (EWO) and an EWO for Support - The EWO procedure of the Code of Civil Procedure (also known as the wage garnishment law or WGL), allows a judgment creditor to enforce a money judgment against the unpaid earnings of the judgment debtor. Under the EWO process, the levying officer issues the order after a writ of execution has been issued to the county where the employer is to be served. The order is served on the employer by the levying officer. The employer then withholds the employee's earnings and pays them to the levying officer, who in turns pays them to the person entitled to them. (CCP § 706.021, 706.022, 706.025, 706.026).

If the withholding order is to collect delinquent support, it is called an "EWO for support". An EWO for support is statutorily defined as "an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, spouse, former spouse of the judgment debtor." (CCP § 706.030(a)). A withholding order for support must be denoted as such on its face. (CCP § 706.030(a)). A local child support agency may issue a withholding order for support on a notice of levy

pursuant to FC § 17522 without obtaining a writ of execution. (CCP § 706.030(b)). The Judicial Council has prescribed separate forms for an EWO (WG-002), an application for such an order (WG-001), and an EWO for support (WG-004).

EWO for Support and Earnings Assignment distinguished - The EWO for support garnishes earnings only to collect arrearages, an earnings assignment operates to collect both arrearages and current support prospectively. See *IRMO Stutz* (1981) 126 Cal.App.3d 1038. Note the federally mandated form is titled an Income Withholding Order (IWO). Don't let the name confuse, it is still an Earnings Assignment if issued per FC § 5230.

1. Employer and Earnings

An "employer" is anyone who pays "earnings." (FC § 5210) "Earnings" include wages, salary, bonus, money, and benefits; payments due to independent contractors, interest, dividends, rents, royalties, residuals, patent rights, mineral or other natural resource rights; payments due from contracts for services or sales whether denominated as wages, salary, commission or otherwise; payments from workers' compensation disability benefits; state disability benefits; and any other payments due or credits due or becoming due, regardless of source. (FC § 5206).

2. Timeframe

Employers are required to begin deducting child support owed pursuant to an earnings assignment order within 10 days after service of the order on the employer. (FC § 5233).

3. Priority

An earnings assignment has priority over any earnings withholding order. (CCP § 706.031(b)). An IRS tax levy takes priority over an earnings assignment unless the judgment for support was entered prior to the date of the levy. (26 USC § 6334(a)(8)).

4. Proration

If there are multiple assignments, they should be honored for the full amount, up to 50 percent of the employee's net earnings. If it is more than 50 percent, the employer should prorate the deductions according to the ratio of the various support orders. (**FC § 5238**).

5. Administrative Arrears Payments

If the underlying court order for support does not include an arrears payment, the LCSA may add one. (**FC § 5246(d)(2)**) The amount specified cannot exceed the maximum allowed under **15 U.S.C. § 1673** (*see* Part 6 of this section). If the obligor's current support obligation terminated by operation of law, the LCSA may "roll down" the prior current support amount adding it into the existing arrears payment. (**FC § 5246(f)**).

If the obligor is receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income/State Supplementary Payments (SSI/SSP) or would be receiving SSI/SSP benefits but for excess income and meets the SSI resource test, and the obligor has supplied the LCSA with this information, then the arrears payment on the earnings assignment issued by the LCSA shall not exceed 5 percent of the obligor's total monthly SSDI payments. (**FC § 5246(d)(3)**; *see also* CSS Letter 04-03).

6. Maximum Withholding Limits

Congress enacted the Federal Consumer Credit Protection Act (CCPA) to provide wage earners nationwide with uniform protections against excessive wage garnishments. (**15 U.S.C. § 1673**). Wage withholding actions to collect support are one of the expressed exceptions to the CCPA's general rule restricting wage withholding actions to a maximum of 25% of an individual's disposable earnings.

Under the CCPA, if the wage earner is supporting a spouse or dependent child (other than the spouse or child covered by the support order being enforced), then up to 50% of this individual's disposable income may be attached "to enforce any order for the support of any person." If the wage earner is not supporting a second family, then up to 60% of this individual's disposable income may be attached to enforce a support order. However, if the wage earner is more than twelve weeks delinquent in the payment of the support obligation, then the 50% and 60% ceilings are increased to 55% and 65% respectively. (**15 U.S.C. § 1673(b)(2)**).

The CCPA limits the amount of an individual's earnings that may be subject to "garnishment" unless the State has laws providing wage earners with more protection against income withholding. There is no California law giving greater protection to earning assignments issued per **FC § 5230** over the CCPA. Thus, California follows the CCPA for earning assignments with one exception. (This exception is contained in the California Code of Regulations at **22 CCR § 116100** and is applicable only to actions involving the LCSA. LCSAs have an added enforcement remedy not available to non-IV-D cases and that is the administrative arrears payment.).

Per **22 CCR § 116100**, when the LCSA exercises its administrative authority to increase the arrears payments, the LCSA earnings assignment is limited to 50% withholding (which is providing greater protection than the CCPA). Note that per **22 CCR § 116100(a)(1), (2)**, if the LCSA sent out the assignment with the court ordered current support and/or arrears payment amount (i.e., no administrative arrears amount), it is not limited to the 50% withholding and the CCPA limits would apply.

 **NOTE:** **22 CCR § 116100** is in direct conflict with **FC § 5246**. **FC § 5246** specifically provides that

when the administrative arrears payment is being used, the withholding limit is the CCPA. (FC § 5246(d)(2), (f)).

➲ **PRACTICE POINT CCP § 706.052** does not place a 50% withholding limit on an earnings assignment. This section addresses a restriction on the EWO for support when there is also an earnings assignment in place at the same time for the same obligor. See the Law Revision Comments for greater explanation and examples. *See also CCP § 706.031(a)* which states “Nothing in this chapter affects an earnings assignment order for support.”

7. No Credit Unless Payment is Received

The obligor is responsible to ensure wage assignment payment deducted from his/her paycheck is received by the IV-D agency. (*See County of Shasta v. Smith* (1995) 38 Cal.App.4th 329 [employer deducted money from obligor’s paycheck, but never sent it to the LCSA; the loss was the obligor’s, not the child’s]).

8. Penalties for Failure to Honor Earnings Assignment

- a. If money was not deducted from the employee’s pay after service of a valid assignment, the employer is liable to the obligee for the amount that should have been collected, including interest. (FC § 5241(a)). This would require joining the employer to your action or filing of an independent action.
- b. If money has been deducted, but not sent in, the employer is liable to the obligee for interest charges as a result. (FC § 5241(b)). The LCSA shall take appropriate action to collect the withheld sums from the employer. (FC § 5241(d)). Such actions could include LCSA contact with the employer via phone and or letter. The obligor should be referred to California Labor Commissioner’s Office or the District Attorney’s Office. A Small Claims action could also be considered.

- c. A civil contempt (**CCP § 1209**) may be filed against an employer who willfully fails to comply with an assignment order. (**FC § 5241(c)**).
- d. **FC § 5241** also provides for a system of penalties on employers for failure to honor an assignment order. LCSAs are not required to establish or collect these penalties on behalf of the obligee.

D. LICENSE SUSPENSION OR DENIAL

FC § 17520 details the process for LCSAs to submit obligors' names for license suspension and release. It also allows obligors to file a "timely" written request with the LCSA and/or a motion with the court to review a release of the license.

When the LCSA is reviewing for release, listed below are suggested items to consider. Remember, you are in the driver's seat until you sign the release. However, you should remain reasonable.

- a. Amount of current support
- b. Amount of arrears
- c. Payment history
- d. Obligor's family and financial circumstances
- e. Needs of the obligee and child(ren)
- f. Ability to comply with the payment schedule considering the priority of child support payments over other debts and expenses
- g. Income level and the need for review and adjustment
- h. Receiving UIB and looking for work
- i. Recently released from incarceration and looking for work
- j. Number of previous releases
- k. Contingent employer letter

If the LCSA review decision is to not release, the obligor can file a motion with the court to review the

LCSA's decision. The court's review is limited to the following: a.) Existence of a support obligation owed by the applicant, b.) Compliance with the order, c.) Additional facts which warrant a conditional release.

The court may do one of the following: a.) Uphold the local child support agency's decision not to release, b.) Grant an unconditional release, c.) Grant a conditional release.

If the court grants a conditional release, the court shall state its basis and make findings of fact concerning: a.) Needs of the obligor, b.) Payment history, c.) Current circumstances of the obligor and obligee, d.) Payments necessary to satisfy the unrestricted release, e.) Payment terms, compliance of which is necessary, to allow the conditional release to remain in effect.

If an obligor is caught driving with a suspended license and the suspension or revocation was under this section, the obligor's vehicle is not subject to impoundment. **FC § 17520 (w)(1)** However, this does not limit the impoundment for other reasons.

Suspension of a driver's license under this section (formerly W&I Code § 11350.6) does not violate a support obligor's constitutional right to equal protection or to travel. (*Tolces v. Trask* (1999) 76 Cal.App.4th 285)

E. BANK LEVIES

LCSAs are required to submit obligors who owe arrears to the Department for collection. This process is known as the Financial Institution Data Match System (FIDM). (**FC § 17453**).

1. Orders to Withhold (OTW)

The FIDM matches a financial institution with an obligor who owes arrears. The Department then serves an OTW on the institution seeking the full amount of arrears. The institution must transmit all

available funds, up to the full amount, to the State Disbursement Unit (SDU) no earlier than ten business days after receipt of the OTW. (**FC § 17454(d)**). The institution must also notify the obligor of the OTW by mail. (**FC § 17456(b)**); **IRMO LaMoure** (2011) 198 Cal.App.4th 807, 816-18).

2. Automatic Exemption

An obligor automatically receives a \$3,500 exemption (**FC § 17453(j)**) if, at the time of the OTW:

- a.** The obligor is in compliance with the court ordered arrears payment;
- b.** The obligor is paying current and past support through a wage assignment; or
- c.** The obligor is paying 50% of their earnings toward support.

Such an obligor is a “compliant obligor” and CSE will issue an Exempt Order to Withhold (EOTW). An obligor who falls into one of these categories is still subject to the OTW procedure, but automatically receives a \$3,500 exemption without filing a Claim of Exemption (COE). (**FC § 17453(j)**). The EOTW itself instructs the financial institution to automatically exempt the first \$3,500 in the account. Anything over \$3,500 is transmitted to the SDU.

3. Claim of Exemption (COE)

Compliant Obligor - Although the first \$3,500 is automatically exempt without the need to make a claim, an additional claim may be made based solely on hardship for obligor and obligor’s dependents. (**FC § 17453(j)(3)** and **FC § 17453(j)(7)**). The COE shall include a financial statement. (**CCP § 703.530**).

Non-Compliant Obligor – An obligor who does not meet the **FC § 17453(j)(1)** criteria can still serve a COE on the LCSA. **FC § 17453** does not deprive non-compliant obligor’s an exemption remedy. The

obligor must indicate which statutory exemption they are relying on. (**CCP § 703.520(b)(5)**).

The obligor must serve the COE on the LCSA within 10 days after the OTW is served on the obligor. (**CCP § 703.520**) An untimely COE results in a waiver, even if the property is exempt. (**CCP § 703.030(a)**). This means that even exempt property is not exempt without filing a COE. Compare “exempt” property with property that is “exempt without making a claim.” (**CCP § 703.030(b)**).

The LCSA is required to review the COE and, if appropriate, file a noticed motion to oppose the claim within 10 days. (**FC § 17453(j)(5), CCP § 703.550**) The LCSA must release the withheld funds if it fails to file the motion within 10 days. (**CCP § 703.550**).

At the hearing, the obligor/claimant bears the burden of proof. (**CCP § 703.580(b)**). Even if exempt, the property may still be applied to the satisfaction of a support judgment. (**CCP § 703.070(b)**).

➲ **PRACTICE POINT:** If a notice of opposition to the COE is filed, be sure to contact the financial institution to delay the remittance of the funds until after the court hearing and ensure that a disbursement hold is placed on the case.

4. No Levy for Obligors Receiving SSDI

In *IRMO Hopkins* (2009) 173 Cal.App.4th 281 held that a disabled child support obligor who qualifies for or actually receives SSI/SSP or SSDI (and meets the federal SSI income test) is exempt from levy. In *Lak v. Lak* (2020) 50 Cal.App.5th 581, the 4th DCA held that *Hopkins* oversimplified the exemption. To become exempt, a support obligor is required to establish they also satisfy the SSI resource test and would have qualified for SSI but for the SSI income test, in addition to proving they receive SSDI benefits.

5. No Court Order Authorizing Levy Necessary

In *IRMO LaMoure* (2011) 198 Cal.App.4th 807, the court held an order authorizing a levy under the

Financial Institution Data Match (FIDM) statutory framework is not required.

F. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

A "qualified domestic relation order" (QDRO) is a domestic relations order that creates or recognizes the existence of an alternate payee's right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable with respect to a participant under an employer sponsored retirement plan, and that includes certain information and meets certain other requirements. (**29 USC § 1056(d)(3)(B); IRC § 414(p)(1)(A)**).

QDROs are authorized under the Employee Retirement Income Security Act (ERISA). (**29 USC § 1056(d)(3); IRC § 414(p)**). Whenever there is a child and/or spousal support obligation arising from a state domestic relations law, a QDRO may potentially be used to enforce the support obligation.

1. Defined Contribution Plans and Lump-Sum QDROs

These are voluntary, employer-sponsored ERISA retirement plans that include 401(k) retirement plans and 403(b) Annuity plans, Employee Stock Ownership Plans (ESOP) and Profit-Sharing Plans. QDROs against these plans are the easiest to draft by IV-D programs and are typically used to collect lump-sum distributions.

2. Defined Benefit Plans

These plans are non-voluntary, employer sponsored ERISA retirement plans which contain no mechanism for IV-D programs to request lump-sum collections. In most instances, an IWO against the plan is effective if the obligor is already drawing benefits.

3. Alternate Payee(s)

For purposes of the QDRO, an alternate payee can only be a spouse, former spouse, child, or other dependent of a participant. (**29 USC § 1056(d)(3)(K); IRC § 414(p)(8).**)

 **NOTE:** The U.S. Dept. of Labor issued an Advisory Opinion dated June 7, 2002 concluding as follows:

[T]he fact that a domestic relations order names [DCSS] as the party to whom payments are to be made on behalf of an alternate payee, would not constitute grounds on which a plan administrator could find the order not to be qualified.

Employee Benefit Security Administration, US Dept. of Labor, **AO 2002-03A** (6/07/2002).

4. ERISA-Exempt Government Retirement Plans

Government sponsored plans are generally exempt from ERISA and not subject to QDROs. **CCP § 704.110** authorizes the intercept of lump sum and periodic payment distributions from public retirement systems to satisfy judgments. PERS and STRS have their own procedure for division of employee (member) interests in the event of a marital dissolution.

5. Request for Employer Information

Under **FC § 17512**, employers and labor organizations are required to provide relevant employment and income information that they have in their possession to the LCSA. Relevant employment and income information shall include, but is not be limited to, information on other earnings as specified in **FC § 5206**. Pursuant to **FC § 5206**, “earnings” includes “any other payments or credits due or becoming due, regardless of source.” A QDRO discovery letter can be sent to California employers, however, State IV-D programs are required to use the federal administrative subpoena for out-of-state employers. (**42 USC § 666 (c)(1)(B)**). Employers can provide information as to whether the employee is

contributing to an employment related retirement plan, as well as the exact name of the plan and the contact information for the employer's plan administrator.

A **plan administrator** is the person or company the employer selects to manage its retirement savings plan. The administrator works with the plan provider to ensure that the plan meets government regulations. The plan administrator is responsible for approving or rejecting your QDRO. If approved, the plan administrator will distribute payment from the plan in accordance with the terms of the QDRO.

➲ **PRACTICE POINT:** Since the Plan Administrator must ultimately approve your QDRO, contact the Plan Administrator early in the process. Submit a draft QDRO to the Plan Administrator for review and approval prior to filing it with the court. Ask the Plan Administrator to place a hold on the participant's retirement account while the QDRO is processed, some may require a letter of adverse interest or a draft QDRO before they place a hold of up to 180 days.

A federal administrative subpoena can be served on the plan administrator prior to submitting a QDRO for information on the participant's account balance. Since all plan administrators charge fees to review QDROs, it is useful to know the plan account balance before deciding whether to proceed with a QDRO.

✍ **NOTE:** FC § 17512(d) requires the LCSA to send a notice that a request for this information has been made to the last known address of the person who is the subject of the inquiry. The federal administrative subpoena does not have the same notice requirement when used to request information from a financial institution. (GC § 7480(l)).

6. QDRO Form

QDRO Forms FL-460 and FL-461 are available in CSE. QDRO Forms FL-460 and FL-461 are intended for use when a Plan Participant is already in pay status. If the Participant is not in pay status at the

time the Plan receives these forms, then the Plan is only required to send notice that no benefits are currently available for distribution.

Most Plans have a model QDRO form available upon request. However, there is no specific form required. Pursuant to **29 USC § 1056(d)(3)(c)**, a QDRO will meet the requirements so long as it contains: (1) the name and address of the Plan Participant and named Alternate Payee(s); (2) the amount or percentage of the Participant's benefit to be paid to the Alternate Payee(s) and the manner in which that amount or percentage is to be determined; (3) the number of payments or period to which the order applies; and (4) the name of each Plan to which the order applies.

A QDRO cannot require a Plan to provide a benefit that is not otherwise provided under the Plan, or increase benefits, or require that benefits be paid to a new alternate payee if the Plan is required to pay those benefits to a different alternate payee pursuant to a prior QDRO. (**29 USC § 1056(d)(3)(D)**).

➲ **PRACTICE POINT:** Many plans “require” use of their model QDRO, but these model QDROs do not usually comport with the requirements of IV-D child support QDROs. LCSAs should generate a QDRO pleading specifically tailored to the unique requirements of IV-D enforcement actions. Model QDROs are available, reach out to other LCSAs for samples if necessary.

7. Tax Consequences

To ensure the obligor is solely liable for taxes stemming from LCSA submitted QDROs, name the Children as the Alternate Payees of any IV-D child support QDRO. Pursuant to **IRC § 3405(b)(1)**, the obligor shall be subject to a 10% tax-withholding from funds distributed. No taxation liability will attach to the obligee/alternate payee.

✍ **NOTE:** The additional 10% penalty for early withdrawal prior to age 59½ does not apply to a

QDRO pursuant to IRC § 72(t)(2)(C).

⦿ **PRACTICE POINT:** All Plans charge a fee for processing a QDRO. The fee is charged against the funds prior to distribution and can be substantial. Always inquire about the fee before proceeding with a QDRO to ensure the remaining balance after tax and fees is sufficient to justify issuing the QDRO.

8. Limitations on QDROs

A QDRO can only divide a member's interests; it cannot offer any benefit not available to the participant. For example, if the member could not access the account until age 65, the alternate payee cannot receive a benefit before that time.

9. Caution - Potential Property Division Issues

Prior to generating a child support QDRO, verify there are no unresolved property division issues stemming from a dissolution action. Verify there are no other outstanding claims to the retirement benefits, particularly by the CP or the Participant's present spouse who may hold a community property interest in the Participant's retirement funds.

10. PERS Intercept

FC § 17528 allows for implementation of an intercept program whereby any payments distributed from a PERS account, whether lump sum or periodic, will be intercepted for unpaid child support. The lump sum payout intercept would act as a lien for the full amount owing, while the periodic payment intercept would be subject to the earnings assignment exemption limitations of CCP § 706.052. The Department currently has an interface with PERS to match participants, from which the Department produces a list for LCSAs to manually generate the IWO. This interface will be incorporated into CSE and updated monthly. STRS has not been included in this data-sharing legislation.

11. Individual Retirement Accounts (IRAs)

Individual Retirement Accounts (IRAs) are not employer sponsored retirement plans. While an employer can set up payroll deductions for contributions into an employee's IRA, the IRA is not subject to ERISA protections. A QDRO is not required to collect from an IRA. Since these accounts are not governed by ERISA, all withdrawals are subject to a 10% early withdrawal penalty, including withdrawals by levy for the payment of child support.

IRA funds are exempt but only to the extent they are necessary to provide for the support of the account holder and/or their spouse or dependents CCP § 704.115(e). It is important to note, however, that funds from an ERISA protected plan that are rolled over into an IRA maintain full creditor protection under CA law (**McMullen v. Haycock** (2007) 147 Cal.App.4th 753). This suggests that a QDRO would be required to collect from an IRA funded with funds from an ERISA protected plan.

G. DEBTOR'S EXAMINATIONS

Debtor's examinations and third-party examinations are allowed under CCP § 708.110 and CCP § 708.120. There is a statutory 150-mile limit on the service of a debtor's examination. (CCP § 708.160) Personal service of the hearing notice must be made at least 10 days prior to the hearing. (CCP § 708.110). The service of the debtor's examination creates a lien on the debtor's personal property for one year. (CCP § 708.110(d)).

1. Turnover Order

At the conclusion of a debtor's examination, the court may order the debtor's interest in property under the control of the debtor or a third person be applied toward the satisfaction of the money judgment if the property is not exempt. (CCP § 708.205) A debtor may claim an exemption, but if the debtor fails to raise a claim of exemption prior to the Court issuing the turnover order, any claim of exemption that

might have been raised is waived. (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540).

⌚ PRACTICE POINT: In the great majority of cases, a turnover order will be limited to cash or checks in the debtor's possession. In the case of checks written to the debtor, have the court order the judgment debtor to cash the check, pay a sum certain to the LCSA, and return to the court with a receipt for the payment. Failure to return with the proof is a direct contempt.

2. Self-Incrimination

An obligor cannot rely on his/her refusal to pay support to invoke the Fifth Amendment right against self-incrimination (because it might lead to a contempt proceeding) to protect financial information that could be utilized to collect arrears owed. (*IRMO Sachs* (2002) 95 Cal.App.4th 1144).

H. ORDERS FOR DEPOSIT OF MONEY OR ASSETS

The court may order a parent required to pay child support to deposit money or assets to secure future child support. (FC § 4550 et seq.).

1. Child Support Security Deposits

In cases where the defendant has money or liquid assets now, but may not in the future (self-employed, commission-only sales, lottery winners, personal injury settlement recipients, etc.), the court may order the obligor to open a "child support security deposit" bank account. (FC § 4560; JCF FL-400 and JCF FL-401).

2. Order for Deposit of Assets

The obligor may be ordered to deposit assets equal to the value of one year of support or \$6,000, whichever is less. (FC § 4614). The court may allow a bond or undertaking to be posted to satisfy this requirement. (FC § 4615).

3. Good Cause for Reasonable Security

The court has the discretion to order the obligor to give "reasonable security" for child support, upon showing of good cause. (FC § 4012). This code

section does not limit the deposit to the amount of one year of support. (*Brothers v. Kern* (2007) 154 Cal.App.4th 126).

I. WRIT OF EXECUTION / ADMINISTRATIVE NOTICE OF LEVY

Support may be enforced by writ of execution or notice of levy without prior court approval. (**FC § 5100**).

1. Writ of Execution

The application for a writ of execution is made to the clerk of the court where the judgment was entered and must include an affidavit of the overdue support, including the accrued interest, the amount of each installment as it became due, and the date it became due. (**FC § 5104**)

The application is drafted on pleading paper and includes an audit as an exhibit. The clerk “issues” the writ by signing and dating the complete writ form and affixes the court seal. The court clerk is obligated to give priority to the application for, and issuance of, writs of execution on orders or judgments for child support and spousal support. A separate writ is required for each county where a levy is to be made. (**CCP § 699.510(a)**). Once issued, the writ and affidavit are then provided to the levying officer who then issues a Notice of Levy. The LCSA can act as and perform the duties of the levying officer. **CCP § 689.040(a)**)

2. Administrative Notice of Levy

FC § 17522 lays out a process that once complete, allows the LCSA to issue a Notice of Levy. This process eliminates the need to obtain a writ of execution from the court clerk.

► **PRACTICE POINT:** Following all the steps in FC § 17522 to get to the point to issue the administrative levy is a lengthy process. If time is of the essence, it may be faster to obtain a writ of execution and issue your own notice of levy as the levying officer, especially since the court clerk will give your writ application priority.

J. LIEN ON PENDING CIVIL ACTION

CCP § 708.410 allows a lien to be filed in pending civil actions. Consider this lien if you have information that the obligor is suing an employer, getting a personal injury settlement, getting an equalization payment in a dissolution action from the “new” spouse, is an heir in a probate action, etc. The obligor only has to have an interest in money or property, the obligor does not need to be a plaintiff. (*Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421).

1. Priorities

CC § 2897 states the priority of liens is based on time of creation. All other things being equal, contractual liens established prior to the filing of a child support lien have priority. (*Wujcik v. Wujcik* (1994) 21 Cal.App.4th 1790; *Cappa v. F & K Rock and Sand, Inc.* (1988) 203 Cal.App.3d 172 [personal injury attorney’s lien had priority over the child support lien]).

2. Medical Lien

Most personal injury cases have liens from attorneys and medical providers that will predate the support lien. If there is any money going to the obligor, file a lien. Most medical service providers discount their liens by 20 to 40 percent on disbursement. If feasible to do so, a best practice is to request copies of all liens the personal injury attorney wants to pay before the support lien and information regarding how much each creditor is requesting.

➲ **PRACTICE POINT:** Often the personal injury attorney will call and say, “if you don’t lower your lien, the obligor will get nothing and therefore he will not settle.” Ask the attorney to ask all claimants to reduce their liens, including the attorney lien.

K. LABOR UNION MEMBERS

If the defendant is a union member and the labor union will not cooperate with the LCSA in providing new job information, the union can be joined as a party to get an order requiring the union to provide work site and pay information. (*IRMO Wilson* (1989) 209 Cal.App.3d 720).

L. COMMUNITY PROPERTY ASSETS

Community property assets are liable for prior non-community debts. (**FC § 910(a)**). This includes a child or spousal support obligation that does not arise out of the marriage, which is to be treated as a debt incurred before marriage. (**FC § 915**). The non-obligor spouse may have a right of reimbursement against the obligor spouse, but that is not relevant to the execution. This issue arises when FIDM hits a community joint bank account of the obligor and new spouse or when a real estate lien is activated by an attempted sale. (*Lezine v. Security Pacific Financial Services, Inc.* (1996) 14 Cal.4th 56; *Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 942).

M. FRAUDULENT CONVEYANCES (CC § 3439 ET SEQ.)

Under California’s enactment of the Uniform Voidable Transactions Act (UVTA), a transfer can be invalid when a debtor made the transfer with actual intent to hinder, delay, or defraud any creditor. (**CC § 3439.04(a)(1)**; *Mejia v. Reed* (2003) 31 Cal.4th 657 [transfers in marital settlement agreements could be found invalid based on the predecessor to UVTA]).

PRACTICE POINT: The Uniform Voidable Transactions Act went into effect on January 1, 2016, replacing the Uniform Fraudulent Transfer Act. The changes include clarification regarding the burden of proof, modification of definitions, and replacement of the term “fraudulent” with the term “voidable.”

N. PASSPORT DENIAL

Upon certification by a state agency that an obligor owes child support arrears exceeding \$2,500, the United States Secretary of State shall refuse to issue a passport to the obligor, and may revoke, restrict or limit a passport previously issued to the obligor. (42 USC § 652(k)).

1. Withdrawal of Passport Denial

For an individual who owes more than the threshold, denial is mandatory. Names can be withdrawn under two provisions: erroneous submissions (wrong person) and certified life and death situations involving an immediate family member. (See OCSS Letter DCL 06-32 and DCL 00-79, available at: www.acf.hhs.gov; CSS Letter 07-20).

2. No Jurisdiction for Court Review

LCSAs do not have control over the denial of passports – the obligation is merely to report. Under the separation-of-powers doctrine, the judiciary cannot prevent the executive from enforcing the law, unless the law is unconstitutional. (**Cal. Const. Art. III § 3**). The reporting requirement has been upheld against numerous constitutional challenges. (*Eunique v. Powell* (9th Cir. 2002) 302 F.3d 971, 974; *Weinstein v. Albright* (2nd Cir. 2001) 261 F.3d 127). Therefore, the trial court lacks the authority to order the LCSA to withdraw its mandated reporting of an obligor who owes more than \$2,500 in arrears.

O. EVASION OF SUPPORT

Anyone who knowingly assists an obligor who has unpaid child support to avoid paying court ordered support is liable for three times the value of the

assistance provided. (CC § 1714.4 and CC § 1714.41). The amount assessed a co-conspirator is a penalty and is not applied to the child support debt.

Conduct that constitutes aiding and abetting includes failing to report hiring an obligor and failing to report wages paid to an obligor to EDD. (CC § 1714.41).

P. PERSONAL PROPERTY LIENS

A lien against the support obligor's personal property arises by operation of law for all amounts of unpaid support when a LCSA is enforcing pursuant to FC § 17400 and FC § 17402. (FC § 17523) The lien is perfected by filing a notice of child support lien with the Secretary of State pursuant to CCP § 697.510. Once filed, it has the same force, effect and priority as a personal property judgment lien. The judgment lien continues for five years unless a continuation statement is timely filed. (CCP § 697.510(b)).

Q. VETERAN'S BENEFITS

A former military service member may receive payments from the branch of the armed service for which service was provided and/or from the Department of Veterans Affairs (VA).

1. Military Retirement Pay

a. Eligibility

Minimum length of required service (generally 20 years, at least 10 of which have been active service). A servicemember can also be medically retired, which does not require 20 years of service but generally requires a standard schedule disability rating of at least 30 percent, and would earn them payments from their branch of service as opposed to the VA. This is treated the same as "regular" military retirement (can be garnished, is taxable, etc.) (10 USC § 3911, 10 USC § 6323, 10 USC § 8911, 10 USC § 1201, 10 USC § 1202, and 10 USC § 1401).

b. Taxability

Generally, military retirement income is taxable, but exceptions may apply.

c. Enforceability

Support can be garnished before payment is paid to the military retiree. (42 USC § 659(h)(1)(A)(ii)(II)).

► PRACTICE POINT: When a veteran is eligible to receive both military retired pay and service-connected disability compensation, federal law limits, in certain cases, the total amount of the combined benefit payment. (10 USC § 1414). In these circumstances, the veteran may elect to waive a portion of his/her taxable military retired pay in exchange for an equal amount of additional, non-taxable, service-connected disability compensation benefit. This waived/exchanged amount is subject to garnishment to enforce a support order. (42 USC § 659(h)(1)(A)(ii)(V); CCP § 483.013). The remaining amount (representing the unadulterated disability compensation) is not enforceable by levy, attachment, or seizure before or after payment. (38 USC § 5301(a)(1)).

2. VA Disability Compensation (service-connected)

a. Eligibility

Veteran disability incurred or aggravated during military service (i.e., service connected). (38 USC § 1110).

b. Taxability

Generally, exempt from taxation. (38 USC § 5301(a)(1)).

c. Enforceability

Generally, not subject to garnishment before payment to the veteran. (42 USC § 659(h)(1)(A)(ii)(V) and 42 USC § 659(h)(1)(B)(iii); CCP § 483.013).

● **PRACTICE POINT:** When you obtain an order against a veteran who receives service-connected disability, be sure to explain that the support will not be paid by wage assignment and the obligor needs to pay support directly to the LCSA. Contempt may be appropriate for failure to pay in these cases because the obligor has the ability to pay from the monthly benefit.

d. Apportionment

When the veteran receives only the service-connected disability benefit, the VA is not bound by a garnishment, but can apportion the veteran's benefit payment upon request. (38 CFR § 3.450). Where hardship is shown to exist, the benefits may be specially apportioned between the veteran and his or her dependents based on the facts of the case. (38 CFR § 3.451).

e. Enforcement After Payment

“Although veterans' disability benefits may be exempt from attachment while in the VA's hands, once they are delivered to the veteran a state court can require that they be used to satisfy a child support order.” (*Rose v. Rose* (1987) 481 U.S. 619, 620). This case involved a contempt proceeding against a veteran obligor whose sole income was derived from service-connected disability benefits. The Supreme Court held that the Tennessee statute that allowed a court to order a veteran to make child support payments from his service-connected disability benefits was not preempted by the federal statute giving the Secretary of the Veteran's Administration authority to apportion the same benefits on behalf of the veteran's children. (*Id.* at 628).

f. Derivative Benefits

Children of a recipient may be eligible for direct benefits based on an obligor's award of veteran's benefits. FC § 4504 requires the custodial parent

or other obligee to apply for derivative benefits after notification of possible eligibility. If benefits are received by the custodial parent, the obligor gets credit toward the support obligation.

3. VA Disability Pension (non-service connected)

a. Eligibility

An obligor who served during a period of war, and was either permanently and totally disabled from a nonservice-connected disability and meets certain income requirements OR age 65 or older, may be eligible for a VA pension. (**38 USC § 1513** and **38 USC § 1521**).

b. Taxability

Generally, a VA disability pension is exempt from taxation. (**38 USC § 5301(a)(1)**)

c. Enforceability

Not enforceable by levy, attachment or seizure before or after payment to the veteran. (**38 USC § 5301(a)(1)**).

d. Not Considered Income

Because nonservice-connected VA Disability Pension benefits are based on a determination of need, these benefits are not considered income for child support purposes. (**FC § 4058(c)**).

R. PRIVATE CHILD SUPPORT COLLECTORS

All child support orders entered on or after January 1, 2010 must contain language requiring the support obligor to pay a fee to the private child support collector under certain conditions. (**FC § 5616**).

VII. ARREARS

A. NO RETROACTIVE MODIFICATION

A support order may not be modified or terminated as to an amount that accrued before the date of the filing of the motion to modify. (**FC § 3651(c)(1)**).

1. Reservation of Jurisdiction

A court may not retroactively modify support based on a reservation of jurisdiction in a previous order, where the underlying motion has been taken off the calendar. (*IRMO Gruen* (2011) 191 Cal.App.4th 627 [The court could not modify temporary support that accrued before the date of filing the notice of motion pursuant to **FC § 3603.**]) However, this does not preclude a trial court from expressly reserving jurisdiction to amend a non-final order as to two months of support based on the anticipated presentation of additional evidence. (*IRMO Frietas* (2012) 209 Cal.App.4th 1059).

2. Interest on Arrears

Courts do not have discretion to abate or forgive interest on arrears, as this would be a retroactive modification of support. (*IRMO Perez* (1995) 35 Cal.App.4th 77).

3. Incarceration

The trial court lacks equitable power to forgive child support arrears because retroactive modification is statutorily barred. (*County of Santa Clara v. Wilson* (2003) 111 Cal.App.4th 1324; See however **FC§4009.5** for incarcerated obligors and suspension of child support.)

4. Child Care Expenses

A court may not relieve a parent of childcare support orders regardless of whether the childcare amount ordered exceeded the actual childcare costs incurred. (*IRMO Tavares* (2007) 151 Cal.App.4th 620, 626 [citing **FC § 3692**]; For further explanation, see also *Stover v. Bruntz* (2017) 12 Cal.App.5th 19, where the court deemed unenforceable the parties' stipulated

retroactivity provision over the childcare portion of the order, holding the provision violated statutory prohibitions against retroactive modification of support. An obligor has a duty to file a motion to adjust the support prospectively if they believe the childcare amount no longer applies. (**FC § 3653 (a)**).

B. LACHES

Laches is not a defense against the enforcement of arrears owed to the custodial parent. “In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment that is owed to the state.” (**FC § 291(d)**) This law is applied retroactively as detailed in *IRMO Fellows* (2006) 39 Cal.4th 179.

C. EQUITABLE CREDIT TOWARDS ARREARS

If an obligor assumes custody of the child with the consent of the previous custodial party, and the court finds that the obligor has met their child support obligation due to having custody, the court has the discretion to grant the obligor equitable credit for the period that the obligor had custody of the child. (*Jackson v. Jackson* (1975) 51 Cal.App.3d 363; *IRMO Trainotti* (1989) 212 Cal.App.3d 1072 [See also *IRMO Wilson* (2016) 4 Cal.App.5th 1011, which held that in some circumstances where a relative of the obligor cares for the child and the obligor pays support to that person, the court may retain equitable discretion to deny enforcement of accrued arrears during that period].)

1. Siblings

The court may provide equitable credit for one child, without providing credit for a sibling. (See *IRMO Okum* (1987) 195 Cal.App.3d 176176 where the Court found that Father had full custody of one child/sibling and paid all of that child’s support, while Mother had substantial custody of the other child/sibling and had incurred expenses while raising that child.)

2. Reconciliation

Equitable custody credits are also available during periods of reconciliation when both parties live in the same home with the child/children. (*Helgestad v. Vargas* (2014) 231 Cal.App.4th 719.)

➲ **PRACTICE POINT:** In granting an equitable credit, the court is not “equitably forgiving arrears,” which would be an unlawful retroactive modification prohibited by **FC § 3651(c)(1)** and case law. Instead, the court merely finds that the obligor has met his/her court-ordered obligation due to having custody; the granting of the credit does not retroactively modify the court-ordered obligation.

D. REFUND OF SUPPORT OVERPAYMENT

A court has the discretion to decide whether an obligor is entitled to reimbursement for overpayment of child support. (*IRMO Starr* (2010) 189 Cal.App.4th 277 [where the parents of two children erroneously stipulated to child support calculated for four children, and obligor paid based on the amount for four children, the court had discretion to decline obligor’s request for reimbursement]; *IRMO Peet* (1978) 84 Cal.App.3d 974 [Credit for overpayments lies within the discretion of the court, considering primarily whether unfairness or harm would befall the child(ren) if credit is given].)

E. OVERPAYMENT CAUSED BY LUMP SUM PAYMENT OF DERIVATIVE BENEFITS

An obligor may be entitled to reimbursement for overpayment of child support due to a lump sum payment of derivative benefits. In a case of first impression, the California Court of Appeal, Fourth District, issued a published decision in *Y.H. v M.H* (2018) 25 Cal.App.5th 300 (the “Hanes case,”) affirming the trial court’s order granting the obligor retroactive credit for a lump-sum payment that the Social Security Administration (SSA) disbursed to the obligee on behalf of obligor’s daughter, which resulted in an overpayment. (Please check with current state policy regarding overpayments due to lump sum derivative benefit payments if this issue arises).

F. AGREEMENT TO WAIVE NON-WELFARE ARREARS

At least one court has ruled that an agreement between parties to waive unassigned arrears is unenforceable if there is no dispute as to the amount of the arrears and the amount accepted is less than the total arrearages. (**FC § 3651(c)(1) and 3651(e); IRMO Sabine and Toshio M.** (2007) 153 Cal.App.4th 1203 [Where arrears exceeded \$300,000 and the mother agreed to accept \$100,000 as full satisfaction of arrears, the court determined a waiver of arrears is not enforceable without a bona fide dispute regarding the amount of the arrears]. “[A]n agreement for payment of [only] a part of the amount due is without consideration.” (*Id.* at 1215 [citations omitted]).

PRACTICE POINT: Some LCSAs believe the holding in *IRMO Sabine and Toshio M.* was limited to the facts of the case and therefore continue to approve agreements to waive arrears. Because of the holding in *IRMO Sabine and Toshio M.*, LCSAs may want to ask the court to hear testimony before approving an agreement to waive arrears. It is questionable whether the “Conditions of Waiver” (i.e., lump-sum payment, consistent sum-certain monthly arrears payment) constitute valid consideration. (See JCF FL-626, p. 3)

G. INTEREST ON ARREARS

Interest on arrears accrues at the legal rate of 10% as each payment is due. (**CCP § 685.010**) (Prior to July 1, 1983, interest was 7%).

1. Effective Date

“[N]o interest shall accrue on an obligation for current child, spousal, family, or medical support due in a given month until the first day of the following month.” (**FC § 17433.5**)

2. No Estoppel

Accrual of interest is not a discretionary matter but is instead controlled by statute and continues until a judgment is satisfied. (**IRMO McClellan** (2005) 130 Cal.App.4th 247.) The county is not estopped from collecting interest because it misstated the amount

owed. (*IRMO Thompson* (1996) 41 Cal.App.4th 1049. [The obligor could have calculated the interest on his own and it was not the county's burden to do it for him.]

3. Installment Judgment

Only the initial support order shall be considered an installment judgment; no order setting forth the amount of support owed for prior periods of time or establishing periodic payments to liquidate the arrears shall be considered a money judgment. (FC § 155, as amended in 2002)

4. Bankruptcy

Interest on child support debt (including welfare arrears) continues to accrue after a Chapter 13 petition is filed and is non-dischargeable and collectable, even after discharge and even if not requested in the Plan or Proof of Claim. (*In re Foster* (9th Cir. 2003) 319 F.3d 495).

5. Military

A servicemember may request a 6% interest rate on pre-service debts pursuant to the Servicemember's Civil Relief Act (SCRA) (See at 50 USCA § 3937.) (See also *Section XV.C.7 – Military*).

H. MOTION TO DETERMINE ARREARS

Any party may request a judicial determination of arrears. (FC § 17526). The motion shall include a monthly breakdown showing amounts ordered and amounts paid. A court order determining arrears is res judicata and cannot be re-litigated (as to that time period). (See *Wodicka v. Wodicka* (1976) 17 Cal.3d 181, 188)

I. PRIORITY OF APPLICATION OF PAYMENTS AND TAX RETURNS (CCP § 695.221)

Payments received before January 1, 2009 were applied to accounts differently, as follows:

1. Payments Received Before January 1, 2009

a. Payments (except tax refunds)

Applied first to the current month's obligation,

then to any interest, then to principal on arrears. Payments towards interest and principal on arrears are first applied to the unassigned amounts, then to the assigned amounts.

b. Tax Refund Intercepts

Applied first to any assigned interest, then to any assigned principal amount of arrears, then to unassigned interest and then, to unassigned principal.

2. Payments Received on or After January 1, 2009

a. Payments (except IRS tax refunds)

Credited first to ongoing support, then to the principal amount of the judgment remaining unsatisfied, then to interest. Payments towards interest and principal on arrears are first applied to the unassigned amounts, then to the assigned amounts.

b. IRS Tax Refund Intercepts

Credited first against the principal amount of past due support that has been assigned to the state, and then any interest due on that past due support, prior to the principal amount of any other past due support remaining unsatisfied, and then to any interest due on that past due support.

J. CHILD SUPPORT DEBT REDUCTION PROGRAM

The Child Support Debt Reduction Program aligns eligibility and repayment options with an obligor's ability to pay, in consideration of gross income, family size and cost-of-living for the county, state or territory of residence. Cost of living is calculated using collection financial standards (allowable living expenses) as published annually by the IRS. (**FC § 17560.**) Information regarding this program, forms, and resources, are available on the California Child Support Central. (See **CSSI Letter 21- 04**). This is an administrative program, which is not subject to the court's jurisdiction.

K. EFFECT OF RECONCILIATION OR MARRIAGE / REMARRIAGE OF PARTIES ON THE ORDERS

1. Orders Nullified During Reconciliation

A temporary support order is not enforceable during any period in which the parties have reconciled and are living together. (*FC § 3602*). For permanent support orders, the obligor may seek equitable credit (*under IRMO Jackson*) for any time he or she reconciled and lived with the other parent and the children. (*Helgestad v. Vargas* (2014) 231 Cal.App.4th 719 [Noting the obligor has the burden of proving they provided “in-kind” or “in the home” support for the children while living in the home. This did not include rent paid by Father to Mother’s parents. The obligor must prove the support was provided for the children].

2. Orders Terminated During Marriage or Remarriage

Remarriage terminates both the court’s jurisdiction over the parties and the support orders in the first divorce judgment. (*Davis v. Davis* (1968) 68 Cal.2d 290.) If there is a paternity judgment and order for support prior to the parties’ marriage, the act of marriage nullifies the child support provisions existing prior to the marriage. (*IRMO Wilson and Bodine* (2012) 207 Cal.App.4th 768.)

L. ESTOPPEL

1. Estoppel Against a Party

Mere acquiescence in payment of an amount of child support less than that provided by a final dissolution judgment is not sufficient to constitute a waiver or otherwise to bar collection of the unpaid amounts. (*IRMO Brinkman* (2003) 111 Cal.App.4th 1281.) [The doctrine of estoppel was not applied where the obligor claimed to believe a settlement officer’s recommendations had become the order and paid the lower recommended amount, and where the obligee accepted the lower payments]).

2. Elements of Estoppel

The party seeking to establish estoppel must show by clear and convincing evidence that:

- (a) The party to be estopped knew the facts;
- (b) The other party was ignorant of the true facts;
- (c) The party intended [their] conduct would be acted upon, or acted in a manner that the party asserting the estoppel had a right to believe it so intended; and
- (d) The other party relied upon the conduct to [their] injury.

When one of the elements is missing, there can be no estoppel. (See *IRMO Brinkman* for a discussion of the elements of estoppel.)

3. Estoppel Against the County

The court held the county was estopped from collecting the child support arrears as reimbursement for public assistance for foster care because of the county's passive failure to locate the father and to provide the father with notice which resulted in the welfare payments. (*County of Orange v. Carl D.* (1999) 76 Cal.App.4th 429).

M. FAILURE TO IMPLEMENT CUSTODY OR VISITATION RIGHTS AND CONCEALMENT

Interference with visitation is not a defense to payment of support. "The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child is not affected by a failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court to the noncustodial parent." (**FC § 3556.**)

1. Interference with Visitation

Mere interference with visitation without concealment of the child is not sufficient grounds to terminate a support obligation. (*Cooper v. O'Rourke* (1995) 32 Cal.App.4th 243).

2. Concealment of Child

Concealment of a child may be a defense to payment of support if all the following elements

are met:

- a) The children were actively concealed by the obligee until the age of majority;
- b) The obligor was reasonably diligent in attempting to locate the children; and
- c) The obligor did not pay because they did not know where to send the payments. (See *IRMO Damico* (1994) 7 Cal.4th 673.)

3. No Defense when Concealment Terminates During Child's Minority

The defense of estoppel is not available if concealment ends while the children are minors. (*IRMO Comer* (1996) 14 Cal.4th 504, 510; *IRMO Vroenen* (2001) 94 Cal.App.4th 1176). Additionally, CP's concealment of the child does not prevent the LCSA from collecting assigned arrears from NCP. (*Id.*)

4. Equitable Discretion

In *IRMO Boswell* (2014) 225 Cal.App.4th 1172, the court held that the mother was estopped from enforcing support arrears because she unjustly concealed the children and therefore had unclean hands. The court held that the family law court had broad equitable discretion to decline to enforce the child support arrears. The court did not address FC § 3556, *IRMO Comer* (1996) 14 Cal.4th 504, or *IRMO Vroenen* (2001) 94 Cal.App.4th 1176.

N. ARREARS COLLECTION UPON DEATH OF PARENT

1. Death of Parent Receiving Support

When the obligee is deceased, current support and non-assigned arrears collections become a debt owed to the estate if one exists. Under Title IV-D, continuing to collect on behalf of an estate is a non-IV-D activity. (See CSS Letter 11-13.) Assigned arrears will continue to be collected.

2. Death of Parent Paying Support

Money judgments for current support and for arrearages are enforceable after the death of the

debtor/obligor and do not terminate by operation of law upon the death of the custodial parent. *Taylor v. George* (1949) 34 Cal.2d 552; *In re Marriage of Gregory* (1991) 230 Cal.App.3d 112, 115 (“[I]t has been established that court ordered child support survives the death of the noncustodial parent and becomes a charge upon his or her estate.”]) (Note, however, CSS Letter 06-39 prohibits the LCSA from opening a case when the supporting parent is already deceased).

O. INCARCERATED OBLIGORS

1. Administrative Suspension of Support –

FC § 4700.5

Any child support obligation that accrues on or after 09/27/2022, regardless of when the child support order was established or last modified, is suspended by operation of law as of the first day of the first full month of incarceration or involuntary institutionalization when all the following conditions are met:

- The person paying support has been incarcerated or involuntarily institutionalized for more than ninety consecutive days prior to the suspension.
- To the extent known to the LCSA, the person paying support does not have the means to pay support while incarcerated or involuntarily institutionalized.

Amended FC § 4700.5 provides that if the person paying support is released on or after 01/01/2024, the prior child support obligation resumes on the first day of the 10th month after the release from incarceration or institutionalization.

2. Exceptions

- Incarceration/Involuntary institutionalization includes, but is not limited to, involuntary confinement to a federal or state prison, county jail, juvenile facility, or mental health facility, but not to persons on house arrest.

- Relief is not available if the person paying support has the means to pay while incarcerated/involuntarily institutionalized.
- The prior exception that excluded relief for participants who were incarcerated for domestic violence against the person ordered to receive support or the child, or failure to comply with a court order to pay support, are no longer excluded. These obligors now qualify for relief.

3. Adjustments Under Prior Versions of FC §4007.5

In addition to affording relief under its own provisions, the current version of **FC §4007.5** mandates adjustment of child support obligations under some, but not all, prior versions of the statute, regardless of whether the prior statute was repealed. If the person paying support qualified for an administrative or court ordered adjustment of the support order under a former version of **FC §4007.5**, they continue to qualify for that adjustment. (See **FC §4700.5(i)**.)

VIII. CONTEMPT AND CRIMINAL ENFORCEMENT**A. CIVIL CONTEMPT VS. CRIMINAL CONTEMPT**

FC § 290 provides that a judgment or order made or entered pursuant to the Family Code may be enforced by the court through contempt proceedings. FC § 4500 allows that a support order made, entered or enforceable in this state is enforceable, whether or not the order was made or entered pursuant to the Family Code.

Contempt actions can be filed pursuant to **CCP § 1209**, **CCP § 1209.5** or **PC § 166(a)(4)**. Filing under the CCP allows the matter to be heard in the IV-D Court, usually by the same Commissioner that hears the regular IV-D calendar. However, filing under the Penal Code requires the case to be heard as a criminal proceeding and can only be done by the local district attorney's office or specially deputized child support attorneys.

COMPARISON CHART

ISSUES	CCP § 1209, CCP § 1209.5	PC § 166(a)(4)
Trial	Judge/Commissioner (unless over 180 days incarceration requested)	Jury (unless waived)
Service of Process	Personal Service Required	Notice by Mail/ Arrest Warrant
Penalty	<u>First Contempt Finding:</u> Up to 5 Days Jail <u>or</u> 5 Days Community Service per count <u>Second Contempt Finding:</u> Up to 5 Days Jail <u>and</u> 5 Days Community Service per count <u>Third or Subsequent Finding:</u> Up to 10 Days Jail <u>and</u> 10 Days Community Service per count <u>and</u> administrative fee *Note new law authorizes the courts to utilize probation in lieu of imprisonment (CCP §1218(c)(2)).	Not to exceed 1 Year incarceration and fine
Statute of Limitations	3 Years (child, family or spousal support orders) / 2 Years (any other order issued under the Family Code)	1 Year

A preliminary consideration to make is whether a contempt action is civil or criminal. Clearly an action

under the penal code is criminal. For purposes of this sourcebook the two civil contempt options will be labeled “civil coercive” and “civil punitive”. In LCSA contempt cases, the process is punitive but has a coercive goal. The punitive process, as defined, has a determinative sentence as compared to an indeterminate penalty that will exist until a wrong is cured.

In practice, when there is a possibility that a guilty citee will be sentenced to jail time, that citee must be afforded criminal due process protections. (*Hicks v. Feiock* (1988) 485 U.S. 624; *County of Santa Clara v. Super. Ct. (Rodriguez)* (1992) 2 Cal. App. 4th 1686).

 **NOTE:** The JCF FL-410 (OSC and Affidavit for Contempt) states that a contempt proceeding is “criminal in nature.”

B. CIVIL CONTEMPT CCP § 1209 AND CCP § 1209.5

1. Different Statutes

CCP § 1209 may be used for violations of any court order, such as failure to perform a job search. CCP § 1209.5 may only be used for failure to pay child support and family support.

2. Statute of Limitations

Pursuant to CCP § 1218.5(b), the period of limitations to commence a contempt action for failure to pay child, family or spousal support is three years from the date that the payment was due. For other orders falling within the Family Code, the period of limitations is two years from the date that the alleged contempt occurred.

3. Standing

The LCSA lacks standing to file contempt in a non-aid case unless there has been a request for services from a non-aid parent. (*Codoni v. Codoni* (2002) 103 Cal.App.4th 18.)

4. CCP § 1209.5 Elements

a. The three requirements are:

- 1) a lawful support order;
- 2) knowledge of the order; and
- 3) failure to comply with the order. (*IRMO Sachs* (2002) 95 Cal.App.4th 1144). Proving these requirements is *prima facie* evidence of contempt of court.

b. Lawful Order

A court of competent jurisdiction made an order compelling a parent to furnish support.

- 1) The order must be in writing, clear, specific and unequivocal. (*In re Marcus* (2006) 138 Cal.App.4th 1009).
- 2) Can be proven by judicial notice of records in court file. (**EC § 452 and EC § 453**).

c. Knowledge

This element can be established by proof that the order was served on the citee or that the citee was present in court when the order was made. If the citee was not present in court or served, knowledge can be demonstrated by:

- 1) Inference (*In re Ivey* (2000) 85 Cal.App.4th 793 [knowledge of the order by the attorney representing the citee may create a permissive inference that the citee had knowledge of the order]); or
- 2) Evidence such as prior payments, contact with the LCSA regarding the order, enforcement of the order, discussions with the other party, etc.

d. Non-Compliance

The citee did not comply with the order.

- 1) May use **EC § 1280** (record by public employee) to have the financial records admitted without the need for testimony. (*Bhatt v. State Department of Health*

Services (2005) 133 Cal.App.4th 923, 929).

- 2) The CP may testify about payments missed during months that the order was payable directly to CP and should be available to rebut any evidence that the obligor paid the CP directly.
- 3) A child support representative may be called to testify about payments missed or regarding the mode of preparation of child support records. (EC § 1271).

➲ **PRACTICE POINT:** If the NCP's only argument is lack of ability to pay the support order, request that the NCP/attorney stipulate to the other *prima facie* elements.

5. CCP § 1209 Elements

a. The four requirements are:

- 1) a lawful order (discussed above);
- 2) knowledge of the order (discussed above);
- 3) ability to comply; and
- 4) willful disobedience. (*In re Ivey, supra*, 85 Cal.App.4th 793).

b. Ability to Comply

For CCP § 1209, ability to comply with the order is an element that must be proven by the petitioner (DCSS). Additionally, for CCP § 1209.5, if the failure to pay support occurs many years after the support order is entered, ability to comply may become an element of the contempt. (*Mery v. Superior Court* (1937) 9 Cal.2d 379, 380-381; *In re Ivey, supra*, 85 Cal.App.4th 793).

✍ NOTE: For CCP § 1209.5, inability to comply is an affirmative defense that must be raised by the citee. It is not a required element for a *prima facie* case. (See C.1 infra, for further information about the affirmative defense of inability to comply).

c. Willful Disobedience

The conduct must be “willful” in the sense that it

is inexcusable. (*Little v. Superior Court* (1968) 260 Cal.App.2d 311). Willfulness does not require a bad intent but only that the citee knew what he was doing as a free agent. Reliance upon advice of counsel is not a defense to the willfulness of the conduct. (*In re Bongfeldt* (1971) 22 Cal.App.3d 465, 476).

6. Penalty (CCP § 1218(c)) (Amended by Stats. 2020, Ch. 283, Sec. 1. (AB 2338) Effective January 1, 2021.)

a. Incarceration and Probation

1) 1st conviction

Up to 120 hours jail or community service for each count.

2) 2nd conviction

Up to 120 hours jail and up to 120 hours community service for each count.

3) 3rd or any subsequent conviction

Up to 240 hours jail and up to 240 hours community service for each count.

4) Alternate to incarceration and probation timeframes

In lieu of an order of imprisonment, community service, or both, as set forth in paragraph (1), the court may grant probation or a conditional sentence for a period not to exceed one year upon a first finding of contempt, a period not to exceed two years upon a second finding of contempt, and a period not to exceed three years upon a third or any subsequent finding of contempt.

C. PROBATION CONDITIONS AND LIMITATIONS

Changes to existing law authorizes courts that were not already utilizing probation to now do so. Standard terms and conditions of probation may include: seek or maintain full-time employment; pay the court ordered support or arrears payment each month; attend each

court hearing; and obey all laws.

1. If the citee fails to comply with the terms of probation, the court may revoke the probation and execute the sentence following a probation revocation hearing. Some courts follow the Penal Code sections regarding probation revocation, even though the sections do not specifically apply to civil contempt proceedings. (i.e. **PC § 1203.2(a)** [revocation of probation tolls the running of the probationary period]).

2. Many courts have decided to apply the limits retroactively citing (*In re Estrada* (1965) 63 Cal.2d 740 (Estrada)), *Estrada* stands for the principle that when the Legislature amends a statute so as to lessen a penalty, the former penalty must have been too severe.

✍ **NOTE:** The time limitation of one year may encourage an LCSA to conduct more frequent review hearings to ensure compliance. It is at these review hearings where an LCSA attorney would request a probation revocation hearing if the terms of the probation are not being met.

➲ **PRACTICE POINT:** Remember that if an ordered probation term is less than the court-ordered support obligation, you should expressly state that fact in the Findings and Order. Additionally, the order should emphasize that this term in no way modifies the underlying support obligation.

1. Other Requests

There is some authority that once a citee is adjudged guilty of contempt, the court shall not entertain further requests (e.g. motion to modify support) filed by the citee, until the underlying contempt is purged. (*Schubert v. Superior Court* (1930) 109 Cal.App. 633).

✍ **NOTE:** However, given the law's preference for accurate orders and recognition that the citee/NCP may be in contempt because the order actually needed to be modified, this position may be untenable.

2. Amended Affidavit

In a contempt action the charging affidavit must allege the evidentiary facts of a *prima facie* case with specificity. **JCF FL-410** and **JCF FL-411**. However, the affidavit or statement in support of the contempt action may be amended at any time during the proceedings, unless substantial rights of the citee would be prejudiced, in which event a reasonable postponement may be granted. (**CCP § 1211.5(b)**).

3. Jury trial

a. The citee is not entitled to a jury trial unless there is a potential to be sentenced to more than 180 days in jail. If tried without a jury and the citee does not expressly waive the right to a jury, the court may only impose a maximum sentence of 180 days. (*In re Kreitman* (1995) 40 Cal.App.4th 750, 753-755).

b. The right to a jury trial is constitutional. (**PC § 689**; CA Const. Art. 1, sec. 16).

✍ NOTE: Under the U.S. Constitution, the right to a jury trial applies to crimes that carry a sentence of more than 6 months.

⌚ **PRACTICE POINT:** To avoid the need for a jury trial, keep the maximum counts alleged on a first contempt at 35, which could result in a 175-day sentence.

4. Right to Counsel

In civil contempt actions, California Courts have long offered appointment of public defenders or the right to retain private counsel for representation of the citee where potential punishment is deprivation of liberty i.e. incarceration. (**GC § 27706(a)**, *County of Santa Clara v. Super. Ct. (Rodriguez)*, *supra*, 2 Cal. App. 4th 1686, 1693).

5. The Final Rule – Guidelines to Follow Pursuant to 45 CFR § 303.6(c)(4)

The OCSS issued the *Final Rule on Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (the Final Rule) in 2016. **81 F.R.**

93562 (2016). A portion of the Final Rule amended criteria and procedures for child support contempt proceedings to ensure that they comply with the constitutional principles articulated in *Turner v. Rogers et al.*, 564 U.S. 431 (2011). The Supreme Court in *Turner* (a case originating in South Carolina) held that an obligor was entitled to Court appointed counsel in the context of a civil contempt unless the opposing party was unrepresented and the Court provided alternative procedural safeguards ensuring that the proceedings were fundamentally fair.

The Final Rule at **45 CFR §303.6(c) (4)** (2017) imposed three requirements on IV-D agencies in regard to civil contempt procedure:

a. Screen the case for information regarding the obligor's ability to pay or otherwise comply with the order. This relates to how recently the order was made, the financial information considered in making the order, and ensures that the contempt process is not used mechanically but rather as a last resort for enforcement. (A convenient check list is included in the state's policy and procedural manual.)

b. Provide the Court with available information regarding the obligor's ability to comply with the order which may assist the Court in making a factual determination of the obligor's ability to pay the purge amount (civil coercive contempt) or probationary conditions (civil punitive contempt).

✍ NOTE: In a finding of guilt or taking of a guilty plea, the court should state that there is a factual basis for that finding. (See JCF FL-415, part 5.e.).

✍ NOTE: A civil coercive contempt action requires the contemnor to perform an act, i.e. a conditional or indeterminate sentence (the citee holds the keys to his own jail cell). A civil punitive contempt punishes for non-compliance

of an ordered act i.e. a determinate sentence.

✍ **NOTE:** Most California IV-D contempt actions are civil punitive actions where the issue is whether the citee had the ability to pay the ordered support at the time that it was due, not at the time of the contempt hearing. Therefore, the purge amount is not technically relevant.

c. Provide clear notice to the obligor that their ability to pay constitutes the critical question in the civil contempt action. Until JC forms have been modified, this requirement can be met by attaching the “Civil Contempt Proceedings Cover Letter” form DCSS 0755.

6. Bankruptcy

Generally, the filing of a bankruptcy petition stays any type of action against the debtor (automatic stay). Criminal actions are not stayed because they are punitive in nature. (**11 USC § 362(b)(1)**).

⌚ **PRACTICE POINT:** 292 B.R. 645). Where the contempt is strictly to enforce or coerce payment of a debt, the proceeding has been found to be prohibited by the stay. (*In re Stovall* (1990, Bankr. N.D. Ga.) 126 B.R. 814). As such, case law suggests that civil contempt proceedings seeking only to punish (as opposed to coerce payment) are not barred from the automatic stay. However, based on the varying opinions of courts and the broad authority of the Federal Court to issue sanctions for a violation of the automatic stay, (*see, e.g., In re Springer* (2017 W.D. Ky.) 2017 WL 3575 859), a civil contempt should not be filed while an automatic stay is in place.

✍ **NOTE:** Federal Courts have exclusive and final authority in deciding the scope and application of the automatic stay. (*In re Gruntz* (2000) 202 F.3d 1074 [here, the court also found that the automatic stay did not apply to preclude state court criminal proceedings against a debtor for failing to pay child support]).

7. Appeal

A finding of contempt by a court of competent jurisdiction may not be appealed. (**CCP § 904.1**)

Instead, the contemnor's only option is to file a writ of certiorari or writ of habeas corpus in the Court of Appeal. (*Devine v. Devine* (1963) 213 Cal.App.2d 549).

D. DEFENSES TO CIVIL CONTEMPT

1. Inability to Comply

For a contempt filed pursuant to CCP § 1209.5, ability to comply is not an element of the prima facie case but is an affirmative defense to be proven by a preponderance of the evidence. (*Moss v. Superior Court* (1998) 17 Cal.4th 396).

a. Burden of Proof

Because the court determined the citee's ability to pay the underlying order by calculating his or her income when support was set, if the act of alleged contempt is committed close to the time the court issued the underlying order, then inability to pay is an affirmative defense, to be proven by the citee. (*In re McCarty* (1908) 154 Cal. 534, 537-538; *In re Ivey, supra*, 85 Cal.App.4th 793, 798-799). However, the petitioner (DCSS) may have to prove ability to pay if the citee's disobedience of the court's order occurred a long time after the court issued its order. (*Mery v. Superior Court, supra*, 9 Cal.2d 379, 380-381 [ability to pay must be proven when 10 years elapsed between the support order and the contempt allegation]).

b. Unemployment

A citee can be found in contempt when the inability to pay is "the result of the parent's willful failure to seek and accept available employment that is commensurate with his or her skills and ability." (*Moss v. Superior Court, supra*, 17 Cal.4th 396, 401).

c. Partial Payments

Even if the court finds the party did not have the ability to pay the full amount ordered, a contempt adjudication can be based on failure to make

partial payments. However, the citee must show compliance with the order to the fullest extent of his/her ability. (*Lyon v. Superior Court* (1968) 68 Cal.2d 446).

➲ **PRACTICE POINT:** If the citee admits he/she has paid his/her other bills instead of the child support obligation, refer to FC § 4011 (payment of child support shall be made before payment of any debts owed to creditors) or if the evidence shows the obligor took vacations or purchased expensive items, refer to FC § 4053 (a parent's first and principal obligation is to support his or her minor children).

d. Evidence of Inability to Comply

While not exhaustive, the following list includes evidence that may be used to prove inability to pay. Generally, a contempt allegation should not be filed when the obligor was receiving need-based public assistance, has a disability, or was incarcerated during the contempt period and had no other income.

1) Need-Based Public Assistance

Receipt of need-based public assistance (i.e. SSI, SSP, General Assistance, CalWORKs) supports a citee's argument of inability to comply with the order because the agency providing the public assistance is presumed to have evaluated the obligor's income and ability to earn before granting the aid.

2) Disability

Proof that the obligor had a disability and was unable to work during the contempt period supports this defense. In asserting that a disability prevented the obligor from complying with the order, the obligor should provide detailed records from a physician stating the disability and that it prevented him/her from working. However, if the obligor had other income (ex: veterans' disability benefits), the disability does not excuse the failure to pay.

3) Incarceration

Incarceration during the contempt period is a defense if the incarcerated obligor does not have actual income (i.e. trust, investment, real estate income) or the opportunity to work to earn income. (*See Section IV – Support*).

➲ **PRACTICE POINT:** If the citee claims mental incompetence, some courts use the procedure set forth in **PC § 1369** to determine whether the citee is able to understand the nature of the proceedings and assist in their defense.

2. Employer Contempt

If an employer withholds support as required by wage assignment, the obligor shall not be held in contempt for nonpayment of the support that was withheld by the employer but not received by the obligee. (**FC § 5241(b)**) The employer though may be charged with contempt and brought to court.

E. CRIMINAL ENFORCEMENT

Child support obligations may be enforced under the Penal Code by filing for criminal contempt (**PC § 166(a)(4)**), criminal non-support (**PC § 270**), or criminal abandonment (**PC § 271**). Prior to filing a criminal action, or at least prior to the first hearing, always review the California Jury Instructions related to the action. Note that LCSA attorneys must either be deputized to file criminal actions or refer the case to the local district attorney for prosecution.

1. Criminal Contempt (PC § 166(a)(4)) – Misdemeanor

a. PC § 166(a)(4)

This misdemeanor includes the same elements as a **CCP § 1209.5** action. Note however, that the relevant Jury Instruction, **CALCRIM No. 2700**, provides that the People must also prove that “The defendant had the ability to follow the Court Order” and that “The defendant willfully violated

the court order" [defined in the instruction as willingly or on purpose]. Note that the California Constitution guarantees a jury trial in all misdemeanor matters regardless of the punishment. (*In re Kreitman* (1995) 40 Cal.App.4th 750).

b. Penalties

Maximum confinement for a misdemeanor or for consecutive misdemeanor sentences is one year. (**PC § 19.2**).

c. Statute of Limitations

Action must be commenced within one year after commission of the offense. (**PC § 802(a)**).

2. Failure to Provide (PC § 270) – Misdemeanor or Felony

a. Elements of the Crime

- 1) The defendant is the parent of the minor child;
- 2) The defendant has failed to furnish necessary clothing, food, shelter, medical attendance or other remedial care; and,
- 3) The omission was willful and without lawful excuse.

b. Parentage

Evidence of parentage is the same as in a civil action. (**PC § 270**). However, a prior guilty plea under **PC § 270** is not conclusive on the parentage issue. (*People v. Camp* (1970) 10 Cal.App.3d 651) If parentage is truly at issue, attempt to establish parentage prior to initiating a criminal action.

c. Failure to Provide

Failure to provide is based on defendant's ability (i.e. income, work skills, abilities). (*People v. Dorius* (1942) 49 Cal.App.2d 259).

d. Prima Facie Case

Proof of abandonment or the failure to provide for

a child is *prima facie* evidence of willfulness. (**PC § 270**). This shifts the burden of producing evidence to the defendant. (*People v. Moore* (1998) 65 Cal.App.4th 933).

e. Affirmative Defense

Failure to provide support may be excused when the omission was due to no fault of the defendant (i.e. defendant is disabled and has no assets or income). (*People v. Cressey* (1970) 2 Cal.3d 836, 844 [inability to provide support is a defense]; *People v. Sorensen* (1968) 68 Cal.2d 280).

f. Penalties

The penalty for a misdemeanor is up to one year in county jail and/or up to a \$2,000 fine. The penalty for a felony is up to one year and one day in state prison and/or up to a \$2,000 fine. (**PC § 270**).

g. Statute of Limitations

If charged as a misdemeanor, action must be commenced within one year after commission of the offense. (**PC § 802**) If charged as a felony, the action must be commenced within three years after commission of the offense. (**PC § 801**).

h. Felony

To charge a **PC § 270** as a felony, the defendant must have a prior **PC § 270** conviction. (*People v. Gregori* (1983) 144 Cal.App.3d 353).

 **NOTE:** See Jury Instructions **CALCRIM No. 2981** for elements the People must prove and for the definition of “willful”, “necessities”, and “lawful excuse”.

3. Failure to Maintain Child under 14 (**PC § 271 – Felony or Misdemeanor**)

a. Elements

- 1) The defendant is the parent of the minor child;
- 2) The child is under 14 years old; and

3) The defendant knowingly and willfully deserts the child with intent to abandon him/her.

b. Felony

May be charged as a felony without a prior conviction; may also be charged as a misdemeanor. (**PC § 17**).

c. Penalty

Upon conviction, sentence may be up to one year in state prison or county jail and/or up to a \$1,000 fine depending upon whether it was a felony or misdemeanor.

**4. Federal Criminal Non-Support Prosecutions
(18 USC § 228).**

a. Child Support Recovery Act of 1992

Amended in 1998 by the Deadbeat Parents Punishment Act.

b. Crime

Willful failure to pay a support obligation for a child who resides in another state (for over 1 year or more than \$5,000) or travel in interstate or foreign commerce with the intent to evade a support obligation. (**18 USC § 228(a)**).

 **NOTE:** Under **18 USC § 228(b)**, the existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period. This was held unconstitutional by *U.S. v. Pillor* (2005 N.D. Ca.) 387 F.Supp.2d 1053. The Court in *Pillor* found that because **18 USC § 228(b)** contained a mandatory rebuttable presumption that an obligor who failed to pay support obligations had the ability to do so, that section violates due process by relieving the government of the burden of establishing that the alleged offense was willful. The Court in *Pillor*, however, found the unconstitutional presumption

severable from the rest of the statute. Therefore, the crime itself is still chargeable, just without the rebuttable presumption of ability to pay. (*Id.*, at 1056-1057).

IX. REAL PROPERTY LIENS

A. CREATING THE LIEN

1. Methods of Creation

Pursuant to CCP § 697.320, a judgment lien against real property interests of a support obligor is created by recording with the county recorder:

- d. An abstract of judgment (JCF FL-480);
- e. A Notice of Support Judgment (DCSS 0239);
- f. A certified copy of a support judgment; or
- g. A federal Notice of Lien (OMB 0970-0152).

☛ **PRACTICE POINT:** Due to its ease of use, the Notice of Support Judgment is the preferred method for LCSAs to create a lien against real property because it can be recorded directly with the county recorder without certification by a court clerk. The Notice of Support Judgment has the same force and effect as an abstract of judgment. (FC § 4506(c)).

2. Satisfaction or Release Necessary

A recorded judgment lien for support continues during the period the judgment remains enforceable, unless the judgment is satisfied, or the judgment lien is released. (CCP § 697.320(b)).

3. Electronic Real Property Liens

FC § 17523.5 permits the recording of real property liens via “digital or digitized electronic records” if the county recorder agrees to allow that practice. The LCSA may use the California Child Support Enforcement System to transmit, file and record a lien. (FC § 17523.5(a)(3)).

4. Facsimile Signatures

FC § 17523.5 (a)(2) allows the acceptance of facsimile signatures on any document relating to a child support lien that is filed and recorded pursuant to this section as long as the requirements under **Government Code Section 27201 (b)(2)** are met.

5. Social Security Numbers

Unless otherwise required by state or federal law, **CC § 1798.89** prohibits submitting to a county recorder any document that is required by law to be open to the public if the document displays more than the last four digits of a social security number.

B. PROPERTY SUBJECT TO THE LIEN

1. Lien Attaches to All Real Property Interests

A lien on real property created pursuant to a judgment or order for support attaches to all real property interests of the obligor in the county where the lien is recorded. But, the lien will not reach rental payments, a leasehold on estate with an unexpired term of less than 2 years, the interest of a beneficiary under a trust, or real property that is subject to an attachment lien in favor of a creditor and was transferred before judgment. (**CCP § 697.340(a)**).

2. Subsequently Acquired Property

If an obligor subsequently acquires any interest in real property in the county after the real property lien is recorded, the real property lien will attach to the obligor's interest in the subsequently acquired property at the time of acquisition. (**CCP § 697.340(b)**).

C. AMOUNT OF LIEN

1. Lien Amount is Amount Required to Satisfy the Judgment

A lien on real property created pursuant to a support judgment or order is for the amount of matured installments, plus any accrued interest, less the amount of any sums paid toward the judgment or order. The real property lien does not become a lien for any installment until it becomes due and payable under the terms of the judgment or order. (**CCP § 697.350(c)**).

2. Lien Extends to Modifications

Where a money judgment lien on real property has been created by recording an abstract of support judgment payable in installments, and the support order subsequently either increases or decreases in amount, the lien extends to the judgment or order as modified without having to record another abstract of support judgment. (**CCP § 697.360(b) and (d)**) However, if the support order subsequently increases in amount, priority for any additional amount under the judgment dates from the time the modification is effective. (**CCP § 697.360(d)**).

D. DURATION OF LIEN AND EFFECT OF TRANSFER

1. Duration

A judgment or order for support, reimbursement, or other arrears, including accrued interest and penalties, is enforceable until paid in full. Support judgments are exempt from renewal requirements. (**FC § 291** and **FC § 4502**). The lien on real property will therefore be in effect until all support obligations arising under the judgment or order are paid in full or otherwise satisfied. (**CCP § 697.320(b)**).

2. Laches Against the State

A defense of laches may be asserted, and the court may consider, only against any portion of the support judgment owed to the state. (**FC § 291(d)**).

3. Transfer or Encumbrance

If the obligor's interest in real property that is subject to a real property lien is transferred or encumbered without satisfying or extinguishing the lien (i.e., when the obligor 'quitclaims' his/her interest in the real property), the real property interest transferred or encumbered remains subject to the lien in the amount of the lien at the time the real property interest is transferred or encumbered, plus any

interest subsequently accruing on the amount owing at the time of the transfer. (**CCP § 697.390(a) and (b)**). However, the amount of the lien does not include any installments that mature after the date of transfer or encumbrance, or any interest on unmatured installments. (*Guess v. Bernhardson* (2015) 242 Cal.App.4th 820 [the amount of ex-wife's support judgment lien was zero because at the time of the ex-husband's encumbrance on the property he did not owe any unpaid and due support payments]).

➲ **PRACTICE POINT:** You may learn, after the fact, of a sale of real property that did not address a valid real property lien for child support. The LCSA does not appear to have standing to file an independent right of action against the title insurance company or escrow company. However, the new property owner has those rights, so it may be useful to make formal contact with the new property owner and make the unpleasant disclosure that the real property lien for child support remains with the property. While the LCSA cannot give legal advice, encouraging the new owner to contact the title insurance company and/or escrow company may assist in resolution of the child support lien.

4. Joint Tenancy/Rights of Survivorship

If the obligor holds title to his or her interest in real property as a joint tenant, or as community property with rights of survivorship, and the obligor subsequently dies, the obligor's interest is extinguished and any encumbrances upon him/her are unenforceable. The title or interest in the real property passes to the surviving tenant(s) free and clear from any encumbrance previously created from the recorded real property lien, unless the judgment lien was attached prior to the creation of the right of survivorship. (*Tenhet v. Boswell* (1976) 18 Cal.3d 150, 159; *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1318; *Dieden v. Schmidt* (2002) 104 Cal.App.4th 645, 650).

E. PRIORITIES AND SUBORDINATION

1. Priorities

The priority in which competing real property judgment liens are paid is determined by CCP § 697.380. Generally, priorities depend upon the type of lien and when each lien was created.

2. Deeds of Trust

Generally, the first-recorded lien on real property has priority over subsequently recorded liens. (CC § 1214). However, a lender who finances the purchase of property and records a deed of trust has priority over previously recorded liens for child support. (CC § 2898; *Walley v. PMC Inv. Co.* (1968) 262 Cal.App.2d 218, 220).

3. Tax Liens

Certain tax liens will have statutory priority over support liens (e.g., **Revenue & Taxation Code § 2192.1**), while the priority of some tax liens depends upon the time of recording and notice (e.g., **26 USC § 6323**).

4. Subordination

A judgment creditor (including the LCSA) may subordinate (assign a lower priority) a support lien to another lien encumbrance, claim, or interest on all or a part of the real property subject to the support lien. (CCP § 697.370(a)(2)).

⌚ **PRACTICE POINT:** Subordination of a support lien may occur when the obligor is refinancing a mortgage and the new lender requires priority of the refinanced loan over the existing support lien. Typically, a LCSA will only subordinate the support lien when the obligor is not receiving any monies upon the close of escrow. If an obligor is taking out equity, or other loans are being paid through the refinancing, subordination of the support lien is generally not allowed by the LCSA without some monies being applied to the support obligation. There is no Judicial Council Form for subordination of a lien. If the LCSA agrees to subordinate its lien, normally an escrow or title company will draft the subordination agreement, which should be carefully reviewed by the LCSA attorney.

⌚ **PRACTICE POINT:** Even in a short sale when there is purportedly no equity, always ask the escrow

company for the breakdown of costs. If there are any commissions to be paid out, consider requesting that something be paid on the lien from the commission(s).

F. SATISFACTION OF JUDGMENT LIENS

1. Acknowledgment of Satisfaction of Judgment (JCF EJ-100)

If an obligor's support obligation has been satisfied, the LCSA is required to immediately file an acknowledgement of satisfaction of judgment. This does not apply if the satisfaction in full was obtained by writ. (**CCP § 724.030** and **CCP § 724.040**).

2. Obligor's Demand

If the money judgment has been satisfied, the LCSA must file and serve an acknowledgement of satisfaction of judgment within 15 days of a written demand from the obligor. (**CCP § 724.050**).

3. Title or Escrow Company's Demand

Additionally, the LCSA is required to respond in a timely manner to a title or escrow company's request for a demand made pursuant to a recorded real property lien. (**CCP § 697.360(e)**).

4. Full Satisfaction

A full satisfaction of judgment is filed when there are no arrears and there is no ongoing child support owed. (**CCP § 724.040**).

5. Matured Installment

A matured installment satisfaction of judgment is filed when all installments due and owing, plus any accrued interest and costs have been paid through the date specified on the satisfaction. (**CCP § 724.210** and **CCP § 724.220**).

⌚ PRACTICE POINT: Prior to executing the matured installment acknowledgement of satisfaction of judgment, extra care should be taken to ensure that the accounts are set up properly, and the accounting is accurate and up-to-date.

6. Partial Satisfaction of Judgment

A partial satisfaction of judgment must specifically state the dollar amount received in partial satisfaction of the judgment. (CCP §§ 724.110 and 724.120).

➲ **PRACTICE POINT:** The LCSA will execute a partial satisfaction of judgment when all support arrears have been paid in full and there is no order for current support, but not all the children subject to the support order have emancipated.

G. RELEASE OF JUDGMENT LIEN

1. Release of Judgment Lien (DCSS 0240)

This form is used by the LCSA to extinguish a lien. This form signifies that the LCSA is no longer claiming an interest in the real property of the obligor in the county where the release is recorded. (CCP § 697.370(a)(1)).

➲ **PRACTICE POINT:** Recording a release does not affect the amount of support owed by the obligor, nor does it prevent the LCSA from subsequently creating another real property lien in the same county where the previous lien was extinguished.

2. Types of Releases

a. Property Specific Release

Extinguishes a lien created on a particular parcel of real property. A specific release is commonly used where the support obligor seeks to refinance or sell real property that has little or no equity.

b. General Release

Extinguishes a lien created on all property owned by a person in the county where the lien was created. A general release is commonly used in cases of mistaken identity or upon case closure.

H. INTERSTATE LIENS

1. Notice of Lien

The Notice of Lien is a federal form used to create

liens on real property owned by the obligor in states outside of California. (**CCP § 697.320(a)**). The Notice of Lien requires the specific legal description of the property on which the lien is to be placed and must be recorded in the specific county or jurisdiction where the property is located. (*See OMB 0970-0152 current as of 2021, expires 04/30/2027*).

➲ **PRACTICE POINT:** The LCSA sends the Notice of Lien directly to the proper recorder's office or department of the local jurisdiction in the state in which the obligor owns an interest in real property, rather than through the Central Registry or Title IV-D Office of the other state. The procedures of the state where the real property of the obligor is located determine which office or department in that state is the appropriate one to receive the lien for recording. The LCSA issuing the Notice of Lien has the responsibility of recording the lien with the appropriate office or department.

X. WORKERS' COMPENSATION

COVID-19 IMPACT ON WCAB HEARINGS UPDATE

In response to COVID-19 the Division of Workers' Compensation (DWC), issued a series of new rules for WCAB Court operations.

Effective 03/21/2022 and at the time of this revision, in-person hearings resumed at all DWC district offices, except Eureka. In-person hearings will consist of trials, lien trials, expedited hearings and special adjudication unit (SAU) trials only. Until further notice, DWC will continue to telephonically hear all mandatory settlement conferences, priority conferences, status conferences, SAU conferences, and lien conferences on the individually assigned judges' conference lines.

As a result of COVID-19 impact, the Eureka District Office is permanently operating online as a virtual office as of July 1, 2021. Please check the DWC website at www.dir.ca.gov/wcab for current updates and to download step-by-step instructions for LifeSize Video Conferencing Guide.

"WCAB RULES" EFFECTIVE 01/01/2020 AND SUBSEQUENT 01/01/2022 UPDATE

The WCAB Rules of Practice and Procedure ("WCAB Rules"), as set forth under Title 8, California Code of Regulations (CCR) sections 10300 – 10995, effective 01/01/2020, represents the latest major changes in how LCSAs file, appear and collect child support liens in WCAB cases.

To name a few of the important changes, LCSAs, as lien claimants, now have new status as "parties" to the workers' compensation action from the outset of lien filing (8 CCR § 10305 (O)). In-person appearance by an LCSA for lien balances over \$25,000 is no longer required at case-in-chief Mandatory Settlement Conferences (MSCs) and Trials. Instead LCSAs must be available for MSCs and Trials by telephone with settlement authority or face sanctions (8 CCR § 10752) and/or dismissal of

liens if they fail to act promptly in certain circumstances (8 CCR § 10888). These new rules represent only some of the most significant changes impacting child support liens since LCSAs were first established in 2000.

Since the last edition of the Sourcebook, the new 01/01/2022 Final Rules were adopted. Given the COVID-19 impact on Court hearings, the primary purpose of the rulemaking is to formalize the processes for remote hearings, electronic filing, and electronic service that developed during the novel coronavirus pandemic. To this end, WCAB adopted several new rules to create processes for noticing and objecting to remote hearings, remote appearances, and remote witness testimony.

The Board also adopted new definitions for “Appearance,” “Hearing,” and “Testimony,” and revised existing rules regarding appearances to facilitate these processes. Also added are new definitions for “Electronic,” “Filing,” and “Service,” and revised existing rules regarding filing and service, to provide for expanded electronic filing and service.

► PRACTICE POINT: Given that LCSAs are now a “party” under the new Rule from the outset of lien filing and Notice of Hearings are served on LCSAs at the official address of record on EAMS, no special consideration is likely given for the LCSA’s unavailability by telephone to resolve child support lien at the MSC. Therefore, liens are subject to dismissal pursuant to 8 CCR § 10888.

A. INTRODUCTION TO THE WCAB SYSTEM

The California Department of Industrial Relations, Division of Workers’ Compensation (DWC), is the state agency that monitors the administration of workers’ compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers’ compensation benefits.

DWC's mission is to minimize the adverse impact of work-related injuries on California employees and employers. The Workers' Compensation Appeals Board (WCAB) serves as the quasi-judicial branch of the DWC. The Board exercises all judicial powers vested by the Labor Code in a reasonable and sound manner and provides guidance and leadership to the workers' compensation community through case opinions and regulations.

The WCAB, located in San Francisco, consists of seven-member Commissioners appointed by the Governor, and confirmed by the Senate. There are over 200 trial-level Workers' Compensation Administrative Law Judges (WCJs) assigned at the 22 District Offices and satellites locations.

For LCSAs, workers' compensation benefits offer a lucrative opportunity to collect child support payments from Temporary Disability Benefits (TD) pursuant to **CCP § 704.160 (b)** via Income Withholding Orders (**FC § 5246**) at the outset of the action.

Furthermore, child support payments may also be collected by way of a child support lien pursuant to **Labor Code § 4903 (e)**, deducted from Permanent Disability benefits (PD), when the action concludes by settlement or trial.

The WCAB administrative system is a benefit delivery system intended to be simple and less litigious. If a party or lien claimant disagrees with the decisions of a WCJ, the aggrieved party may file a Petition for Reconsideration (**LC § 5900**). On Recon, the case is removed from the WCJ trial-level and assigned to a three-member panel of the WCAB in San Francisco.

Decisions of this three-member panel offer directions to WCJs on individual cases and are not binding. However, an en-banc (seven-member) decision is binding precedent on all WCAB panels and WCJs.

Decisions of the WCAB are subject to Judicial Review. A party aggrieved by a final decision of the Appeals Board may apply to the court of appeal for the appellate district in which the party resides for a writ of review pursuant to LC § 5950.

➲ **PRACTICE POINT:** Attorneys representing injured workers are commonly referred to as “Applicants’ Attorneys” who traditionally receive a maximum of 15% of their clients’ gross settlements. Accordingly, the pace of WCAB actions is fast-moving. Settlement of an action can occur at any time, and LCSAs *SHALL* be ready during business hours to provide accurate information on lien balances and have available employees with settlement authority. The general rule is: **MAKE IT EASY TO GET PAID!**

PLEASE TAKE NOTICE: Under 8 CCR § 10752 (d) (effective 01/01/2020), LCSAs *SHALL* be immediately available by telephone with full settlement authority and shall notify defendants of the telephone number at which the defendants may reach the lien claimant. Failure to comply may give rise to sanctions under LC § 5813 and 8 CCR § 10421.

B. TERMINOLOGY

Workers’ Compensation practice involves specialized medical-legal phrases, jargon, descriptions, and acronyms which can be confusing. Some common terminologies are: Primary Treating Physician (PTP), Secondary Treating Physician (STP), Qualified Medical Examiner (QME), Agreed Medical Examiner (AME), Permanent and Stationary or “P&S” and Maximum Medical Improvement or “MMI”.

For a comprehensive list of terms, the “Glossary of Workers’ Compensation Terms for Injured Workers” can be very helpful. Access the DWC website at <https://www.dir.ca.gov/dwc/WCGlossary.htm>

C. TYPES OF WORKERS’ COMPENSATION BENEFITS

Generally, if liability is accepted by a defendant, an injured worker may be entitled to various statutory types of benefits including: 1) medical treatments, 2) temporary disability indemnity, 3) permanent disability indemnity, 4) supplemental job displacement voucher, and/or 5) death benefits payable to the injured worker's dependents.

For LCSA workers' compensation collection purposes, there are two general types of benefits from which child support can be collected:

1. Temporary Disability (TD)

Temporary Disability benefits are intended to be a wage-replacement indemnity. To qualify for TD, an injured worker must prove: 1) he or she has a medical disability that precludes him or her from working; (2) the disability must be temporary, rather than permanent in nature; (3) the disability must be a result of a compensable industrial injury; (4) the employee must sustain a wage loss; and (5) the wage loss must result from the work-related disability. *See LC § 4653 et. seq.*

If eligible, TD payment is "two-thirds of the average weekly earnings (AWE) during the period of such disability" (**LC § 4653**), payable every two weeks (bi-weekly) for up to 104 weeks, within five years from the date of injury and continuing until the injured employee can return to work (regular work duties, or modified work duties), or becomes "Permanent and Stationary" ("P & S"), aka "Maximum Medical Improvement ("MMI"), in which the medical condition is static. (**LC § 4650** and **LC § 4656**).

2. Permanent Disability (PD)

Permanent Disability is an indemnity benefit paid to compensate the injured employee for future loss of earnings due to the injury, based upon such factors as "the nature of the injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to

an employee's diminished future earning capacity." **LC § 4660 (a).**

With the exceptions of statutorily required advanced payments, PD is generally paid *after* the settlement is reached or a Findings and Award ("F&A") after trial.

LC § 4660 and LC § 4660.1. The levels of PD are first determined by qualified-physician(s) assigning a whole-person-impairment (WPI) to the affected body part(s) or condition(s), then adjustments are made based on statutory factors (i.e., adjustments for age, occupation, etc.) and ultimately "rated" on a scale from 1 to 100% disability.

EX: Left leg amputation: 17.01.02.02 – 35 – [5]45 – 351G – 48 – 44 PD

Left knee motion: 17.05.04.00 – 14 [2]16 – 351G – 18 – 16 PD

44% PD + 16% PD = 53% Permanent Disability

A PD percentage chart issued by the State of California is then referenced to show what compensation should be awarded for the damage to the specific body part(s). This is called the "money chart" and is found in **LC § 4660**. It is also found in the Appendix to the WCAB Codebook.

➲ PRACTICE POINT: For purposes of lien negotiations and settlement, it is imperative that LCSAs understand what benefits the injured workers may be entitled to and the settlement breakdown. Always reference the "money chart" to assess whether an offer or demand to resolve a lien is reasonable. For instance, for injuries occurring on or after 01/01/2014, the monetary value of a 55% PD is \$90,262.50. Knowing this will make LCSA a more effective negotiator in maximizing collections from workers' compensation claims.

a. Permanent Disability Advances (PDAs)

PDAs are permanent disability benefits that are paid in advance of settlement of the case. In some cases, defendants may be statutorily obligated to advance "reasonable estimate" of PD benefits. Such advance payments, if required, shall commence 14 days after the date of last payment of

TD (**LC § 4650**). The defendant's failure to comply may result in penalties and interests for unreasonable delay. **LC § 5814**. However, **LC § 4650 (b)(2)** provides for certain exceptions to advancing PD payments.

 NOTE: For LCSAs, knowing whether PDAs are being paid to the injured worker on a claim will help maximize WC liens collection efforts to minimize and/or mitigate a "bleeding out" scenario (further discussion below on bleeding-out claims).

D. COLLECTING FROM TD AND PD

1. Order/Notice to Withhold Income for Child Support (IWO)

a. Temporary Disability (TD) benefits

A TD-IWO is used to collect the total monthly support order (current and arrears) from the injured employee's TD benefits not to exceed 25% of the TD benefits. (**CCP § 704.160(c)**, **FC § 5206(d)**; *Messinese v. Workers' Compensation Appeals Bd.* (2004) 69 Cal. Comp. Cases 480). The IWO must be served on the employer's insurance carrier or the employer if the employer is self-insured for workers' compensation purposes. (**FC § 5246**).

 NOTE: Collections from TD benefits by way of IWO does not require that a lien be filed with the WCAB; however, once TD ends, the IWO no longer attaches. Best practice calls for issuance of TD-IWO to the insurance company or employer (if self-insured) **and** concurrently file a lien, pursuant to **LC § 4903 (e)** with the WCAB.

b. Objection to TD IWO

If the injured worker objects to the IWO, any legal challenge (i.e., request for hearing regarding earnings assignment, motion to quash, or other proceeding) must be litigated in the IV-D Court (Superior Court). The WCAB does not have subject matter jurisdiction or authority to decide issues

relating to the IWO. FC § 5246(e); *Messinese*, supra; 69 CCC 480

2. Permanent Disability Advances (PDA)

If the defendant advances PD payments to the injured worker pursuant to **LC § 4650**, unlike TD-IWO, there is **NO** current statutory authority which authorizes child support deductions by an IWO against PDAs. For an LCSA, these PDA payments create the problem of a “bleeding out” situation because the value of the case diminishes with each bi-weekly payment of PDA, and in the interim, an LCSA is deprived of the ability to collect against these advances absent an interim Order/Award from the WCAB.

✍ **NOTE:** Historically, for various reasons WCJs have been hesitant to issue withholding orders against PDAs, preferring to resolve LCSA liens after the resolution of the case-in-chief.

However, in cases where high percentage of PD is reasonably expected and defendant is advancing PD payments, there is a very high probability that most of the PD payments will have already been issued to the injured worker when the case-in-chief is ready for settlement or trial (hence, the case is “bleeding out”). This scenario creates irreparable harm to the LCSA and waiting until the resolution of case-in-chief will be highly prejudicial to the LCSA since most of the PD will have been exhausted and there may be little to no PD benefits left to recover through the lien.

⌚ **PRACTICE POINT:** To address this concern, an LCSA may want to consider filing a Declaration of Readiness (DOR). BE CREATIVE: Demonstrate that there is irreparable harm to the LCSA and waiting until the resolution of case-in-chief will be highly prejudicial since there will be little to no PD benefits left to recover against. Also, demonstrate the necessity of the money to the Person Receiving Support (PRS) and minor children, and the consequences of delayed compensation. Attach a payment history showing long periods of non-payment by the obligor. Overall, WCJs should still consider the best interest of the child.

Efforts are continuing to enact legislation to correct this lack of a statutory basis for such deductions.

But note, the legal standard under **LC § 4903 (e)** is a *reasonableness* standard and the WCJs have wide discretion. Furthermore, LCSAs may face resistance from the Applicant attorney's Bar (the California Association of Applicant Attorney, or CAAA). In opposition to an LCSA's effort, an argument can be made that the interim Order will thwart the legislative intent of **LC § 3202**, which calls for the liberal construction of the Labor Code by the court, with the expressed purpose of extending WC benefits for the protection of persons injured in the course of their employment.

➲ **PRACTICE POINT:** Building a good relationship with your local Board Judges is important to the expedient and full collection of money from Workers' Compensation cases, especially in smaller counties dealing with one primary Board.

a. Reserving Sufficient Money to Pay Child Support Lien(s)

Once a lien has been filed and served upon the party responsible for paying compensation to the injured worker – usually an insurer – that party is responsible for withholding sufficient funds to cover the lien until the case is resolved. *See, Waldrum vs. Jaeger* (1939) 4 CCC 200, *Truck Insurance vs. WCAB (Cy-Remus)* (1997) 62 CCC 240. See Section D.4. for further discussion.

3. Child Support Lien against Permanent Disability

LCSAs can collect against the injured worker's PD benefits by filing and serving a lien pursuant to **LC § 4903(e)** in the injured worker's case filed with the WCAB, or by filing an original Adjudication for Adjudication themselves (in such case the "Applicant" will be the LCSA).

a. Reasonable Living Expenses

A lien, once filed and served, protects the LCSA's

interest in “the reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of injury.” **LC § 4903 (e)** The WCAB may order the support lien be paid from “any sum to be paid as compensation, any amount” as determined by the Board Judge as they “**deem proper**”. **LC § 4903(e)**. This provides wide discretion to the WCJ in awarding the child support lien.

b. Expense in Proportion Appeals Board “Deems Proper”

LC § 4903 (e) only requires the WCJ to allow the lien “in the proportion that the appeals board deems proper.”

There are no set rules on how much recovery the appeals board must allow for a lien, if at all. In deciding what is “proper,” the appeals board has wide discretion, and the legal standard on appeal is an abuse of discretion. *Di Pasqua v. IAC* (1949) 14 CCC 251 (writ denied).

In one panel (writ denied) decision, the LCSA filed a lien for child support totaling \$13,953.73. At the time of the hearing on the lien, the applicant had about \$13,387 remaining on a permanent disability award. The WCJ allowed the lien **in full** against the applicant's permanent disability award. The WCJ explained that the applicant had seven minor children, had not provided any support, lived with his parents, and was not looking for work. So, the WCJ found that in balancing the equities of the case, the equity was entirely with the seven children. *Hernandez v. WCAB* (1994) 59 CCC 634 (writ denied).

In another case, the WCJ did not allow the lien in full. The WCJ allowed a lien for unpaid child support filed by the county in proportion to the applicant's earnings previously payable as child support. The WCJ explained that the applicant's

dependents retained their rights to recover the balance of the lien but not within the workers' compensation arena. *County of Sutter v. WCAB (Neel)* (1990) 55 CCC 313 (writ denied).

In comparison, there are also supporting case law authorities holding that it was not an abuse of discretion for the WCJ to disallow the LCSA liens altogether. The factors in the lien disallowed cases and supporting decision were:

(1) the permanent disability award was relatively small; (2) the applicant had a new wife and family to support; and (3) the applicant had been required to seek a lighter job at less pay because of the injury. *See. Coxson v. WCAB* (1975) 40 CCC 215 (writ denied). *See also Di Pasqua v. IAC* (1949) 14 CCC 251 (writ denied) (**lien denied** when the result of allowing the lien would likely have left the injured employee as a public charge).

➲ **PRACTICE POINT:** Each case must be evaluated on its own facts with the reasonableness standard in mind. If LCSA comes off as the “unreasonable” party, remember that it is not an abuse of discretion for WCJ to disallow a lien.

c. Application of Collected Funds

Monies collected through TD or PD must be applied by the LCSA in accordance with CCP § 695.221, LC § 4903(e)).

d. Imprisoned Obligor

If an injured worker is in prison and becomes eligible to receive benefits for an injury sustained prior to or during incarceration, TD and PD benefits shall be paid to the dependents of the injured worker. LC § 3046, LC § 3370(d).

● **PRACTICE POINT:** A court order for child support is NOT a prerequisite for the filing of a WCAB lien. A current child support order, however, is helpful in establishing an amount for the reasonable living expenses of the injured worker's minor child or children after the date of injury. A letter to the employer's Workers' Compensation insurance carrier may also be sufficient to protect the LCSA's interest, but it is a better practice to file and serve a formal lien. In addition, the LCSA can only request the amount of arrears which accrued from the date of injury forward, with the **Messinese** case exception. *Supra*, Section C.1(a).

E. TYPES OF WORKERS' COMPENSATION SETTLEMENT

1. Two Options:

Generally, a workers' compensation case can be settled by a Compromise and Release ("C&R") or a Stipulation with Request for Award ("Stip"). Note, however, parties cannot be forced to settle by way of a C&R, providing for a lump-sum payment to the injured worker. Effectively, the only alternative method of settlement may be a Stipulation for weekly payments with "future medical left open."

a. Compromise and Release (C&R)

When the case settles by a C & R, the injured worker agrees to settle the entire claim and all future rights in exchange for a lump sum payment. This settlement resolves ALL issues and defendant's liability, including the right to reopen and Petition for New and Further Disability, future medical treatments, and death benefits payable to the injured worker's dependents. A C&R is a full and final resolution of the workers' compensation claim as to all WC issues. Because of the finality of this type of settlement, the parties and the Court cannot force the parties to settle by way of a C&R.

✍ **NOTE:** For LCSA negotiation purposes, it is important to recognize that parties to the workers' compensation claim will frequently

stipulate to settle a claim by way of “C&R without admission of liability and claim remains denied” in exchange for a quick lump-sum payment and claims closure by the insurance company.

Parties will often C&R to “avoid the risks of litigation.” Because the real value of the claim is not litigated and may be unknown at the time of C&R, it is even more critical for LCSAs to closely examine the information from both parties to assess the value of the claim in maximizing WC liens collections.

➲ **PRACTICE POINT:** The C & R payment is the gross amount negotiated by the Applicant’s Attorney (or Applicant, if unrepresented) and the insurer to settle the case. From the gross amount, the following deductions are made: credit for PDAs (Permanent Disability Advances) already provided to the injured worker, attorney fees, EDD liens and any Temporary Disability overpayments. This “net” remaining money is the amount the LCSA negotiates to resolve the child support lien.

➲ **PRACTICE POINT:** It is widely accepted among WCJs that if the net settlement can satisfy the LCSA lien and leave the injured worker with an equal or greater amount of money, the entire lien should be requested and paid. If the net settlement does not provide sufficient money to satisfy the LCSA lien, leaving the injured worker with a share less than half of the net proceeds, the standard approach is to request the net proceeds be split 50/50. LCSAs cannot collect, by way of a LC § 4903 lien, from a settlement if the only support owed consists of arrears that accrued prior to the date of injury at settlement.

b. Stipulation with Request for Award (Stipulation)

When the case settles by a stipulation, the parties agree to a level of permanent disability (based upon their “rating”, or “percentage of injury”), an amount to be paid based upon the rating, and a level of on-going medical care, as needed. Instead of a lump-sum payment, the injured

worker receives bi-weekly payments of PD indemnity capped at a weekly-rate by statute.

Ex: For injuries on or after 01/01/2014, a 55% PD is payable at 311.25 weeks of payment at \$290.00 weekly maximum for a Total indemnity of \$90,262.5

➲ **PRACTICE POINT:** Typically, stipulations are used when the injured worker continues employment with the same employer who is also responsible for paying the ongoing medical care. The injured worker continues to receive regular PD payments until the full amount of the settlement is paid, even though the injured worker may have returned to work. A Stipulation resolves the PD benefits, and the injured worker is still entitled to receive future medical care from the insurance carrier and can re-open the claim within five years from date of injury if the injury worsens. **LC § 5410.**

2. Special Rules for Lump-Sum Payment of Lien (“Commutation”)

While C&R agreements involve lump-sum payments, and Stipulations with Request for Awards normally involve continuing, periodic payments, LCSAs should request payment of their lien in a lump-sum payment by requesting “**commutation from the far end of the award**”. This allows the child support lien to be addressed up front and paid immediately, just like the injured worker’s attorney fees, without having to wait until the injured worker exhausts his benefits through the fixed installments up to the lien amount. Alternatively, the LCSA may seek to obtain an order to withhold from the PD payments as noted previously.

a. C&R settlement of Future Medical Care Only

Even after the claim settles by stipulation and PD indemnity has been paid, an injured worker can request that the ongoing or future medical care be quantified into a lump-sum payment. (**LC § 5100**). While a defendant insurance carrier is not required to settle out the future medical care, it is often an advantage to do so to reduce its future

liabilities if the price is right. It remains unclear whether child support liens, pursuant to **LC § 4903**, can be enforced against a C&R of Future Medical Care only. **LC § 4903** operates as a lien against “any sum to be paid as compensation.” Presently, there is no legal authority to give guidance on whether future medical treatment only without TD and/or PD is “compensation” for purposes of **LC § 4903 (e)** child support lien.

➲ **PRACTICE POINT:** Recognizing the potential risks and challenges outlined above will assist LCSAs in recouping an additional C&R lump sum amount during lien settlement negotiations.

3. Special Consideration for Petition for New and Further Disability after a Stipulation and Award Only

If the WC case settled by way of a Stipulation, an injured worker can petition the WCAB to reopen the workers’ comp case to establish “new and further disability” provided the petition is within five years after the date of injury. **LC § 5410**.

In such case, the injured worker alleges new and/or worsening in the conditions and PD is effectively relitigated to determine the additional increase in PD, if any. For LCSAs, this is an additional opportunity to collect from the additional increase in PD, if any, after the filing of the Petition.

➲ **PRACTICE POINT:** Problems arise with LCSA liens against these “new and further disability” cases when the LCSA original lien settlement document is unclear as to the parties’ intentions at the time of the original Stipulation.

In the original Stipulation and/or the lien settlement documents, it is recommended that the LCSA make it abundantly clear that the Stipulation is **NOT** a full and final resolution of the LCSA lien. The Stipulation **DOES NOT** preclude the LCSA from further pursuing its lien balance against future compensation, if applicable, should the injured

worker file a timely Petition for New and Further Disability as a result of this date of injury.

4. Failure of Insurer to Satisfy Support Lien

a. Once a child support lien has been filed and served upon the party responsible for paying compensation to the injured worker, that party (usually, the insurer – some businesses are self-insured) must withhold sufficient funds to cover payment of the lien until the case is resolved. *See Waldrum vs. Jaeger* (1939) 4 CCC 200.

A lien claim filed more than five months *after* a Compromise and Release was **not** barred by the doctrine of laches because the defendant had knowledge of the potential lien claims, had failed to investigate them, failed to notify lien claimants of an applicant's workers' compensation claim, failed to disclose potential liens at the time of approval of a stipulated award or at the time of the C&R and had agreed to "pay all unpaid balances, for which there exists no bona fide dispute over defendant's liability." *See K-Mart v. WCAB* (Acevedo) (2003) 68 CCC 494 (writ denied). *See also Truck Insurance Exchange v. WCAB* (Cyr-Remus) (1997) 62 CCC 240 (writ denied) (laches not applicable when defendant did not serve lien claimant with C&R); *Town of Hillsborough v. WCAB (Sheehan)* (1996) 61 CCC 528 (writ denied) (laches did not bar lien claim when defendant must have known about it and did nothing); *Bethlehem Steel Corp. v. WCAB* (1985) 50 CCC 186 (writ denied) (lien claim not barred by laches when employer failed to make any effort to pay for medical treatment despite its knowledge of such treatment);

➲ **PRACTICE POINT:** The deadline to file a Petition for Reconsideration is calculated from the date notice is provided to the lien claimant of the settlement. (**LC § 5903**). There have been instances in which LCSAs have been able to receive compensation for their omitted child support liens several years after the original settlement was issued for the parties' failure to provide notice.

☛ **NOTE:** This may be less true in light of **8 CCR § 10888** which requires the prompt filing of a DOR to resolve liens once settlement is reached.

➲ **PRACTICE POINT:** If the injured worker opts to receive a lump sum for the remaining balance of PD and/or future medical and the original LCSA lien was previously settled, the LCSA should file a new lien for months of support that accrued after the last month of the previously settled lien period. If the insurance carrier or employer is self-insured, and is noticed of a support lien, and fails to withhold enough money to satisfy the lien, the WCAB judge can enter a judgment against the insurer or employer for either the amount of the lien or the amount paid to the injured worker, whichever is less. **CCP § 491.460(c)**.

F. DISMISSAL OF LIENS (8 CCR § 10888)

Effective January 01, 2020, liens are subject to dismissal pursuant to **8 CCR § 10888** for “non-prosecution, non appearance by the lien claimant, or failure to comply with the provisions of the Labor Code or these rules” (i.e., other WCAB Rules). An applicant, defendant, or the WCJ on their own motion, can file a petition for dismissal if the lien claimant fails to file a Declaration of Readiness within either: a) 180 days after the “underlying case of the injured worker has been resolved, or has not chosen to proceed with the case”, or b) “180 days after a lien conference or lien trial is ordered off calendar if the lien claim was at issue”. **8 CCR § 10888 (b)**

The WCJ will issue a Notice of Intention (“NOI”) to Dismiss prior to dismissing the lien. **CCR 10888 (e).** On showing of good cause, lien claimants have 10 days to

object to the NOI to Dismiss. This imposes a requirement that lien claimants must regularly check their liens to ensure either settlement resulted in their liens being satisfied, or to be prepared to act promptly to address them.

G. MISCELLANEOUS ISSUES

1. Electronic Adjudication Management System

EAMS is a computer-based management system used by the Division of Workers' Compensation (DWC). EAMS allows its internal and external users online access to case information as well as the ability to perform public information cases searches. (<https://www.dir.ca.gov/dwc/eams/eams.htm>).

There are two ways to file workers' compensation pleadings through EAMS:

a. OCR Paper Form Filing

Filing is accomplished by mailing or hand-delivering existing hardcopy OCR forms to the WCAB district office.

b. Electronic Filing

There are two methods of electronic filing:

1) E-Forms

E-form filing is typically used for smaller filings. To file e-forms, you must sign up for a log-on and password and participate in a mandatory training webinar.

2) JET-File

Documents are transmitted through a secure internet connection to the State of California servers where it is picked up by the DWC and deposited into EAMS. It is a more comprehensive, high-volume system set-up through a third-party filer or software from an approved vendor. It allows electronic filing of multiple forms and attachments in a single transmission.

2. Collecting from an Injured Worker After Settlement

Once paid to the injured worker, workers' compensation settlement monies are exempt from further collections. (**CCP § 704.160 (a)**). If the money is levied upon (e.g., bank levy), the debtor can seek relief by submitting a Claim of Exemption to the LCSA. (**CCP § 703.010 et seq**).

☛ **PRACTICE POINT:** If the injured worker has provided adequate proof that the source of the levied funds resulted from the workers' compensation settlement, the LCSA should release the funds without requiring a claim of exemption.

3. General Considerations re: Evidentiary and Procedural Rules

If liens are not fully resolved at the Conference hearing, parties must be prepared to sign and file a pretrial conference statement (PTCS), aka "Five-Pager", which includes: (1) all stipulations; (2) the specific issues in dispute; (3) all documentary evidence that might be offered at the lien trial; and (4) all witnesses who might testify at the lien trial **8 CCR § 10875(d)**

✍ **NOTE:** Discovery closes on the date of a lien conference. Evidence not disclosed or obtained thereafter will not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence before the lien conference. **8 CCR § 10875 (e)**.

Workers' compensation trials are informal. All trials and hearings before the WCAB are governed by **LC § 3200 et seq.** and by the WCAB Rules. **LC § 5708** Trial exhibits must be filed and served 20 days before trial. **8 CCR § 10670**. The WCAB is not bound by the Evidence Code when admitting evidence at trial or during hearings. **LC § 5708**. Nonetheless, the evidence must have some degree of probative force to be considered. *Simmons Co. v. Industrial Acci. Com.* (1945) 70 Cal.App.2d 664,

670). [Hearsay evidence is admissible.] (*McAllister v. Workers’ Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 fn. 2).

➲ **PRACTICE POINT:** If there are other case-in-chief trials set on the same day as the child support lien trial, priority is given to cases-in-chief. But note that cases settle even the morning of Trial, so your Lien Trial may proceed. Always be prepared!

➲ **PRACTICE POINT:** Trial calendars are always set at 8:30 a.m. There are multiple trials set on the same day. Even on the morning of trial, the WCJ will attempt to convince the parties to settle.

In the event the trial goes forward, there is no “opening statement” in a WC trial. Parties meet with the WCJ in chambers to discuss “Stips and Issues.” WCJs want a “clean record” so they usually go over the issues with the parties – **this is your opportunity to give an “opening statement.”**

➲ **PRACTICE POINT:** WCAB lien trial is very different than civil trial. Introduction and objections to ALL Exhibits must be made in the beginning of trial prior to witness testimonies. WCJ is not bound by Rules of evidence and procedure.

4. Other Physical Appearances by Lien Claimants

There are still several instances in which physical appearances by representatives of LCSAs could be required, including but not limited to, the following: Lien Conferences, Lien Trials, hearings initiated by LCSAs (primarily, Declaration of Readiness to address omitted LCSA liens from settlement documents), and any hearing in which the Judge orders the LCSA to appear.

WCJs have the authority to order lien claimants to appear at MSCs and Trials, notwithstanding other rules. **8 CCR § 10752 (e)**. This makes good relations with WCJs increasingly important.

5. Discretionary Appearances by Lien Claimants

Each LCSA must evaluate its own available resources to determine which non-required hearings to cover. In smaller counties with one primary Board, the relationship with your Board Judge is important. In metropolitan areas with multiple Boards, such relationships are less possible. LCSAs always can request assistance in making the occasional “out of area” appearance pursuant to FC § 17400(o).

a. Hearing Representative 8 § CCR 10401

Non-attorneys are authorized by the Board to make appearances, generally to collect child support liens. They must carry a “Notice of Representation” letter or document with them which identifies whom they are appearing on behalf of and be prepared to file a “Notice of Appearance” with the Board, if requested by the WCJ, which outlines this same information.

WCJ may “remove or suspend” non-attorney representatives for “good cause” after a hearing. “Good cause” is defined as “serious or repeated violations” of DWC rules, or failure to pay an order of sanctions, attorney fees or costs under LC § 5814 within 60 days”. **8 CCR § 10404.**

6. State-Wide List of WCAB Coordinators

For a comprehensive list of WCAB Coordinators or “CSE Task Designee” contacts in each county, access the link to the Workers’ Compensation Contact List at California Child Support Central (<https://central.dcss.ca.gov>). LCSAs will need to ensure the CSE Task Designee is given settlement authority, is reachable during all business hours, and is trained on settlement protocols, to facilitate collections on WCAB liens. **8 CCR § 10752 (d)** imposes possible sanctions if lien claimants are not available for settlement discussions.

⌚ **PRACTICE POINT:** It strongly suggested that the current WCAB Coordinator or CSE Task Designee be clearly identified, and their contact information widely disseminated to all appropriate individuals who commonly need it, including WCAB Judges, applicant attorneys, insurers, or defense attorneys to facilitate timely, effective communication and settlement of WCAB cases.

XI. COLLECTING FROM ESTATES & TRUSTS**A. CHILD SUPPORT OBLIGATIONS
ENFORCEABLE AFTER DEATH****1. Obligation Survives Death**

A child support obligation survives the death of the supporting parent and is a charge against his or her estate. (*IRMO Perry* (1997) 58 Cal.App.4th 1104, 1106).

 **NOTE:** CSS Letter 06-39 prohibits the LCSA from opening a case when the supporting parent is already deceased. However, it does not require closure of an open case upon the death of the supporting parent.

2. Modification

A deceased noncustodial parent's support obligation is subject to modification as to amounts not yet accrued on a satisfactory showing of changed circumstances. (*IRMO Bertrand* (1995) 33 Cal.App.4th 437, 440).

B. PROBATE ESTATES OF DECEASED OBLIGORS

 **PRACTICE POINT:** "Probate estates" are those in which the decedent's property passes by way of a will, or where the decedent died intestate (without a will), but do not include estates controlled by a trust or property that passes by contract or other vehicle (e.g., life insurance, joint tenancy deed, etc.).

1. Creditor Claim

A person or entity who may have a claim against the estate of a decedent is a creditor and must file a creditor claim (JCF DE-172) to demand payment for a liability of the decedent. (**Prob. Code § 9000, et seq.**). The LCSA should only file a creditor claim when there is an existing probate action. Due to fiduciary and liability issues, it is generally advised that the LCSA not attempt to initiate its own probate action where one does not already exist.

a. Notice to Creditors

The personal representative of the estate is required to give notice to “the known or reasonably ascertainable creditors of the decedent.” (**Prob. Code § 9050(a)**).

b. Time for Filing Claims

A creditor must file a claim within four months after letters of administration are issued or 60 days after the creditor receives notice, whichever occurs later. (**Prob. Code § 9100(a)**).

c. Documentation

A creditor claim shall be filed with the court and a copy shall be served on the personal representative. (**Prob. Code § 9150**).

d. Accepting or Rejecting the Claim

Once a creditor claim is filed, the administrator must accept or reject the claim in writing, in whole or in part. (**Prob. Code § 9250(a)**) There is no statutory time limit to accept or reject a claim, but failure to accept it within 30 days may, at the creditor’s option, be treated as a rejection, thereby entitling the creditor to maintain an action on the claim (**Prob. Code § 9256**). If the claim is rejected, or no acceptance is received within 30 days, the creditor may file suit on the claim or request summary determination within 90 days. (**Prob. Code § 9353**). Prior to taking this step, however, it may be advisable for the LCSA to contact the administrator to clarify his or her intention relative to the claim.

e. Priority of Payments

Debts which are owed to the United States or State of California have priority as may be required by law. The priority of all other types of debts are as follows:

- 1) expenses of administration;**
- 2) obligations secured by mortgage, trust deed, or other lien, including a judgment lien;**

- 3) funeral expenses;
- 4) last illness expenses;
- 5) family allowance;
- 6) wage claims;
- 7) general debts, including judgments not secured by a lien (e.g. DCSS support judgments), and “all other debts”. (**Prob. Code § 11420**).

 **NOTE:** In most cases, child support debt will fall under the category of “general debts” (last in priority). The priority given to support obligations under **FC § 4011** does not apply to trust or estate claims.

 **PRACTICE POINT:** Filing a Request for Special Notice (JCF DE-154) pursuant to **Prob. Code § 1250 et seq.** will ensure that notice of all further actions is made to the LCSA. It is recommended that this form be filed in conjunction with any document filed in a probate action.

C. TRUST ESTATES OF DECEASED OBLIGORS

1. Claim

A person who may have a claim against the trust is a creditor, and must file a claim to demand payment for a liability of the decedent. (**Prob. Code § 19000, et seq.**).

a. Notice to Creditors

The trustee is required to give notice to known creditors of the settlor (decedent). (**Prob. Code § 19050**).

b. Time for Filing Claims

A creditor must file a claim within four months after the first publication of notice to creditors or 60 days after the date actual notice is mailed or personally delivered to the creditor, whichever occurs later. (**Prob. Code § 19100(a)**).

c. Documentation

A claim shall be filed with the court and a copy shall be mailed or delivered to the trustee. (**Prob.**

Code § 19150). The claim shall be supported by an affidavit of the creditor or a person acting on behalf of the creditor. (**Prob. Code § 19151**). If a claim is based on a written instrument, the instrument shall be attached to the claim. (**Prob. Code § 19152**). There is not a specific Judicial Council Form to file a claim against a trust estate, but the Notice of Lien form (JCF AT-180) is frequently used in these cases. The LCSA should attach a certified copy of the support judgment and/or order to its Notice of Lien.

 **NOTE:** This is not the same mechanism used when the obligor is a beneficiary of a trust (discussed in Paragraph E., below).

D. OBLIGOR AS THE BENEFICIARY OF A PROBATE ESTATE

1. File a Notice of Lien

If an obligor is the beneficiary of a probate (non-trust) estate, the LCSA may file a lien in the action pursuant to **CCP § 708.410**. The LCSA must file the Notice of Lien with an abstract or certified copy of the money judgment. (JCF AT-180, JCF EJ-185). It is a good practice to also include an arrears accounting with your lien, since many courts require it.

2. Avoidance of Support Obligations

a. Assigning One's Rights

A beneficiary of an estate is generally free to assign his or her rights during the course of estate administration. However, the probate court has discretion to inquire into the circumstances surrounding the execution of an assignment and may refuse to allow the assignment if equity so demands. (**Prob. Code § 11604**).

 **NOTE:** If a child support obligor attempts to assign his/her interest in an estate to avoid a child support obligation, the LCSA can file for an injunction to prevent this.

b. Disclaimers

A beneficiary of an estate may also “disclaim” his or her interest in the estate by filing a “Disclaimer of Interest.” (**Prob. Code § 260 et seq.**) With the disclaimer, the disclaiming party is treated as having predeceased the testator (**Prob. Code § 282**), so the obligor would have no interest in the estate from which the LCSA could collect child support. Disclaimers, by statute, are not voidable (**Prob. Code § 283**), but the timeliness of a disclaimer may be an issue (**Prob. Code § 279** sets out the time limits – conclusively reasonable if filed within nine months after death of testator). A valid disclaimer will prevent the LCSA from collecting against the interest of an estate beneficiary.

E. OBLIGOR AS A BENEFICIARY OF A TRUST ESTATE

1. Support is Payable from Beneficiary’s Interest
Under **Prob. Code § 15305**, a claimant for delinquent child or spousal support can reach a beneficiary’s interest in a trust. **Prob. Code § 15306** allows the LCSA to request reimbursement for public assistance.

2. Spendthrift Provision

Spendthrift provisions are common in revocable trusts. The purpose of such provisions is to prevent creditors from attaching a debtor’s interest in the trust, generally by giving the trustee discretion as to when or if to make distributions to the debtor beneficiary. However, a child’s right to support is not defeated by a spendthrift provision in a trust instrument. Courts have discretion to order the trustee to satisfy all or part of the support judgment from all or part of the beneficiary’s interest (*Ventura County DCSS v. Brown* (2004) 117 Cal.App.4th 144; *Pratt v. Ferguson* (2016) 3 Cal.App.5th 102; **Prob. Code § 15305 (c) and (d)**).

3. Petition to Enforce Money Judgment

The mechanism for collecting money from a beneficiary of a trust (any kind of trust, be it a trust estate or otherwise) is to prepare and file a Petition to Enforce a Money Judgment Against a Trust Beneficiary with the Probate Court in the county in which the trust is being administered. (**Prob. Code § 15301; CCP § 709.010(b)**). There is no Judicial Council Form for this petition.

4. Trustee Liability

If a trustee has been served with process in a proceeding filed by the LCSA seeking to reach the obligor's interest in a trust, and the trustee makes discretionary payments to the obligor, the trustee is liable to the judgment creditor (LCSA or obligee) to the extent that the payment to the obligor impairs the right of the creditor. (**Prob. Code § 15303(b)**).

► PRACTICE POINT: If there is no existing action regarding the trust, the LCSA can create a new court case by filing its Petition to Enforce with the Probate Court pursuant to **FC § 17400** and **FC § 17406**. Unlike initiating a probate action, the filing of a Petition to Enforce creates no fiduciary duties or liability issues.

5. Court Discretion

If “the court determines it is equitable and reasonable under the circumstances of the particular case,” the court may order the trustee to satisfy all or part of a support judgment out of the beneficiary's interest in the trust. (**Prob. Code § 15305(c)**).

► PRACTICE POINT: While **CCP § 709.010(b)** states the obligor's interest is only subject to enforcement by petition to the court, past practice shows that an income withholding order to the trustee will often be honored.

F. CUSTODIAL PARTY AS DECEDENT

1. Ongoing Support Order Continues

A child support obligation survives the death of a custodial parent. (*IRMO Gregory* (1991) 230 Cal.App.3d 112). While the support obligation may remain legally enforceable after the death of the

custodial parent, the LCSA will not continue to collect support on behalf of an estate. (*See* CSS Letter 11-13).

2. Child Support is an Estate Asset

Child support arrears owed to a deceased custodial parent is an asset of his/her estate. Thus, it is subject to distribution by a court to the decedent's heirs or beneficiaries, according to law (not necessarily the decedent's children) (**Prob. Code § 7000**). As an estate asset, a debt owing to the custodial party (decedent) can be transferred in the same manner as any other estate property, although the LCSA cannot enforce the right to receive support when transferred to a third party.

G. OTHER TRANSFER VEHICLES

In addition to trusts and estates (both probate and intestate), there are additional methods of transferring property after death. These non-probate transfer vehicles include jointly-held property with right of survivorship (e.g., joint tenancy deeds), contractual agreements (e.g., life insurance), small property affidavits for personal property not exceeding \$166,250 (**Prob. Code § 13100**, et seq.), and small property affidavits for real and personal property not exceeding \$166,250 (**Prob. Code § 13150**, et seq.). Transfers made via such mechanisms are usually done quickly, without court involvement. Due to the nature of these transfer mechanisms, it is highly unlikely that an LCSA will succeed in collecting from these types of non-probate transfers.

XII. BANKRUPTCY

A. TERMINOLOGY

1. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)

The legislative act that made several significant changes to the Bankruptcy Code starting October 17, 2005. (**11 USC § 101 et seq.**)

2. Debtor

The person or business that owes money and has filed for relief under the Bankruptcy Code. (**11 USC § 101(13)**)

3. Creditor

The person or business who claims to be owed money by the Debtor. (**11 USC § 101(10)**)

4. Domestic Support Obligation (DSO)

All types of family-related support, including child, spousal, family, medical, educational, transportation, past, present, and future, whether assigned or unassigned, including interest. (**11 USC § 101(14)(A)**)

5. Automatic Stay

Prohibits Creditors from pursuing the Debtor for payment (with some exceptions); however, the stay automatically stops lawsuits, foreclosures, garnishments, and all collection activity. (**11 USC § 362**)

6. Bankruptcy Estate

A fictional estate that is owned and managed by the Trustee upon filing the petition for bankruptcy; the Debtor transfers all assets into the bankruptcy estate and no longer owns the assets.

7. Property of the Estate

a. Chapter 7 All assets owned by the Debtor at the time the petition is filed. (**11 USC § 541**)

b. Chapter 13 All assets owned, plus all income the Debtor anticipates receiving. (**11 USC § 541 and 11 USC § 1306**)

8. Plan

A Debtor's detailed description of how the Debtor proposes to pay the Creditors over a specific, limited

period of time. (**11 USC § 1321 et seq.**)

9. Discharge

The release of a Debtor from further personal liability for certain debts. (**11 USC § 727** and **11 USC § 1328**)

B. TYPES OF BANKRUPTCY

1. Bankruptcy Code Chapters

There are different types of bankruptcy chapters and corresponding protections depending on the chapter of relief sought. All bankruptcy petitions must be filed under a specific chapter of the Bankruptcy Code.

2. Chapter 7 “Liquidation Bankruptcy”

- a. Permits a Debtor to discharge most debt in exchange for giving up property that is not exempt, which is turned over to the Trustee to distribute to Creditors who file claims. (**11 USC § 701 et seq.**)
- b. The Debtor then receives a discharge of certain debts, releasing the Debtor from further personal liability. (**11 USC § 727**)
- c. Short duration, lasting usually no more than 4 months. (**FRBP 4004(c)**).

➲ **PRACTICE POINT:** In most Chapter 7 cases there are no assets available for distribution to Creditors, so most Creditors do not have to file claims against the estate. If there are assets, the Creditor may receive a Notice to File Proof of Claim due to Possible Recovery of Assets, at which point a proof of claim should be filed.

3. Chapter 13 “Wage-Earner Plan” or “Reorganization”

- a. Permits a Debtor with regular income to keep his/her property while repaying Creditors, in full or in part, in installments over a three to five-year period. (**11 USC § 1301 et seq.**)
- b. Debtors are eligible for Chapter 13 relief if an individual owes, on the date of filing the petition, noncontingent, liquidated debts of less than \$2,750,000. (**11 USC § 109(e)**)
- c. During the bankruptcy, Creditors are

prohibited from starting or continuing collection efforts. (**11 USC § 362(a)**)

d. Property of the estate includes all assets owned on the date of filing, and all income the Debtor anticipates receiving during the pendency of the bankruptcy. (**11 USC § 541** and **11 USC § 1306**)

e. The Debtor must file a Plan, and the Trustee will proceed to pay all Creditors according to their priority in the Plan. (**11 USC § 1321** and **11 USC § 1326**)

f. What should you do if you receive notice of a Chapter 13 bankruptcy?

1) File a Proof of Claim, with a copy of the child support judgment and an audit showing arrears owed. (See **FRBP 3001(c)(1) and (2)**.)

⌚ PRACTICE POINT: The arrears amount claimed by the Debtor in the Plan will control payments unless you file a Proof of Claim. The arrears amount in the Proof of Claim will control unless the Debtor objects to the Proof of Claim, in which case the court's ruling on the Objection controls. (**FRBP 3001(f); 11 USC § 502(a)**) If the Debtor files an Objection, see Section I, infra. A claim cannot be augmented to include interest that will accrue during the Plan under **11 USC § 502(b)(2)**. Similarly, a claim cannot be made for future child support that has not yet accrued under **11 USC § 502(b)(1)**

2) If the obligor owes arrears and no ongoing support, the LCSA should state on the Proof of Claim form that the arrears accrue interest at 10% per year. The Trustee can adjust payments to provide for the continuation of the 10% interest to allow the total amount of arrears to be paid in full when the bankruptcy is discharged.

⌚ PRACTICE POINT: The LCSA should immediately load the bankruptcy in CSE, which automatically places suppressions; however, the suppressions will not impact a wage assignment that is already in place.

4. Chapter 11

a. Permits a business or a Debtor with secured or

unsecured debt totals that exceed the Chapter 13 limits to restructure and repay his or her debts. (**11 USC § 1101 et seq.**)

b. Debtor must file a Plan of Reorganization to specify how Creditors will be paid either in full or at a pro-rata share, usually in 3 to 5 years. (**11 USC § 1123**)

c. If an obligor's employer files this type of bankruptcy, the obligor's wages may be garnished, but not paid as support. The obligor is the Creditor and would have to file a Proof of Claim. (*County of Shasta v. Twig Smith* (1995) 38 Cal.App.4th 329)

d. No Income Withholding Order may be served upon the Debtor-Business for this type of bankruptcy.

C. REQUEST FOR NOTICE

1. Written Notice

Bankruptcy Trustees are required to provide written notice to the State child support agency regarding a bankruptcy. (**11 USC § 704(c), 11 USC § 1106(c), and 11 USC § 1302(d)**)

2. Request for Notice

A LCSA should file and serve a Request for Notice pursuant to **11 USC § 342(f)** if the preferred address for notice for the LCSA is not listed on the List of Creditors.

D. APPEARANCE OF CHILD SUPPORT CREDITOR

1. Admission

Bankruptcy rules require that the appearing attorney be admitted to practice law in the federal district. (**FRBP 9010(a)**).

2. Exception

However, there is a special exception for child support Creditors, who may appear and intervene without charge, and without meeting the local rules regarding attorney appearances, in any bankruptcy court or district court. (**Public Law 103-394**, see also Historical and Statutory Notes to **11 USC § 501**, titled

Child Support Creditors or Their Representatives; Appearance Before Court.)

3. Form

The special form for this purpose is Form B 2810 – Appearance of Child Support Creditor or Representative. This form can be accessed on the United States Courts website: www.uscourts.gov

E. AUTOMATIC STAY

1. Generally

The automatic stay prohibits Creditors from pursuing the Debtor for payment, filing lawsuits, seeking foreclosures, obtaining garnishments, and all other collection activity against the Debtor by most Creditors the moment the petition is filed. (**11 USC § 362(a)**)

- a.** Property that is not in the bankruptcy estate is exempt from the automatic stay. (**11 USC § 362(b)(2)(B)**)
- b.** Actions to establish paternity, establish child support, and modify child support are not subject to the automatic stay. (**11 USC § 362(b)(2)(A)**)

2. Permissible Support Enforcement Actions

Certain support enforcement actions are exempt from the automatic stay, even against property of the bankruptcy estate:

a. Income Withholding Order

An Income Withholding Order is valid, notwithstanding the filing of a bankruptcy, for both current support and arrears. (**11 USC § 362(b)(2)(C)**)

⌚ **PRACTICE POINT:** If the LCSA plans to keep the wage assignment in place, rather than filing a proof of claim, the LCSA should obtain a written agreement from the Trustee to explain why a proof of claim is not filed. Additionally, in a Chapter 13, the Plan should be analyzed to ascertain if child support arrears are explicitly paid through the Plan. If so, the Income Withholding Order should be amended for current support only since garnishing monies for arrears would violate the express provisions of the Plan. (See **11 USC § 1327**)

b. Driver's License Suspension or Revocation
Suspending or revoking driver's, professional and recreational licenses does not violate the automatic stay. (**11 USC § 362(b)(2)(D)**) (See below regarding releasing licenses).**1) Chapter 13 Proceedings:**

Although suspending or revoking a professional or driver's license may not violate the automatic stay, suspending a license in a Chapter 13 proceeding where there is an existing Confirmed Plan, may be inconsistent with the Plan. Courts have opined that a Debtor's driver's license was "necessary and appropriate to [...] further the implementation of the Debtor's confirmed Plan." (See *In re Cobb* (2006), Bankr. N.D. Ga. .) LEXIS 2273 [nonpubl.opn].) Therefore, where suspension of a license may impact the flow of funds into the Plan, an LCSA may consider not suspending or revoking such license.

c. Passport Restriction

An LCSA may submit a passport denial request to the Department of State after a bankruptcy petition has been filed. (See Federal Office of Child Support Enforcement, PIQ-07-04, citing **22 CFR § 51.60(a)(2)** and **22 CFR § 51.7**, providing that a passport is not property of the estate, and therefore, not subject to the automatic stay.)

d. Credit Reporting

Reporting overdue support obligations to a credit reporting agency is not a violation of the automatic stay. (**11 USC § 362(b)(2)(E)**)

e. Tax Intercept

It is not a violation of the automatic stay to intercept a tax refund for support. (**11 USC § 362(b)(2)(F)**). (But see below discussion in section F,2(a)(1), regarding tax intercepts in Chapter 13 proceedings.)

f. National Medical Support Notice (NMSN)

The enforcement of medical support orders is not a violation of the automatic stay. (**11 USC § 362(b)(2)(G)**)

g. Abstracts of Judgments

Placing a lien on property in the Debtor's estate violates the automatic stay. (**11 USC § 362 (a)(4) and (5)**) However, the recording of an abstract of judgment or certified copy of the judgment under California law places a lien for unpaid support only on the interest of the Debtor in the property, not the interest of the estate. Therefore, the continued practice of recording support abstracts or judgments would appear not to violate the stay, although execution on the abstract likely would. (*In re Cady (9th Cir. 2001)*, 266 B.R. 172, 181, aff'd, 315 F.3d 1121)

⌚ **PRACTICE POINT:** Generally, a Debtor may avoid (remove) a Creditor's lien on his/her property if that lien interferes with the Debtor's right to an exemption in that property. There is an exception to this rule for support liens. No lien securing the payment of any domestic support obligation may be avoided. (**11 USC § 522(f)(1)(A)**)

h. Criminal Bankruptcy Enforcement

The prosecution of a criminal action (**PC § 270; PC § 166**) is not stayed. (**11 USC § 362(b)(1); In re Gruntz (9th Cir. 2000)** 202 F.3d 1074))

i. Civil Contempt

Courts have varying opinions as to whether a civil contempt violates the automatic stay provision. Some courts have found that if the sole purpose of the contempt is to punish or uphold a court's dignity, the contempt proceeding is not stayed. (*In re Dingley (2014*, B.A.P. 9th Cir.) 514 B.R. 591; *In re Rook (1989*, Bankr. E.D. Va.) 102 B.R. 490; *In re Lowery (2003* E.D. Mo.) 292 B.R. 645). However, where the contempt proceeding is strictly to enforce or coerce payment of a debt, such proceeding has been found to be prohibited by the stay. (*In re Stovall (1990* Bankr. N.D. Ga.) 126 B.R.

814) As such, the case law suggests that civil contempt proceedings solely seeking to punish (as opposed to coerce payment) are not barred from the automatic stay. However, based on the varying opinions of courts, a civil contempt should NOT be filed when the automatic stay is in place.

3. Enforcement Actions that Violate the Automatic Stay

a. FIDM Bank Levies

Enforcement against property of the bankruptcy estate violates the automatic stay. Although the data match process itself remains active, a participant-level bank levy suppression should remain in place until the bankruptcy is concluded. For additional guidance, see CSS Letter 12-02 "Restrictions on Enforcement Actions for Bankruptcy."

b. Harassing the Debtor

Contacting the Debtor to ask when the next payment will be made violates the automatic stay.

⌚ **PRACTICE POINT:** LCSAs may want to consider noting an obligor's bankruptcy filing in CSE under the Special Circumstances at the Participant Level to inform caseworkers that the obligor should not be "harassed."

c. Debtor's Examination

Filing an Order to Show Cause for a Debtor's Examination violates the automatic stay.

d. Civil Contempt

Filing a civil contempt action may be interpreted as violating the stay and should not be filed. (See above, Section E, 2, (i))

e. Negotiating a SLMS Release

The automatic stay prohibits LCSAs from negotiating a SLMS release with the Debtor directly (but the LCSA may negotiate a release with the Debtor's attorney or the Trustee).

4. Sanctions for Violations of the Automatic Stay

An individual injured by a willful violation of the

automatic stay shall recover actual damages, including costs and attorney fees, and may recover punitive damages. (**11 USC § 362(k); Fleet Mortg. Group v. Kaneb (1st Cir. 1999) 196 F.3d 265** [award of \$25,000 for emotional distress and \$18,220.68 for attorney fees and costs for violation of the automatic stay affirmed]; **In re Schwartz-Tallard (9th Cir. 2015) 803 F.3d 1095** [The award for violation of an automatic stay includes attorney fees incurred in prosecuting an action for damages caused by the violation.])

F. EFFECT OF CONFIRMATION ORDER

1. Confirmation Order Is Binding on All Creditors

The provisions of a confirmed Plan bind the Debtor and each Creditor, whether or not the claim of such Creditor is provided for by the Plan, and whether or not such Creditor has objected to, accepted, or rejected the plan. (**11 USC § 1327**)

2. Permissible Actions Dictated by Terms of Confirmation Order

Even if an action is not prohibited by the automatic stay, an action may still be prohibited by the confirmation order. Whether an action is allowed may be dictated by the terms of the confirmed bankruptcy Plan. (**11 USC § 1327; In re Gellington (N.D.Tex.2007) 363 B.R. 497** citing **In re Murray (S.D.Ohio 2006) 350 B.R. 408**; **In re McGrahan** (1st Cir. BAP N.H. 2011) 459 B.R. 869)

a. Mandatory Model Plan or Local Plan

Effective December 1, 2017, Official Form 113, or an alternative Local Form Plan, must be used in all Chapter 13 proceedings. (**FRBP 3015(c) and FRBP 3015.1**). Each local district in California has adopted their own Local Form Plans. When reviewing Chapter 13 cases outside of California, check the local district's website to determine if the Official Form or a Local Form is used, as such plans will vary and may expressly impact certain child support enforcement mechanisms used by

an LCSA.

a. Tax Intercepts:

Ensure that the Official Form or the Local Form plan does not address the treatment of the Debtor's tax refund. If there is an express provision in the Plan that accounts for the Debtor's tax refund, the LCSA should suppress its ability to intercept the tax refund, seek to amend the Plan, or seek relief from the Bankruptcy Court, as interception could be interpreted as violating the terms of the confirmed plan, contrary to 11 USC § 1327(a).

a) Central District of California Local

Plan:

This plan expressly provides for the treatment of the Debtor's tax refund in the standard language of the plan. LCSAs should suppress its ability to intercept or seek appropriate relief from the bankruptcy court before intercepting the Debtor's tax refund.

b) Southern District of California Local Plan:

This plan allows the debtor (subject to ultimate plan approval) to elect how tax refunds are treated under the plan. (See section 2.4 of the Southern District Plan). LCSA should review section 2.4 of this plan to determine appropriate suppressions, if any, relating to interception of the debtor's tax refund.

c) Northern and Eastern Districts of California Local Plans

These plans do not expressly provide for the treatment of the debtor's tax refund. However, any commentary relating to the treatment of the debtor's tax refunds are generally found in section 2 or the nonstandard plan provisions.

3. Sanctions

In one case, a court found that Florida Department of Revenue (FDR) violated **11 USC § 1327(a)** when they intercepted a check issued to a Debtor despite the fact that the confirmed plan included payment in full of the DSO, and as a result, the FDR was subject to sanctions, payment of Debtor's attorney fees and costs, and potentially compensatory and punitive damages. (*In re Gonzalez* (2016) 832 F.3d 1251; see also *In re Rodriguez* (11th Cir. Fla. 2010) 367 Fed. App'x. 25 [State was required to pay Debtor's attorney fees for expenses incurred trying to fend off collection actions and imposed a fine of \$10,000 for each of the three stay violations (but the court allowed the state to purge this fine by not sending any further letters in violation of the stay)]).

➲ **PRACTICE POINT:** If a proposed plan improperly restricts child support enforcement, an objection to confirmation of the plan should be filed.

G. OBJECTION TO CONFIRMATION

1. Objection to Confirmation

Objections to Confirmation may be filed in response to a petition where the Debtor's plan does not comply with **11 USC § 1322** and **11 USC § 1325**. Grounds for objecting include:

a. Failure to Plan for Full Payment of DSO

The plan fails to provide for the full payment of a priority claim of a DSO unless the holder agrees to a different treatment. (**11 USC § 1322(a)(2)**) The Debtor can provide for less than full payment for an assigned **11 USC § 507(a)(1)(B)** claim if all of Debtor's projected disposable income for a 5-year period will be applied to make payments under the plan. (**11 USC § 1322(a)(4)**)

1) Definition of "Assigned":

Under **11 USC § 507(a)(1)(B)**, "assigned" means monies owed directly to the government. Arrears are not "assigned" simply because the government is collecting on behalf of a custodial parent – the monies

have to be owed directly to the government to be deemed “assigned” under **11 USC § 507(a)(B)**. (*In re Penaran* (2010 Bankr. D. Kan.) 424 B.R. 868)

b. Lack of Good Faith

The plan has not been proposed in good faith. (**11 USC § 1325(a)(3)**). The factors for determining good faith include the duration of the plan, preferential treatment of classes of Creditors, and the type of debt to be discharged. A bankruptcy court must consider “the totality of the debtor’s conduct, both before and after the plan is submitted... when evaluating whether the debtor has acted in good faith.” (*In re Doersam* (9th Cir. 1988) 849 F.2d 237). Specifically, the court should consider “the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealing with his creditors.” (Ibid.)

c. Plan is Not Feasible

The plan is not feasible since the Debtor will not be able to make all payments under the plan and comply with the plan. (**11 USC § 1325(a)(6)**) When a Debtor demonstrates inability to meet his current support obligations, he cannot propose a feasible plan.

d. Failure to Pay Current Support

Debtor has not paid current support since filing for bankruptcy. (**11 USC § 1325(a)(8)** [the debtor must pay “all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition...”]). Similarly, **11 USC § 1307(c)(11)** permits dismissal of a petition for “failure of the Debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.” One of the requirements for confirmation is that the Debtor has paid all amounts owed pursuant to a DSO payable after the date of the filing of the petition. (**11 USC §**

1129(a)(14); *In re Fisette* (Bankr. D.S.C. 2011) 459 B.R. 898)

e. Plan Fails to Propose Application of All Income

Debtor's plan has not proposed that all projected disposable income will be applied during the applicable commitment period. (**11 USC § 1325(b)(1)(B)**)

H. PROOF OF CLAIM

1. Proof of Claim

A claim is a demand for payment from the Debtor. (**11 USC § 101(5)**). The official bankruptcy form used for this demand for payment is called a "Proof of Claim" (Bankruptcy Form B 410). A Creditor files this written statement with the bankruptcy court proving why the Debtor owes the Creditor money in a specified amount in order to receive a lump-sum distribution or regular payments from the assets of the bankruptcy estate. (**11 USC § 502; FRBP 3001(a)**).

2. Chapter 13

a. Timing

The deadline for LCSAs to file a proof of claim is 180 days after the bankruptcy petition is filed. (**FRBP 3002(c)(1)**)

 **NOTE:** If a Creditor misses the deadline, the Debtor or Trustee could file a proof of claim on behalf of the Creditor within 30 days of the Creditor's deadline. (**FRBP 3004**). Also, it may be possible for the Debtor to file an amended plan to provide for the payment on a late proof of claim.

b. Where to File

All claims must be filed with the clerk in the federal bankruptcy district where the bankruptcy case is pending. (**FRBP 5005(a)(1)**) California has four bankruptcy districts: Northern, Eastern, Central, and Southern.

c. Documentation

The proof of claim must include the total amount of the DSO, including all arrears owed by the obligor for every case open with the support

agency, all costs, and interest as of the date the bankruptcy petition is filed. (**11 USC § 501**, **11 USC § 502**, and **11 USC § 1305**; see also **FRBP 3001**)

d. Priority of Claim

DSO claims should be filed as priority unsecured claims pursuant to **11 USC § 507(a)(1)(A)** and **11 USC § 507(a)(1)(B)**. If the LCSA has a lien filed and the Debtor actually owns real property in the same county, the claim may be a secured one to the extent that there is equity in the property.

e. Failure to File

A failure to file a proof of claim does not discharge the debt, but it makes it less likely that assets will be secured to satisfy a support obligation. It also makes it less likely that any arrears owed by the Debtor will be satisfied within the duration of the bankruptcy. A Creditor must file a claim with the bankruptcy court to receive payment from any assets administered by the Trustee from the bankruptcy estate. (*In re Bateman* (11th Cir. 2003) 331 F.3d 821). Failure to file a claim means that the Creditor will receive no payments from the Trustee. (**FRBP 3002(a)**).

► PRACTICE POINT: A proof of claim should be filed to make sure that the bankruptcy Trustee is aware of the claim and to ensure payments throughout the bankruptcy. If an obligor has more than one case, the LCSA should file a proof of claim in each case.

3. Chapter 7

The filing of a proof of claim is rarely required in a Chapter 7 bankruptcy. A Chapter 7 liquidation is usually open and closed in a relatively short period of time, and many Chapter 7 cases are “no asset” cases. The Debtor’s earnings and property acquired post-petition are not property of the estate in a Chapter 7, and you can continue to collect both current support and arrears payments through an IWO, thus minimizing the brief impact of the bankruptcy filing. (**11 USC § 362(b)(2)(B)**). You

should, however, remain cognizant of the issues surrounding the automatic stay, as discussed above.

I. OBJECTION TO CLAIM BY DEBTOR

1. Objection

A Debtor may file an objection to a support claim pursuant to **FRBP 3007** and **FRBP 9014**.

a. Local Rules

Many districts have local rules regarding objecting to a Debtor's objection to claims. These local rules may mandate the deadline by which the Creditor must respond and submit evidence and/or memoranda of law. Failure to timely comply may result in the court granting the Debtor's requested relief by default.

2. Exempt

Generally, a claim for family support is exempt from discharge under **11 USC § 523(a)(5)** and it is not one of the specific types of claims which will automatically be disallowed under **11 USC § 502**.

3. Grounds

Grounds for claim disallowance are listed in **11 USC § 502**. The most common objections to a support claim are either that the claim amount is incorrect, or that the claim was not timely filed.

a. Determination of Arrears

If the arrears have already been determined in state court, the federal court lacks jurisdiction to hear a collateral attack on a state court judgment. (*Rooker v. Fidelity Trust Company* (1923) 263 U.S. 413; *District of Columbia Court of Appeals v. Feldman* (1983) 460 U.S. 462; *In re Diaz* (11th Cir. 2011), 647 F.3d 1073, 1093) An aggrieved litigant must pursue his remedies through the state appellate process, not through inferior federal courts. (*GASH Associates v. Village of Rosemont, Ill.* (7th Cir. 1993) 995 F.2d 726; *In re Keeler* (D.Md. 2002) 273 B.R. 416) If the arrears have not already been determined in state court, the federal court could determine the support arrears, but many bankruptcy judges and attorneys prefer to defer to

the state court to litigate the matter.

4. Cause

A claim that has been allowed or disallowed may be reconsidered for cause under **11 USC § 502(j)**. Cause is not defined statutorily, but the statute does provide for the allowance or disallowance of the reconsidered claim “according to the equities of the case.”

J. DISCHARGEABILITY OF SUPPORT DEBTS AND INTEREST ACCRUAL

1. Discharge

Support debts, whether assigned or unassigned, are not dischargeable under any chapter of the Bankruptcy Code. (**11 USC § 523(a)(5); Florida Dept. of Revenue v. Diaz (11th Cir. 2011)** 647 F.3d 1073; **In re Davis (11th Cir. 2012)** 481 Fed. Appx. 492)

2. Interest

The filing of a petition in bankruptcy does not stop the accrual of interest on unpaid support debts. (**In re Foster (9th Cir. 2003)** 319 F.3d 495; **In re Witaschek (Bankr. N.D. Okla. 2002)** 276 B.R. 668) Nondischargeable debts do not cease accruing interest simply because the Debtor has filed a petition in bankruptcy since “interest is considered to be the cost of the use of the amounts owing a creditor and an incentive to prompt repayment and, thus, an integral part of a continuing debt.” (**Bruning v. United States (1964)** 376 U.S. 358, 360)

XIII. INTERJURISDICTIONAL CASES

A. UIFSA AND FFCCSOA BASICS

1. Uniform Interstate Family Support Act (UIFSA)

The UIFSA provides universal and uniform rules for the enforcement of family support orders. UIFSA 2008 became effective in California on January 1, 2016, repealing all previously chaptered UIFSA provisions. UIFSA 2008 provisions are located at FC § 5700.101 et seq. Sections are numbered to match UIFSA 2008 provisions (i.e. FC § 5700.319 corresponds with UIFSA § 319).

➲ **PRACTICE POINT:** On September 19, 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (**Public Law 113-183**), which required all states to enact the 2008 version of UIFSA, verbatim, by the end of their 2015 legislative session as a condition for continued receipt of federal funds supporting state child support programs. UIFSA 2008 incorporated changes that allowed the United States to ratify the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention) for international cases, which went into effect for the United States on January 1, 2017, as discussed below.

a. Jurisdiction

UIFSA ensures that in every case only one state has jurisdiction over support at any given time. (*IRMO Crosby and Grooms (2004)* 116 Cal.App.4th 201, 206).

b. Types of Orders

UIFSA encompasses any judgment, decree, order, decision, or directive, whether temporary or final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse providing monetary support, health care, arrearages, retroactive support, or reimbursement. (FC § 5700.102(28)).

c. Record

In the UIFSA section, “record” is defined as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” (**FC § 5700.102(20)**) This means informal documents (i.e., text messages or emails) may be submitted to the court for some purposes.

2. Full Faith and Credit for Child Support Orders Act (FFCCSOA)

This federal law (**28 USC § 1738B**) was enacted and became effective on October 20, 1994 and amended in 1996, 1997, and 2014. The law requires States to enforce child support orders made by other States and prohibits States from modifying other States’ child support orders unless it has subject matter and personal jurisdiction and the parties were given notice and an opportunity to be heard.

3. Interstate Recognition and Enforcement

Sister state support orders rendered by a court of competent jurisdiction in compliance with the FFCCSOA/UIFSA must be recognized and enforced across state lines. (**28 USC § 1738B(a); FC § 5700.205(c), FC § 5700.207(a), FC § 5700.603(c)**).

Therefore, any initial child support orders issued after October 20, 1994 must be analyzed with the concept of Continuing Exclusive Jurisdiction (CEJ) in mind. (*See* Section G, *infra*).

4. State IV-D Agency Services in Intergovernmental Cases

Federal Regulation (**45 CFR § 303.7**) requires that State IV-D Agencies provide intergovernmental IV-D services upon request and enumerates the Initiating State agency’s responsibilities (**45 CFR § 303.7(c)**) and Responding State agency’s responsibilities. (**45 CFR § 303.7(d)**). This includes all services performed on intrastate IV-D cases, such as establishment of paternity and support,

enforcement, and review and adjustment. In addition, Agencies must cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery and genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement, copies of court orders, and payment records. Requests for other limited services may be honored at the State's option (i.e. probate proceedings in another state, real estate liens, or bank levies). The services described above also includes Direct Applications received from International Residents. (**454 (4)(A) (ii) of the Social Security Act [42 U.S.C. 654] and PIQ-99-01, Federal Office of Child Support Enforcement**).

B. CHOICE OF LAW ISSUES

1. Issuing State's Law

The issuing state's law governs the "nature, extent, amount, and duration of current payments" to be enforced under an existing order, as well as the computation and payment of arrearages and accrual of interest thereon. (**FC § 5700.604(a); 28 USC § 1738B(h)**). Note that the interest rate of the issuing state applies until the order is registered and modified by another state having CEJ.

➲ **PRACTICE POINT:** The interest on arrears accrues pursuant to the law of the state that contributed the arrears unless and until the order is modified. If a new state assumes CEJ and modifies the order, the interest then accrues pursuant to the new state's laws. Therefore, the calculation of interest on arrears can be complicated, requiring different interest rates for different time periods.

2. Statute of Limitations (SOL) on Enforcement of Arrears

For arrears, the forum court must apply the SOL of its' state or the issuing state or foreign country, whichever is longer. (**FC § 5700.604(b); 28 USC § 1738B(h)(3); Bell v. Heflin (2016) 383 P.3d 1031**).

Therefore, California's statute of limitations ordinarily will always apply in a UIFSA proceeding to enforce an out-of-state support order because, under CA law, support orders are enforceable until paid in full or otherwise satisfied. (**FC § 291(a), FC § 4502; *Trend v. Bell* (1997) 57 Cal.App.4th 1092**).

However, if the statute of limitations for collection of arrears has expired for an out-of-state order, a CA court cannot revive the order by registering and enforcing it. (*See Scheuerman v. Hauk (2004)* 116 Cal.App.4th 1140 [AZ statute of limitations for recovery of arrears was 3 years after the child emancipates; after the SOL expired and the order could not be enforced in AZ, Mother could not register the order in CA to recover arrears]).

3. Forum State's Law

The procedural and substantive law of the responding state applies in all other respects, including determining the duty of support and the payable guideline amount. (**FC § 5700.303; 28 USC § 1738B(h); see *IRMO Crosby and Grooms (2004)* 116 Cal.App.4th 201** [once CA properly assumes jurisdiction under UIFSA, CA law governs amount of child support to be ordered prospectively in proceedings to modify out-of-state order]).

C. PROCEDURAL RULES

1. Case Initiation

Pursuant to **FC § 5700.301(b)**, an individual or LCSA may commence a UIFSA proceeding by:

- a.** filing a petition in an initiating tribunal for forwarding to a responding tribunal; or
- b.** filing a petition or comparable pleading directly in the tribunal of another state or a foreign country that has or can obtain personal jurisdiction over the respondent.

 **NOTE:** CRC 5.370 contains rules for party designations in caption of new UIFSA actions, and registration of UIFSA actions.

2. Tribunal

A CA court may serve as initiating or responding tribunal. (FC § 5700.203 and FC § 5700.206). A CA court can use FC § 5700.316 to receive evidence from another state and FC § 5700.318 to obtain discovery through the court of another state.

3. Federally Mandated Forms

UIFSA proceedings must be prosecuted and defended using federally mandated forms, promulgated by the Federal Office of Child Support Services. (FC § 5700.311; 45 CFR § 303.7(a)(4)).

OCSS's intergovernmental forms are available at:

<https://www.acf.hhs.gov/css/form/intergovernmental-child-support-enforcement-forms>

Most of the forms have been uploaded on the CCSAS CSE System. OMB-approved Hague Child Support Convention forms are available at:

<https://www.acf.hhs.gov/css/form/hague-child-support-convention-forms>

 **NOTE:** Foreign reciprocating countries are not required to use UIFSA forms. States are encouraged to be as flexible as possible in processing cases from foreign reciprocating countries. Tribal IV-D programs may choose to use the federal intergovernmental forms but are not required to use or accept them.

4. Supplemental Judicial Council forms

Judicial Council forms fill in the gaps in the federal forms. Please refer to:

<http://www.courts.ca.gov/forms.htm?filter=IA>.

5. Standing

UIFSA confers standing on any individual to register the support order or income-withholding order issued in another state (even a “stranger to the litigation, for example a grandparent or an employer of an alleged obligor, may register a support order.”) (See Comment following **UIFSA (2008) § 603**).

D. LCSA SERVICES

1. Services upon Request

Pursuant to **FC § 5700.307**, the LCSA “shall provide” services to a UIFSA petitioner upon request, including:

- a. Taking all steps necessary to enable a CA court (or a tribunal in a sister state or foreign country, as the case may be) to obtain jurisdiction over the respondent;
- b. Requesting an appropriate court set a date, time and place for a hearing;
- c. Making a reasonable effort to obtain all relevant information, including information concerning the parties’ income and property;
- d. Within 14 days (exclusive of weekends and legal holidays) after receipt of written notice in a record from an initiating, responding or registering court, sending a copy of the notice to the petitioner;
- e. Within 14 days (exclusive of weekends and legal holidays) after receipt of a written communication in a record from respondent or respondent’s attorney, sending a copy of the communication to the petitioner; and
- f. Notifying the petitioner if jurisdiction over respondent cannot be obtained.

2. Non-Disclosure of Identifying Information

Pursuant to **FC § 5700.312**, “If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying

information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.” UIFSA 2008 forms include the Child Support Agency Confidential Information Form (OMB 0970-0085) for use by the IV-D agency only and is not to be filed with a tribunal or provided to the other party. On the other hand, the Personal Information Form for **UIFSA § 311** (OMB 0970-0085) is filed with the tribunal, along with the petition. Although this form is not filed in a public access file, it may be disclosed to the parties in the case, unless accompanied by an Affidavit of non-Disclosure (**DCSS 0722**).

➲ **PRACTICE POINT:** An ex parte order for non-disclosure is no longer required as of January 1, 2015. The Judicial Council made obsolete the FL-511 form, utilized for that purpose, as of January 1, 2017; UIFSA 2008 codified the statutory change from judicial to administrative process as of January 1, 2016. The party only must allege in an affidavit or a pleading under oath that the health, safety, or liberty of a party would be jeopardized by disclosure.

3. Custodian of Records

The issuing state is the official custodian of records and all payments must go to the payee listed on the order.

a. Out-of-State Order, NCP in Issuing State

If a CA LCSA wants to enforce an out-of-state order and the NCP is still in the state that issued the order, the LCSA must initiate a two-state case with the issuing state to enforce.

b. Exception

Out-of-State Order where all parties and child have left Issuing State: If this is the case, and CP requests services from a CA LCSA, the LCSA

may request the issuing state IV-D agency change the payee to CA to redirect payment. (**FC § 5700.319(b)**). If properly requested, the issuing state must grant the request by issuing a conforming IWO or an administrative notice of change of payee to the employer. In this situation, CA LCSA becomes the new custodian of records. The LCSA may also consider modification of the order, where appropriate, as the new order is made payable to the state that issued the order.

E. APPEARANCE, DISCOVERY, AND EVIDENTIARY RULES

1. Appearance

Petitioner's physical presence is not required in the forum court. (**FC § 5700.316(a)**). Also, a nonresident petitioner's participation in UIFSA proceedings before the responding tribunal does not confer personal jurisdiction over petitioner in any other proceeding; and the person is not amenable to service of process while physically present in CA to participate in a UIFSA proceeding. (**FC § 5700.314**). Telephone appearances shall be permitted by nonresident parties or witnesses. (**FC § 5700.316(f)**) Appearances by telephone must also be permitted in any child support action when the LCSA is providing services, even if both parents reside in CA. (**FC § 17404.3**).

➲ **PRACTICE POINT:** Prior to UIFSA 2008, the statute stated the court "may" permit a nonresident party or witness to testify by telephone. Now, the statute states the court "shall" permit telephonic appearances. This may result in significant changes, as many courts do not allow telephonic appearances in contempt proceedings.

2. Sworn Document

An affidavit, which would not be inadmissible hearsay if given in person, is admissible in evidence

if given under penalty of perjury by a party or witness residing in another state. (FC § 5700.316(b)).

☞ NOTE: To be admissible in a CA court, declarations signed under penalty of perjury outside California must be signed under penalty of perjury “under the laws of the State of California” pursuant to CCP § 2015.5. (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 606).

3. Certified Payment Record

A certified record of payments may be forwarded to the forum court and used as evidence of the facts asserted therein and is admissible to show whether payments were made. (FC § 5700.316(c)).

4. Means of Transmission

Documents transmitted from another state to the forum court by telephone, fax, or email are not excludable from evidence upon objection based on the means of transmission. (FC § 5700.316(e)).

5. Privileges

If a party invokes the privilege against self-incrimination to refuse to testify at a UIFSA hearing, the trier of fact “may draw an adverse inference from the refusal.” (FC § 5700.316(g)). Spousal privilege does not apply in UIFSA proceedings. (FC § 5700.316(h)). The defense of immunity based on husband-wife or parent-child relationships do not apply.(FC § 5700.316(i)).

6. Financial

Amounts collected in a different state shall be credited against the accounts for a CA child support order for the same period. (FC § 5700.209) Amounts received must be disbursed promptly and the LCSA shall furnish a requesting party or court of another state a certified payment statement. (FC § 5700.319(a)).

7. Enforcement of Multiple Orders

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time against the same obligor but with respect to different obligees, at least one of which was issued by a tribunal in another state or country, a CA court “shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.” (**FC § 5700.208**).

8. Attorney Fees and Costs

UIFSA petitioners may not be required to pay a filing fee or other costs. (**FC § 5700.313(a)**). A prevailing obligee in UIFSA proceedings may be awarded “filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses.” (**FC § 5700.313(b)**). Neither the obligee nor the initiating or responding state’s support enforcement agency may be assessed fees, costs or expenses by the court “except as provided by other law.” (**FC § 5700.313(b)**).

Costs and reasonable attorney fees shall be ordered if the court determines a UIFSA hearing was requested “primarily for delay.” A party who requests a hearing to contest the registration of a support order is presumed to have done so “primarily for delay” if the order is confirmed or enforced without change. (**FC § 5700.313(c)**).

9. Evidence Abroad

a. California Court

A CA court may communicate with a tribunal outside of this state in a record or by telephone, electronic mail, or other means, to obtain information concerning the laws of that tribunal, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. Furthermore, a CA court may

request that a tribunal outside CA assist in obtaining discovery. (FC § 5700.317 and FC § 5700.318).

⌚ **PRACTICE POINT:** Be aware that some non-signatory Countries of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance do not contemplate the methods of communications described in FC § 5700.317 and FC § 5700.318. In those situations, the best practice is to obtain evidence through a “Letter of Request to Obtain Evidence Abroad” (also referred as a “Letter Rogatory”) under the “Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.”

b. Hague Convention Website

The Hague Convention includes the full text of the Convention, Status Table, Country Profiles, Practical Operations Documents, Model Forms transmittal guidelines and other information regarding how to process “Letters of Request to Obtain Evidence Abroad” under the Hague Convention. The link to the website address is: <https://www.hcch.net/en/instruments/specialised-sections/evidence>.

c. Forms

1) Hague Convention Model Forms

The Hague Convention fillable forms may be found on the Hague Conference of International Private Law website:

<https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65>.

These forms can be completed online, in both PDF and Word formats.

2) California

For cases being initiated by your LCSA to other jurisdictions (outgoing cases): The Judicial Council of California has not developed any Judicial Council forms for use regarding the Hague Convention on the

Taking of Evidence Abroad in Civil or Commercial Matters. Therefore, the best practice is to prepare an *ex parte* application and order requesting that a CA court issue the “Letter of Request to Obtain Evidence Abroad” (Hague form) and submit both to the court for filing and signature of the order by the judicial officer.

⌚ **PRACTICE POINT:** For cases initiated to California in which your LCSA is the responding jurisdiction (incoming cases): To obtain evidence in CA on behalf of a foreign tribunal, JCF SUBP-030 and JCF SUBP-035 can be used by an LCSA according to FC § 5700.317, FC § 5700.318 and CCP §§ 2029.100 – 2029.900.

d. Current Member States

A list of the signatory countries to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is available here: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82>.

e. Types of Requests for Evidence Abroad

1) Information Regarding the Laws of Foreign Countries in the Establishment of Parentage of Children Born out of Wedlock:

When addressing UIFSA cases from foreign countries, there might be situations in which a parent's name and signature appears on a child's birth certificate. In this situation, it is important for the LCSA to verify if a parent's name and signature on the child's birth certificate is evidence that paternity has already been established under the foreign country's laws. Verifying this information will assist an LCSA to determine if parentage is at issue and whether to proceed with establishment of parentage under FC § 5700.305(b)1, and FC § 5700.402.

Similarly, this information will assist the Court and the LCSA in determining if a non-parentage argument can be considered a defense under FC § 5700.315.

➲ **PRACTICE POINT:** In working incoming cases from Mexican states, an LCSA can request the Mexican Consulate in their jurisdiction issue a “Certificate of Mexican Law.” This document describes how paternity is established according to the laws of the applicable Mexican state. To verify if other countries issue these documents, the LCSA must contact that specific Embassy or Consulate. For information regarding specific Embassies or Consulates, please refer to the U.S. Department of State website:
<https://www.usembassy.gov>.

2) Information Regarding the Legal Effect of a Judgment, Decree, or Order Entered by a Foreign Tribunal:

In UIFSA cases, specifically in border states, it is common that after an NCP has been served with the Summons and Complaint Regarding Parental Obligations (S&C) by the LCSA, the NCP then provides documentation regarding legal proceedings taking place in the child’s home state (usually regarding issues of custody, visitation, child support agreements, and/or voluntary consignments of child support, etc.). In these situations (where simultaneous proceedings arise), an LCSA can assist the court in determining the proper jurisdiction to establish a judgment under FC § 5700.204, thus avoiding duplicate judgments.

➲ **PRACTICE POINT:** Under FC § 3951(a)-(c), Voluntary child support payments are considered gifts. In dealing with cases with Mexico, it is common that after an NCP is served with the S&C, the NCP obligor proceeds to file a similar action in Mexico, and/or provides receipts of voluntary child support payments or consignments made before the court in Mexico (not considered court-ordered child support judgments under Mexican law), and agreements of child support

executed between the parties before the District Attorney's office (not before the Courts, and merely executed in good faith) with the intention of challenging the jurisdiction of the CA courts, claiming that a child support order is already entered in Mexico, and that to proceed with a CA judgment would create a duplicate judgment. In these situations, the LCSA needs to verify the nature of the proceeding that is taking place in the Mexican courts to assist the CA Courts in determining proper jurisdiction to hear the case and enter a judgment.

3) Status of a Proceeding in Foreign Country:

An LCSA might find itself in a situation where the parties have filed a legal action at the same time. For example, the LCSA might file a UIFSA Summons & Petition seeking to establish parentage and child support on behalf of the CP in the CA courts, and on the other hand, the NCP may file for divorce, and/or establishment of parentage, custody and visitation in the foreign country.

The purpose of the "Letter of Request to Obtain Evidence Abroad" is to learn the status of the legal proceedings filed in the foreign country by the NCP. The information most often requested and that should be included in the body of the Hague forms is the following:

- a)** The nature of the legal action (divorce, parentage, custody, visitation, or support (filed by the NCP in the family courts of the foreign country;
- b)** If the CP has already been served with a copy of the said summons, and if so, the date of service (This point of clarification is extremely helpful in the "race to the courthouse" argument.);
- c)** If a judgment, order, or decree of dissolution of marriage, paternity, custody, and visitation has already been entered; and

- d) If a temporary or final judgment of child support has been entered.

Once received, the information from the foreign court will allow the LCSA to take the best course of action, particularly in cases where it is discovered that child support has not been addressed in the action that was filed in the courts of the foreign country, which then gives the CA courts adequate jurisdiction to proceed with the establishment of a child support order.

⦿ **PRACTICE POINT:** If the LCSA receives information from the foreign court that child support has in fact been established (or has been requested by the NCP) in the foreign court proceeding, and that country is also the child's home state, an NCP will only be successful in challenging California's jurisdiction to establish a child support order if the NCP follows all the procedures established in FC § 5700.204(b)(1).

4) Foreign Law is Subject to Judicial Notice:

Under EC § 452(f), the law of an organization of nations and of foreign nations and public entities in foreign nations is subject to judicial notice.

5) Means of Transmission of “Letters of Request to Obtain Evidence Abroad”:

The channels of transmission authorized by the Hague Convention on the Taking of Evidence Abroad are the following:

- a) Central Authority (Article 2): In the case of the United States it is the United States Department of State through its contractor, ABC Legal Services INC; (<https://www.abclegal.com/>);
- b) Diplomatic Channels (Article 16);
- c) Judicial Channels (Article 27: from court to court).

Some restrictions on the transmittal methods of “Letters of Request” under the Hague

Convention were made by several countries that adopted it. Said restrictions can be found in the Hague Conference on International Private Law website: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6546&dtid=42>

PRACTICE POINT: In the case of the country of Mexico, the judicial transmittal of “Letters of Request for Taking Evidence Abroad” is authorized by their Federal Code of Civil Procedure. This means that a “Letter of Request” can be mailed from the CA court to the applicable Mexican state court (there are 32 states) or if the LCSA is authorized by the CA court to participate in the direct transmittal, the LCSA can mail the Letter of Request directly to the Mexican court, assuming all proper notice requirements to parties are followed.

6) Requirements of “Letters of Request to Obtain Evidence Abroad (Articles 3 and 4 of the Hague Convention)

- A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.
- A Letter of Request shall specify:
 - i. The authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
 - ii. The names and addresses of the parties to the proceedings and their representatives (legal counsel) if any;
 - iii. The nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto; and
 - iv. The evidence to be obtained or other judicial act to be performed.

F. JURISDICTION TO ESTABLISH SUPPORT ORDER WHEN PLEADING IS ALSO FILED OUT-OF-STATE: SIMULTANEOUS PROCEEDINGS

1. After Pleading Filed in Another State

CA court may exercise jurisdiction to “establish” support if the petition is filed after a pleading is filed out-of-state or country only if all of the following circumstances exist (**FC § 5700.204(a)**):

- a.** A petition was filed in CA before the expiration of the time allowed in the other state or country to file a responsive pleading;
- b.** The contesting party timely challenges the other state’s or country’s jurisdiction; and
- c.** “If relevant,” CA is the child’s “home state.”

1) “Home state”

The state or foreign country where the child lived with a parent for at least six consecutive months immediately preceding filing of a petition for support; or, if the child is less than six months old, the state where the child lived from birth. (**FC § 5700.102(8); 28 USC § 1738B(b)**).

2. Before Pleading Filed in Another State

A CA court may not exercise jurisdiction to establish support if the petition is filed before a pleading is filed in another state or country where all of the following circumstances exist (**FC § 5700.204(b)**):

- a.** The pleading was filed in the other state or country before the expiration of the time allowed in CA to file a responsive pleading;
- b.** The contesting party timely challenges the exercise of CA jurisdiction; and
- c.** “If relevant,” the other state or country is the child’s “home state.”

3. No Pleading in the Home State

If no pleading has been filed in the child’s home state, UIFSA does not limit the CA trial court’s child support jurisdiction. (*IRMO Richardson (2009)* 179 Cal.App.4th 1240 [trial court had jurisdiction over custody and support in CA, where father lived, even

though child and mother lived in Japan, because no case had been filed in Japan]).

G. JURISDICTIONAL CONFLICTS

1. Spousal Support

The state that orders spousal support retains continuing, exclusive jurisdiction to modify spousal support throughout the existence of the support obligation; CA jurisdiction concerning an out-of-state spousal support order is limited to enforcing the order according to its terms. (**FC § 5700.211**; *Lundahl v. Telford* (2004) 116 Cal.App.4th 305; *IRMO Rassier* (2002) 96 Cal.App.4th 1431).

2. Child Support

Courts must defer to the state with Continuing Exclusive Jurisdiction (CEJ) to modify child support. (**FC § 5700.205**; **28 USC § 1738B(d)-(e)**).

a. First State to Issue Order

The first state to issue a valid child support order has CEJ as long as the obligor, oblige, or child resides in that state at the time the request for modification is filed. (*See Kilroy v. Super. Ct.* (1997) 54 Cal.App.4th 793 [CA court did not have jurisdiction because Mother and child still resided in Georgia, which was the state that issued the registered order. Further, the court found FFCCSOA to be a valid regulation of interstate commerce under the commerce clause, that it did not violate the 10th Amendment of the U.S. Constitution.]).

➲ **PRACTICE POINT:** UIFSA 2008 clarifies this point to say that even if all parties left the issuing state at one point if one party resides in the issuing state at the time the request for modification is filed and no other state has assumed CEJ, the issuing state retains jurisdiction. (**FC § 5700.205(a)(1)**).

1) Residence

- a) *Harding v. Harding* (2002) 99

Cal.App.4th 626 – Texas retained CEJ because Texas was still the residence of the respondent, even though he had a condo and worked in Missouri because the respondent was registered to vote in Texas and his fiancée and daughter lived with him in Texas on weekends and vacations.

- b) *IRMO Amezquita and Archuleta* (2002)

101 Cal.App.4th 1415 – A person may have more than one “residence” but only one “domicile,” the place where he/she has a permanent connection and intends to remain. A person stationed in CA in the military does not reside in CA for purposes of UIFSA because “residence” must mean “domicile”, or “military domicile”. (*But see* comment following **UIFSA (2008) § 205** [stating “the question is residence, not domicile,” indicating there is a distinction between the two terms]).

- c) *Gonzalez v. Rebollo* (2014) 226

Cal.App.4th 969 – Mexico no longer had CEJ because Rebollo did not have a “residence” in Mexico, and CEJ depends on whether a party’s “residence” is in the issuing state (not whether the party’s “domicile” is there).

2) Orders Entitled to CEJ Status

Any type of child support order is entitled to CEJ status, including:

- a) An order staying a support obligation based on the financial resources and needs of both parents (*Rivera v. Ramsey County* (2000) 615 N.W.2d 854 [noting, however,

that an order reserving over the issue of child support is not, itself, a child support order]);

- b)** An order providing for health insurance or medical support only (*Bordelon v. Dehnert (2000)* 770 So.2d 433; *Watkins v. Watkins (2001)* 802 So.2d 145); and
- c)** An order for monetary support, arrears, retroactive support, or reimbursement for financial assistance provided to an individual obligee. (FC § 5700.102(28)).
- d)** A temporary support order issued ex parte, or pending resolution of a jurisdictional conflict does not create CEJ in the issuing tribunal. (FC § 5700.205(e)).

3) Losing CEJ

By negative implication, a CA court that issued a child support order does not have CEJ to modify the order when all of the parties and the child reside out-of-state, even if no other state has assumed jurisdiction over the case. (*IRMO Haugh (2014)* 225 Cal.App.4th 963).

3. Jurisdiction to Modify

A CA court can obtain jurisdiction to modify another state's child support order when:

a. All Parties Now in CA

All individual parties presently reside in CA and the child no longer resides in the issuing state; (FC § 5700.613(a)).

b. Consent

CA is the residence of the child, or, an individual party is subject to CA personal jurisdiction, and all of the individual parties have filed or given consent in a record in the issuing court for a CA court to modify the order and assume CEJ; (FC § 5700.611(a)(2)).

✍ NOTE: Under the prior version of UIFSA (former FC § 4960), one court found written consents to UIFSA jurisdictional transfer are effective even if signed only by parties' attorneys. (*Knabe v. Brister* (2007) 154 Cal.App.4th 1316).

c. The “Play Away” Rule

A CA court finds, after notice and hearing, all the following (FC § 5700.611(a)(1)):

- 1) The child, individual obligee and obligor do not reside in the issuing state,
- 2) A nonresident party has petitioned the CA court for a modification, and
- 3) The respondent is subject to CA personal jurisdiction.

In other words, the person seeking modification must “play away.” (See *IRMO Crosby and Grooms* (2004) 116 Cal.App.4th 201).

4. Exceptions to the “Play Away” Rule

UIFSA 2008 includes three exceptions to the “play away” rule to allow the parties to agree to a forum asserting CEJ and ensure that parties are not left without a forum in which to seek a modification.

a. Consent

Parties can consent to a state retaining CEJ even if no party lives there, or parties can consent to another state assuming CEJ, even if someone remains issuing.

1) State Retaining CEJ

If CA has issued a child support order, but none of the parties reside in CA, the parties may consent to a CA court retaining CEJ. (FC § 5700.205(a)(2)).

➲ **PRACTICE POINT:** The statute states parties must consent “in a record or in open court.” Therefore, the consent must be in writing or the parties must appear in court to consent.

 **NOTE:** FC § 5700.102(20) defines “record” as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. A record can thus be a formal written document, text message, or email.

2) Another State Assumes CEJ

Even if CA has CEJ, parties can “file consent in a record” with a CA court to have another state’s tribunal assume CEJ and modify the order (so long as the child resides in that state, or the tribunal has personal jurisdiction over one of the parties). (FC § 5700.205(b)(1) [the consent is filed in the issuing state]; and FC § 5700.611(a)(2) [the state assuming CEJ finds that consent was filed in the issuing state]).

b. International Move Away

A CA court retains jurisdiction to modify its order if: 1. one party resides in another state as defined by UIFSA, and 2. the other party resides outside the U.S. (FC § 5700.611(f)). This is to ensure that the parties are not left without a forum to modify the order due to the “play-away” rule.

➲ **PRACTICE POINT:** Note that CA is not the only jurisdiction that may modify under these circumstances. If the requesting party is in the U.S., he or she may choose to play away to the other country. If the requesting party is outside the U.S., he or she may register and request modification in the U.S. resident’s new state. The purpose of this section is to ensure that the party remaining in the U.S. is not forced to litigate support issues in an international forum.

c. Modification of Foreign Support Order

A CA court with personal jurisdiction over the parties can modify a foreign support order if the foreign country lacks or refuses to exercise jurisdiction to modify its order pursuant to its laws. (FC § 5700.615) Consent of the resident obligor is not necessary.

5. Required Attachment to Orders

FL-590A, UIFSA Child Support Order Jurisdictional Attachment, must be attached to court orders when the court must make a finding regarding CEJ.

6. Loss of CEJ

The state that issued the original child support order loses its CEJ over the order once another state with FFCCSOA/UIFSA jurisdiction modifies the order. At that point, the modifying state becomes the state with CEJ. (FC § 5700.205(c), FC § 5700.611(e), and 28 USC § 1738B(d)).

a. Limitation

Following the shift in CEJ, the issuing state shall recognize the modifying order of the other state, upon registration, for enforcement, and is limited to:

- 1)** Enforcing its order as to arrears and interest accruing before the modification; and
- 2)** Providing other “appropriate relief” for a violation of its order that occurred before the modification. (FC § 5700.612; 28 USC § 1738B(g)).

H. MULTIPLE ORDER ISSUES

1. Rules of Priority

Under UIFSA and FFCCSOA, there is only one valid support order regarding the same parties and children. However, because there could be multiple conflicting orders under prior laws, there is a procedure to determine which of several orders is the controlling order. (FC § 5700.207(b); 28 USC § 1738B(f)). This applies only to orders with ongoing support that were issued prior to the enactment of FFCCSOA on October 20, 1994. After FFCCSOA was enacted, if one state has entered an order and a party

continues to reside in that state, any subsequent orders issued in other states are void ab initio for lack of jurisdiction. (*Holdaway-Foster v. Brunell* (2014) 330 P.3d 471; *State ex rel. Freeman v. Sadlier* (1998) 586 N.W.2d 171).

⌚ **PRACTICE POINT:** Because the multiple conflicting orders must have been issued before October 20, 1994, with continuing support to have a situation requiring a determination of controlling order, these are extremely rare at this point. If the children have all been emancipated, the proper request is for a determination of arrears.

2. Determining Controlling Order (DCO) (FC § 5700.207(b)):

✍ **NOTE:** Determining Controlling Order (DCO) (FC § 5700.207(b)): A DCO is necessary if all the orders were issued before FFCCSOA became effective (10/20/1994) and at least one child has not emancipated.

a. Only One Court with CEJ

If only one of the courts would have CEJ under the FFCCSOA/UIFSA, that court's order controls and must be recognized.

b. More Than One State CEJ—Home State Preference

If more than one of the courts would have CEJ under the FFCCSOA/UIFSA, an order issued by a court of the child's current home state controls. But if no order is issued by the child's current home state, the most recently issued order controls.

c. No State With CEJ—CA Jurisdiction to Enter Controlling Order

If none of the courts would have CEJ under the FFCCSOA/UIFSA, a CA court with jurisdiction over the parties "shall issue a support order" and that order is the controlling order entitled to interstate recognition and enforcement.

3. Reconciliation of Arrears (ROA)

If all the orders were issued before FFCCSOA became effective and all the children were emancipated, a DCO is not necessary but a ROA is necessary.

a. A ROA will (1) determine the amount of support that accrued compared to the amount of support paid, along with other forms of satisfaction of the child support obligation, and (2) determine the unpaid balance.

b. When calculating arrears for multiple orders, each order is entitled to full faith and credit. All payments are applied *pro tanto* (to each order). Essentially, arrears accrue under the highest order for any given period. Interest also accrues on each order as directed by the law of the issuing state.

4. Validity of Order

a. If you discover there are two or more orders for the same parties and children issued by different states post-FFCCSOA while one state retained CEJ, you should first request the state that issued the order in violation of FFCCSOA to set aside their order. If that state won't set aside its order, a request to determine the validity of the orders must be filed in the state which retained CEJ. Attach all the known orders and explain the facts regarding CEJ. A copy of the court's determination regarding the validity of the orders should be sent to the other state(s) involved.

5. CEJ

A “controlling order” is the only order for current support that is prospectively enforceable. The court that issued the controlling order has CEJ. (**FC § 5700.207(e); 28 USC § 1738B(f)(5)**).

I. ENFORCEMENT OF OUT-OF-STATE SUPPORT ORDER WITHOUT REGISTRATION

1. Direct Income Withholding Orders (IWOs)

Another state may send an out-of-state IWO to enforce its own order to the obligor's CA employer directly without first filing a petition or registering the order in a CA court. (**FC § 5700.501**). So long as it "appears regular on its face," the IWO must be treated by the employer as if it had been issued by a CA court. (**FC § 5700.502(b)**).

☞ **NOTE:** Direct IWOs are no longer available to foreign countries as they are no longer part of the "state" definition.

a. Contesting IWO Through Registration

The obligor may contest the validity or enforcement of the out-of-state IWO received by the CA employer by registering the order in a CA court. (**FC § 5700.506(a)**). There usually is no underlying case in a CA court but CRC 5.335 provides a uniform procedure for handling the hearing on an interstate IWO.

➲ **PRACTICE POINT:** Likewise, since all states have adopted UIFSA 2008, if there is a CA support order, but the obligor's employer is in another state, the LCSA may issue an IWO directly to the obligor's employer. Note that the obligor may register the IWO in the other state to contest it. Be sure to respond when given notice of an obligor's registration and contest of the IWO (which may require requesting assistance from the IV-D agency in the other state).

2. Administrative Enforcement through LCSA

UIFSA also authorizes administrative enforcement of another state or foreign support order through the LCSA, which sidesteps registration of the order. (**FC § 5700.507**) Upon receipt of the documents required for registering an order, the LCSA, without initially registering the order, "shall consider and, if appropriate, use any administrative procedure"

authorized by CA law to enforce a support order and/or IWO. (**FC § 5700.507(b)**). If the obligor does not contest administrative enforcement, the order need not be registered, but the order shall be registered if the obligor contests the validity or administrative enforcement of the order. (**FC § 5700.507(b)**).

J. ENFORCEMENT BY REGISTRATION WITH CA COURT

1. Registration

An out-of-state support order or IWO may be registered in CA for enforcement. (**FC § 5700.601**). This does not make the order a CA order.

2. Required Documents

Registration of an out-of-state order occurs by sending the following documents to the appropriate CA court. (**FC § 5700.602(a)**):

- a. A letter of transmittal requesting registration and enforcement;
- b. Two copies, including one certified copy of the order to be registered, including any modification of the order;
- c. A sworn or certified statement of arrears;
- d. Obligor's name and other descriptors, if known;
- e. Obligee's name and address, except as provided in **FC § 5700.312**.

 **NOTE:** The method of certifying an order as a true and correct copy varies by other states' laws. With the implementation of UIFSA 2008 and advances in technology, many states are moving to electronic certification.

3. Seeking Affirmative Relief

A pleading seeking a remedy that must be affirmatively sought under other CA law may be

filed at the same time as the request for registration or later. (**FC § 5700.602(c)**).

4. Enforceable as CA Order

Once registered, the support order or IWO is enforceable “in the same manner and is subject to the same procedures” as an order issued by a CA court. (**FC § 5700.603(b)**). However, the CA court cannot modify the registered order if the issuing forum still has jurisdiction. (**FC § 5700.603(c)**).

5. Notice to “Nonregistering Party”

Upon registration of the out-of-state order or IWO, the CA court “shall notify the nonregistering party.” (**FC § 5700.605(a)**). For IWOs, the LCSA or CA court “shall notify the obligor’s employer” pursuant to CA law. (**FC § 5700.605(d)**).

6. “Nonregistering Party’s” Right to Challenge Registered Order

The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of non-compliance, or contest the remedies being sought or the amount of alleged arrears. (**FC § 5700.606(a)**).

- a.** To contest the validity or enforcement of the registered order, a nonregistering party must request a hearing within 20 days after notice. (**FC § 5700.606(a)**, referencing **FC § 5700.605(b)(2)**). JCF FL-575 is used to request the hearing. Federal regulations govern the allowable timeframes for contesting IWOs. (**42 USC § 666(b)**).

 **NOTE:** CA courts serve notice on the nonregistering party typically by mail. Therefore, the time for service is extended. *See* Section II.

b. Upon the nonregistering party's timely request for hearing to contest the registered order, the CA court must schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing. (FC § 5700.606(c)).

7. Defenses to Registration

The contesting party has the burden of proving one of the eight defenses to registration (FC § 5700.607(a); *see also Willmer v. Willmer (2006)* 144 Cal.App.4th 951 [trial court confirmed registration on obligor's motion to vacate registration citing, *inter alia*, lack of personal jurisdiction; Court of Appeals affirmed, finding that the Obligor "failed to meet his burden of proving that the German court had no jurisdiction over him under its own laws, or that Germany's assertion of jurisdiction offends traditional notions of fair play and substantial justice."]):

- a.** The court that issued the order lacked personal jurisdiction over the obligor;
- b.** The order was obtained by fraud;
- c.** The order has been vacated, suspended, or modified by a later order;
- d.** The issuing court stayed the order pending appeal;
- e.** There is a defense under CA law to the remedy sought (e.g., violation of due process or lack of subject matter jurisdiction);
- f.** Full or partial payment has been made;
- g.** Arrearages enforcement is precluded by the applicable SOL; or
- h.** The alleged controlling order is not the controlling order.

 **NOTE:** Non-parentage is not a defense to registration. (FC § 5700.315; *County of Los Angeles Child Support Services Dept. v. Superior Court (2015)* 243 Cal.App.4th 230 [trial court ordered genetic testing on obligor's motion to vacate registration citing, *inter alia*, paternity at issue; Court of Appeals

vacated the genetic test order holding that a responding court may not order genetic testing to challenge the registration of a foreign order]).

8. Disposition of Contest

a. Defense Established

If the evidence establishes a full or partial defense, the CA court may stay enforcement of the registered order, continue the proceeding to permit the production of additional evidence, and “issue other appropriate orders.” Any uncontested portion of the order, however, is confirmed and may be enforced by all remedies available under CA law. (**FC § 5700.607(b)**).

b. No Defense Established

If the contesting party does not establish a defense, the CA court “shall issue an order confirming the (registered) order.” (**FC § 5700.607(c)**). If the obligor is unsuccessful in contesting registration, the hearing is presumed to have been requested primarily for delay and if the court finds the hearing was requested primarily for delay, it shall order the payment of costs and reasonable attorney fees. (**FC § 5700.313(c)**).

9. If No Challenge, Order Confirmed

If there is no challenge to the registered order, the registered order is confirmed by operation of law. (**FC § 5700.606(b)**).

a. Preclusive Effect of Confirmation

Confirmation of a registered order, either by operation of law or after notice and hearing, precludes further contest of the order “with respect to any matter that could have been asserted at the time of registration.” (**FC § 5700.608**).

10. Arrears Determinations

There is case law regarding whether the statement of

arrears filed with the registered orders is binding on parties pursuant to FC § 5700.607(a)(6).

a. Arrears Statement Binding on Obligor
“[A]bsent timely objection, the statement of arrears included in a registration statement becomes binding on ‘the nonregistering party.’ (*de Leon v. Jenkins* (2006) 143 Cal.App.4th 118 [the LCSA registered a support order specifying that Obligor owed no arrears, Obligee failed to contest within 20 days, Obligor sought confirmation that no arrears were owed]). The court held that only an overstatement of arrears is a cognizable defense under FC § 5700.607(a)(6), and thus must be raised by the obligor, if at all, within 20 days after notice of registration.

b. Arrears Statement Not Binding on Obligee
The Jenkins court furtherheld that an understatement of arrears is not fairly encompassed by any of the FC § 5700.607(a) objections, and thus confirmation cannot preclude a non-registering obligee from later litigating additional arrears under the registered order.

Further, an obligee is allowed “to contest an obligor’s statement of child support arrears notwithstanding the obligee’s failure to request a hearing within 20 days of receiving notice of the order’s registration.” (*State ex rel. DES v. Pandola* (2018) 408 P.3d 1254 [Obligor filed registration with his avowal that zero arrears were owing, Obligee failed to contest within 20 days]). The court noted that some of the defenses to registration apply only to obligors: (1) full or partial payment has been made, and (2) the statute of limitations precludes enforcement of some or all of the alleged arrears, and that “neither provision permits an obligee to claim an obligor understated the amount of arrears.”

K. MODIFICATION AFTER REGISTRATION

1. Registration Prerequisite

A party or support enforcement agency seeking to modify, or modify and enforce, a child support order issued in another state must first register the order in CA if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later, and must specify the grounds for modification. (FC § 5700.609; 28 USC § 1738B(i)).

2. Modification Shifts Exclusive Jurisdictional Situs

Provided it has modification jurisdiction under the above standards, upon issuing an order modifying the out-of-state child support order, the CA court becomes the forum with CEJ over the order. Thereafter, no other court may exercise jurisdiction to modify unless the jurisdictional situs again changes under the FFCCSOA/UIFSA jurisdiction rules. (FC § 5700.611(e); 28 USC §§ 1738B(d)-(f)).

a. Issuing state's "residual" jurisdiction

After the jurisdictional situs shifts to CA, the issuing state's jurisdiction regarding the order is limited in the same manner as a CA court's jurisdiction would be limited after an out-of-state modification of its order. (FC § 5700.612; 28 USC § 1738B(g)).

3. Governing Law

Having acquired CEJ over a registered child support order for purposes of modification, the CA court must apply CA substantive law to determine the appropriate amount of support. (FC § 5700.611(b), FC § 5700.303; 28 USC § 1738B(h)(1)). Moreover, parties cannot stipulate to the application of a different state's law. In *IRMO Crosby and Grooms* (2004) 116 Cal.App.4th 201, the Obligor objected to the application of California law to modify an Idaho

order, contending that pursuant to the parties' marital settlement agreement, all matters affecting interpretation of that agreement shall be governed by the laws of Idaho. The Court of Appeal disagreed holding that "parents are bound by public policy extrinsic to their own agreements" and because application of Idaho law would "undermine the mandate of the UIFSA, it is contrary to public policy and is not enforceable."

✍ NOTE: A CA court may not modify any aspect of the out-of-state child support order that is not modifiable under the issuing state's law, including the duration of support. (FC § 5700.611(c); 28 USC § 1738B(h)(2)).

4. Filing Copy of Modified Order with Tribunals in Other States

Within 30 days after issuance of a modified child support order, the party who obtained the modification must file a certified copy of the order with the issuing tribunal that had CEJ over the earlier order and with each tribunal in which he or she knows the earlier order was registered. (FC § 5700.614).

5. Compare—CA Recognition of Modifications by a Tribunal in Another State

CA courts must recognize a modification of a CA child support order by another state that assumed jurisdiction in accordance with the FFCCSOA/UIFSA (FC § 5700.612), and, upon request:

- a.** May enforce the order that was modified only as to amounts accruing before the modification;
- b.** May provide "appropriate relief" for violations of its order which occurred before the effective date of the modification; and
- c.** Shall recognize the other state's modifying order, upon registration, for enforcement. (FC § 5700.612).

L. INTERNATIONAL

1. The 2007 Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance (Convention)

The Hague Convention became effective for the United States on January 1, 2017. Article VII of UIFSA 2008 (**FC § 5700.701 et seq.**) applies to Hague Convention cases.

a. Website

The Hague Convention website includes the full text of the Convention, the Status Table, Country Profiles, and other information regarding how to process Hague Convention cases:

https://www.hcch.net/en/instruments/convention_s/specialised-sections/child-support

b. Forms

1) Federal

The OCSS includes Hague Convention forms:

<https://www.acf.hhs.gov/css/form/hague-child-support-convention-forms>

There are two mandatory forms (Transmittal and Acknowledgment) and several recommended forms. Country Profiles listed on The Hague Conference website explain which forms each Contracting State expects to receive.

2) California

The Judicial Council of California created new Judicial Council forms, JCF FL-592 (Notice Of Registration Of An International Hague Convention Support Order) and JCF FL-594, (Request For Hearing Regarding Registration Of An International Hague Convention Support Order) for exclusive use on Convention cases. These forms were approved for use starting January 1, 2017.

c. iSupport

iSupport has been decommissioned for CA use. OCSS is working with the Hague Conference Commissioners to determine use for all U.S. states.

d. Current Member States

Including the U.S. States, The Hague Convention countries currently are:

Albania	Finland	Nicaragua
Austria	France	New Zealand
Azerbaijan	Germany	Norway
Belarus	Georgia (date of entry TBD)	Philippines
Belgium	Greece	Poland
Bosnia and Herzegovina	Honduras	Portugal
Botswana (as of 11/16/23)	Hungary	Romania
Brazil	Ireland	Serbia
Bulgaria	Italy	Slovak Republic
Canada (Manitoba, Ontario, British Columbia)	Latvia	Slovenia
Croatia	Lithuania	Spain
Cyprus	Luxembourg	Sweden
Czech Republic	Malta	Turkey
Ecuador	Montenegro	Ukraine
Estonia	Netherlands	United Kingdom (England and Wales, Gibraltar, Northern Ireland, Scotland)

e. Terminology (FC § 5700.701)

- 1) Application: Request under the Convention made for assistance from a Central Authority.

2) Central Authority: The public authority designated to carry out the duties of cooperation and assistance under the Convention.

3) Creditor: custodial party or obligee.

4) Debtor: Noncustodial parent or obligor

5) Decision: Judgment, order, or administrative assessment.

6) Maintenance arrangement: An agreement in writing relating to the payment of maintenance that can be subject to review and modification by a competent authority and is enforceable as a decision in the State where it was made.

7) Requesting State: The State where the applicant resides and where a request under the Convention is initiated.

8) Requested State: The State that is being asked to process the application or request.

f. Types of Requests available under the Convention

1) Creditor (FC § 5700.704(b))

a) Recognition or recognition and enforcement of a decision;

b) Establishment of a decision in the requested country, including establishment of parentage;

c) Establishment of a decision in the requested country where recognition and enforcement of a decision is not possible or is refused;

d) Modification of a decision.

2) Debtor (FC § 5700.704(c))

a) Recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested country;

b) Modification of a decision.

 **NOTE:** The Convention curtails the rights and duties available to the Creditor.

3) Request for Specific Measures

a) Specific Measures are certain duties of administrative cooperation and can be requested; by one Central Authority to another Central Authority;

b) These requests are separate from applications;

c) Examples:

i. Locate services

ii. Financial information provision

iii. Paternity establishment

iv. Service of documents

v. Obtaining evidence

g. Registration of International Hague Convention Support Orders

1) Time to Contest (FC § 5700.707(b))

The contesting party must request a hearing within 30 days of the date that notice was mailed if he/she resides in the U.S., or within 60 days if he/she resides outside the U.S.

 **NOTE:** CA courts serve notice on the nonregistering party typically by mail. Therefore, the time for service is extended. See Section II-Establishment & Civil Procedure in IV-D Cases, Part G. Service of Pleadings.

2) Defenses to Registration (FC § 5700.708)

a) Recognition and enforcement of the order is manifestly incompatible with public policy, including failing to observe minimum standards of due process (notice and opportunity to be heard);

b) The issuing tribunal lacked personal

- jurisdiction;
- c) Order is not enforceable in the issuing country;
 - d) Order obtained by procedural fraud;
 - e) Record lacks authenticity or integrity;
 - f) Prior to proceeding in this state with the same purpose and parties;
 - g) Order is incompatible with a more recent order involving the same parties and purpose if the order is entitled to recognition and enforcement in this state;
 - h) Payment of alleged arrears, in whole or part;
 - i) It is a default order without either prior notice and opportunity to be heard, or post-order notice and opportunity to appeal; or
 - j) The order violates FC § 5700.711 (modification where obligee remains a resident of the foreign country where the support order was issued).

3) Effect of Non-Recognition

If an order is not recognized because of a lack of personal jurisdiction, fraud, or default without due process, the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order.

2. Reciprocity

There are certain countries that are considered federal “foreign reciprocating countries”. In addition, CA has established reciprocity with several countries. If reciprocity is established, the foreign country is treated the same as another state in the U.S. (*See Willmer v. Willmer (2006)* 144 Cal.App.4th 951). Note that all of the CA agreements are based on either URESA or RURESAs, and some of these

countries may not recognize them as valid at this time.

Foreign Reciprocating Countries	State Reciprocity
Australia	Bermuda
Canada – all except Quebec	Canadian Province of Quebec
El Salvador	Fiji
Israel	Mexico (all Mexican states)
Switzerland	New Zealand
	South Africa

3. No UIFSA

Other countries do not have UIFSA and are not required to use federal or state forms.

4. Notarization Alternatives

Many foreign countries don't have notaries, so documents from other countries may be signed under penalty of perjury or sworn to and signed before an official authorized to administer an oath, a consular agent, or a judge. The change under UIFSA 2008 from signing documents "under oath" to "under penalty of perjury" addresses this difference.

5. New Definitions

Under UIFSA 2008, the term "state" only includes U.S. states, territories and Indian nations or tribes. (It does not include foreign countries, whereas previous versions of UIFSA included foreign countries in the definition of "State."). Under UIFSA 2008, the definitions relating to foreign countries are:

a. "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

- 1) Which has been declared under the law of the United States to be a foreign reciprocating country;**
- 2) Which has established a reciprocal arrangement for child support with this state as provided in FC § 5700.308;**

- 3) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this part; or
 - 4) In which the Convention is in force with respect to the United States. (FC § 5700.102(5)).
- b.** "Foreign support order" means a support order of a foreign tribunal. (FC § 5700.102(6)).
- c.** "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention. (FC § 5700.102(7)).
- d.** "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child. (FC § 5700.102(12)).

6. Comity

If a foreign country does not fall into one of the four definitions of foreign country, registration cannot be used to modify or enforce the order. However, a complaint could be filed requesting recognition of the foreign order based on principles of comity. Comity is the acceptance or adoption of a decision by a court of another jurisdiction based on public policy rather than legal mandate.

⌚ PRACTICE POINT: The LCSA does not have authority to refuse to register an order that is valid on its face; only a court may refuse enforcement. If the court refuses to enforce, request establishment of a new order immediately.

XIV TRIBAL CASES

A. IN GENERAL

1. Tribal Sovereignty

Indian tribes within the US possess sovereign authority over their people and territory. Tribal sovereignty is the right for tribes to make their own laws and be governed by them. Tribes retain this authority unless Congress specifically provides otherwise. (*Michigan v. Bay Mills Indian Community* (2014) 134 S. Ct. 2024.) Federal and state governments are required to engage in government-to-government relationships with all federally recognized tribes.

2. Public Law 280

Public Law 280 is a federal statute enacted by Congress in 1953 which limits tribal sovereignty by granting state courts, including California, concurrent jurisdiction over criminal and some civil matters involving Indians as litigants within tribal boundaries. (See 17 USC §1738.) The law does not grant states regulatory power over tribes or lands held in trust by the US, however. The test of whether a state law may be applied on Indian land is whether the application of that law would interfere with the tribe's right to self-govern. (*Organized Village of Kake v. Egan* (1962) 369 US 60).

B. JURISDICTION

1. LCSA Obligation

State IV-D agencies have an obligation to equally provide services to all children and families, including those on tribal land. (*Howe v. Ellenbecker* (1991) 774 F. Supp. 1224).

2. State Court Jurisdiction

States are prohibited from unreasonably interfering with the rights of Indian self-government. (*Organized Village of Kake v. Egan*

(1962) 369 US 60.) However, a state court has jurisdiction over an individual member of a federally recognized tribe living on a reservation to reimburse the county for public assistance paid to support the member's child. (*County of Inyo v. Jeff* (1991) 227 Ca. App.3d 487.)

3. Tribal Court Jurisdiction

Tribal courts have concurrent jurisdiction over domestic relation actions if they are willing to assume jurisdiction. (*Sanders v. Robinson* (9th Cir. 1988) 864 F.2d. 630; *Baker v. John* (1999) 982 P.2d 739.)

a. Jurisdiction Over Tribal Members

In general, tribal sovereignty applies in matters that affect members who live on tribal land. When one or both parties are members of a specific tribe and live on tribal land, the tribe will have jurisdiction. (*Montana v. United States* (1981) 450 U.S. 544).

b. Jurisdiction Over Non-Members

Tribal jurisdiction over the conduct of non-members exists only in limited circumstances (for example, non-members who enter consensual relationships with the tribe or its members, or activity that directly affects the tribe's political integrity, economic security, health or welfare). (*Strate v. A-1 Contractors* (1997) 520 U.S. 438).

⌚ **PRACTICE POINT:** Contact the tribe in question prior to sending a case to them to determine if it meets that tribe's jurisdictional requirements (i.e. one or more parties are members of the tribe, one or both parties reside on the reservation or tribal land, noncustodial parent is employed by tribal entity, etc.) Requirements will not be the same for all tribes.

C. TRIBAL COURTS

1. Tribal Courts Generally

There are currently 22 tribal courts in California. Most tribal child support hearings are judicial, but some may be administrative, or a combination of both. The California Tribal Courts Directory can be found at <https://www.courts.ca.gov/14400.htm#panel14773>.

2. Applicable Laws

a. Full Faith and Credit for Child Support Orders Act

28 USC §1738B is the Full Faith and Credit for Child Support Orders Act (FFCCSOA,) which requires the appropriate authorities of each “State” (including Indian Country) to enforce child support orders if they are made consistent with the provisions of the statute. FFCCSOA further provides that child support orders cannot be modified except following the statute.

1) Requirements

To be consistent with FFCCSOA, the issuing court must have had subject matter jurisdiction and personal jurisdiction over the parties and the parties must have been given reasonable notice and opportunity to be heard. (**17 USC § 1738B(c)**).

2) Continuing Jurisdiction

A state or tribal court has continuing, exclusive jurisdiction over its order if the state or tribe is the child’s residence or the residence of any individual party unless the court of another state or tribe, acting following the statute has modified the order. This is analogous to UIFSA’s CEJ. (**17 USC § 1738B(d)**.)

3) Determining Controlling Order

If multiple tribal and state orders exist, **45 CFR §1738B(f)** provides the rules to determine which order should be recognized for purposes

of continuing, exclusive jurisdiction and enforcement.

a) State Law

The Uniform Interstate Family Support Act (UIFSA) requires California state courts to apply its provisions to tribal orders. (**FC §5700.102 (26)**.) However, tribal courts are not required to adopt or to apply to UIFSA.

b) Tribal Law

Each tribe is unique in terms of the laws applied to child support. Most tribes have their own constitution and tribal codes.

c) Comity

In situations where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity.

3. Appearances

Appearances in the tribal court by LCSA attorneys will be governed by each tribal court's unique rules and procedures. In situations where appearances are necessary, the LCSA should research the requirements of each tribe in their area and take the necessary steps to obtain approval to appear in tribal court.

D. TRIBAL IV-D

1. Tribal IV-D Generally

Federal funding for direct grants is available to federally recognized tribes to establish and operate child support enforcement programs. (**42 USC § 655(f)**). The regulations for the establishment and operation of tribal child support programs are found at **45 CFR § 309 et seq.**

As of February 1, 2019, there are 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs ("BIA") by virtue of their status as Indian Tribes. There are currently

109 federally recognized tribes in the State of California, with 60 tribal agencies operating child support programs, which provide services to Native American families consistent with tribal values and cultures.

2. Yurok Tribe

The Yurok Tribe in Eureka, CA is the only California Tribe with a comprehensive child support program.

3. Requirements

Tribal IV-D programs must provide paternity establishment, support order establishment, modification and enforcement of orders, including the requirement that tribal employers comply with IWOs, and locate services. There is no current requirement that tribal support orders include medical support. However, there is no prohibition for a tribal support order to do so. Presently, no tribal agencies in California recoup TANF benefits. Tribal TANF recipients who open a child support case with state IV-D agencies are treated as non-assigned cases.

4. Paternity Establishment

Tribes establish paternity following tribal law, code, or custom. States are required to honor tribal paternity orders when they are the basis for child support orders under tribal law. Likewise, tribes are required to honor the states' paternity order when it is the basis for child support orders through state court. (CSSIN Letter: 10-06).

5. Enforcement of Tribal Orders

Tribal child support orders are entitled to the full faith and credit accorded to state orders when the tribe has properly exercised jurisdiction over the parties and the subject matter. Orders can be registered and enforced but not modified if the tribe has continuing, exclusive jurisdiction. (28 USC § 1738B; CSSIN Letter: 10-06).

a. IWO Mandated

Federal regulations require tribes to include in their tribal CSE plans tribal law, code or regulations that describe the types of collection/enforcement actions the tribe can use. The only collection/enforcement method mandated by federal regulation for tribes and tribal organizations is income withholding.

6. Enforcement of In-Kind Orders (Non-Monetary)

Tribal orders may contain an “in-kind” order (non-monetary), in which orders for child support are paid via goods or services, i.e. to supply a cord of firewood every month to the custodial party’s residence. The LCSA must request through the tribal court that the in-kind order be assigned a monetary value pursuant to **45 CFR § 309.105(a)(3)**. Non-cash support cannot be used to satisfy assigned support, including assigned arrears. (CSSIN Letter: 10-06)

7. Information Sharing

Information may only be shared if the state has a cooperative agreement with the tribe to perform certain IV-D functions, such as to establish/modify court orders, establish paternity, etc. The data to be provided must be necessary to perform these functions and the tribe, through the cooperative agreement, is bound to the same confidentiality rules that apply to State IV-D programs. LCSAs may release information to the extent allowed in **FC § 17212(b)(1)**.) Requests from federally recognized Tribal IV-D programs should be honored in the same way as requests from a recognized federal reciprocating country.

8. Differences Between Tribal IV-D and State IV-D Programs

Policies and procedures for Tribal IV-D programs are still evolving, but some differences from state IV-D programs are:

- a. Use of tribal customs or common law (45 CFR § 309.90(b));
- b. Tribes are not required to adopt UIFSA but are required to recognize child support orders issued by other jurisdictions in accordance with FFCCSOA (45 CFR § 309.120(b));
- c. In-kind support (non-cash) may be allowed, but must have cash equivalency and cannot be used to satisfy assigned support (45 CFR § 309.105(a)(3));
- d. No mandatory health insurance requirements for child support orders (45 CFR § 309.90)

9. Transfer of IV-D Cases Between State and Tribal Court

The California Rules of Court, Rule 5.372 defines the procedure for the transfer of Title IV-D child support cases between the state court and a tribal court.

a. Notice of Intent to Transfer

Before filing a motion for case transfer, the requesting party must provide all parties with notice of their right to object and the procedures for objecting.

b. Determination of Concurrent Jurisdiction

When ruling on a motion to transfer, the state court must first make a threshold determination that concurrent jurisdiction exists. There is a presumption of concurrent jurisdiction if the dependent(s) of the action are enrolled tribal members or are eligible for enrollment.

c. Objecting to Transfer

If concurrent jurisdiction is found, the transfer will occur unless a party has objected in a timely manner. On the filing of a timely objection, the court must conduct a hearing on the record considering all the relevant facts set forth in 5.372(f.) The superior court judge may

attempt to resolve any procedural issues by communicating with the tribal court judge, provided the parties are given the opportunity to participate in all communications and a record of the communication is prepared

d. Disposition

If a transfer request is denied, the court must state on the record, the basis for the denial. If the court grants the request, it must issue a final order.

e. Proceedings After Transfer

Once the superior court has granted the application to transfer and the tribal court has accepted jurisdiction, the entire file must be transferred and no further filings may be accepted by the superior court, except upon the finding by the tribal court that it is not in the child's best interest to retain jurisdiction. In this case, the superior court must not reject the case.

E. ESTABLISHMENT AND MODIFICATION

1. Service of Process

In California, tribal members may be served on or off tribal land. (*Nevada v. Hicks* (2001) 533 U.S. 353).

➲ **PRACTICE POINT:** Cooperation with Tribal Government and/or Tribal Police for service of process is highly recommended. If service is required on tribal land, contact the individual Tribe to ascertain their policy. If service is required outside of California and if Long Arm Jurisdiction exists, service may be made by mail (CCP § 415.30 and CCP § 415.40) or by personal service. If no Long Arm, the LCSA must establish an interstate action with the appropriate State or Tribal IV-D agency.

2. Trust Money as Income

Indian trust money (money derived from leases of Indian Trust Allotment lands, which is exempt from liability for any obligations owed by Indians

pursuant to **25 USC § 410**), can be considered income for determining guideline support, but cannot be used for enforcement of the support order. (**IRMO Purnell (1997)** 52 Cal.App.4th 527).

➲ **PRACTICE POINT:** Indian Tribes that conduct gaming activities on a California reservation may use gaming profits for all tribe members' general welfare. The law allows tribes to distribute gaming income to each tribal member (per capita) after meeting or accounting for tribal obligations. The tribal member may be required to pay state and federal income taxes on the per capita. (**IRC § 3402(r)**).

3. Modification

A tribal order is entitled to full faith and credit. (**28 USC § 1738B**). A state court cannot modify a tribal court order unless the tribe no longer retains CEJ. (**FC § 5700.205; 28 USC § 1738B(d)-(e)**).

F. ENFORCEMENT

1. Exempt Indian Money

While **25 USC § 410** exempts any money accruing from the lease of lands held for an Indian from liability for any debt owed by that Indian, the money loses its identity as Indian property once deposited in a bank account outside tribal land. (**IRMO Purnell (1997)** 52 Cal.App.4th 527).

2. Income Withholding Orders

An IWO issued to the tribe or tribal employer is voluntary unless it is included in a Tribal-State Gaming Compact or it is received by a Tribal IV-D agency in accordance with their tribal due process requirements. (**45 CFR §309.110**). However, California employers are required to honor tribal court or Tribal IV-D IWOs. (**FC §5230.1**).

➲ **PRACTICE POINT:** Many Tribes voluntarily cooperate with LCSAs, so contacting a Tribe regarding a case is helpful. Additionally, once tribal funds are distributed to the obligor, all enforcement remedies may be used.

3. Options if an IWO is not Honored

If a tribe or tribal employer does not honor an IWO:

- a. If the tribe has a tribal court, use the tribal court registration for enforcement process.
- b. If the tribe has a Tribal IV-D agency, use an intergovernmental referral to enforce the order
- c. If there is no tribal court or Tribal IV-D agency, the LCSA may attempt to develop an intergovernmental agreement with the tribe.

4. Individual Indian Monies (IIM)

Individual Indian Money (IIM) accounts can be encumbered with an order from a court of competent jurisdiction. (**25 CFR § 115.601(b)(1)**). IIM and “court of competent jurisdiction” are defined in **25 CFR § 115.002**.

5. Per Capita

Some tribal ordinances allow enforcement against per capita (individual distribution of tribal revenue) monies through the tribal court.

➲ **PRACTICE POINT:** Contact the tribe to determine whether it will honor an IWO against per capita monies.

G. HEALTH INSURANCE

A child’s eligibility for Indian Health Service satisfies the requirement for health insurance, even when the child is receiving Medicaid. (OCSS Policy Interpretation 94-07).

XV. MILITARY CASES

A. SERVICE OF PROCESS (SOP) ON MILITARY MEMBERS

1. Access

SOP may be attempted by any method provided by law, but if the servicemember must be served formally on military property, federal law, and military regulations will determine whether the process server may gain access to the installation.

a. Military Installation Jurisdiction

Sometimes federal jurisdiction is so exclusive that a state process cannot be served on the installation. In most cases, however, states reserve the right to serve civil and criminal process. This is true on military installations where there is concurrent or partial federal legislative jurisdiction or where the federal government just has a proprietary interest in the land or buildings. (**32 CFR § 516.10**).

➲ **PRACTICE POINT:** The best way to determine an installation's type of jurisdiction is to call the installation legal office. The installation legal office can also inform you of the policies and regulations governing service of process on the installation. The installation provost marshal or law enforcement section is the usual conduit.

2. Voluntary Acceptance of Service

All branches of the armed services have regulations requiring military members to take care of their civil paternity and support issues. A military commander may not involuntarily serve the member with process but may allow the member to accept service voluntarily. The member will usually be given the chance to speak to a legal assistance attorney before deciding whether to accept the documents.

⌚ **PRACTICE POINT:** It may be helpful to send the pleadings and a Notice and Acknowledgment of Receipt to the unit commander and explain the adverse effects that can result from delays (e.g. the accrual of significant child support arrears and lack of support for the minor children). This is an effective method to avoid potential delays in getting the member timely served.

B. MILITARY INCOME

1. Leave and Earnings Statement (LES)

A servicemember's pay is recorded on a LES that normally shows a variety of income figures and deductions. The basic income considered is the Base Pay, Basic Allowance for Housing, and Basic Allowance for Subsistence. Individual service members may also be eligible for other types of pay, such as flight pay and hazardous duty pay.

a. Basic Allowance Housing (BAH)

BAH is a non-taxable supplement to provide uniformed servicemembers with housing compensation based on comparable civilian costs of housing in that geographical area.

⌚ **PRACTICE POINT:** In some cases, a servicemember who lives in base housing will have little or no BAH reflected on the LES or will show BAH paid in and then deducted in full to cover the costs of base housing. Part or all the amount of BAH may still be included as income when base housing is provided for a servicemember. The receipt of BAH reduces the servicemember's cost of living and is considered compensation whether actually received or used for on base housing.

b. Basic Allowance for Subsistence (BAS)

BAS is a non-taxable supplement intended to offset the servicemembers' costs for meals. The amount of BAS is adjusted each year based on the increase in food prices as measured by the USDA food cost index.

2. Income

Non-garnishable BAH and BAS are income for

purposes of child support. (*IRMO Stanton* (2010) 190 Cal.App.4th 547). The reason is that servicemembers receive extra money for housing and food, and guideline calculations are based on income before housing and food expenses.

➲ **PRACTICE POINT:** Failure to include BAH and BAS in the guideline reduces income available for support despite BAH and BAS reducing the servicemember's own cost of living. Some judicial officers may wish to exclude BAH/BAS if it is not received by the servicemember. However, BAH/BAS are employer-paid compensation and should be included as non-taxable income whether received or used to offset base housing costs.

Note: Pending legislation will make BAH/BAS income under **Family Code 4058(a)**

3. Taxation

Base pay is taxable, while BAH and BAS are nontaxable. Consider that wages labeled "pay" are generally taxable income while wages labeled "allowance" are generally nontaxable. However, military pay earned in a combat zone is non-taxable. Upon separation from the military, retirement pay is taxable, but military disability pay is not. Refer to <https://militarypay.defense.gov/Pay/Tax-Information/>

4. Entitlements

Army and Navy LESs list child support deductions both in the Entitlements box (upper left) and Deductions box (center). It gives the impression that the government has paid the soldier the child support deduction amount. They are not paying that amount. It is a straight deduction – disregard the item in the Entitlement box.

5. Reserves and National Guard

Active Reserve and National Guard members are typically paid two ("drill") days per month. Additionally, members are paid 14 days for "summer" annual trainings per year. Reservists

receive an LES each month, which is available to them online.

6. Internet Resources

Military pay internet resources can be found at
<https://www.dfas.mil/MilitaryMembers/>

7. State of Domicile

Be sure to ask military members where they file taxes – it is usually their state of domicile (rather than residence). The military member's domicile may be different than what is stated on the LES for purposes of income tax deductions.

C. SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

1. Military Service Protections

Active-duty members of the military and active-duty National Guard are entitled to certain protections under the Servicemembers Civil Relief Act (SCRA). (**50 USC § 3901 et seq.**)

2. Active Duty Servicemember

The SCRA protects active duty (or commissioned) members of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, Public Health Service, and the National Oceanographic and Atmospheric Administration. (**50 USC § 3911(1); 10 USC § 101(a)(5)**).

3. Proceedings

The SCRA applies to both judicial and administrative proceedings. (**50 USC § 3912**).

4. Active Duty Service Members Protected from Default

Before entering a judgment in any civil action where the servicemember does not make an appearance, the plaintiff is required to file an affidavit stating whether the defendant is in military service or that the plaintiff is unable to determine whether or not the defendant is in military service. (**50 USC §**

3931(b)(1)).

a. Appointment of Attorney

If it appears that the defendant is in military service, the court cannot enter a judgment until after appointing an attorney to represent the defendant. (**50 USC § 3931(b)(2)**; *Allen v. Allen* (1947) 182 P.2d 551; *Price v. McBeath* (2008) 989 So.2d 444 (concurrence)). After an attorney is appointed, the attorney should be given a reasonable amount of time to contact the servicemember. Then, if no request for a stay is filed, the LCSA should proceed with the establishment of an order.

☛ **PRACTICE POINT:** The attorney is appointed for the limited purpose of protecting the servicemember's rights under the SCRA and not for the merits of the case. If the servicemember wishes to retain the attorney for the merits of the case, he or she is free to do so. If not, any on-the-record discussion or pleadings addressing the merits of the case may constitute a general appearance.

b. Post-Judgment Motions

This procedure applies to post-judgment motions and the original judgment. (*IRMO Lopez* (1981) 115 Cal.App.3d 776).

c. Vacate or Set Aside

If a default is taken against a servicemember during his or her period of military service, or within 60 days after termination of service, the servicemember can move to set aside the default. The application must be filed no later than 90 days after the date of termination of or release from military service. Upon a showing that the servicemember's military service "materially affected" (See 5d of this section) his or her ability to defend against the action and that he or she has a meritorious defense, the court shall reopen the judgment to allow the servicemember to defend the action. (**50 USC § 3931(g)(2)(A)(B)**).

5. Staying the Action or Proceeding

The SCRA also allows the servicemember to obtain a temporary stay of the proceedings if the individual's circumstances warrant.

a. Initial Mandatory Stay

Pursuant to **50 USC § 3931(d)**, the court must grant a stay for at least 90 days upon application of counsel, or on the court's own motion, if the court determines that:

- 1) The servicemember may have a defense, which cannot be presented in his or her absence; or**
- 2) The appointed attorney has not been able to locate the servicemember after exercising due diligence.**

b. Case Law: Mandatory Stay

A juvenile court erred in refusing to stay the dispositional hearing for 90 days when the father's commanding officer provided a letter stating the father was on active duty on a ship deployed to the Middle East and he could not take leave for the remainder of his deployment.

(*In re A.R.* (2009) 170 Cal.App.4th 733, 741; *see also In re Amber M.* (2010) 184 Cal.App.4th 1223 [even if the stay request did not technically meet all the SCRA requirements, the stay should have been granted because it was undisputed that the father was unavailable to appear at the hearing]).

c. Additional Discretionary Stay

Pursuant to **50 USC § 3932(b)**, when an active duty servicemember has notice of the action or proceeding, the court may, on its own motion, and shall, upon application of the servicemember, stay the action for at least 90 days, if:

- 1) A letter or other communication is provided stating how the servicemember's military duty requirements "materially affect" his or her ability to appear and the future date he or she will be able to appear; and
- 2) A letter or other communication is provided from the servicemember's commanding officer stating that the servicemember's current military duty prevents him or her from appearing and that leave is not authorized to allow him or her to appear.

d. Case Law: Material Affect

"Material affect" depends on the circumstances of the particular case. One court upheld a denial of a request for additional stay by a servicemember stationed in Iraq in juvenile dependency proceedings because the court found member's military service did not adversely affect his ability to reunify with his child. (*George P. v. Superior Court* (2005) 127 Cal.App.4th 216).

e. A Stay Request is Not an Appearance or Waiver

A request for a stay does not constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense. (50 USC § 3932(c)).

f. More Additional Discretionary Stays

Additional stays may be requested in the same manner as above based on a continuing "material effect" of the servicemember's military duty on his or her ability to appear in the action. (50 USC § 3932(d)). If the court refuses to grant an additional stay, the court shall appoint counsel to represent the servicemember.

g. Stay as Shield

The protections of the SCRA are intended as “a shield, not a sword. The goal of preventing a servicemember from being disadvantaged by his or her military service to the country is not furthered by giving servicemembers an unwarranted advantage over civilian litigants.” (*George P. v. Superior Court* (2005) 127 Cal.App.4th 216, 225).

h. Leave

Servicemembers are entitled to 2.5 days of paid leave per month. Their current accrued leave balance is prominently displayed on their Leave and Earnings Statement.

6. Military Requirements for Support

When dealing with servicemembers, remember that they have an additional incentive to comply with court orders. The Uniform Code of Military Justice (UCMJ) (and internal regulations of most military branches) requires servicemembers to support their dependents. (**10 USC § 801 et seq.** and **10 USC § 933**).

7. Reduced Interest Rate for Pre-Active Duty Debt

Debts owed by a servicemember before the servicemember enters the military or, for reservists or National Guard, before activation shall not bear an interest rate of more than 6 percent during the period of military service, and interest at a rate more than 6 percent per year that would otherwise be incurred is forgiven. (**50 USC § 3937(a)**).

a. Written Notice

To obtain this relief, the servicemember must provide written notice to the creditor along with a copy of the military orders calling them to active duty. (**50 USC § 3937(b)**).

b. Creditors Can Seek Court Relief

Creditors can obtain court relief against the 6 percent interest limitation by showing that the ability of the servicemember to pay interest at the normal rate is not “materially affected” by their military service. (50 USC § 3937(c)).

➲ **PRACTICE POINT:** Keep in mind that most initial entry service members will see a rise in income. Also, a substantial portion of military pay consists of nontaxable allowances such as BAH and BAS. These nontaxable allowances may increase the amount of “take home” pay of the military member. In addition, some civilian employers will continue to pay a reservist’s regular civilian salary during their period of activation.

XVI. ANALYZING TAX RETURNS

OVERVIEW

Tax returns are a valuable source of information that may aid in the determination of income available for support. Tax returns provide an overview of earnings and may be helpful in cases where a person's income fluctuates due to seasonal employment or is derived from multiple sources. Additionally, when a person receives income from self-employment or from a business entity, an LCSA attorney may need to analyze a business tax return, which includes more complex tax schedules that explain the gross income and business expenses that affect a person's tax obligations and, in turn, affect their income available for support.

A. ACCESS TO TAX RETURNS

The LCSA may seek to review tax returns at both the administrative Review and Adjustment phase and as part of the discovery process when a hearing is pending.

1. Prior to Commencing a Proceeding

The Family Code provides for an inexpensive process for the discovery of facts before the commencement of a proceeding. (FC § 3660). As part of the LCSA's Review and Adjustment process, the LCSA may serve a request, without leave of court, for the production of a completed current income and expense declaration. (FC § 3664(a)).

2. The Family Code Requires Attachment of Tax Returns to the Income and Expense Declaration

Both parties are required to complete, file, and serve current Income and Expense Declarations (I&Es) (JCF FL-150) for all child, spousal, and family support hearings. A Financial Statement (Simplified) (JCF FL-155) is also acceptable for hearings regarding child support-only matters. (CRC § 5.260). While the forms themselves instruct the parties to take a copy of their latest federal tax return to the court hearing, the Family Code mandates the attachment of the prior year's state and federal personal income

tax returns. (**FC § 3665**).

3. After A Motion is Filed: Production and Discovery of Tax Returns

In a child, family, or spousal support proceeding, tax returns are required to be produced and are discoverable. (**FC § 3552(a)-(b)**). The production of tax returns is also required on an application for expedited support orders. (**FC § 3629(a)**).

a. Request for Tax Returns

Tax returns are rarely attached to the I&E, therefore, it may be necessary to request them from the parties prior to the hearing or to ask the court to order them be produced while at the initial hearing. Formal discovery methods can also be used to obtain the documents (e.g., Family Law Form Interrogatories (JCF FL-145); Interrogatories (**CCP § 2030.010**); Demand for Production of Documents (**CCP § 2031.010**); or Notice in Lieu of Subpoena. (**CCP § 1987**)).

4. Confidentiality of Tax Returns

Federal Tax Information (FTI) is confidential and may only be used by authorized persons for authorized purposes. (**26 USC § 6103**). Unauthorized inspection and disclosure of FTI can result in criminal and civil fines and imprisonment. (**26 USC § 7213**; **26 USC § 7213A**; **26 USC § 7431**). Under California law, tax returns may not be disclosed to anyone except the court, the party's attorney, the party's accountant, or financial consultant(s) assisting with matters related to the proceeding, or any other person permitted by the court. (**FC § 3665(b)**).

5. Refusal to Comply

No party to a child, family, or spousal support proceeding may refuse to submit copies of their state or federal income tax return to the court for examination, whether individual or joint. (**FC § 3552(a)**). If a dispute regarding income exists, the party whose income is in dispute refuses to provide tax returns, and the refusing party stands to benefit

from the lack of proof of income, consider asking the court to take the motion off calendar or to deny the motion in its entirety for failure to comply with discovery requests.

a. No Fifth Amendment Right to Deny Access

Tax returns requested pursuant to FC § 3552 may not be denied on the basis of the 5th Amendment, subject to the statutory requirements of confidentiality. (*IRMO Sachs* (2002) 95 Cal.App.4th 1144).

B. REVIEWING PERSONAL TAX RETURNS

The personal tax return is a useful tool because the return and its schedules and supporting documents should list a person's sources of income, assets, and any bases that a person may have to qualify for tax deductions.

1. Tax Return Income Presumptively Correct as to a Parent's Income

A parent's gross income, as stated under penalty of perjury on a recent tax return, should be presumptively correct. (*IRMO Loh* (2001) 93 Cal.App.4th 325; but also see *IRMO Hein* (2020) 52 Cal.App.5th 519 regarding self-employment income/tax returns). The presumption is persuasive because tax returns are ultimately enforced by federal and state criminal penalties, but it is not conclusive.

2. Rebutting the Presumption

This presumption may be successfully rebutted where the obligor has made inconsistent income claims. Courts have looked at inconsistencies between a parent's tax return and their Income and Expense Declaration, business expense statements, testimony, and loan applications as bases to rebut the presumption. (*IRMO Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28; *IRMO Chakko* (2004) 115 Cal.App.4th 104).

3. Multiple Years

Tax returns from multiple years may be compared line-by-line for trends and consistency in reporting

income and deductions.

C. FORM 1040: OVERVIEW

Form 1040, which U.S. taxpayers use to file an annual individual income tax return, is the tax return that the LCSA attorney will most commonly review. The 1040 was redesigned effective tax year 2022 and has been improved to categorize and identify sources of income. The IRS has also released a new alternative to Form 1040 for senior taxpayers (age 65 or older) who have uncomplicated finances. See Form 1040-SR.

An average Form 1040 may contain Schedules 1 through 3 but may also include any of the sixteen (16) schedules for more complex tax filings that claim certain deductions or credits or owe additional taxes.

1. Schedules

The following are the schedules that may need to be filed with the redesigned Form 1040 depending upon the type of deductions, credits, and obligation to pay additional taxes:

- a. Schedule 1 – Additional Income and Adjustments to Income
- b. Schedule 2 – Additional Taxes
- c. Schedule 3 – Additional Credits and Payments
- d. Schedule A – Itemized Deductions
- e. Schedule B – Interest and Ordinary Dividends
- f. Schedule C – Profit or Loss from Business (Sole Proprietorship)
- g. Schedule C-EZ – Net Profit from Business
- h. Schedule D – Capital Gains and Losses
- i. Schedule E – Supplemental Income and Loss (From rental properties, royalties, partnerships, S Corporations, estates, trusts, REMICs, etc.)

- j. Schedule EIC – Earned Income Credit
- k. Schedule F – Profit or Loss from Farming
- l. Schedule H – Household Employment Taxes
- m. Schedule J – Income Averaging for Farmers and Fishermen
- n. Schedule R – Credit for the Elderly or the Disabled
- o. Schedule SE – Self-Employment Tax
- p. Schedule 8812 – Additional Child Tax Credit

2. Reportable Income and Allowed Deductions

IRC § 61(a) defines “gross income” similar to FC § 4058. However, not all sources of income available for child support are required to be reported on Form 1040. Additionally, when determining the annual net disposable income for calculating child support, the Family Code’s definition of allowable deductions under FC § 4059 is different from the deductions allowed under the IRC. Form 1040 can be misleading when used as the only source for determining a party’s income, which is why a holistic analysis of the party’s Income and Expense Declaration, proof of income, and tax returns is the best practice for determining income available for support.

a. W-2 Income

Form 1040-line 1a requires the wage earner to report the total taxable income from their W-2 at Box #1 (Taxable Wages). To determine gross earnings available for support, however, review Box #3 (Social Security Wages) and Box #5 (Medicare wages). The higher number should be used for calculating support, which will include not only the taxable wages but also the elective deferrals to retirement plans, pretax benefits, and/or payroll deductions.

i. W-2 for the Self-Employed Party

A self-employed party may pay themselves a

self-determined salary as a W-2 employee, in addition to paying personal expenses through the business. Discovery of bank statements, business ledgers, check registers, etc. are necessary to obtain a better understanding of the income available for payment of support.

b. Other Non-Reported Income

A party may have other income available for the payment of child support that is not reported on their Form 1040, including Workers' Compensation benefits, Social Security Disability Income (depending on filing status and household income), State Disability Insurance, VA Disability Income, Basic Allowance for Housing (Military) and Basic Allowance for Sustenance (Military).

c. Net Profit or Loss

Line 9 of Form 1040 reports total income, including the Schedule 1 income reported on line 8. Schedule 1 income includes self-employment income, partnership or S corporation income, unemployment compensation, rental income, and capital gains, including any additional income from Schedule 1. Schedule 1, line 9 reports the total amount of additional income that is not from W-2, retirement, interest, dividend, or capital gain. Note, line 3 reflects business income or loss, but the amount shown as net business income or loss is often not the amount of income available for support. The attached Schedule C contains a more detailed explanation of the gross receipts and expenditures for the business and requires analysis. (*See subsection E below.*)

D. SCHEDULE A – ITEMIZED DEDUCTIONS

Schedule A is used to report itemized deductions. Taxpayers generally take the larger of their itemized deductions or the standard deduction to reduce federal tax liability. The Tax Cuts and Jobs Act (TCJA), which

remains in effect through 2025, has impacted a number of factors that parties consider when determining to take the standard deduction or to itemize their deductions. Itemized deductions include medical and dental expenses, amounts paid for state and local income or sales taxes and real estate taxes (up to \$10,000/year), mortgage interest, and gifts to charity. Effective January 1, 2022, taxpayers can no longer claim qualified mortgage insurance premiums, and taxpayers must itemize their deductions if they wish to claim charitable contributions. Additionally, the standard mileage rate allowed for operating expenses for a car has changed throughout 2022.

1. Analysis

Add the actual cash outflow as stated in the Schedule A deductions and compare it to the party's I&E.

- a.** Does the actual outflow exceed the stated monthly income?
- b.** Is there enough income left for non-tax items such as food, transportation, clothing, etc.?

E. SCHEDULE B – INTEREST AND ORDINARY DIVIDENDS

Interest and dividends are included in the definition of income. (**FC § 4058(a)(1)**). Interest income may be based on a reasonable rate of return on an investment. (*IRMO Scheppers* (2001) 86 Cal.App.4th 646; *IRMO Williams* (2007) 150 Cal.App.4th 1221). Dividends are distributions of property by a corporation to its shareholders. Tax returns showing significant interest and ordinary dividend income may be indicative of an obligor voluntarily diverting income and financial resources to capital assets at the expense of child support.

F. SCHEDULE C – BUSINESS INCOME AND EXPENSES

Schedule C (Profit or Loss from Business) is used to report income or loss from a business or a profession. An activity qualifies as a business if the primary purpose for

engaging in the activity is for income or profit and if the owner is involved in the activity with continuity and regularity. It does not include hobbies. See <https://www.irs.gov/pub/irs-pdf/f1040sc.pdf>

 **NOTE:** The I&E requires that a self-employed party attach either a profit and loss statement for the preceding 2 years, or the Schedule C from the party's last federal income tax return. A profit and loss statement should be analyzed with the same methodology as the Schedule C. Profit and loss statements are frequently prepared specifically for the child support litigation and have nominal value.

1. General Assessment

Begin by looking at several context clues to assess an obligor's business.

- a. What industry or primary business activity is this business related to?
- b. What type of accounting does this business use? (Cash vs. Accrual accounting)
- c. What level of investment or expenses is the obligor putting into this business?
- d. Are there opportunities for personal expenses or assets to be comingled with the reported assets and expenses of the business?

2. Income Available for Child Support

Many business owners structure their income and expenses to minimize the reporting of net profit, using proper IRS and accounting methods, thereby reducing the amount of taxable income.

An obligor may not structure their business income and expenses in such a way that would seek to minimize child support obligations. (*IRMO Chakko* (2004) 115 Cal.App.4th 104).

While tax laws and accounting principles allow for the use of depreciation to reduce a person's taxable obligation, the statutes and principles governing child support are more stringent, and only permit deductions that are:

- Ordinary, necessary, and required;

- Directly associated with the day-to-day operation of the business;
- Are actual cash expenditures and not paper losses;
- Actually, reduce the amount of income available for support.

(FC § 4058(a)(2); *Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407, 1425; *IRMO Hein* (2020) 52 Cal.App.5th 519.)

3. Part I – Income

For purposes of support calculations, income derived from a business as reported on a Schedule C is determined by adding the amount of gross receipts reduced by the expenditures required for the operation of the business. (FC § 4058(a)(2)).

The Cost of Goods Sold (“COGS”) is calculated in Part III of Schedule C and is an indication of the minimum necessary costs to produce or acquire the product that a business uses to generate income. This mandatory cost is deducted in Part I of Schedule C before Business Expenses are deducted in Part II.

4. Part II - Expenses

IRS rules require a business expense to be both ordinary and necessary. “Ordinary” is defined as an expense that is common and accepted in the industry. “Necessary” is defined as one that is helpful and appropriate for the trade or business. The expense need not be indispensable to be considered necessary under IRS rules. (See IRS Publication 535 Business Expenses.) For child support purposes, however, expenses must be “required” for the operation of the business.” (FC § 4058(a)(2)). In the face of an ambiguity as to whether disputed sums represent income available for support, or reasonable business expenses, the trial courts have discretion. (*IRMO Blazer* (2009) 176 Cal.App.4th 1438).

Case law further highlights the need to construe business expense deductions narrowly and specifically as part of an effort to support public policy to ensure the payment of adequate child support. (*Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407, 1425; *Stewart v. Gomez* (1996) 47 Cal.App.4th 1748, 1755; *IRMO Rodriguez* (2018) 23 Cal.App.5th 625.)

a. Critical Thinking: A Profitable Business

In reviewing expenses, the LCSA should review Part II with a focus on how each expenditure benefits the business in its overall goal to be a profitable venture. For example, if the business has significant expenses for vehicles, travel, and meals, but is not involved in an industry that requires significant expenses in these categories to produce their good or service, these expenses may require in-depth review.

b. Adding Back

When reviewing a Schedule C to determine income available for child support, add back any expenses that are not “reasonable and necessary” for the operation of the business, and add back any expenses that result in the reduction of the party’s living expenses or are for personal use. Note that self-employment income may also include self-employment benefits, including any reduction in living expenses. (FC § 4058(a)(3); see Section IV – Support E.7).

When analyzing, ask the following:

- 1) Is the same expense deducted on multiple lines, “double-dipping”?
- 2) Is the expense reasonable and necessary?
- 3) Are the amounts accurate or inflated?
- 4) Are personal expenses being deducted: car and truck, insurance, legal fees, travel, meals and entertainment, and utilities?
- 5) Is the depreciation an actual reduction of

cash to the business or a paper loss?

c. Depreciation

Although depreciation expenses may be deducted from income for tax and accounting purposes, the same is not necessarily true when income is being used to determine child or spousal support obligations.

The following question should be asked: Can the business be conducted without a deduction for depreciation? (*Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407).

If the depreciation is related to real property, that depreciation is classified as a “paper loss” and is irrelevant for child support purposes and should be reviewed to add back to the total income available for support. If the depreciation is related to personal business property, such as business tools or equipment, a court may consider the depreciation of those assets as appropriate.

Whether depreciation is a reasonable business expense is for the trial court to decide. (See *IRMO Blazer* (2009) 176 Cal.App.4th 1438).

As tax and accounting principles evolve, so does the case law governing depreciation and calculation of child support. *IRMO Hein* (2020) 52 Cal.App.5th 519 discusses the impact of a business decision to use Section 179 of the IRC to take the full depreciation value of an asset in the same year that they acquire the business equipment. This, in turn, significantly reduces the amount of business income they report for taxes. This has been classified as a paper expense that does not reflect an actual expenditure that impacts the income available for support.

1) Rental Property/Motor Vehicles

Deprecation of rental property and motor vehicles are not deductible expenses from a parent's income for the calculation of

child support. (*Asfaw v. Woldberhan*, 147 Cal.App.4th 1407; *IRMO Rodriguez* (2018) 23 Cal.App.5th 625). (Also see *IRMO Hein* (2020) 52 Cal.App.5th 519 where the 5th District Court of Appeal extended its holding in *IRMO Rodriguez* (2018) 23 Cal.App.5th 625, 635 [vehicle depreciation is not an automatically allowable expense deduction to a parent's self-employment income for purposes of calculating child support] to include depreciation deductions for equipment and other assets used in a self-employed parent's business. The court explained that the "term 'expenditure' describes an actual outlay of cash. Claiming a depreciation deduction on an income tax return does not require an outlay of cash and, thus, does not reduce the funds available for child support".)

d. The Home Office

The IRS provides basic requirements to qualify for the home office deduction and two commonly seen categories are:: 1) Exclusive and regular use of the space as the principal place of business; or 2) Exclusive and regular space where the business meets or deals with clients in the normal course of business. (See IRS Publication 587)

Questions to ask:

- 1) What is the relative importance of the activities performed at the home in relation to any other place where business is conducted?
- 2) Does the party claim a mortgage interest in addition to a deduction for home office space?
- 3) Is the portion of the home used exclusively for business?
- 4) Is the business deducting personal expenses:

utilities, telephone?

- 5) Is the home office space claiming depreciation?
- 6) Can the business be conducted without the use of the home office space?

e. Timing of Expense

A business owner may elect to deduct the cost of certain assets on their income tax return as an expense, rather than requiring the cost of the asset to be capitalized and depreciated (Schedule C, Line 13; **26 USC § 179**). This asset is generally limited to tangible, depreciable, personal property which is acquired by purchase for use in the active conduct of a trade or business. Question to ask: Was the asset expensed actually paid for in the year claimed, or was it financed over time (e.g., on business line of credit or credit card)?

f. Interest on Debt

Analyze Schedule C, Part II, line 16b as follows:

- 1) What business purchases are associated with the interest deducted?
- 2) Did the business deduct the entire price of the claimed item in the tax year, but actually pay on it over time through a business line of credit or credit card?
- 3) Did the business “expense” the entire asset in one tax year under Section 179 and then depreciate it in a following tax year?

5. Part III – Costs of Goods Sold

Costs of Goods Sold (COGS) are essentially anything that ultimately becomes part of products that are sold or distributed to customers. Money spent on raw materials, packaging, and shipping are COGS. Because COGS can easily be manipulated, it is best to verify that they are ordinary and necessary to the trade or business, they are not for personal use, and the costs are not inflated. Be aware of possible

"double-dipping."

a. Inventory

To calculate COGS, the owner will need the dollar value of inventory at the beginning and end of the year.

b. Analysis

- 1) Is the business purchasing a lot of items but claiming a non-profitable business year?
- 2) Did the business sell everything it purchased?
- 3) Where is the profit from the mark-up on goods purchased and sold?
- 4) Is the cost of labor (line 37) included as commissions and fees on Line 10 or as wages on Line 26?
- 5) If labor costs incurred by the business exceed \$600, did the business owner file the required Miscellaneous 1099?
- 6) Are the wages paid to employees higher than the business owner's income?
- 7) Are there relatives or other people in a non-business relationship with the owner on the payroll?

6. Part IV – Business Use of a Vehicle

If a vehicle is used for business, the amount of use for business must be listed to determine the division of expenses for business and personal purposes. A business can either claim actual expenses, which includes parking fees and tolls, interest on a vehicle loan, vehicle registration fees, personal property tax on a vehicle, lease and rental expenses, insurance, fuel and gasoline, repairs, oil changes, tires, routine maintenance, and depreciation, (but not commuting expense,) or it can claim the standard mileage rate, which amount varies yearly. As of January 01, 2023 the rate has increased to 65.5 cents per mile. See <https://www.irs.gov/pub/irs-pdf/p463.pdf>

a. Analysis

Analyze whether the vehicle expense should be added back, just as you would with other business expenses. Questions to ask:

- 1) Is the expense reasonable and necessary?
- 2) Are the amounts accurate or inflated?
- 3) Are personal expenses also being deducted?
- 4) Is the vehicle being depreciated?
- 5) Are commuting miles being deducted?

7. Net Profit

Review the net profit as a percentage of gross receipts to determine whether the net profit is reasonable. Where cases warrant, look to industry standards for rate of return and gross profit margin. *See* <https://www.bls.gov>

8. Business Records

The IRS does not require special record-keeping, but they do require that a business be able to identify sources of income and prove deductible expenses reported on their tax return. Records of employment taxes must be kept for at least 4 years. Therefore, if necessary, request documentation to substantiate the income and expenses claimed in Schedule C.

9. Earning Capacity

Look at obligor's earning history in relationship to the earnings reported through the business. If a self-employed individual is earning less than what he/she earned as a W-2 employee in the same industry, you may want to request imputation of income. (*See* Section IV - Support). Statistics regarding "reasonable compensation" may be found at <https://www.bls.gov> and <https://www.salary.com>. For information specific to California, go to <https://labormarketinfo.edd.ca.gov>

G. SCHEDULE D – CAPITAL GAINS AND LOSSES

The Schedule D form is used to report capital gains and losses that result from the sale or trade of certain property during the year. Capital assets include all personal property and investment assets. When a capital asset that was held for personal use is sold at a gain, any money gained must be reported and is considered as income for purposes of calculating support. However, any increase in the value of marketable, but unliquidated assets, is not considered income for purposes of calculating child support. (*IRMO Pearlstein* (2006) 137 Cal.App.4th 1361).

1. Form 8949

Form 8949 (Sales and Other Dispositions of Capital Assets) is an itemization of every transaction that occurred during the tax year. The total aggregate is entered on Schedule D. Analyze Form 8949 to ensure the transactions reported qualify as capital gains and losses or whether income has accrued that should be considered in child support calculations. See IRS Publication 550 (Investment Income and Expenses at <https://www.irs.gov/pub/irs-pdf/p550.pdf>). When analyzing capital gains and losses, use a cost-basis analysis (the cost of the asset when purchased compared with the sales price when sold).

2. Sale of a Business

Cash received from the sale of a business is a capital asset. If the cash is not reinvested as capital but used for living expenses, the court has discretion to assign a reasonable rate of return on the amount received. (*IRMO Destein* (2001) 91 Cal.App.4th 1385). If the obligor sells the business and reinvests in another income-producing asset, the money from the sale is not income for calculating child support, but the replacement of one capital asset with another.

3. Increased Equity in Home

The reasonable rate of return analysis does not extend to increased equity in a party's home. (*IRMO Henry* (2005) 126 Cal.App.4th 111).

4. Deferring Compensation

If an obligor voluntarily defers compensation to invest in his or her business at the expense of his support obligation, the deferred income should be used in calculating support. (*IRMO Berger* (2009) 170 Cal.App.4th 1070).

5. Selling a Profitable Business

A court may impute income to an obligor who chooses to sell a company at a large profit and invest in new companies which would predictably operate at a loss for the near term. (*IRMO Sorge* (2012) 202 Cal.App.4th 626).

H. SCHEDULE E – SUPPLEMENTAL INCOME AND LOSS

Rental income is any payment received for the use or occupation of property. Taxable rental income includes the gross income received as rent, minus the expenses of renting the property. For child support purposes, analyze rental income as you would business income. Add back any expenses that are not reasonable or are for the obligor's personal benefit.

1. Analysis

Is the net effect of the rental to show current losses (or minimal gains), while at the same time the owner/defendant of the property is increasing his/her equity so that after the child emancipates, the owner/defendant will own a valuable piece of property without encumbrance?

2. Adding Back

Add back any expenses that are not reasonable or that are for the obligor's personal benefit.

- a.** Is the property a true rental, or only portrayed that way for tax purposes?
- b.** Are the expenses reasonable and necessary?
- c.** Are the repairs legitimate, or are they improvements to enhance the equity and value of the property?

- d.** Were the repairs and/or maintenance actually done on the rental property, or on the owner's residence?
- e.** Are there personal expenses mingled-in with rental property expenses?
- f.** Is there excessive auto mileage claimed?
- g.** Is the rent charged fair market value?
(Sometimes the obligor will rent at a reduced rate to a relative or a friend).

3. Depreciation

Depreciation of rental property is not allowed and should be added back as income. (*Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407). Consider adding the rental property depreciation claimed back in as non-taxable gross income. If the rental property depreciation is input as taxable gross income, it has the effect of giving a tax benefit to the obligor for an otherwise fictional paper loss and thus minimizing the actual income available for child support.

4. Reasonable Rate of Return

The court has the discretion to impute a reasonable rate of return to the investment property even if it is non-income producing. (*IRMO Destein* (2001) 91 Cal.App.4th 1385). However, it may be an abuse of discretion to impute a rate of return on home equity absent a showing of special circumstances rendering the guideline amount unjust or inappropriate. (*IRMO Williams* (2007) 150 Cal.App.4th 1221).

5. Primary Residence

Untapped equity in a primary residence is generally not income for support purposes. (*IRMO Henry* (2005) 126 Cal.App.4th 111).

6. "Special Circumstances"

The court may find special circumstances to deviate upward from the guideline support calculation pursuant to **FC § 4057(b)(5)(C)** if an obligor has extensive property holdings that do not produce income. (*IRMO de Guigne* (2002) 97 Cal.App.4th

1353).

I. SCHEDULE F – PROFIT OR LOSS FROM FARMING

Analyzing a Schedule F parallels the analysis of the Schedule C.

1. Depreciation

Depreciating farm assets is common and generally necessary to promote the continuity of the business. While California has no specific case law addressing whether to include or exclude depreciation expenses for farm equipment, other jurisdictions have allowed its inclusion depending upon the circumstances presented, with the trial court having the ultimate say. Use the same depreciation analysis as set forth above when analyzing Schedule F depreciation.

J. BUSINESS ENTITY TAX RETURNS

If a business elects to operate in a more complex manner, the LCSA may encounter a legal structure that serves to distinguish the owner from the business. Each business entity has its own rules for reporting income and utilizes different tax forms.

Common business structures are Partnerships, Limited Liability Companies, and Corporations. Therefore, the initial task of the LCSA attorney is to determine what type of business entity they are encountering and what associated documents they need to seek to obtain the necessary financial information to determine income available for support.

1. Compensation

Each business entity must report the amount of net earnings generated by the business, as well as the way the earnings are attributed to the members of the business. Depending on the business structure, a business member may receive income from the business through profit-sharing, wages, benefits, or a combination of methods.

2. Forms and Schedules

The type of tax return filed for a business depends on the type of business entity:

- Form 1065 – U.S. Return of Partnership Income
A Partner's Share of Income, Deductions, and Credits is reported on Form 1065, Schedule K 1. This amount will also appear on Schedule E of Form 1040.
- Form 1120 – U.S. Corporation Income Tax Return
Corporate earnings are typically reported as dividends on Form 1099-DIV.
- Form 1120-S – U.S. Income Tax Return for an S Corporation

An S- Corporation involves passthrough taxation, and the Shareholders of the corporation's Share of Income, Deductions, and Credits is reported on Form 1120-S K-1. This amount will also appear on Schedule E of Form 1040.

K. THE CORPORATION AND FORM 1120

A corporation is a legal and tax entity by itself, which must file a corporate tax return (Form 1120) and pay taxes at the corporate level. The corporation serves to limit the liability of the owner or owners to the amount of their investment in the corporation.

Small business owners will incorporate to protect personal assets. In these cases, a corporate return can be analyzed similar to a Schedule C under an “alter ego” theory. Questions to ask:

- Do the corporation and the party comingle funds and other assets?
- Does the party treat the corporation as his/her own, paying personal debts with corporate funds?
- Who controls distributions?
- Are there monetary reserves that have not been distributed that should be considered as income?
- Does the corporation issue stock?
- Does the corporation maintain corporate records?
- Are there corporate officers? Who are they?
- Is the location of the corporation the same as the party's personal residence?

- Is the corporation adequately capitalized?

1. Personal Income

Income distributed to the officers, owners, and/or shareholders of a corporation is also taxed and is considered personal income. It is listed on Form 1120 as "Compensation of Officers." You will need to know how many owners/shareholders are involved in the corporation to determine personal income.

2. Analysis

- a. Compare the Form 1120 corporate tax returns and schedules to the party's personal tax returns.
- b. Ascertain who controls distributions and whether the corporation maintains monetary reserves that have not been distributed and if so, that should be considered as income.
- c. Consider requesting articles of incorporation, corporate bylaws, corporate records, financial statements, and bank records.

3. Discovery of Corporate Returns

Corporate tax returns regarding a shareholder spouse are properly discoverable. However, any information regarding the private financial affairs of non-parties must be carefully balanced before ordering disclosure. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704).

L. THE S CORPORATION: FORM 1120 S AND PASS-THROUGH TAXATION

An "S" Corporation is a form of corporation that meets specific IRS requirements. It gives a corporation with 100 shareholders or less the benefit of incorporation while being taxed as a partnership. Income is passed directly to shareholders to avoid double taxation. An "S" Corporation files an informational return reporting its gross income (or loss) and deductions, its shareholders, and the shareholders' pro rata shares of each item (IRS Form 1120S U.S. Income Tax Return for an S Corporation). (26 USC § 1361 et seq. and R&T § 23800 et seq.).

1. Section 1: Income

Similar to the Schedule C for a self-employed individual, the gross profit of the business is determined by taking the gross receipts of the business, subtracting the Cost of Goods Sold (if any) and assessing any additional income or loss of the business.

2. Section 2: Deductions

Here, the LCSA attorney may find valuable information regarding a person's compensation, as an S corporation must pay their corporate officers a reasonable rate of pay, listed on line 7, and if the S corporation has any employees, those salaries and wages will be listed on line 8. A corporate officer can also be an employee, so these earnings need to be compared with the party's personal tax return.

This section also provides an opportunity to scrutinize for comingling of corporate and personal expenses, especially in the "other deductions" listed on line 19. Given that S corporations are a passthrough entity, the typical S corporation will attempt to maximize the advantages of this business entity by using their deductions to reduce their income, resulting in ordinary business income (or loss) on line 21 that is significantly less than the total income initially reported on line 6.

The IRS allows for significant business deductions related to meals, travel, and non-essential business expenses, therefore, the statement related to line 19 can be scrutinized for deductions to "add back" to the overall income available for support.

The tax benefits of a lower reported taxable income on a shareholder's Schedule K-1 may also be a factor that is persuasive in determining the amount of income available for support.

3. Schedule K-1 and Ordinary Business Income

When analyzing a Schedule K-1 for Form 1120-S:

- Determine the percentage of the business that the shareholder owns on line G.

- Review the Ordinary Business Income (or loss) on line 1 to ensure that the percentage of the business income matches the percentage of the profits owed to the shareholder.
 - o Especially in cases where little income or a loss is reported, review and assess the business expenses and deductions for paper losses or expenditures that may not be essential or excessive for the business.
- Review for any Section 179 deductions that are flowing to the shareholder's personal tax return on line 11. Are these purchases that qualify for Section 179 deductions wholly business expenses? Analyze for equipment, furniture, computers off-the-shelf software, or vehicles that may provide personal benefit.

M. THE LIMITED LIABILITY COMPANY: IS IT A PARTNERSHIP OR A CORPORATION?

A limited liability company (LLC) is a business structure where the members of the company cannot be held personally liable for the company's debts or liability. LLC's are essentially hybrid entities that combine the characteristics of a corporation and a partnership or sole proprietorship. Like partnerships, the LLC itself is not a separate taxable entity. LLC owners report business profits or losses on their personal income tax returns; the business itself does not pay tax on this money. LLCs may file the same informational tax return with the IRS as partnerships (Form 1065) and distribute the same schedules (Schedule K-1, which lists each owner's share of income). Alternatively, LLC owners can elect to have their LLC taxed like a corporation. Depending on how the LLC is taxed, review the section on the partnerships or corporations above.

N. QUALIFIED BUSINESS INCOME DEDUCTION

Effective January 1, 2018, the TCJA has introduced a new tax deduction applicable to income earned from sole

proprietorships (self-employment income), partnerships, S corporations, and some trusts and estates (**26 USC § 199A**). The Qualified Business Income (QBI) deduction allows eligible taxpayers to deduct up to 20 percent of their QBI. In most cases, QBI is the net proceeds from the operation of a business or Schedule K-1 income distributed by a pass-through entity. QBI does not include income that is not directly connected to the operation of the business (e.g. investment income such as capital gains or losses or dividends, and interest income not properly allocable to a trade or business) and W-2 income paid by the business.

The QBI deduction is also available against rental income if the rental activity is operated in the form of a business with sufficient regularity and investment of time and effort. A safe harbor is available to individuals and owners of passthrough entities who seek to claim the QBI deduction with respect to a rental real estate business *see IRS Notice 2019-07 at <https://www.irs.gov/pub/irs-drop/n-19-07.pdf>.* The IRS issued Rev. Proc. 2019-38 on September 24, 2019, finalizing the limited safe harbor initially documented in IRS Notice 2019-07. *See <https://www.irs.gov/pub/irs-drop/rp-19-38.pdf>.*

The QBI deduction is claimed against personal taxable income in addition to the standard deduction or itemized deduction claimed by the taxpayer. Thus, it provides a significant amount of additional tax deduction reducing the tax liability and increasing net disposable income available for support. You can determine the amount of the QBI deduction claimed from line 13 of IRS Form 1040 or calculate the amount of the deduction based on the business type, business income, taxable income, W-2 wages paid by the business, unadjusted basis of qualified property and whether the business is a qualified or specified business. *See the QBI deduction calculator at <https://childsupport.ca.gov/calculate-child-support/> when IRS Form 1040 is not available to determine the*

amount of the deduction. Once determined, the deduction needs to be entered in the guideline support calculation in the specific field provided.

O. SCHEDULE K – PARTNERSHIP TAX RETURNS

A partnership files a Schedule K-1 (IRS Form 1065) to report each partner's share of the partnership income or loss, deductions, and credits for the tax year. Each partner is also required to file their own personal tax return, which should reflect the net income derived from the partnership.

1. Discovery

Request the partnership's tax returns, along with the party's individual tax return to help ascertain available income for child support.

2. Cash Distributions

Many partnerships maintain cash reserves without distributing income to partners to capitalize on the partnership. If cash distributions are made to the individual partners, those distributions may not be reflected as income on a party's personal tax returns, (unless the distribution is in excess of a previously defined basis,) but the distribution will show on line 19 of the Schedule K-1.

3. Analysis

- a.** Compare how much income the partner reports he/she received to the amount he/she could have received.
- b.** Consider whether the partner's share of monetary reserves, or other holdings not distributed to the partner, should be deemed as income for child support calculations.
- c.** Obtain the partnership agreement and terms, related business records, as well as financial documentation (especially bank records concerning the partnership).
- d.** Attempt to ascertain what arrangements

exist and/or who controls distributions to the partners such as “draws,” bonuses, loans or other compensation.

e. If the child support obligor controls the distributions, consider applying the **Berger** and **Sorge, supra**, line of reasoning in arguing for the inclusion of income that is being voluntarily deferred.

4. Privacy Rights of Partners

Where the confidentiality and financial privacy rights of third-party partners are at issue, the court may be required to balance the privacy rights of the third-parties with the need for disclosure of the financial information (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704), so provide the court with less intrusive alternatives to disclosure (e.g., records under seal and disclosed only to parties, counsel, and experts; records redacted to exclude irrelevant information, etc.) (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481; *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566).

XVII. EVIDENCE AND OBJECTIONS

A. EVIDENCE

1. Formal Proceedings

While some informality and flexibility have been allowed in family law proceedings, the same rules of evidence apply as in other civil actions. (**FC § 210**; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337).

2. Testimony

Courts must receive “any live, competent testimony.” (**FC § 217**; *IRMO Shimkus* (2016) 244 Cal.App.4th 1262) This live testimony requirement not only applies to contested trials but also includes hearings on any order to show cause or notice of motion brought pursuant to the Family Code. (**FC § 217(a)**); *but see* 3(b) below.

If the LCSA attorney seeks to compel attendance of a party to a hearing or trial and additional information is required from the party that has not been gathered pre-motion, consider issuing the Notice to Appear and Produce. If served at least 20 days before the required attendance and production, the Notice has the same effect as a subpoena and the same consequences for noncompliance as a subpoena. See CCP 1987 regarding issuance and effect of a notice to appear in lieu of a subpoena. See CCP 1991 for consequences for disobedience to a subpoena. It may be appropriate to file a motion to compel the production before seeking a contempt finding.

 **NOTE:** CSE does not save a viewable copy of the Notice to Appear and Produce when generated. If you wish to keep a copy for reference or potential later use, you will need to upload an image of the Notice when you issue it.

3. Exceptions to Live Testimony Requirement

a. Stipulation of the parties; and

b. “In appropriate cases, a court may make a finding of good cause to refuse to receive live

testimony and shall state its reasons for the finding on the record or in writing.” (**FC § 217(b)**; **Chalmers v. Hirschkop** (2013) 213 Cal.App.4th 289, 313 [trial court decision not to hear live testimony from 10-year-old child upheld]). **CRC 5.113(b)** lists the following good cause factors:

- 1)** Whether a substantive matter is at issue;
- 2)** Whether material facts are in controversy;
- 3)** Whether live testimony is necessary to assess credibility of the parties or other witnesses;
- 4)** The parties’ right to question anyone submitting reports or other information to the court;
- 5)** Whether the parties have filed and served a non-party witness list in compliance with **FC § 217(c)**; and
- 6)** Any other factor that is just and equitable.

JUDICIAL NOTICE: Certain facts may meet the criteria for the court to take judicial notice without requiring testimony or other evidence to prove the fact. Judicial notice is only available under the law when certain requirements are met. There are two basic forms of judicial notice - mandatory and permissive. Mandatory judicial notice is identified in the Evidence Code (**EC § 451**). Permissive judicial notice is discussed in **EC § 452**. The process for requesting judicial notice under **EC § 452** is set forth in **EC § 453**. There is a notice component to making such a request and the non-requesting party is to be afforded the opportunity to respond as set forth in **EC § 455**.

4. Declarations

Pursuant to **CCP § 2015.5**, written declarations, whether executed inside or outside California, must be made under penalty of perjury. If executed outside California, the declaration must state: “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and

correct." (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 618).

A party may attempt to offer a declaration in place of live testimony from a third party. Declarations are typically permitted in law and motion proceedings under Code of Civil Procedure section 2009. At trial, however, a declaration is generally not admissible as evidence due to the hearsay rule. An LCSA attorney should be prepared to elicit live testimony from a case manager or other custodian of records if there is a need to introduce a record from the agency.

 **NOTE:** Even if declarations are properly signed under penalty of perjury, they may be inadmissible on other grounds. (FC § 217; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 [Local rule requiring a trial court to receive written declarations in evidence in lieu of direct testimony was invalid because it conflicted with the hearsay rule]).

EXHIBITS: Some courts may require service and filing (or lodging) of exhibits in advance of a trial. See your local rules concerning such requirements. Deadlines for the exchange of exhibits may also be set during the trial setting hearing. It is a good idea to meet and confer with opposing counsel to determine if there are any agreements concerning the admissibility of proposed exhibits. This would save time during the contested hearing. If no prior exchange of exhibits is required by your court, be prepared to have enough copies of exhibits for all parties or their counsel and for the court. It may be appropriate to provide an extra copy to the court for note-taking. If there is no agreement concerning the admissibility of the exhibits, be prepared to obtain testimony concerning the authenticity and content of the exhibits from a witness who can show a basis for their knowledge of the document.

5. Non-Party Witness List

Prior to the hearing, parties who seek to introduce live testimony from non-party witnesses must file and serve a witness list with a brief description of the anticipated testimony. (**FC § 217(c)**). If the non-party witness list is not served before the hearing, the court may, on request, grant a brief continuance, and make appropriate temporary orders pending the continued hearing.

☞ **NOTE:** Witnesses may still be allowed to testify even if no witness list has been served, however the court may require an offer of proof before it allows any nonparty witness to testify. (**CRC 5.113(e)**).

☛ **PRACTICE POINT:** Considering the live testimony requirements of **FC § 217** and *Elkins*, LCSA attorneys may need to issue subpoenas for non-party witnesses to get their live testimony before the court. For example, a custodial party that is a guardian and not named as a party to the action. The process to do this is a subpoena. (**CCP § 1985**). An attorney of record can sign and issue a subpoena. To compel a witness to attend trial they must be a resident of California at the time of service and have been personally served. (**CCP § 1985, 1987, 1989**). It is timely served if it's served in enough time to allow the witness a reasonable time for preparation and travel to the place of attendance, otherwise there is not a specific amount of days' notice required. (**CCP § 1987(a)**).

☛ **PRACTICE POINT:** Consider whether to request exclusion of non-party witnesses from the hearing until they are called to testify, to avoid prejudice to any party that may be caused by the witness overhearing other testimony and conforming their own testimony to what is heard. (**EC § 777**).

6. Offers of Proof

While unsworn statements made by an attorney are not evidence (*County of Alameda v. Moore* (1995) 33 Cal.App.4th 1422, 1426), an attorney may make an offer of proof.

An offer of proof is a statement by counsel describing proposed evidence and what counsel intends to

prove if the proposed evidence is admitted. (*Gordon v. Nissan Motor Co., Ltd.* (2009) 170 Cal.App.4th 1103, 1113).

Example: “If called to testify Child Support Specialist Jane Smith will testify that Respondent spoke with a LCSA CSS on 10/5/13. That CSS went over the current child support order in detail with him. All of this is made as an offer of proof that Respondent had knowledge of the order.”

Failure to make a sufficient offer of proof on the record could preclude you from raising the issue on appeal should the trial court exclude your proffered evidence. (EC § 354(a); *Gordon v. Nissan Motor Co., Ltd.*, *supra*, at 1113).

7. Birth Certificates

A certified copy of a birth certificate is admissible as *prima facie* evidence of facts contained therein. (H&S § 103550).

8. Genetic Test Results

Absent a timely filed written objection, genetic test results must be admitted without the need for foundational testimony. (FC § 7552.5(b)).

9. Credibility

The trial court has broad power to determine the credibility of testimony and evidence. (*IRMO Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28).

B. OBJECTIONS GENERALLY

1. Reasonable Control

It is the court’s duty to exercise reasonable control over the interrogation of witnesses, find the truth to quickly and effectively and to protect the witnesses from undue harassment or embarrassment. (EC § 765).

2. Court Discretion

The court may in its discretion exclude evidence if its

probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, or it will create substantial danger of undue prejudice or confuse the issues before the court. (**EC § 352**).

3. Objections at Trial

Generally, an objection must be made at the time the statement is made. (**EC § 353**).

4. The Hearsay Rule

One of the most frequently cited objections is hearsay. Evidence of an out of court statement made by someone other than the witness testifying, which is offered to prove the truth of the matter asserted, is considered hearsay. Hearsay evidence is inadmissible unless it falls into one of the many recognized exceptions to the hearsay rule (see Exceptions to the Hearsay Rule below). (**EC § 1200** and **EC § 1220 et seq.**).

C. LIST OF COMMON OBJECTIONS

Objections to Form	
Ambiguous or unintelligible	EC § 765(a)
Argumentative	EC § 765(a)
Asked and Answered	EC § 352; EC § 765(a)
Assumes facts not in dispute/in evidence	EC § 210; EC § 765(a)
Calls for narrative answer	EC § 352; EC § 765(a)
Calls for speculation	EC § 702; EC § 800
Compound question	EC § 765(a)
Leading	EC § 767
Harassing or badgering witness	EC § 765
Misquotes testimony	EC § 765(a)
Vague/too general	EC § 765(a)
Non-Responsive	EC § 766
Objections to Competency	
Witness cannot be understood	EC § 701(a)(1)
Witness does not understand duty to tell truth	EC § 701(a)(2)
Witness lacks personal knowledge	EC § 702(a)
Unqualified expert witness	EC § 720
Witness opinion testimony	EC § 800
Objections to Offered Evidence	
Cross-exam exceeds scope of direct	EC § 773(a)
Cumulative	EC § 765(a); EC § 352
Improper impeachment	EC § 352; EC § 785 et seq.
Improper rehabilitation	EC § 785; EC § 790; EC § 791
Inadmissible lay opinion	EC § 800; EC § 802; EC § 803
Inadmissible parole evidence	EC § 1523; CCP § 1856
Insufficient/lacks foundation	EC § 403; EC § 405
Relevance	EC § 210; EC § 350; EC § 351
Prejudice outweighs probative value	EC § 352
Settlement discussions	EC § 1152
Writing not properly authenticated	EC § 1401

Hearsay	EC § 1200
Exceptions to the Hearsay Rule	
Party Admission	EC § 1220
Adoptive admission	EC § 1221
Authorized admission	EC § 1222
Declarations against interest	EC § 1230
Inconsistent statements	EC § 1235; EC § 1294
Prior consistent statements	EC § 1236
Past recollection recorded	EC § 1237
Spontaneous statement	EC § 1240
Contemporaneous statement	EC § 1241
Statement of existing mental or physical state	EC § 1250; EC § 1251
Business records	EC § 1271
Absence of entry in business records	EC § 1272
Statement of absence of public record	EC § 1284
Official Records (aka Government Records)	EC § 1280
Vital statistics records	EC § 1281
Former Testimony	EC § 1291; EC § 1292; EC § 1293
Felony conviction	EC § 1300
Marital Spouse Testimony	EC § 907; EC § 971
Documents	
Identification	EC § 403
Authentication – writings	EC § 1400
Authentication – ancient documents	EC § 643
Relevance	EC § 210; EC § 350; EC § 351
Proof by Original (former Best Evidence Rule)	EC § 1520
Secondary Evidence Rule	EC § 1521
Hearsay	EC § 1200
Privilege – work product	CCP § 2018.030
Commercial, Scientific, and Similar Publications	EC § 1341

INDEX**A**

- ability to earn..... *See* earning capacity
abstract of judgment..... **168, 211**
Acknowledgment of Receipt..... **21**
action
 civil **21, 31, 134, 164, 274, 306**
 criminal..... **152, 163, 164, 211**
Additional Child Support..... **103**
 Discretionary **103**
 Mandatory..... **103**
address, confidentiality and release of..... **6, 8, 26**
administrative enforcement..... **223, 246, 247**
adult disabled child **72, 73, 76**
affirmative defense..... **155, 161, 165**
aid..... **3, 4, 68, 70-72, 75-76, 79-80, 93**
amended
 affidavit **158**
 plan (bankruptcy) **217**
 proposed judgment **17**
 summons and complaint **15**
answer..... **15, 16, 17, 18, 105, 107, 108, 109, 312**
 extension of time to **17**
AO 2002-03A..... **127**
arrears
 determination of..... **145, 219, 244**
 equitable credit towards **142**
 forgiveness or waiver of **144**
 interest on **141**
 laches **142**
 payment *See* payments
 Reconciliation of **245**
 statute of limitations in UIFSA cases **223**
 waiver *See* waiver
assets
 capital..... **94, 286, 295**
 community property **135**
assignments of rights..... **80, 146, 148, 201, 267**
assisted reproduction..... **30, 35, 37, 38, 50, 51-54, 60**
attorney
 bad faith actions and sanctions **9**
 -client relationship **4**
 discovery requests for LCSA records **9**
 fees..... **9, 23, 81, 188, 189, 196, 213, 215, 230, 250**
 attorney-in-fact (AIF)..... **26**
 automatic stay..... **160, 205, 209-13**

INDEX

B

bank levy.....	123 , 194, 212
bankruptcy	
applicable law (BAPCPA).....	205
claim priority	218
criminal enforcement.....	211
dischargeability of support debts and interest accrual	220
enforcement.....	209–215
interest	220
medical support enforcement	211
objection to confirmation.....	215–17
proof of claim.....	206–210 , 217
Request for Notice	208
terminology	205–6
types of.....	206–8
benefits	
derivative.....	86–88, 139, 143
disability	73 , 83 , 85 , 90 , 118 , 139 , 162 , 178 , 180 , 181
employment	80, 83
veteran's.....	<i>See</i> veteran benefits
birth certificate.....	32 , 45 , 59 , 61 , 232 , 310
bonus	82
burden of proof.....	33, 43 , 46 , 61 , 77 , 107 , 125 , 136 , 161
business income and expenses	286–94

C

CALCRIM No. 2700	163
CALCRIM No. 2981	165
California Constitution Article	136
California Parent Locator Service (PLS)	2 , 7
capital gains and losses	283 , 285 , 295
case initiation	2 , 224
Child	
care costs	103 , 141
Support Recovery Act of 1992	166
civil contempt	153–61 , 211
Claim of Exemption (COE)	124–25
coercion	79
cohabitation.....	37 , 45 , 60
comity	260
Commissioner	12–14 , 152
authority	12
objection to	13
community property assets	135
competing claims to child support funds	116
Compromise	
and Release (C&R)	187 , 191
	315

concealment	148
conception.....	36–37 , 50, 52, 54, 60
confidentiality.....	6–9 , 26, 266, 282
attorney in fact	6
domestic violence issues	8
exceptions	6–8
generally.....	6
juvenile court files	8
proof of service	6
social security number	8 , 169
welfare information.....	9
confirmation of a registered order.....	250
consolidation of actions	9
contempt	
civil	153–61 , 211
criminal.....	152
right to counsel	158
statute of limitations.....	152 , 153, 164, 165
Continuing Exclusive Jurisdiction (CEJ).....	<i>See jurisdiction</i>
controlling order	243–44
conveyance, fraudulent	135
corporations.....	302–304
creditor claim.....	198
CSS Letter 04-03	119
CSS Letters	
06-39	150 , 198
07-20	136
10-04	64
11-13	149 , 204
12-02	212
15-09.....	4 , 70, 71, 79, 80
16-05	1
custodial parent (CP)..	2 , 62, 65, 78, 80, 86, 87, 97, 114, 116, 203, 204, 215
custodian of records.....	41 , 227
custody.....	13 , 26, 63, 101, 148

D

DCL 00-79.....	136
DCL 06-32.....	136
de novo hearing.....	14 , 105
Deadbeat Parents Punishment Act	166
death of a parent, child support order survives the.....	67
declaration of paternity	11 , 18, 29, 35, 41, 56, 60
deductions.....	84 , 101, 119, 131, 183, 285–86, 299, 301
default.....	16–17 , 24, 106, 108, 219, 258, 274, 275
Department	
of Child Support Services (DCSS)	1
of Motor Vehicles (DMV).....	23 , 122
depreciation	84 , 290 , 297, 298

INDEX

derivative benefits	139
Determining Controlling Order (DCO).....	244 , 263
digital/electronic signature	3
disclaimer.....	202
discovery	9, 223, 225, 228, 280–82, 285, 300, 304
dividends.....	80, 93, 100, 118, 283, 286, 299, 303
divorce/dissolution action	8, 112, 147 , 234
DNA.....	<i>See</i> genetic testing
domestic	
partners.....	39
violence	8, 16, 65 , 151
due	
diligence	113, 194, 276
process	7, 26, 40, 106
duress	33, 60, 79 , 112

E

earning capacity	92, 95–99 , 104, 181, 294
emancipated minor.....	67
employee	
benefits	80
Retirement Income Security Act (ERISA)	127
enforcement	
bankruptcy	209–15
indian/tribal money.....	269
license suspension.....	122
lien.....	137
out-of-state support order	224, 227, 238, 246–248
passport denial.....	136
spousal support	4
writ of execution	133
Entitlements.....	273
equitable credit.....	142
equity	94, 114, 172, 174, 186, 201, 218, 295–97
escrow demand	173
estoppel.....	44, 50, 113–14, 144, 147–49
evasion of support	136
evidence.....	59, 96, 100, 162–64, 230, 236, 1–313
ex parte.....	12 , 21, 227, 232, 240

F

farming income and expenses	298
father	
alleged.....	39–42, 49
biological	37–44, 46–49
presumed	43, 48
Federal Tax Information (FTI).....	281
	317

FFCCSOA	221–22, 238, 243–45
Fifth Amendment	132 , 282
filings fees	2 , 230
Financial Institution Data Match System (FIDM)	123, 126, 135, 212
foreign judgment or order	242, 246, 250, 260
forum state	12, 224
foster care cases	68
fraud	108–9 , 112–14, 135–36
full faith and credit.....	<i>See</i> FFCCSOA

G

general appearance.....	105
genetic	
test results.....	310
testing	13, 18, 37–42, 55–61, 223, 249, 250, 310
guardian ad litem (GAL).....	19 , 38, 55, 57
guideline factors and income	4, 73–313 , 269, 273, 297
deviation from guideline	75, 77, 83
rebutting the guideline amount	76–78

H

Hague Convention, The	23, 221, 231, 232, 235, 236, 254, 261
Forms	16, 254
member states	255
hardship deduction.....	101–102
health insurance	30, 101, 240, 267, 270
hearsay	96, 311
home office deduction.....	291

I

Inability to Comply	161
Incarceration	98 , 141, 150, 152, 156, 158, 163
income	
bonus	82
child's	76
definition	286
disposable	95, 101–03 , 119–20, 215, 217, 284, 303
imputing	<i>See</i> earning capacity
net profit or loss	285
new spouse	91 , 100
non-reported	285
non-taxable	95
overtime	82
presumed	110

INDEX

reportable.....	284–85
self-employment	83–85 , 285
tribal trust money.....	269
independent action.....	5–6
advance notice requirement	5
failure to respond.....	6
independent modification action.....	6
LCSA responsibilities	5
Individual Indian Money (IIM).....	270
Individuals with Disabilities Education Act.....	69
Inheritance.....	93 , 200–03
installment judgment.....	145
intercept	130, 146 , 210
interest	27, 87, 141, 144–46 , 169–171, 292
intrastate registration	19–20
filing requirements	19
general	19
motion to vacate the registration.....	20
notice requirements	19
investment income	92
itemized deductions.....	285–86

J

JCF FL-632	3
joinder.....	13 , 20
judgment.....	16–19 , 28, 221, 233
liens, satisfaction of.....	173
Judicial Council Form (JCF)	
AT-180.....	201
DE-154.....	200
DE-172.....	198
EJ-100.....	173
EJ-185	201
FL-145.....	281
FL-150.....	280
FL-155.....	280
FL-360.....	109
FL-400.....	132
FL-401.....	132
FL-410.....	153, 158
FL-411.....	158
FL-415.....	159
FL-480.....	168
FL-510.....	16
FL-575	248
FL-592.....	254
FL-594.....	254
FL-600.....	15
FL-615.....	18

FL-616.....	17
FL-620.....	16
FL-626.....	144
FL-632.....	3
FL-645.....	5
FL-646.....	6
FL-650.....	19,20
FL-660.....	21
FL-663.....	21
FL-680.....	17, 21
FL-683.....	21
FL-684.....	17
FL-686.....	21
FL-697.....	16
FL-920.....	10
SUBP-030.....	232
SUBP-035.....	232
jurisdiction	
(CEJ), Continuing Exclusive	222-23, 238-45
juvenile court	8, 47-49 , 55, 62, 66, 69, 276
personal	11-12 , 222, 224, 228, 240-42, 249, 258, 263
subject matter	12 , 182, 222, 249, 263, 265

L

labor union	135
laches	114, 142, 170
Leave and Earnings Statement (LES)	272, 278
legal guardian entitled to support	64
liens	
interstate.....	174
personal property.....	137
workers' compensation	185-89
limited liability company (LLC)	302
Local Child Support Agency (LCSA)	1, 2-4
indispensable party	4-5
lottery	92
low-income adjustment	102

M

mediation	13
medical support	1, 2, 20, 77, 101, 103, 144 ,210, 221, 240, 265
mental incapacity	112
military	
appointment of attorney.....	275
domicile.....	99 , 274
income.....	272-74
retired pay	89, 138

INDEX

service of process on	271
Servicemembers Civil Relief Act (SCRA)..... See Servicemembers Civil Relief Act (SCRA)	
minimum contacts	12
minor parent	19, 23, 68
mistake	56, 60, 107
mistaken identity	111
modification	6, 80, 103, 141, 170, 198 , 238–43, 252–55, 269
monetary gifts.....	91
money judgment	117, 131, 145, 149, 170, 173, 201, 203
motion	
determination of arrears	219, 244
for judgment	17
modification	104 , 238
modifications.....	253
service	See service
to determine arrears	145
multiple	
orders	119, 230, 243, 245
parents	43, 61, 62, 75

N

National Medical Support Notice (NMSN)	210
Neglect	56, 106–09
new spouse income	91, 100
non-aid cases	2–5
noncustodial parent (NCP)	2
notice	
lack of or no.....	4, 5, 108–10
of Entry of Judgment by Default.....	16–17
of levy.....	133
of lien	168 , 174 , 201
of motion.....	17, 141, 306
of registration.....	247, 251, 254
of support judgment	168
Regarding Payment of Support (NRPS).....	3 , 4
to creditors.....	198, 200

O

objection	
to Commissioner	13
to genetic testing.....	41 , 310
objections	
evidentiary.....	1–313
offer of proof	309
Office of Child Support Services (OCSS)	16, 136, 158, 225, 254, 270
OMB 0970-0152	168, 175
order	

administrative order for genetic testing.....	41
administrative orders for genetic testing	42
commencement	73
confirmation of (bankruptcy)	213–17
for deposit of money or assets.....	132–33
for examination	25, 131–32, 213
for examination (OEX).....	22
out-of-state	31, 224, 227, 237–41 , 246–54
Qualified Domestic Regulations.....	<i>See</i> Qualified Domestic Relations Order (QDRO)
request for.....	17
stipulation	<i>See</i> stipulation
to Show Cause (OSC)	22
turnover	131
overpayment.....	143

P

parentage	
alleged father	49
biological father	46–49
disestablishment.....	55–59 , 110
effect of judgment in child support court.....	49
effect of VDOP.....	49
establish	42, 47
establishment.....	36 , 45
estoppel.....	44, 50
judgment	28–36 , 42–47, 49–51, 54–61
presumed father.....	48
same-sex cases	49–50
parental rights termination.....	59, 67
partnership	298–304
privacy rights of.....	305
passport denial	136 , 210
paternity	<i>See</i> parentage
payments	
application of	87–88, 145–46
arrears.....	124, 143, 219
priority of	116 , 145, 199
record of.....	229
penalty of perjury	3, 23, 229 , 259, 282, 307, 308
perjury	109
Permanent Disability	
(PD) Benefits.....	180
PERS	127, 130
personal injury	92
personal jurisdiction.....	<i>See</i> jurisdiction
pleadings	
electronic file.....	3
fees.....	2

INDEX

in multiple jurisdictions	236
initial.....	15–16
service of	15–16
power of attorney (POA).....	26–27
confidentiality.....	26
definition	26
legal requirements.....	26
Servicemembers Civil Relief Act (SCRA).....	27
unauthorized practice of law.....	27
presumption	
conclusive marital.....	36–39 , 45, 60
conflicting.....	46
genetic testing	37–41, 45, 61
hold out/taking into home	42–45 , 61
other 7611.....	45–46
rebuttable.....	25, 31, 39–42, 46 , 61
privacy rights.....	39, 305
private child support collector	140
profit and loss statement	83, 85, 287
Proof of Claim	145, 206–08, 217–19
Chapter 13.....	217–18
Chapter 7.....	218
proof of service.....	6 , 16, 21, 24, 105, 106
prorate	119
public assistance.2, 4, 14, 65, 71, 72, 75, 78, 79, 81, 97, 148, 162, 202, 262	

R

real property	94, 168 , 218, 290
reasonable rate of return.....	297
reconciliation.....	142
records	
business	294, 305, 313
financial	287
LCSA.....	6–9
public.....	7
welfare	9
registration	
defenses to	249, 251, 257
for enforcement	253, 270
intrastate	19
modification after	252–54
notice of	<i>See</i> notice
to contest IWO	248
reimbursement	58 , 69, 135, 143, 148, 170, 202, 221, 240
release	
of judgment lien	174
of lien	174
relief	
affirmative	18, 247

equitable	113
fraud, perjury, or lack of notice	108–10
inadequate grounds for	115
remarriage	147
rental income	91, 296–97
Request for Service Abroad	23
res judicata	59, 145
residence	239
responsive declaration	11, 18, 25, 237
retroactive	24, 73, 87, 141–43
reunification	47, 48, 69, 277
royalties	80, 83, 118, 283

S

S Corporation	283–285, 299, 300–03
Salary	82, 83, 118, 279, 285
Sanctions	9, 10, 212, 215
self-employment income	83
self-incrimination	132
separation-of-powers doctrine	136
service	
avoidance or evasion of	24, 73, 108, 136, 201
contempt	22, 152
custody and visitation motions	26
debtor's examination	25, 131
electronic	24, 177
improper	105, 106
incarcerated individuals	23
military members	23, 271
minors	23
motions	24–26
Order for Examination (OEX)	22
Order to Show Cause (OSC)	22
out of state or out-of-country	22
post-judgment motions	22
presumption of services on non-moving party	25
proof of	<i>See proof of service</i>
quash	105
response and replies	25
substitute	21
summons and complaint	21
time for	24, 106
Servicemembers Civil Relief Act (SCRA)	27, 99, 145, 274–79
set aside	
clerical mistakes	107
default judgment	108–11
dissolution actions	112–13
equitable grounds	113–14
inadequate grounds for relief	115

INDEX

parentage judgment.....	50, 55–59
presumed income	110–11
void judgment	108
voluntary declaration of paternity (VDP).....	29
sexual intercourse	11, 50
Social Security	
Act (SSA)	1, 85
Disability Insurance (SSDI)	85
Numbers.....	8, 169
retirement benefits	85
spousal support.....	4, 238
standard of living	74
standing	3, 38, 41, 55, 60, 153, 225
State Supplemental Program (SSP)	81
Statement of Decision.....	105
Statute of Limitations	56, 152, 153, 164, 165, 223–24
stay	
automatic	<i>See</i> automatic
enforcement.....	209–13
SCRA	27, 274–78
sterility	37
stipulation	4, 5, 13, 19, 78 , 80, 189, 306
non-welfare	79
welfare	79
subordination.....	171–73
subpoena	18, 127, 128, 281, 306, 309
Summons	
and Complaint (S&C)	3, 15–17 , 21, 23
and Petition (S&P)	16
Supplemental	
Security Income (SSI).....	81
Summons and Complaint	15
support	
adult disabled child	<i>See</i> adult disabled child
agreements notwithstanding.....	62
avoidance	137, 201
calculating	<i>See</i> guideline
child resides with a non-parent.....	65
duration of	66, 223, 253
legal duty to	62–66 , 153, 278
legal guardian entitled to	64
limitations, voluntary	63, 69
medical.....	1, 2 , 21, 77, 210, 240
surrogacy	51–55, 59

T

tax	
filing status	99
refund intercept	146, 214

returns	81, 83, 85, 280
state income.....	95
Temporary	
Disability (TD)	180
testimony	306
The U.S. Dept. of Labor	127
Timeshare	77, 100
Title IV-D	1
tribal	
applicable laws	263–64
enforcement.....	269
establishment and modification.....	268
IV-D agency	25
jurisdiction.....	261–62
trust	67, 73, 80, 94
estates.....	200–203

U

Uniform

Code of Military Justice (UCMJ).....	278
Parentage Act (UPA)	8, 45, 49, 52, 59
Reciprocal Enforcement of Support Act (URESAs)	258
Voidable Transactions Act (UVTA).....	135
Uniform Interstate Family Support Act (UIFSA)	16, 221–59
administrative enforcement.....	246
Appearance, Discovery and Evidentiary Rules.....	228–36
Choice of Law Issues.....	223–24
evidence abroad.....	230–36
LCSA Services.....	226–28
Procedural rules	224–26
simultaneous proceedings.....	236–38
union.....	<i>See</i> labor union

V

Vacate	20 , 42, 55, 57, 58, 248–50, 275
Vehicle	23, 123, 198, 204, 289, 291, 293
venue	10, 14 , 57
court appearance	15
effect of relocation of a child	15
generally.....	14
motion, change in.....	15
veteran's benefits	138–140 , 162
visitation	13, 26, 31, 32, 47, 57, 66, 78, 148
voluntary declaration of paternity (VDP)	11, 43, 46, 49, 61
effect of.....	49
rescission.....	32
set aside	32, 46, 59–60

W

- W-2 **284–87**, 294, 303
wage assignment 85, 116, 121, 124, 139, 163, 207, 209
wages 80, 99, 273
waiver of arrears 144
welfare 2, 9, 14, 64, 79, 98, 145, 148
witness 308
 declarations 307
workers' compensation 80, 118, 176
 terminology 179
writ
 habeas corpus 161
 of certiorari 161
 of execution **133**
written findings **77**, 102

TABLE OF CASES**CASES**

A.R., In re (2009)	276
Adoption of Matthew B. (1991)	105
Adoption of Michael H	49
Adoption of Michael H. (1995)	48
Allen v. Allen (1947)	275
Amber M., In re (2010).....	276
American Express Centurion Bank v. Zara (2011).....	106
Amezquita and Archuleta, IRMO (2002).....	239
Anna M. v. Jeffrey E. (2017)	92
Armstrong v. Armstrong	62, 76
Armstrong v. Armstrong (1976)	62, 76
Asfaw v. Woldberhan (2007)	84, 288, 289, 290, 291, 297
Asfaw, IRMO (2007)	290
Barron v. Superior Court (2009)	98
Bateman, In re (11th Cir. 2003)	218
Bell v. Heflin (2016)	223
Berger.....	299
Bertrand, IRMO (1995)	198
Bhatt v. State Department of Health Services (2005).....	154
Bongfeldt, In re (1971)	156
Bordelon v. Dehnert (2000).....	240
Brian C. v. Ginger K. (2000).....	37
Brianna M., In re (2013)	31
Brothers v. Kern (2007)	99, 116, 133
Bruning v. United States (1964).....	220
Burnham v. Superior Court (1990)	11
Burnham v. Superior Court of California (1990)	11
C.A. v. C. P. (2018)	28, 29, 38
Cady, In re (9th Cir. 2001).....	211
Calcaterra and Badakhsh, IRMO (2005)	85, 282, 310
Cappa v. F & K Rock and Sand, Inc. (1988).....	134
Cedars-Sinai Imaging Medical Group v. Superior Court (2000) ...	22
Century Surety Co. v. Polisso (2006).....	135
Chalmers v. Hirschkop (2013).....	307
Charisma R. v. Kristina S. (2009)	42
Chatterjee v. King (N.M. Ct. App. 2010)	52
City and County of San Francisco v. Cartagena (1995) 59, 113, 114	
City and County of San Francisco v. Stanley (1994)	59
Clevenger v. Clevenger (1961).....	44
Cobb, In re (2010, Bankr. D. Kan.)	210
Codoni v. Codoni (2002)	153
Cooper v. O'Rourke (1995)	148
County of Alameda v. Johnson (1994)	75, 78

TABLE OF CASES

County of Contra Costa v. Lemon (1988).....	92
County of Fresno v. Sanchez (2005)	59
County of Humboldt v. Harris (1988).....	11
County of Kern v. Castle (1999)	94
County of Kern v. Castle (2001)	92
County of LA v. Salas (1995)	115
County of Lake v. Palla (2001)	16
County of Los Angeles Child Support Services Dept. v. Superior Court (2015)	249
County of Los Angeles v. James (2007).....	58
County of Los Angeles v. Navarro (2004)	59
County of Los Angeles v. Ralph V. (1996)	69
County of Los Angeles v. Sheldon P. (2002).....	57
County of Los Angeles v. Smith (1999)	69
County of Orange v. Brian Jeffrey Cole (2017).....	53
County of Orange v. Carl D. (1999)	148
County of Orange v. Smith (2005)	91
County of Orange v. Superior Court (2005)	9
County of Orange v. Superior Court (Rothert) (2007)	59
County of Placer v. Andrade (1997).....	82
County of Riverside v. Michael Estabrook (2019).....	39
County of San Diego Child Support Services v. C.A. (2019).....	63
County of San Diego v. Arzaga (2007)	44
County of San Diego v. Gorham (2010)	106, 111, 114
County of San Diego v. Lamb (1998).....	68
County of San Diego v. Mason.....	40
County of San Diego v. Mason (2012)	9
County of San Diego v. Sierra (1990)	102
County of San Mateo v. Clark (2008).....	58
County of Santa Clara v. Super. Ct. (Rodriguez) (1992)	153, 158
County of Santa Clara v. Super. Ct. (Rodriguez), <i>supra</i>	158
County of Santa Clara v. Wilson (2003)	141
County of Shasta v. Smith (1995)	121
County of Shasta v. Twig Smith (1995)	208
County of Tulare v. Campbell (1996).....	91, 100
County of Ventura v. Gonzales (2001)	62, 67
County of Yolo v. Francis (1986)	98
County of Yolo v. Garcia (1993)	98
County of Yuba v. Savedra (2000)	16
Craig L. v. Sandy S. (2004).....	36, 47
Crosby and Grooms, IRMO (2004)	221, 224, 241, 252
DaSilva v. DaSilva (2004)	100
Davis v. Davis (1968)	147
Davis, In re (11th Cir. 2012).....	220
de Leon v. Jenkins (2006)	251
De Weese v. Unick (1980)	59

Devine v. Devine (1963)	161
Diaz, In re (11th Cir. 2011).....	219
Dieden v. Schmidt (2002).....	171
Dingley, In re (2014, B.A.P. 9th Cir.)	211
District of Columbia Court of Appeals v. Feldman (1983).....	219
Doersam, In re (9th Cir. 1988)	216
Donovan L., JR., In Re (2016)	28
Drake v. Superior Court (1994).....	27
Elijah V., In re (2005)	37
Elisa B. v. Superior Court (2005).....	44, 49
Elkins	309
Elkins v. Superior Court (2007)	306, 308
Elsenheimer v. Elsenheimer (2004).....	81
Eunique v. Powell (9th Cir. 2002)	136
Fagan v. Fagan (1941)	64
Fisette, In re (Bankr. D.S.C. 2011).....	217
Fleet Mortg. Group v. Kaneb (1st Cir. 1999).....	213
Florida Dept. of Revenue v. Diaz (11th Cir. 2011).....	220
Foster, In re (9th Cir. 2003)	145, 220
Freeman, IRMO (1996)	37
Frietas, IRMO (2012)	141
Gabriel P. v. Suedi D. (2006)	44
GASH Associates v. Village of Rosemont, Ill. (7th Cir. 1993).....	219
Gellington, In re (N.D.Tex.2007)	212
George P. v. Superior Court (2005).....	277, 278
Gonzalez v. Rebollo (2014).....	239
Gonzalez, In re (2012)	215
Gordon v. Nissan Motor Co., Ltd. (2009)	310
Gregory, IRMO (1991)	64, 67, 203
Grothe v. Cortlandt Corp. (1992).....	171
Gruen, IRMO (2011)	141
Gruntz, In re (2000)	160
Gruntz, In re (9th Cir. 2000).....	211
Guess v. Bernhardson (2015)	171
Haggard v. Haggard (1995).....	102
Hall, IRMO (2000)	77
Harding v. Harding (2002)	239
Haugh, IRMO (2014).....	240
Helgestad v. Vargas (2014).....	62, 143, 147
Hicks v. Feiock (1988)	153
Holdaway-Foster v. Brunell (2014)	244
Hoover-Reynolds v. Superior Court of San Diego (1996)	116
Howe v. Ellenbecker (1991).....	261
Hubner, IRMO (2001)	66, 77
Imperial Bank v. Pim Electric, Inc. (1995)	132
In IRMO Crosby and Grooms (2004).....	252

TABLE OF CASES

In re A.R. (2009)	276
In re Amber M. (2010)	276
In re Bongfeldt (1971)	156
In re Brianna M. (2013)	31
In re Bryan D. (2011)	43
In re Cheyenne B. (2012).....	43, 49
In re E.O.....	48
In re E.O. (2010)	48, 49
In re Elijah V. (2005)	37
In re Emma B. (2015).....	40
In re Gruntz (2000)	160
In re Ivey (2000)	154
In re Ivey, <i>supra</i>	155, 161
In re J.O. (2009)	44
In re Jesusa V. (2004)	46
In re Jovanni B. (2013).....	49
In re Kreitman (1995)	158, 164
In re Levi H. (2011)	31
In re M.R. (2017)	29
In re Marcus (2006)	154
In re Mary G. (2007)	32
In re McCarty (1908)	161
In re Nicholas H. (2002)	40, 44
In re Springer (2017 W.D. Ky.)	160
In re Stovall (1990, Bankr. N.D. Ga.)	160, 211
In re Zacharia D. (1993)	48, 49
International Shoe Co. v. Washington (1945).....	12
Int'l Shoe Co. v. State of Wash., <i>Office of Unemployment Comp. & Placement</i> (1945)	12
IRC § 61(a)	284
IRMO Ackerman (2006)	77
IRMO Alter (2009)	62, 91, 104
IRMO Amezquita and Archuleta (2002).....	239
IRMO Asfaw (2007)	289
IRMO Asfaw, <i>supra</i>	290
IRMO Bardzik (2008)	96
IRMO Barth (2012)	97
IRMO Berger (2009)	83, 95, 296
IRMO Bertrand (1995)	198
IRMO Blazer (2009)	84, 289, 290
I83, 95well (2014).....	149
IRMO Butler and Gill (1997)	78, 102
IRMO Buzzanca.....	52
IRMO Buzzanca (1998)	52
IRMO Calcaterra and Badakhsh (2005).....	85, 285, 310
IRMO Carlsen (1996)	102

IRMO Carlton and D'Allessandro (2001).....	99
IRMO Cecilia and David W. (2015).....	73
IRMO Chakko (2004)	84, 282, 287
IRMO Cheriton (2001)	94
IRMO Comer (1996)	149
IRMO Crosby and Grooms (2004).....	221, 224, 241
IRMO Cryer (2011)	78
IRMO D.H. and B.G. (2023)	66
IRMO Dade (1991).....	3
IRMO Daugherty (2014)	86
IRMO de Guigne (2002).....	78, 95, 298
IRMO Destein (2001).....	92, 94, 295, 297
IRMO Djulus (2017)	13
IRMO Drake (1997).....	73, 76
IRMO Drake (2015).....	73
IRMO Eggers (2005).....	96
IRMO Fellows (2006)	142
IRMO Ficke (2013)	97
IRMO Freeman	37
IRMO Freeman (1996).....	37
IRMO Gigliotti (1995)	78, 103
IRMO Gregory	67
IRMO Gregory (1991)	64, 203
IRMO Hall (2000)	77
IRMO Hall and Frencher	86
IRMO Haugh (2014).....	240
IRMO Hein (2020)	81, 84, 288, 290, 291
IRMO Heiner (2006)	92
IRMO Henry (2005)	95, 296, 297
IRMO Hinman (1997).....	97
IRMO Hopkins (2009)	125
IRMO Hubner (2001)	66, 77
IRMO Ilas (1993).....	93, 104
IRMO Knowles (2009).....	91
IRMO LaBass and Munsee (1997).....	96, 97
IRMO Lambe and Meehan (1995)	62
IRMO LaMoure (2011).....	124, 125
IRMO Laudeman (2001)	80, 104
IRMO Lim and Carrasco (2013).....	98
IRMO Loh (2001)	81, 282
IRMO Lontos (1979)	12
IRMO Lopez (1981).....	275
IRMO McCann (1994).....	62, 65
IRMO McHugh (2014).....	95, 97, 104
IRMO McQuoid (1991)	95
IRMO Mena (1989).....	5

TABLE OF CASES

IRMO Miller (1998).....	38
IRMO Mosley (2008)	82
IRMO Okum (1987)	142
IRMO Ostler and Smith (1990)	82
IRMO Padilla (1995).....	96, 104
IRMO Park (1980)	113
IRMO Paulin (1996)	97
IRMO Pearlstein	94
IRMO Pearlstein (2006)	295
<i>IRMO Pedregon</i> (2003).....	45, 114
IRMO Peet (1978).....	143
IRMO Perez (1995)	141
IRMO Perry (1997).....	67, 198
IRMO Purnell (1997).....	269
IRMO Rassier (2002).....	238
IRMO Richardson (2009)	237
IRMO Riddle (2005)	82
IRMO Rocha (1998)	93
IRMO Rodriguez (2018)	77, 289, 291
IRMO Rosenfeld and Gross (2014)	103
IRMO Rosevear (1998)	112
IRMO Rothrock (2008).....	92
IRMO Sabine and Toshio M (2007).....	144
IRMO Sabine and Toshio M. (2007).....	144
IRMO Sachs (2002).....	132, 154, 282
IRMO Scheppers (2001).....	80, 93, 286
IRMO Scheppers, <i>supra</i>	82
IRMO Schlafly (2007).....	83, 92, 103
IRMO Schopfer (2010)	63, 101
IRMO Schulze (1997)	83
IRMO Sellers (2003).....	105
IRMO Shimkus (2016).....	105, 306
IRMO Simpson (1992)	82, 95, 98
IRMO Smith (2001).....	98, 99
IRMO Smith (2015).....	92
IRMO Sorge (2012).....	94, 296
IRMO Stanton (2010).....	273
IRMO Starr (2010)	143
IRMO Stephenson	96
IRMO Stevenot	114
IRMO Stevenot (1984).....	113
IRMO Stutz (1981)	118
IRMO Tavares (2007).....	141
IRMO Thompson (1996)	145
IRMO Thorne and Racina (2012).....	112
IRMO Torres (1998)	11

IRMO Trainotti (1989)	142
IRMO Valle (1975)	114
IRMO Vroonen (2001)	149
IRMO Whealon (1997)	101
IRMO Williams (2007)	95, 286, 297
IRMO Williamson (2014)	92
IRMO Wilson (1989)	135
IRMO Wilson (2016)	65, 141, 142
IRMO Wilson and Bodine (2012)	147
IRMO Wittgrove (2004)	74
IRMO Zimmerman (2010).....	109, 114
Ivey, In re (2000)	154
J.O., In re (2009)	44
J.R. v. D.P. (2012).....	36, 46
Jackson v. Jackson (1975)	142
Jager v. County of Alameda (1992).....	4
Jason P. v. Danielle S. (2014)	53
Jesusa V., In re (2004).....	46
Johnson v. Calvert (1993)	52
Jovanni B., In re (2013)	49
K.M. v. E.G. (2005).....	50, 54
Keeler, In re (D.Md. 2002)	219
Kern County DCSS v. Camacho (2012)	14, 107
Kevin Q. v. Lauren W. (2009)	31, 44
Kilroy v. Super.Ct. (1997).....	238
Knabe v. Brister (2007).....	241
Kreitman, In re (1995)	158, 164
Kristine H. v. Lisa R. (2005)	50
Kristine M. v. David P. (2006)	59, 62
Kulshrestha v. First Union Commercial Corp. (2004).....	229, 308
L.M. v. M.G. (2012).....	44
Lambe and Meehan, IRMO (1995)	62
LaMoure, IRMO (2011).....	124, 125
Levi H., In re (2011)	31
Lezine v. Security Pacific Financial Services, Inc. (1996)	135
Librers v. Black (2005)	40
Little v. Superior Court (1968)	156
Lopez v. Watchtower Bible & Tract Society of New York, Inc. (2016).....	305
Lopez, IRMO (1981).....	275
Lundahl v. Telford (2004)	238
Lyon v. Superior Court (1968)	162
M.R., In Re (2017).....	29
M.S. v. O.S. (2009).....	81
M.Z., In Re(2016).....	28
Manson v. Black (2009)	113

TABLE OF CASES

Manson, Iver & York v. Black (2009).....	108
Marcus, In re (2006)	154
Martinez v. Vaziri (2016)	28
McCann, IRMO (1994)	62, 65
McCarty, In re (1908)	161
McGrahan, In re (1st Cir. BAP N.H. 2011).....	213
McMullen v. Haycock (2007)	131
Mejia v. Reed (2003)	135
Mendoza v. Ramos (2010).....	98
Mery v. Superior Court (1937).....	155
Mery v. Superior Court, <i>supra</i>	161
Michael H. v. Gerald D. (1989).....	40
Miller, IRMO (1998).....	38
Milliken v. Meyer (1940)	11
Montana v. United States (1981)	262
Moore v. Bedard (2013)	65
Moss v. Superior Court (1998).....	96, 161
Moss v. Superior Court, <i>supra</i>	161
Murray, In re (S.D.Ohio 2006)	213
Nevada v. Hicks (2001)	268
Nicholas H., In re (2002)	40, 44
Nwosu v. Uba (2004)	115
Oldham v. California Capital Fund, Inc. (2003)	134
Orange County DCSS v. Superior Court (2005)	9
Organized Village of Kake v. Egan (1962)	261
Padilla, IRMO (1995)	96, 104
Pavan v. Smith (2107).....	32
Penaran, In re (2010 Bankr. D. Kan.)	216
People v. Camp (1970)	164
People v. Cressey (1970)	165
People v. Dorius (1942)	164
People v. Gregori (1983).....	165
People v. Malone (1965)	27
People v. Moore (1998).....	165
People v. Mozes (2011)	116
People v. Sorensen (1968).....	165
Perry, IRMO (1997).....	67, 198
Plumas County Child Support Services v. Rodriguez (2008)	63
Pratt v. Ferguson (2016).....	94, 202
Price v. McBeath (2008)	275
Purnell, IRMO (1997)	269
R.M. v. T.A. (2015).....	43
Rappleyea v. Campbell (1994)	113, 115
Rassier, IRMO (2002).....	238
Reid v. Google Inc. (2010).....	42
Richardson, IRMO (2009)	237

Rios v. Pulido (2002)	100
Rivera v. Ramsey County (2000).....	239
Robert B. and Denise B. v. Susan B. (2003).....	52
Robert J. v. Leslie M. (1997)	59
Rodriguez, In re (11th Cir. Fla. 2010).....	215
Rojas v. Mitchell (1996).....	77
Rook, In re (1989, Bankr. E.D. Va.).....	211
Rooker v. Fidelity Trust Company (1923)	219
Rose v. Rose (1987)	88, 90, 139
S.P. v. F.G. (2016)	76
S.Y. v. S.B. (2011).....	43
Sakaguchi v. Sakaguchi (2009).....	23
Scheuerman v. Hauk (2004)	224
Schnabel v. Superior Court (1993)	300, 305
Schubert v. Superior Court (1930).....	157
Schwartz-Tallard, In re (9th Cir. 2015).....	213
Sorge, <i>supra</i>	305
Springer, In re (2017 W.D. Ky.)	160
Stanton, IRMO (2010).....	273
State ex rel. DES v. Pandola (2018).....	251
State ex rel. Freeman v. Sadlier (1998).....	244
State of Oregon v. Vargas (1999).....	98
Stephenson, IRMO (1995)	96
Steven S. v. Deborah D. (2005).....	53
Stewart v. Gomez (1996).....	83, 289
Stiles v. Wallis (1983)	115
Stovall, In re (1990, Bankr. N.D. Ga.)	160, 211
Stover v. Bruntz (2017).....	141
Strate v. A-1 Contractors (1997)	262
Swan v. Hatchett (2023)	81
Tenhet v. Boswell (1976)	171
Thomas v. Commissioner of Internal Revenue (2010)	100
Tolces v. Trask (1999)	123
Trackman v. Kenney (2010)	21, 105
Trend v. Bell (1997)	224
Turner v. Rogers et al	159
U.S. v. Pillor (2005 N.D. Ca.)	166
UIFSA (2008) § 205	239
United States v. Dann (9th Cir. 2011)	116
Ventura County DCSS v. Brown (2004)	202
Ventura v. Gonzales (2001)	62, 67
Volkswagen of America, Inc. v. Superior Court (2006)	305
W.S. v. S.T. (2018).....	43
Walley v. PMC Inv. Co. (1968)	172
Watkins v. Watkins (2001)	240
Weinstein v. Albright (2nd Cir. 2001)	136

TABLE OF CASES

Willmer v. Willmer (2006)	249, 258
Wilson v. Shea (2001).....	78, 103
Witaschek, In re (Bankr. N.D. Okla. 2002)	220
Wodicka v. Wodicka (1976).....	145
Wujcik v. Wujcik (1994).....	134
Y.H.	88
Y.H. v. M.H. (2018)	88, 143
Y.R. v. A.F. (2017)	76
Y.R. v. A.F., <i>supra</i>	77
Yolo County DCSS v. Lowery (2009).....	70
Yolo County DCSS v. Myers (2016)	106

TABLE OF STATUTES

FEDERAL

Code of Federal Regulations

22 CFR § 51.60	210
22 CFR § 51.7	210
25 CFR § 115.002	270
25 CFR § 115.601(b)(1)	270
32 CFR § 516.10	271
38 CFR § 3.450	90, 139
38 CFR § 3.450(a)(1)(ii)	90
38 CFR § 3.451	90, 139
45 CFR §1738B(f)	263
45 CFR § 303.6(c)(4)	158
45 CFR § 303.7	222
45 CFR § 303.7(a)(4)	225
45 CFR § 303.7(c)	222
45 CFR § 303.7(d)	222
45 CFR § 309 et seq	264
45 CFR § 309.90	267
45 CFR § 309.90(b)	267
45 CFR § 309.105(a)(3)	266, 267
45 CFR § 309.110	269
45 CFR § 309.120(b)	267
45 CFR § 303.6(c) (4)	158, 159

Federal Rules of Bankruptcy Procedure

FRBP 3001	218
FRBP 3001(a)	217
FRBP 3001(c)(1) and (2)	207
FRBP 3001(f)	207
FRBP 3002(a)	218
FRBP 3002(c)(1)	217
FRBP 3004	217
FRBP 3007	219
FRBP 3015(c)	213
FRBP 3015.1	213
FRBP 4004(c)	206
FRBP 5005(a)(1)	217
FRBP 9010(a)	208
FRBP 9014	219

Internal Revenue Code

IRC § 61(a)	284
IRC § 3402(r)	269

TABLE OF CASES

IRC § 3405(b)(1).....	129
IRC § 414(p)	126
IRC § 414(p)(1)(A)	126
IRC § 414(p)(8).....	127
IRC § 72(t)(2)(C).....	130

Public Law

Public Law 103-394.....	208
Public Law 113-183	221
Public Law 280.....	261

Uniform Interstate Family Support Act (UIFSA)

10 USC § 101(a)(5).....	274
10 USC § 801 et seq.....	278
10 USC § 933	290
10 USC § 1201	137
10 USC § 1202	137
10 USC § 1401	137
10 USC § 1414	138
10 USC § 3911	137
10 USC § 6323	137
10 USC § 8911	137
11 USC § 101 et seq.....	205
11 USC § 101(10)	205
11 USC § 101(13)	205
11 USC § 101(14)(A)	205
11 USC § 101(5)	217
11 USC § 109(e)	206
11 USC § 342(f).....	208
11 USC § 362	205
11 USC § 362(a).....	207, 209
11 USC § 362(b)(1).....	160, 211
11 USC § 362(b)(2)(A)	209
11 USC § 362(b)(2)(B)	209, 211, 218
11 USC § 362(b)(2)(C)	209
11 USC § 362(b)(2)(D)	210
11 USC § 362(b)(2)(E)	210
11 USC § 362(b)(2)(F)	210
11 USC § 362(b)(2)(G)	211
11 USC § 362(k)	213
11 USC § 501	208, 218
11 USC § 502	217, 218, 219
11 USC § 502(a)	207
11 USC § 502(b)(1).....	207
11 USC § 502(b)(2).....	207

11 USC § 502(j)	220
11 USC § 507(a)(1)(A)	218
11 USC § 507(a)(1)(B)	215, 216, 218
11 USC § 522(f)(1)(A)	211
11 USC § 523(a)(5)	219, 220
11 USC § 541	205, 207
11 USC § 701 et seq.....	206
11 USC § 704(c)	208
11 USC § 727	206
11 USC § 1101 et seq.....	208
11 USC § 1106(c)	208
11 USC § 1123	208
11 USC § 1129(a)(14).....	216
11 USC § 1301 et seq.....	206
11 USC § 1302(d)	208
11 USC § 1305	218
11 USC § 1306	205, 207
11 USC § 1307(c)(11)	216
11 USC § 1321	207
11 USC § 1321 et seq.....	206
11 USC § 1322	215
11 USC § 1322(a)(2).....	215
11 USC § 1322(a)(4).....	215
11 USC § 1325	215
11 USC § 1325(a)(3).....	216
11 USC § 1325(a)(6).....	216
11 USC § 1325(a)(8).....	216
11 USC § 1325(b)(1)(B)	217
11 USC § 1326	207
11 USC § 1327.....	209, 213
11 USC § 1327(a)	214, 215
11 USC § 1328	206
15 U.S.C. § 1673	119
15 U.S.C. § 1673(b)(2).....	120
17 USC § 1738B	261
17 USC § 1738B(c)	263
17 USC § 1738B(d).....	263
18 USC § 228	166
18 USC § 228(a)	166
18 USC § 228(b).....	166
25 USC § 41	269
25 USC § 410.....	269
26 USC § 179	292
26 USC § 199A	303
26 USC § 1361 et seq.....	301
26 USC § 6103	281

TABLE OF CASES

26 USC § 6323	172
26 USC § 6334(a)(8).....	118
26 USC § 7213	281
26 USC § 7213A.....	281
26 USC § 7431	281
28 USC § 1738B.....	222, 263, 265, 269
28 USC § 1738B(a).....	222
28 USC § 1738B(b).....	237
28 USC § 1738B(d).....	243
28 USC § 1738B(f).....	243
28 USC § 1738B(f)(5)	245
28 USC § 1738B(g)	243, 252
28 USC § 1738B(h).....	223, 224
28 USC § 1738B(h)(1)	252
28 USC § 1738B(h)(2)	253
28 USC § 1738B(h)(3)	223
28 USC § 1738B(i).....	252
28 USC §§ 1738B(d)-(e)	238, 269
28 USC §§ 1738B(d)-(f)	252
29 USC § 1056(d)(3).....	126
29 USC § 1056(d)(3)(B)	126
29 USC § 1056(d)(3)(c).....	129
29 USC § 1056(d)(3)(D).....	129
29 USC § 1056(d)(3)(K)	127
38 USC § 1110	138
38 USC § 1513	140
38 USC § 1521	140
38 USC § 5301(a)	140
38 USC § 5301(a)(1).....	138, 140
42 USC § 651 et seq.....	1
42 USC § 652(k)	136
42 USC § 653	8
42 USC § 653(c)	8
42 USC § 654.....	223
42 USC § 655(f).....	264
42 USC § 659(h)(1)(A)(ii)(II).....	138
42 USC § 659(h)(1)(A)(ii)(V).....	138
42 USC § 659(h)(1)(B)(iii)	138
42 U.S.C. 666 (a)(5)(C)(iv)	32
42 USC § 666(b)	248
42 USC § 666 (c)(1)(B).....	127
50 USC § 3901 et seq.....	274
50 USC § 3911(1).....	274
50 USC § 3912	274
50 USC § 3920	27
50 USC § 3931(b)(1).....	274

50 USC § 3931(b)(2).....	275
50 USC § 3931(d).....	276
50 USC § 3931(g)(2)(A)(B).....	275
50 USC § 3932	27
50 USC § 3932(b).....	276
50 USC § 3932(c)	277
50 USC § 3932(d).....	277
50 USC § 3937	27, 145
50 USC § 3937(a)	278
50 USC § 3937(b).....	278
50 USC § 3937(c)	279
50 USC § 4001	99

STATE

California Code Regulations

22 CCR § 116100	120
22 CCR § 116100(a)(1), (2).....	120

California Rules of Conduct

CRC 2.257(b).....	3
CRC 5.113(b).....	307
CRC 5.113(e).....	309
CRC 5.260	280
CRC 5.335	246
CRC 5.365	10
CRC 5.370	225
CRC 5.635	47

Civil Code

CC § 1214.....	172
CC § 1714.4.....	136
CC § 1714.41	136, 137
CC § 1798.89	169
CC § 2897.....	134
CC § 2898.....	172
CC § 3439 et seq.....	135
CC § 3439.04(a)(1).....	135
CC § 4390(a)	116
CC § 4390.3(a)	116

Code of Civil Procedure

CCP § 12.....	25
---------------	----

TABLE OF CASES

CCP § 128.5	9
CCP § 128.7	9
CCP § 372(c)(1)	19
CCP § 389(a)	4
CCP § 397	15
CCP § 410.10	11
CCP § 410.50(b)	12
CCP § 411.10	15
CCP § 413.10(b)	22
CCP § 413.10(c)	22
CCP § 415.10	21
CCP § 415.20(b)	21
CCP § 415.50	21
CCP § 416.60	23
CCP § 464	15
CCP § 472	15
CCP § 473	56, 108, 107
CCP § 473(b)	56, 107
CCP § 473(d)	107, 108
CCP § 483.013	138
CCP § 583.210(a)	24
CCP § 583.210(b)	24
CCP § 583.250	106
CCP § 664.6	18
CCP § 695.221	88, 186
CCP § 697.340(a)	169
CCP § 697.350(c)	169
CCP § 697.360(e)	173
CCP § 697.370(a)(1)	174
CCP § 697.510(b)	137
CCP § 703.010 et seq	194
CCP § 703.550	125
CCP § 704.110	127
CCP § 704.160(a)	194
CCP § 704.160(b)	178
CCP § 704.160(c)	182
CCP § 708.110	131
CCP § 708.110(d)	22, 25, 131
CCP § 708.160	131
CCP § 708.205	131
CCP § 724.110	174
CCP § 724.120	174
CCP § 724.210	173
CCP § 724.220	173
CCP § 904.1	160
CCP § 1005	21

CCP § 1005(b)	24, 25
CCP § 1010.6(a)(2)	25
CCP § 1012	21
CCP § 1013	17
CCP § 1013(a)	17, 24
CCP § 1014	105
CCP § 1209.....	122, 152, 153, 155
CCP § 1209.5	152, 153, 154, 155, 161, 163
CCP § 1211.5	15
CCP § 1211.5(b).....	158
CCP § 1218(a)	156
CCP § 1218(c)(2).....	152
CCP § 1218.5(b).....	153
CCP § 1985.....	309
CCP § 1987(a)	309
CCP § 372(a)	19
CCP § 372(c)(2)	19
CCP § 410.50(a)	11, 12, 105
CCP § 415.20	21
CCP § 415.30	21, 268
CCP § 415.40	22, 268
CCP § 416.90	23
CCP § 418.10(a)	105
CCP § 418.10(d)	105
CCP § 465	22
CCP § 473.5(a)	108
CCP § 473.5(b)	108
CCP § 491.460(c).....	192
CCP § 580(a)	16
CCP § 583.210	106
CCP § 583.240(c)	106
CCP § 632	105
CCP § 685.010	144
CCP § 689.040(a)	133
CCP § 695.221	87, 88, 145
CCP § 697.320	168
CCP § 697.320(a)	175
CCP § 697.320(b)	168, 170
CCP § 697.340(b)	169
CCP § 697.360(b)	170
CCP § 697.360(d)	170
CCP § 697.370(a)(2)	172
CCP § 697.380	172
CCP § 697.390(a)	171
CCP § 697.390(b)	171
CCP § 697.510	137

TABLE OF CASES

CCP § 699.510(a)	133
CCP § 703.030(a)	125
CCP § 703.030(b)	125
CCP § 703.070(b)	125
CCP § 703.520	125
CCP § 703.520(b)(5).....	125
CCP § 703.530	124
CCP § 703.580(b)	125
CCP § 704.115(e)	131
CCP § 706.021	117
CCP § 706.021, 706.022, 706.025, 706.026	117
CCP § 706.030(a)	117
CCP § 706.031(a)	121
CCP § 706.031(b)	118
CCP § 706.052	121, 130
CCP § 706.303(b)	118
CCP § 708.110(d)	131
CCP § 708.120	131
CCP § 708.410.....	134, 201
CCP § 709.010(b).....	203
CCP § 724.030	173
CCP § 724.040	173
CCP § 724.050	173
CCP § 1856	312
CCP § 1985	309
CCP § 1985, 1987, 1989	309
CCP § 1987	281, 306
CCP § 1991.....	306
CCP § 2015.030.....	229, 307
CCP § 2018.030	313
CCP § 2030.010	281
CCP § 2031.010	281
CCP § 2029.100 – 2029.900	232

Evidence Code

EC § 210.....	312, 313
EC § 350.....	312, 313
EC § 352.....	311, 312
EC § 353.....	311
EC § 354(a)	310
EC § 403.....	312, 313
EC § 405.....	312
EC § 451.....	307
EC § 452.....	154, 307
EC § 452(f).....	235
EC § 453.....	154, 307
	345

EC § 455	307
EC § 643	313
EC § 647	105
EC § 701(a)(1)	312
EC § 701(a)(2)	312
EC § 702	312
EC § 702(a)	312
EC § 765	310, 312
EC § 765(a)	312
EC § 766	312
EC § 767	312
EC § 773(a)	312
EC § 777	309
EC § 785 et seq	312
EC § 790	312
EC § 791	312
EC § 800	312
EC § 802	312
EC § 803	312
EC § 970	313
EC § 971	312
EC § 1040	9
EC § 1152	312
EC § 1200	311, 312
EC § 1221	313
EC § 1222	313
EC § 1230	313
EC § 1235	313
EC § 1236	313
EC § 1237	313
EC § 1240	313
EC § 1241	313
EC § 1250	313
EC § 1251	313
EC § 1271	155, 313
EC § 1272	313
EC § 1280	154, 313
EC § 1281	313
EC § 1284	313
EC § 1291	313
EC § 1292	313
EC § 1293	313
EC § 1294	313
EC § 1300	313
EC § 1341	313
EC § 1400	313

TABLE OF CASES

EC § 1401.....	312
EC § 1520.....	313
EC § 1521.....	313
EC § 1523.....	312

Family Code

FC § 200.....	12
FC § 215(b)	21
FC § 217	306, 308, 309
FC § 217(b).....	307
FC § 217(c)	309
FC § 297.5(d)	39
FC § 2024.5.....	8
FC § 2120 et seq	112
FC § 2122(b)	112
FC § 2125.....	112
FC § 2330.1.....	15
FC § 3602.....	147
FC § 3651(e)	62
FC § 3652.....	9
FC § 3654.....	105
FC § 3691.....	63, 106, 109
FC § 3691(c)(1)	109
FC § 3910.....	72
FC § 3930.....	68
FC § 4007.5.....	151
FC § 4052.5(a)	75
FC § 4053.....	74, 77, 162
FC § 4053(a).....	74
FC § 4053(b)	74
FC § 4053(c).....	74
FC § 4053(d)	74
FC § 4053(e)	74
FC § 4053(f)	74, 76
FC § 4054(b)	88
FC § 4055.....	73
FC § 4056.....	77
FC § 4057.....	78
FC § 4057(a).....	76
FC § 4057(b)	76, 77, 103
FC § 4057(b)(5)	83
FC § 4057.5.....	100
FC § 4057.5(a).....	91
FC § 4057.5(b)	91
FC § 4058.....	80, 82, 83, 284
FC § 4058 (a).....	83, 91

FC § 4058(a)(2)	84, 288
FC § 4058(a)(3)	83, 84, 289
FC § 4058(c)	75, 81, 140
FC § 4059	101, 284
FC § 4059(a).....	91, 99
FC § 4060.....	82
FC § 4064.....	82
FC § 4065(d)	80
FC § 4071(a)(1)	101
FC § 4071(a)(2)	102
FC § 4251(b)	12, 13
FC § 4251(c).....	13, 14
FC § 4251(f)	5
FC § 4502.....	170, 224
FC § 4504(b)	86
FC § 4504(c).....	87
FC § 4506(c).....	168
FC § 5206.....	85, 127
FC § 5206(d)	182
FC § 5241(b)	163
FC § 5601.....	19
FC § 5601(b)	19
FC § 5603(a).....	20
FC § 5700.201(a).....	11
FC § 5700.201(a)(2)	11
FC § 5700.201(a)(6)	11
FC § 5700.301.....	16
FC § 5700.311(b).....	16, 224
FC § 6340(a).....	65
FC § 7002.....	67
FC § 7540.....	29, 54
FC § 7540(b)	37
FC § 7541(e)	38
FC § 7551.....	39, 40, 42
FC § 7555.....	40, 61
FC § 7555 et seq	36
FC § 7558.....	41, 42
FC § 7570(a).....	39
FC § 7570(b)	30
FC § 7575(c)(1)	55, 56
FC § 7576(e)	44
FC § 7601(c).....	28
FC § 7611 et seq	36
FC § 7612.....	28
FC § 7612(b)	36, 46
FC § 7612(c)	28, 38, 43, 61

TABLE OF CASES

FC § 7612(d)	31, 43
FC § 7612(e)	47
FC § 7613	29, 30, 33, 35, 51, 53
FC § 7613(d)	54
FC § 7613(e)(1)	54
FC § 7613(e)(2)	54, 61
FC § 7630	33, 41, 56
FC § 7635(a)	55
FC § 7635.5	42
FC § 7645 et seq	58, 110
FC § 7645(b)	55
FC § 7646	42, 55, 59, 60
FC § 7646(a)	55, 56
FC § 7646(a)(1)	56
FC § 7646(a)(2)	56
FC § 7647(a)(1)	57
FC § 7647(a)(3)	58
FC § 7647(b)	57
FC § 7647.5	57
FC § 7647.7	57
FC § 7648	58
FC § 7648.1	58
FC § 7648.3(a)	55
FC § 7648.3(b)	55
FC § 7648.4	36, 58
FC § 7648.8	55
FC § 7648.9	55
FC § 7650(a)	49
FC § 7960(f)	51
FC § 7962(f)	51
FC § 155	145
FC § 17000(h)	2
FC § 17200	1
FC § 17202	1
FC § 17210	1
FC § 17212(b)	9
FC § 17212(b)(1)	6
FC § 17212(b)(2)	8
FC § 17212(b)(3)	6, 7
FC § 17212(c)(1)	7
FC § 17212(c)(2)	7, 27
FC § 17212(c)(3)	7, 27
FC § 17212(c)(4)	7, 27
FC § 17212(c)(5)	7
FC § 17212(c)(6)	7, 26
FC § 17212(c)(7)	7

FC § 17212(c)(8)	8
FC § 17212(c)(9)	8
FC § 17304.....	1
FC § 17306.....	1
FC § 17400.....	20, 21, 25, 137, 203
FC § 17400 et seq	28
FC § 17400(a)	2, 3, 4
FC § 17400(b)(2)	3
FC § 17400(b)(3)	3
FC § 17400(d)	110
FC § 17400(n)	14
FC § 17400(n)(2)	15
FC § 17400(o)	15
FC § 17400.5.....	82, 85
FC § 17402.....	137
FC § 17402(a)	68
FC § 17402(b)	64
FC § 17402(c)(2)	68
FC § 17402(c)(3)	68
FC § 17404	15, 79
FC § 17404(b)	17
FC § 17404(b)(2)	18
FC § 17404(e)(2)	20, 21
FC § 17404(e)(3)	25, 26
FC § 17404(e)(4)	5, 26
FC § 17404(f)	5
FC § 17404(f)(1).....	5, 6
FC § 17404(f)(2).....	5, 6
FC § 17404(f)(3).....	79
FC § 17406(a)	4
FC § 17406(f)(1)(A)	21
FC § 17408.....	10
FC § 17408(a).....	10
FC § 17428.....	15
FC § 17430(a)	16
FC § 17430(b)	16, 24
FC § 17430(c).....	17
FC § 17430(d)	17
FC § 17432.....	110
FC § 17432(c).....	110
FC § 17432(d)	110
FC § 17432(f)	110
FC § 17432(g)	111
FC § 17432(h)	111
FC § 17432(i)	110
FC § 17433.....	111

TABLE OF CASES

FC § 17433.5.....	144
FC § 17453.....	123, 124
FC § 17453(j)	124
FC § 17453(j)(1)	124
FC § 17453(j)(3)	124
FC § 17453(j)(5)	125
FC § 17453(j)(7)	124
FC § 17454(d)	124
FC § 17456(b)	123
FC § 17506(a)	2
FC § 17506(c).....	2, 8
FC § 17512.....	127
FC § 17512(d)	128
FC § 17520.....	122
FC § 17520 (w)(1)	123
FC § 17522	118, 134, 133
FC § 17523.....	137
FC § 17523.5.....	168
FC § 17523.5(a)(2)	168
FC § 17523.5(a)(3)	168
FC § 17526.....	145
FC § 17528.....	130
FC § 17530.....	111
FC § 17530(a)	24
FC § 17530(d)	111
FC § 17552.....	69
FC § 17800.....	111
FC § 2121(b)	112
FC § 2122.....	112
FC § 2122(a)	112
FC § 2122(b)	112
FC § 2122(d)	112
FC § 2122(e)	112
FC § 2123.....	112
FC § 213.....	308
FC § 213(a).....	18
FC § 271.....	9
FC § 273.....	9
FC § 290.....	152
FC § 291.....	170
FC § 291(d)	142, 170
FC § 298.6.....	111
FC § 306.5.....	111
FC § 3556.....	148, 149
FC § 3603.....	141
FC § 3651(c)(1)	141, 143, 144

FC § 3651(e)	144
FC § 3653(a).....	142
FC § 3664(a)	280
FC § 3690 et seq	114
FC § 3690(a)	108
FC § 3690(b)	108
FC § 3691.....	63, 106, 114
FC § 3691(a)	109, 114
FC § 3691(b)	109, 114
FC § 3691(c).....	114
FC § 3691(c)(2)	109
FC § 3691(c)(3)	110
FC § 3692.....	110, 141
FC § 3693.....	110
FC § 3900.....	28, 62
FC § 3901(a)	66
FC § 3901(a)(1) and (2)	66
FC § 3902.....	76
FC § 3910(a)	76
FC § 3951(a)	63, 65
FC § 4009.....	19, 24, 73
FC § 4011.....	116, 162, 200
FC § 4012.....	132
FC § 4055(a)(1)(D)	100
FC § 4055(b)(7)	102
FC § 4057.5(c).....	91
FC § 4058(a)(1)	85, 94, 286
FC § 4058(b)	95
FC § 4061.....	103
FC § 4062.....	103
FC § 4062(a)(1)	103
FC § 4062(a)(2)	103
FC § 4062(b)(1)	103
FC § 4062(b)(2)	103
FC § 4065(a)	76, 79
FC § 4065(c).....	4, 5, 78, 79
FC § 4065(d)	104
FC § 4071(b)	102
FC § 4072.....	102
FC § 4204.....	4
FC § 4251(d)-(e).....	12
FC § 4500.....	152
FC § 4504.....	139
FC § 4504(a)	86
FC § 4550 et seq	132
FC § 4560.....	132

TABLE OF CASES

FC § 4614.....	132
FC § 4615.....	132
FC § 4700.5.....	150
FC § 4700.5(i)	151
FC § 5100.....	133
FC § 5104.....	133
FC § 5206.....	85, 118
FC § 5208(a).....	116
FC § 5208(b)	117
FC § 5210.....	118
FC § 5230.....	118, 120
FC § 5230(a)	117
FC § 5233.....	118
FC § 5238.....	119
FC § 5241.....	122
FC § 5241(a)	121
FC § 5241(b)	121
FC § 5241(c).....	122
FC § 5241(d)	121
FC § 5246.....	120
FC § 5246(c).....	117
FC § 5246(d)(2).....	119
FC § 5246(d)(2), (f).....	121
FC § 5246(d)(3).....	119
FC § 5246(f)	119
FC § 5601.....	19
FC § 5601(a)(1)-(3).....	19
FC § 5601(c).....	20
FC § 5601(e)	20
FC § 5604.....	32
FC § 5616.....	140
FC § 5700.201(a)(1)	11
FC § 5700.201(a)(7)	11
FC § 7050(a)	67
FC § 7540	29, 37, 44, 54, 57, 60
FC § 7541.....	36, 38, 41
FC § 7541(a)	37
FC § 7541(b)	37
FC § 7552.5.....	41
FC § 7570(a)(2)	30
FC § 7571.....	60
FC § 7573.....	30, 31
FC § 7573(a)(1)	34
FC § 7573(d)	31
FC § 7573(e)	32
FC § 7573.5.....	33, 35

FC § 7575(a)	32
FC § 7576(a)	33
FC § 7576(b)	33
FC § 7577(a)	33
FC § 7577(b)	33
FC § 7577(d)	33
FC § 7577(f)).....	33
FC § 7577(g)	34
FC § 7577(g)(1-4)	34
FC § 7577(g)(5)	34
FC § 7577(g)(6)	34
FC § 7577(h)	34
FC § 7580(c).....	31, 32
FC § 7600 et seq	8
FC § 7606.....	50
FC § 7611.....	29, 33, 35, 38, 44-48, 55, 56, 61
FC § 7611(a)	45, 46, 47, 61
FC § 7611(a)-(c)	54
FC § 7611(d).....	31, 34, 42, 43, 44, 46, 47, 49, 53, 61
FC § 7611(e)	46
FC § 7612(a)	43, 44, 46
FC § 7634(a)	28
FC § 7635.....	33, 35
FC § 7636.....	28, 59
FC § 7643.....	8
FC § 7643(b)(2)	8
FC § 7647.....	57
FC § 7962.....	35, 38
FC § 910(a)	135
FC § 915.....	135
FC § 4251(d)-(e)	12
FC § 7600-7730.....	45
FC §17400(g)(2)	18
FC §215(a)	21
FC §217(a)	306
FC §5230.1.....	269
FC §7555(a)	40
FC §7555(b)	40
FC §7560.....	40
FC §7573(a)(2)	50
FC §7573.5	31
FC §7577(e)	33
FC §7580 (c).....	30
FC §7580(a) and (c).....	31
FC§ 4504(b)	86
FC§ 7577(c).....	33

TABLE OF CASES

FC§ 7580 (d) and (e)	31
----------------------------	----

Government Code

GC § 27201 (b)(2)	168
GC § 27706(a)	158
GC § 6103.9	2
GC § 6250 et seq.	7
GC § 6103	2
GC § 70672	2
GC § 7480(l)	128

Health and Safety Code

H&S § 103550.....	310
-------------------	-----

Labor Code

LC § 3200 et seq	194
LC § 3202.....	184
LC § 3046	187
LC § 3370(d)	187
LC § 4650.....	180, 181, 183
LC § 4650(b)(2)	182
LC § 4653	180
LC § 4653 et seq	180
LC § 4656	180
LC § 4660.....	181
LC § 4660(a)	181
LC § 4660.1.....	181
LC § 4903.....	188, 190
LC § 4903(e)	178, 182, 184, 185, 187
LC § 5100.....	189
LC § 5410.....	189, 190
LC § 5708.....	194
LC § 5813	179
LC § 5814	182
LC § 5900	178
LC § 5950	179

Penal Code

PC § 271.....	163, 165
PC § 1203.2(a)	157 355

PC § 1369.....	163
PC § 166	211
PC § 166(a)(4).....	152, 163
PC § 17	166
PC § 19.2.....	164
PC § 270.....	28, 163, 164, 165, 211
PC § 2717.8(4).....	98
PC § 4013.....	23
PC § 689.....	158
PC § 801.....	165
PC § 802.....	165
PC § 802(a)	164

Probate Code

Prob. Code § 260 et seq.....	202
Prob. Code § 279	202
Prob. Code § 282	202
Prob. Code § 283	202
Prob. Code § 7000.....	204
Prob. Code § 9000, et seq	198
Prob. Code § 9050(a).....	199
Prob. Code § 9100(a).....	199
Prob. Code § 9250(a)	199
Prob. Code § 9256.....	199
Prob. Code § 9353	199
Prob. Code § 11420	200
Prob. Code § 11604	201
Prob. Code § 1250 et seq	200
Prob. Code § 13100, et seq	204
Prob. Code § 13150, et seq	204
Prob. Code § 15301	203
Prob. Code § 15303(b).....	203
Prob. Code § 15305	202
Prob. Code § 15305(c)	203
Prob. Code § 15305(d).....	202
Prob. Code § 15306	202
Prob. Code § 19000	200
Prob. Code § 19050	200
Prob. Code § 19100(a).....	200
Prob. Code § 19150	200
Prob. Code § 19151	201
Prob. Code § 19152.....	201
Prob. Code § 9150	199
Prob. Code § 9152	199

TABLE OF CASES

Revenue and Taxation Code

R&T § 2190.1.....	172
R&T § 2192.1.....	172

Vehicle Code

VC § 1808.21(c)	23
-----------------------	----

Welfare and Institutions Code

W&I § 10850(a)	9
W&I § 11254	68
W&I § 11254(a)(1)-(2)	68
W&I § 11254(b).....	68
W&I § 11477	4, 79
W&I § 11477.04	8
W&I § 300	47
W&I § 366.26	67
W&I § 601	47
W&I § 602	47
W&I § 827(a)(1)(N).....	9
W&I § 827(a)(4).....	9
W&I § 903	69
W&I § 903(c)(4)	69
W&I § 903(e)	69

Thank you for purchasing the

2024 Child Support Attorney Sourcebook

For more information or to order additional copies of CSDA legal publications, please visit the CSDA website at <https://csdaca.org> or call at 916-446-6700.

The Child Support Directors Association was established in 2000 as a non-profit trade association to represent the local child support directors of California's 58 counties. The association strives to be of service to local child support agencies in their effort to provide children and families with the financial, medical, and emotional support required to be productive and healthy citizens in our society.



Child Support Directors Association of California

2150 River Plaza Dr., Ste. 420 Sacramento, CA 95833

tel (916) 446-6700

www.csdaca.org