

CALIFORNIA JUDGES BENCHGUIDES

**Benchguide 204**

**AB 1058 CHILD SUPPORT  
PROCEEDINGS:  
ENFORCING SUPPORT**

[REVISED 2014]



ADMINISTRATIVE OFFICE  
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JUDICIAL AND COURT OPERATIONS  
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## **AB 1058 CHILD SUPPORT PROCEEDINGS: ENFORCING SUPPORT**

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This benchguide covers civil and criminal methods of enforcing child support, setting aside support or parentage judgments or orders, and determining arrears in cases filed by Local Child Support Agencies (LCSAs). For discussion of establishing child support and parentage and related procedures, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* (Cal CJER).

For a convenient, topically arranged chart of key Family Code sections relating to child support proceedings, see Appendix D.

For more discussion generally of child and spousal support, see California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER).

*Same-sex marriages and registered domestic partners.* The California Supreme Court held that by limiting marriage to opposite-sex couples, the marriage statutes (Fam C §§300, 308.5) violate a same-sex couple’s fundamental right to marry. *In re Marriage Cases* (2008) 43 C4th 757, 76 CR3d 683. Proposition 8, approved by the voters in November 2008, sought to overturn this ruling and establish a constitutional ban against same-sex marriages. The federal district court concluded that Proposition 8 is unconstitutional under both the due process and the equal protection clauses, and entered an order enjoining its enforcement. *Perry v Schwarzenegger* (ND Cal 2010) 704 F Supp 2d 921, 1003–1004 (opinion by J Vaughn Walker). Subsequent attempts to appeal by the initiative’s proponents ultimately failed, with the US Supreme Court holding that the proponents had no Article III standing. See *Hollingsworth v Perry* (2013) \_\_ US \_\_, 133 S Ct 2652, 2668, 186 L Ed 2d 768 (5-4 decision, opinion by Chief Justice John Roberts). On remand, the Ninth Circuit of Appeals dismissed the proponents’ appeal for lack of jurisdiction and ordered that mandate issue immediately. *Perry v Brown* (9th Cir (Cal) 2013) 725 F3d 1140, 1141. Thus, the district court order—permanently enjoining the enforcement of Proposition 8—took effect.

For couples that register as domestic partners, the California Domestic Partner Rights and Responsibilities Act of 2003 extends the same rights, protections, benefits, and obligations to registered domestic partners that apply to spouses under California law both during and on termination of the union. Stats 2003, ch 421; Fam C §297.5. These rights and protections also extend to a domestic partnership with an underage person that was approved by the court. Fam C §297.1. The laws governing the dissolution, nullity, or legal separation of marriage apply to the dissolution, nullity, or legal separation of a domestic partnership. Fam C §299(d).

As used in this benchguide and for purposes of family law rules, the terms “spouse(s),” “husband,” and “wife” encompass “domestic partner(s);” “father” and “mother” encompass “parent”; and “marriage” and “marital status” encompass “domestic partnership” and “domestic partnership status.” Cal Rules of Ct 5.16(b)(2), 5.76; Fam C §297.5(j).

## II. CONTEMPT AND OTHER CRIMINAL ENFORCEMENT

### A. Overview of Contempt

#### 1. [§204.2] Introduction

The court may generally use its contempt power to enforce orders made in family law proceedings. See §204.3. A parent who has knowledge of and fails to pay a lawful child support order is deemed in contempt of court and may be ordered to perform community service or be imprisoned, or both. *Moss v Superior Court (Ortiz)* (1998) 17 C4th 396, 422, 71 CR2d 215.

This section generally covers contempts and other criminal enforcement matters that come before the court through support enforcement activities of the Department of Child Support Services (DCSS). The discussion focuses primarily on contempts brought under CCP §§1209 and 1209.5.

For a checklist of contempt procedures, see Appendix A.

#### 2. [§204.3] General Authority for Contempt

The authority to pursue a contempt action in connection with a family law proceeding arises from the following statutes:

- Fam C §290—a judgment or order made or entered under the Family Code may be enforced by contempt.
- CCP §1209(a)(5)—contempts of the court’s authority include “[d]isobedience of any lawful judgment, order or process of the court.” This is the primary authority for contempt in a family law proceeding (*e.g.*, visitation violations), other than for child support.
- CCP §1209.5—contempt for noncompliance with an order for support. This is the primary authority for contempt for failing to obey a child support order.
- Fam C §4500—a support order made, entered, or enforceable in California is enforceable under the Family Code, whether or not the order was made or entered under the Family Code.
- Pen C §166(a)(4)—willful disobedience of the terms of any lawfully issued process or court order or out-of-state court order, including orders pending trial. This is the authority for a “true” criminal contempt: a misdemeanor prosecution, where the citee is entitled to a jury trial and, if found guilty, may be sentenced to up to 6 months or 1 year in county jail, ordered to pay a fine of \$1000, plus penalty assessments, or both.

➤ JUDICIAL TIP: Penal Code §166(a)(4) is rarely utilized by DCSS for child support violations. It is primarily used for violations of Domestic Violence Restraining Orders in family law cases.

#### 3. [§204.4] Orders Enforceable by Contempt

The following court orders are enforceable by contempt:

- Current child support. CCP §1209.5.

- Family support. *People v Dilday* (1993) 20 CA4th Supp 1, 3, 25 CR2d 386.
- Spousal support. *Mossman v Superior Court* (Mossman) (1972) 22 CA3d 706, 712, 99 CR 638 (citee must raise inability to pay as a defense); *Sorell v Superior Court* (Kieser) (1967) 248 CA2d 157, 161, 56 CR 222.
- Orders for the payment of necessary attorney fees and costs. *In re Hendricks* (1970) 5 CA3d 793, 796, 85 CR 220.
- Arrears. Fam C §150 (support includes past due support or arrearage); see §204.51.
- Contempts against employers who fail to obey orders directed to them to enforce court orders against their employees (e.g., wage assignments, health insurance assignments). Fam C §§3768(b), 5241(c); see §204.53.
- Job training and seek work orders. *Moss v Superior Court* (Ortiz) (1998) 17 C4th 396, 420, 423, 71 CR2d 215; see §204.56.

The following orders are not enforceable by contempt:

- Debts. See Cal Const art I, §10; *People v Smith* (2000) 81 CA4th 630, 642, 96 CR2d 856.
- Contractual obligations not merged into the judgment. *Plummer v Superior Court* (1942) 20 C2d 158, 164, 124 P2d 5 (nonmerged provisions of marital settlement agreement).

#### 4. Nature of Contempt Proceeding

##### a. [§204.5] Criminal vs. Civil Contempt

A contempt proceeding is usually a criminal proceeding that may subject the contemner to imprisonment or fine. Thus, the rules of criminal procedure apply. Whether it is a civil or criminal contempt depends on the penalties imposed on the contemner. Criminal penalties cannot be imposed on a person who is denied criminal due process protections. *Hicks v Feiock* (1988) 485 US 624, 632, 108 S Ct 1423, 99 L Ed 2d 721; *International Union, United Mine Workers of Am. v Bagwell* (1994) 512 US 821, 114 S Ct 2552, 129 L Ed 2d 642.

A contempt is criminal, or punitive, in nature if the contemner is subject to be (*Hicks v Feiock, supra*, 485 US at 632; *International Union, United Mine Workers of Am. v Bagwell, supra*, 512 US at 828–829; see *In re Cassil* (1995) 37 CA4th 1081, 1087, 44 CR2d 267):

- Imprisoned for a set, unconditional period of time; or
- Ordered to pay a fine to the court.

Any enforcement of unpaid child support by means of a contempt action is criminal in nature because the possible penalties include jail. *County of Santa Clara v Superior Court* (Rodriguez) (1992) 2 CA4th 1686, 1693, 5 CR2d 7.

A contempt is civil, or remedial, in nature if the contemner is subject to be (*Hicks v Feiock, supra*, 485 US at 632–633; *International Union, United Mine Workers of Am. v Bagwell, supra*, 512 US at 828–830):

- Ordered imprisoned only until he or she performs an act ordered by the court (“conditional sentence” or “determinate sentence with a purge clause”);
- Ordered to pay a fine to the court unless he or she performs an act required by the court’s order (“conditional fine”); or

- Ordered to pay a “compensatory fine” to the other party.

#### **b. [§204.6] Mixed Relief**

In a “mixed relief” proceeding, when both civil and criminal penalties are imposed, the criminal feature of the order is dominant and fixes its character. Thus, the contemner must be afforded all the constitutional protections. *Hicks v Feiock* (1988) 485 US 624, 638 n10, 108 S Ct 1423, 99 L Ed 2d 721.

- **JUDICIAL TIP:** The proceedings brought by the LCSA may sometimes be referred to as a civil contempt or quasi-criminal because they are brought under the Code of Civil Procedure, but they are not truly “civil contempts” as defined above. Nor are such proceedings “quasi-criminal.” This term should be discouraged because it is inaccurate and misleading considering the citee, if convicted, will not be sent to a “quasi-jail.” They are criminal contempt proceedings.

#### **5. [§204.7] Due Process Requirements**

When the potential penalty for contempt proceedings includes the potential loss of liberty, the proceedings should be treated as criminal matters. Hence, criminal due process procedures and rules apply in the contempt proceeding. *Hicks v Feiock* (1988) 485 US 624, 632–633, 108 S Ct 1423, 99 L Ed 2d 721; *International Union, United Mine Workers of Am. v Bagwell* (1994) 512 US 821, 114 S Ct 2552, 129 L Ed 2d 642. The citee is entitled to the following rights and protections:

- *Notice of charge.* The pleading must inform the citee about the charge and the time and place for the court hearing.
- *Opportunity to be heard.* The citee is entitled to a full hearing and must be allowed to testify; to call, see, hear, and cross-examine witnesses; to have witnesses subpoenaed to testify on his or her behalf; and to introduce evidence in his or her defense.
- *Right to counsel.* The citee has a right to have a qualified attorney represent him or her at all stages of the proceedings. The attorney may be of the citee’s own choosing, or the court must appoint counsel to represent the citee if the citee is unable to afford counsel.
- *Speedy trial.* A trial must be held within 30 days of the arraignment if the citee is in custody, or within 45 days if the citee is not in custody, unless the citee waives time. Pen C §1382(a)(3).
- *Testimonial privilege.* The citee is entitled to exercise his or her Fifth Amendment privilege not to be called as a witness and can decline to answer specific questions claiming the privilege against self-incrimination.
- *Criminal burden of proof.* The citee is entitled to have the prima facie elements of contempt proven beyond a reasonable doubt.
- *Right to a jury trial.* The citee has no right to a jury trial unless the court can consider a possible sentence of more than 180 days (*e.g.*, multiple counts with an aggregate sentence that exceeds 6 months). As a practical matter, the LCSA generally tries to avoid the possibility of a jury trial when pleading multiple counts.

- *Double jeopardy*. The citee may not be subject to duplicate punishment or duplicate prosecution for the same criminal offense.

## **B. Contempt To Enforce Child and Family Support**

### **1. Elements and Proof**

#### **a. [§204.8] Prima Facie Case**

The elements of a prima facie case for contempt of a child or family support order are (CCP §1209.5):

- A lawful (valid) order of the court;
- Citee had knowledge of the order; and
- Citee did not comply with the order.

#### **b. [§204.9] Lawful Order**

The charging affidavit must identify the underlying order by date of entry and type. For purposes of sustaining a prima facie case, the court can presume validity unless the order is void on its face. The citee may challenge the validity of the order, either as an affirmative defense in the answer or by motion to discharge the contempt citation. Hogoboom & King, Cal Practice Guide: Family Law (The Rutter Group 2002) ¶18:172; see also 8 Witkin, CALIFORNIA PROCEDURE, *Attack on Judgment in Trial Court* §7 (5th ed 2008).

A party may request the court to take judicial notice of an order or judgment contained in the court's file. On proper request, the court must take judicial notice of records in its file. Evid C §453. The court may also take judicial notice of records in its file on its own motion. Evid C §452(d).

#### **c. [§204.10] Knowledge of Order**

The charging affidavit must set forth facts showing the citee's knowledge of the underlying order. This is a jurisdictional prerequisite to a valid contempt adjudication. *In re Ivey* (2000) 85 CA4th 793, 804, 102 CR2d 447; *Freeman v Superior Court* (1955) 44 C2d 533, 537, 282 P2d 857.

The citee's knowledge can be shown directly by any of the following methods:

- Personal service of the order on the citee. If personal service of the order is by a registered process server, the filing of a properly executed proof of service is prima facie evidence that the service occurred, which creates a permissive inference. Evid C §647.
- The citee's presence in court at the time the order was made.
- The citee signing a stipulation on which the order is based.

It is not necessary to show that the citee was served with a copy of the order or was familiar with all of its terms if it is shown that he or she had knowledge of the existence of the order and that portion of it that the citee is alleged to have violated. *In re Sigesmund* (1961) 193 CA2d 219, 14 CR 221. Thus, it may be possible to show knowledge indirectly through the citee's conduct, such as:

- Prior payments, either voluntary or by wage assignment;

- Contact by the citee with the custodial parent or LCSA regarding the order;
- Contact by the citee regarding the enforcement of the arrearages, *i.e.*, license suspension, passport denial, or other enforcement mechanism; or
- Affirmation of the order by the citee in the form of a new order for arrears payments.

Finally, it may be possible to show knowledge by reasonable inference, such as the citee’s attorney has knowledge of order (presence in courtroom or being served with order), which creates a permissive inference that the citee had knowledge of the order. Such a reasonable inference is sufficient to sustain a contempt in the absence of evidence overcoming the inference. *In re Ivey, supra*, 85 CA4th at 802.

#### **d. [§204.11] Noncompliance With Order**

To complete the *prima facie* case of contempt, the charging party must allege and prove facts showing noncompliance with the order. Noncompliance with monetary orders must be alleged by showing the total amount ordered, dates due, amounts paid, and amounts due. Each violation of a monthly obligation must be itemized separately. CCP §1218.5.

Noncompliance with monetary orders is usually established by:

- Personal testimony of the custodial parent or LCSA family support officer or accounting personnel or any combination of them; or
- Official records of the LCSA regarding payment history. These records may be admitted over a hearsay objection without live testimony. Evid C §1280.

#### **e. [§204.12] Affirmative Defense of Inability To Pay**

Code of Civil Procedure §1209.5 statutorily removes ability to pay as an element of the charge of contempt for failure to pay support, even with the passage of time. Thus, ability to pay is not an element of contempt, but rather an affirmative defense to be proven by the citee by a preponderance of the evidence. *Moss v Superior Court (Ortiz)* (1998) 17 C4th 396, 425, 71 CR2d 215; see *Hicks v Feiock* (1988) 485 US 624, 629, 108 S Ct 1423, 99 L Ed 2d 721. This also applies to contempts for nonpayment of spousal support, family support, or court-ordered attorney fees. *In re Ivey* (2000) 85 CA4th 793, 801, 102 CR2d 447.

A citee can be found in contempt for violating a child support order when the inability to pay is the result of willful failure to seek and accept available employment that is commensurate with the parent’s skills and ability. *Moss v Superior Court (Ortiz), supra*, 17 C4th at 401.

In contempt proceedings brought under Pen C §166(a)(4) for willful nonpayment of support, ability to pay is handled in the same way as contempt under CCP §1209.5—it is an affirmative defense, not an element of the contempt. See *People v Dilday* (1993) 20 CA4th Supp 1, 4 n3, 25 CR2d 386; see Pen C §166.5 (suspend contempt proceedings by posting bond).

- **JUDICIAL TIP:** In contempt proceedings brought under CCP §1209, which are proceedings other than for the failure to pay child, family, spousal support, or attorney fees, or under Pen C §166(a)(4) for willful violation of a court order other than for

payment of support, ability to comply is an element of contempt that must be proven beyond a reasonable doubt.

## **2. Initiating Contempt Proceeding**

### **a. [§204.13] Pleadings**

The contempt proceeding must be initiated by use of the mandatory Judicial Council forms Order to Show Cause and Affidavit for Contempt (form FL-410) and Affidavit of Facts Constituting Contempt (Financial and Injunctive Orders) (form FL-411). CCP §1211(b). Failure to use these forms is grounds to dismiss the action.

### **b. [§204.14] Multiple Counts**

If the alleged violation is for failure to pay child, family, or spousal support, only one count per month can be charged. For example, if one-half of the payment is due on the first of the month and one-half is due on the 15th of the month, only one count can be filed for failure to make both payments. CCP §1218.5. However, there can be multiple counts of contempt charged each month if there are multiple “types” of orders each month. For example, if there is an order for child support and an order for spousal support, this could be charged as two counts per month. A party is not precluded from bringing a request for an order re contempt for months of unpaid support that was not charged in a prior contempt action because each month is a divisible act of contempt and there is no continuing course of conduct that has to be charged simultaneously. *Marriage of Rice & Eaton* (2012) 204 CA4th 1073, 1082, 139 CR3d 518.

### **c. [§204.15] Statute of Limitation**

The statute of limitation for commencing a contempt action for the nonpayment of child, family, or spousal support is (CCP §1218.5(b)):

- Three years from the due date of the payment for alleged nonpayment.
- Two years from the date of the alleged violations of other Family Code orders.

A contempt cause of action for nonpayment of support may be broken down into separate “counts” for each month that payment was not made in full. Thus, the fact that the obligor stopped (or fell short in) payments over 3 years ago is not fatal to a contempt remedy: each month within the 3-year period for which payments were in default is separately punishable as separate counts of contempt. CCP §1218.5(a); *Moss v Superior Court* (Ortiz) (1998) 17 C4th 396, 403, 71 CR2d 215.

Unless the order otherwise specifies, temporary (pendente lite) child or spousal support orders are not enforceable during any period in which the parties have “reconciled and are living together.” Fam C §3602.

### **d. [§204.16] Pleadings Frame Issues and Jurisdiction**

The order to show cause (OSC) and supporting affidavit setting forth the specifics of the alleged contemptuous conduct frames the issues before the court. Jurisdiction to adjudicate contempt only exists when the charging affidavit alleges evidentiary facts showing a prima facie case. CCP §1211; *Moss v Superior Court* (Ortiz) (1998) 17 C4th 396, 404, 71 CR2d 215; *Fabricant v Superior Court* (1980) 104 CA3d 905, 916, 163 CR 894.

A deficient charging affidavit may be amended at any time without a continuance unless the court determines that a continuance is required to avoid prejudice to the citee. CCP §1211.5(b).

Although the affidavit frames the contempt proceedings, it does not constitute evidence unless it is offered and actually received into evidence. *Collins v Superior Court* (1957) 150 CA2d 354, 364, 310 P2d 103. If the affidavit is offered and a hearsay objection is made, however, the objection must be sustained.

### 3. [§204.17] Service of Contempt Action

The time limit and service requirements for contempt are as follows:

- *Service completed 16 days before hearing.* The OSC and affidavit for contempt (conformed copies) must be served on the citee at least 16 court days before the hearing. CCP §1005(b).
- *Personal service.* The OSC acts as a summons, *i.e.*, an original pleading in bringing the contempt action, to appear in court on a certain day. The citee must be served personally with the OSC; otherwise, the court lacks jurisdiction to proceed. *Cedars-Sinai Imaging Med. Group v Superior Court* (Moore) (2000) 83 CA4th 1281, 1286, 100 CR2d 320; see also CCP §§1015, 1016.

A general appearance at the hearing by the citee can constitute a waiver of any defect in the notice, as well as in the service itself. *Leonis v Superior Court* (1952) 38 C2d 527, 531, 241 P2d 253.

If personal service is impossible due to concealment, alternative service methods may be available. *Shibley v Superior Court* (1927) 202 C 738, 742, 262 P 332 (service on attorney of record). To invoke this exception, the charging party must submit an affidavit or declaration to the court alleging specific facts showing reasonable efforts to locate the citee and the efforts taken to attempt service. *Albrecht v Superior Court* (1982) 132 CA3d 612, 619, 183 CR 417.

### 4. [§204.18] Responses to Charges

No responsive pleadings are required. The citee may, however, answer the charges on the merits or move for a discharge on jurisdictional grounds without answering.

#### a. [§204.19] Answer

In response to the charge, and before the hearing, the citee may file an opposing affidavit or declaration, questioning the adequacy of the charging affidavit, or raising a sufficient excuse or justification in defense. The charging affidavit, together with the opposing affidavit, frames the issues to be tried in the proceeding. *Freeman v Superior Court* (1955) 44 C2d 533, 536, 282 P2d 857; *Morelli v Superior Court* (Berry) (1968) 262 CA2d 262, 266, 68 CR 572.

#### b. [§204.20] Motion for Discharge

If it appears that the court is without jurisdiction to proceed, the charged party may move for discharge. This motion may also be called a motion to dismiss or a motion to quash the order to show cause, and it has substantially the same function as a demurrer to the complaint



in a civil action. *Taylor v Superior Court* (1942) 20 C2d 244, 246, 125 P2d 1. Such a motion may be made orally at the hearing, without notice.

## 5. First Appearance

### a. [§204.21] Arraignment

The citee's first appearance, as in any criminal action, is at the arraignment on the charges. See a sample arraignment script in California Judges Benchguide 52: *Misdemeanor Arraignment* §52.30 (Cal CJER).

The physical presence of the charged party is not required, and he or she can appear through counsel. Pen C §§977, 1429.

- **JUDICIAL TIP:** The best practice is to order the citee to be present personally at each hearing, including the arraignment. This provides an opportunity to settle the matter without setting further court hearings and ensures that the court maintains personal jurisdiction over the citee. Further, the citee will better appreciate the severity of the situation and the possible consequences, which serve as motivation to follow the court orders.

### b. [§204.22] Failure To Appear

If the charged party was served, but still does not appear through counsel or otherwise, the court should issue a civil bench warrant/body attachment for the citee's arrest. The bench warrant must specify a bail amount. CCP §§1212, 1213.

If counsel appears without the client, the court should issue and hold (*i.e.*, stay service) a civil bench warrant/body attachment in order to secure appearance at any trial that is set.

### c. [§204.23] Right to Counsel

In a contempt action that is criminal in nature, as defined in §204.5 above, the alleged contemner has a right to be represented by counsel at all stages of the proceeding, including the arraignment. Thus, if the citee requests counsel after being advised of his or her rights, the arraignment must be continued to allow the citee to obtain counsel. *In re Shelley* (1961) 197 CA2d 199, 202, 16 CR 916; *County of Santa Clara v Superior Court* (Rodriguez) (1992) 2 CA4th 1686, 1692–1693, 5 CR2d 7.

If the contempt is civil in nature, the due process clause does not automatically require the provision of counsel to the citee when the opposing parent or other custodian (to whom the support funds are owed) is not represented by counsel and the state provides alternative procedural safeguards (e.g., adequate notice of the importance of ability to pay, and fair opportunity to present and to dispute relevant information and court findings). *Turner v Rogers* (2011) 131 S Ct 2507, 2520, 180 L Ed 2d 452. The US Supreme Court in *Turner* explicitly stated that they were not addressing civil contempt proceedings when the underlying child support payment was owed to the state, *e.g.*, for reimbursement of welfare funds, when the government was likely to have counsel, nor were they addressing what due process requires in an unusually complex case.

- **JUDICIAL TIP:** If the citee appears without counsel and wishes to be represented, the best practice is to delay asking the citee to enter a plea until appearance with counsel, as the right to counsel includes the arraignment.

**d. [§204.24] Indigent Citee**

A citee who is indigent has the right to court-appointed counsel, as long as there is a possibility that the proceeding will result in imprisonment. *County of Santa Clara v Superior Court* (Rodriguez) (1992) 2 CA4th 1686, 1693–1694, 5 CR2d 7.

A determination of indigency is based on a financial declaration that should be filed under seal. See form MC-210.

The court must inform the citee before appointing counsel that the citee may be ordered to reimburse the county for the cost. Pen C §987.8(f). The court can reevaluate the citee's present ability to pay after the proceedings and may then require the citee to pay all or a portion of the cost. Pen C §987.8(b)–(c).

**e. [§204.25] Right To Represent Self**

The citee has a right under the Sixth Amendment to self-representation. *Faretta v California* (1975) 422 US 806, 813, 95 S Ct 2525, 45 L Ed 2d 562. The court may, however, deny a request for self-representation when the citee is unable or unwilling to abide by the rules of procedure and court rules. *McKaskle v Wiggins* (1984) 465 US 168, 184, 104 S Ct 944, 79 L Ed 2d 944.

**6. Taking a Plea****a. [§204.26] In General**

The citee can plead one of the following to the charges of contempt: guilty, not guilty, or nolo contendere. Pen C §1016. If the citee refuses to answer a plea, a plea of not guilty is entered by the court. Pen C §1024.

**b. [§204.27] Not Guilty Plea—Setting Trial Date**

After a plea of not guilty, the matter should be set for trial and the citee ordered to appear at that trial. If the citee pleads not guilty and does not waive time for trial, a trial must be held within 30 days of the arraignment if the citee is in custody, or within 45 days if the citee is not in custody. Otherwise, the action must be dismissed. Pen C §1382(a)(3).

- **JUDICIAL TIP:** If there is a waiver of time, the court may defer setting a trial date to save valuable trial slots on the court's calendar and set the matter for a status conference. This allows the LCSA and citee one more opportunity to reach a plea bargain. If a plea bargain is not reached at the status conference, then the matter should be set for trial.

**c. [§204.28] Guilty Plea**

A plea of guilty is more than a confession that admits that the accused did various acts; it is itself a conviction. Nothing remains but to give judgment and determine punishment. *Boykin v Alabama* (1969) 395 US 238, 242, 89 S Ct 1709, 23 L Ed 2d 274.

The following federal constitutional rights are involved and must be waived on the taking and entering of a guilty plea (*Boykin, supra*, 395 US at 243):

- The privilege against compulsory self-incrimination guaranteed by the Fifth Amendment.
- The right to trial by jury although generally not an issue in family contempts.
- The right to confront one’s accusers.
- The ability to present evidence.

The court must make sure that the accused has a full understanding of what the guilty plea means and of its consequences, including what rights are being waived—all of which should be done on the record.

#### **d. [§204.29] Time for Sentencing**

If the citee pleads guilty to all or some of the counts through a plea bargain, the citee has a right to have a separate time set for sentencing. Unless time for sentencing is waived on the record or in writing, the court, after a guilty plea, must appoint a time for pronouncing judgment. The time must not be less than 6 hours, nor more than 5 days, after the plea or verdict. Pen C §1449.

The court may extend the time for sentencing for not more than 20 court days if probation is considered, or for not more than 90 additional days on the citee’s request. Pen C §1449.

#### **e. [§204.30] Nolo Contendere Plea**

A plea of nolo contendere is treated procedurally the same as a plea of guilty.

### **7. Plea Bargain—Probation**

#### **a. [§204.31] In General**

Most often, child support contempt matters are settled through a plea bargain in an effort to give the citee an incentive to comply with existing orders. The plea bargain generally includes a pronounced sentence of jail time, the execution of which (sometimes the imposition of which) is suspended or stayed, and the citee is placed on informal summary court probation conditioned on compliance with existing support orders. The punishment for contempt is discussed in §204.46. For a first offense, the contemner must be ordered to perform community service of up to 120 hours, or to be imprisoned for up to 120 hours (5 days), for each count of contempt. CCP §1218(c)(1).

#### **b. [§204.32] Authority and Time To Accept Plea**

It is within the court’s discretion to approve or reject a negotiated plea. The court, however, may not arbitrarily refuse to consider a plea negotiation. *People v Smith* (1971) 22 CA3d 25, 29, 99 CR 171.

The United States Supreme Court in *Hicks v Feiock* (1988) 485 US 624, 637 n8, 108 S Ct 1423, 99 L Ed 2d 721, allowed a grant of probation. See CCP §128 (court authority to compel obedience to its orders); Pen C §1203b (authority to suspend execution of sentence and grant conditional sentence in misdemeanor or infraction case without referring case to probation officer).

There is no set time for negotiating a plea bargain. It may take place at arraignment, but usually takes place sometime before the date the case is set for hearing, such as at a settlement conference hearing date.

### c. [§204.33] Typical Plea Bargain

A typical plea bargain that the court will be asked to approve is one that may induce future compliance, as follows:

- The citee pleads guilty to less than the full number of the contempt counts charged (remainder dismissed either with or without prejudice).
- The maximum sentence is imposed and then execution of sentence is suspended.
- The citee is placed on informal court probation for a period not exceeding 3 years (Pen C §1203a), under conditions specified on the record (1 year is typical for the first time).
- The conditions of probation are generally that the citee comply with all court orders and pay support timely and in full and set an arrears payment.
- A compliance review hearing is set for every 90 days (or 120 or 180 days or as specified) through the period of probation.
- The citee is ordered to be personally present at all review hearings.

➤ **JUDICIAL TIP:** Some courts will authorize the LCSA attorney to excuse the appearance at a particular review hearing if the LCSA has determined before the hearing that there has been full compliance. The court will still have jurisdiction so long as the contemner was ordered to be present at each of the hearings, unless excused. At the conclusion of the review period, if probation has been successfully completed and when, for example, the imposition of the sentence was stayed pending completion of probation, then the court may be asked to discharge the OSC.

## 8. Contempt Trial

### a. [§204.34] In General

The contempt trial is generally indistinguishable from an ordinary trial on which there is a question of fact, with one exception: the citee is not sworn at the outset of the hearing, due to the right not to testify. On request, the citee may call witnesses or testify. See *Reifler v Superior Court* (1974) 39 CA3d 479, 484, 114 CR 356.

### b. [§204.35] Time for Trial

A trial must be held within 30 days of the arraignment if the citee is in custody, or within 45 days if the citee is not in custody, unless the citee waives time. Pen C §1382(a)(3). If the citee withdraws a general time waiver in open court, a new trial date must be set within 30 days of the withdrawal. Pen C §1382(a)(3)(A).

### c. [§204.36] Discovery Rights

Generally, because the proceedings are criminal with criminal due process protections applicable, the citee is entitled to *criminal* due process discovery rights. Many of these rights have been embodied into Pen C §1054.1.

- JUDICIAL TIP: Some judges believe that not all criminal discovery rights apply. There is no direct case on point. Civil discovery procedures would generally not apply in these matters, particularly because the time frames would violate the right to a speedy trial should the citee choose to exercise it, and in view of the right against self-incrimination.

Regardless of whether the court is following Pen C §1054.1, the citee has the following *due process* discovery rights:

- *Evidence favorable to the accused.* The prosecution's suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or punishment, irrespective of the prosecution's good faith or bad faith. *Brady v Maryland* (1963) 373 US 83, 86, 83 S Ct 1194, 10 L Ed 2d 215. However, evidence is material for *Brady* purposes only if a reasonable probability exists that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *US v Bagley* (1985) 473 US 667, 682, 105 S Ct 3375, 87 L Ed 2d 481.
- *Evidence relating to the credibility of prosecution witnesses.* The prosecution must disclose evidence relating to the credibility of the prosecution witnesses, such as prior convictions of crimes of moral turpitude, to the defendant. *People v Pinholster* (1992) 1 C4th 865, 4 CR2d 765.

Generally, a criminal defendant does not have a fundamental due process right to pretrial interviews or depositions. *People v Municipal Court* (Runyan) (1978) 20 C3d 523, 530, 143 CR 609.

- JUDICIAL TIP: Suggested best practice for disclosure is to follow Pen C §§1054 et seq, which sets forth material required to be disclosed by the prosecuting attorney. However, to the extent Pen C §1054.1 requires the disclosure of the witness' addresses, it is suggested that the address of the custodial party (CP) not be disclosed based on Fam C §17212. If the citee or counsel insist on the CP's address, they can request a court order under either Pen C §1054.5 or Fam C §17212(c)(6). For further discussion of confidentiality and disclosure of DCSS records, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support Part VI* (Cal CJER).

#### **d. [§204.37] Authority of Child Support Commissioners**

Generally, commissioners do not have authority to determine contempt unless, on the parties' stipulation, they hear the matter as a judge pro tem. *In re Frye* (1983) 150 CA3d 407, 409–410, 197 CR 755. However, Fam C §4251 provides that Title IV-D child support commissioners act as temporary judges unless an objection is made. If a party objects to a commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within 10 days, a judge must ratify the recommended order unless a party objects to the order or the order is in error. In either case, the judge must hear the matter de novo within 10 court days. See *County of Orange v Smith* (2002) 96 CA4th 955, 961, 117 CR2d 336.

Before the start of the hearing, the parties must be advised that the matter is being heard by a commissioner acting as a temporary judge unless the party objects. Fam C §4251(b).

Failure to properly advise could result in the ensuing order being attacked as void. See *In re Frye, supra*, 150 CA3d at 409.

- **JUDICIAL TIP:** If an objection to the commissioner is made under Fam C §4251 in a contempt proceeding, the best practice is to have the matter transferred to a judge before the contempt trial to promote court efficiency (*e.g.*, obviate the need for two hearings when objections are likely due to criminal nature of proceedings).

#### **e. [§204.38] Right to Jury Trial**

The charged party is not entitled to a jury trial in a contempt proceeding under CCP §§1209 et seq. The alleged conduct is a violation of a court's order or authority, not punishment for a crime by the "people." As such, the court decides the case, not a jury. See *Bridges v Superior Court* (1939) 14 C2d 464, 473, 94 P2d 983 rev'd on other grounds in 314 US 252; *Pacific Tel. & Tel. Co. v Superior Court* (1968) 265 CA2d 370, 375, 72 CR 177.

At least one court has held that if the charged party may be sentenced to more than 180 days in jail (*e.g.*, multiple counts with a potential aggregate sentence that exceeds 6 months), the right to a jury trial is guaranteed by the United States Constitution and any waiver of that right must be express. If the court tries the contempt charges without a jury and the charged party does not expressly waive the right to a jury trial, the maximum sentence the court may impose is 180 days. *In re Kreitman* (1995) 40 CA4th 750, 753, 47 CR2d 595.

#### **f. [§204.39] Standard of Proof**

The court may convict only on proof of contempt, by competent evidence, beyond a reasonable doubt—the standard of proof required for conviction of a crime. *In re Coleman* (1974) 12 C3d 568, 572, 116 CR 381; *In re Witherspoon* (1984) 162 CA3d 1000, 1001, 209 CR 67.

### **9. Presentation of Evidence**

#### **a. [§204.40] Proof of Elements**

Proof will be needed for each of the required elements (see §204.8):

- Prior lawful order;
- Knowledge of the order; and
- Noncompliance with the order.

#### **b. [§204.41] Charging Affidavit**

The charging affidavit is hearsay evidence and is inadmissible over objection. Evid C §§1200(a), 1200(b). The affidavit may, however, be received as competent evidence on request, if the charged party makes no objection. See Evid C §353.

#### **c. [§204.42] Personal Testimony**

If the charging affidavit cannot be introduced, personal testimony will be required. Technically, the direct examination should be conducted by the court. CCP §1217. In practice,

the court allows counsel for the aggrieved person to conduct the direct examination. The charged party is entitled to cross-examine. Evid C §773(a).

**d. [§204.43] Financial Records**

Although the need to prove ability to pay as part of the prima facie case for support or monetary contempts no longer exists, records will be subpoenaed to establish financial ability to pay in order to defeat a defense of inability to pay. As all support payments are to be paid through the State Disbursement Unit (SDU), the LCSA will usually be seeking to admit SDU payment records. At present there are differing opinions on how these records are admissible. DCSS's announced policy (CCL 07-01) is that these records may be admitted without further foundation as "official records." Evid C §664; see *Bhatt v Department of Health Servs.* (2005) 133 CA4th 923, 928-930, 35 CR3d 335 (reports prepared by fiscal intermediary qualify as official records under Evid C §1280). This policy has not yet been reviewed by an appellate court. Many disagree with this policy as the SDU records are not compiled and maintained by a governmental agency but by a contractor. Absent testimony of an employee or custodian of the records of the SDU, the court cannot take judicial notice of or find sufficient evidence to show that the record or report was prepared in such a manner as to assure its trustworthiness. The other option for admission of these records is to follow the procedure for subpoena duces tecum of business records contained in Evid C §1560, in which case, if the proper procedures are followed, the records are admissible into evidence. A source of information that may be used to determine which records, if any, should be subpoenaed is the citee's credit report. Paying a creditor in a given month when the citee did not pay his or her court-ordered support goes to showing that the citee has the ability to pay. See *Hasbun v County of Los Angeles* (9th Cir 2003) 323 F3d 801, 805 (LCSA need not comply with certification requirements, including notice to consumer, when seeking to enforce an existing CS order).

- JUDICIAL TIP: In order to overcome a hearsay objection, the citor will need the actual subpoenaed records from the creditor, not just the credit report.

**e. [§204.44] Charged Party Need Not Testify**

The charged party may refuse to be called as a witness. This privilege is not waived by filing an answer to the affidavit for the order to show cause. *In re Witherspoon* (1984) 162 CA3d 1000, 1002, 209 CR 67; *Crittenden v Superior Court* (1964) 225 CA2d 101, 105, 36 CR 903. An answer is not evidence and can be objected to as hearsay.

Evidence Code §776(a), which provides that a party may be called and examined by any adverse party, does not apply. *Oliver v Superior Court* (1961) 197 CA2d 237, 240, 17 CR 474; see also Evid C §930.

Also, the citee may not be compelled to give self-incriminating testimony. *In re Witherspoon, supra*, 162 CA3d at 1002; see Evid C §940; *In re Sigismund* (1961) 193 CA2d 219, 224, 14 CR 221.

Once the charged party testifies regarding the inability to pay, however, the party waives the self-incrimination privilege and can be cross-examined on the issue.

**10. [§204.45] Findings**

In contempt adjudications, the trial court is required to make findings with particularity and specificity. *In re Mancini* (1963) 215 CA2d 54, 56, 29 CR 796.

## 11. Sentencing

### a. [§204.46] Required Sentences

In any court action in which a party is found in contempt of court for failure to comply with an order under the Family Code, the court must order the following (CCP §1218(c)(1)–(3)):

- On a first finding of contempt, the contemner must be ordered:
  - To perform community service of up to 120 hours, or
  - To be imprisoned for up to 120 hours (5 days) for each count of contempt.
- On a second finding of contempt, the contemner must be ordered:
  - To perform community service of up to 120 hours, and
  - To be imprisoned for up to 120 hours (5 days) for each count of contempt.
- On a third or any subsequent finding of contempt, the contemner must be ordered:
  - To serve a term of imprisonment of up to 240 hours (10 days), and to perform community service of up to 240 hours, for each count of contempt; and
  - To pay an administrative fee, not to exceed the actual cost of the contemner’s administration and supervision while assigned to a community service program.

➤ **JUDICIAL TIP:** If the court is planning to place the contemner on probation at sentencing, the court has the authority to suspend the *execution* of the sentence once it is pronounced (*e.g.*, state on the record “execution of the sentence is suspended,” also known as ESS), or to suspend the *imposition* of the sentence (*e.g.*, state on the record “imposition of the sentence is suspended,” also known as ISS). Utilizing ESS versus ISS can sometimes make the difference as to whether the case results in a negotiated plea bargain. See §204.31. Depending on the particular sentence entered, however, different procedures are required on any alleged probation violation. See §204.71.

### b. [§204.47] Attorney Fees

Reasonable attorney fees and costs incurred to the party who initiated the contempt proceeding may also be awarded. CCP §1218(a).

### c. [§204.48] Time for Sentencing

On conviction on any or all of the counts, the contemner has a right to have a separate time set for sentencing. Unless time for sentencing is waived on the record or in writing, after a finding or verdict of guilty, the court must appoint a time for pronouncing judgment. The time must not be less than 6 hours, nor more than 5 days, after the verdict. Pen C §1449.

The court may extend the time for sentencing for not more than 20 court days if probation is considered, or for up to 90 additional days on the contemner’s request. Pen C §1449.

## 12. [§204.49] Judicial Review

The judgment and orders of the court or judge in contempt cases are “final and conclusive.” CCP §1222. These judgments and orders are explicitly excluded from the statute



listing appealable orders and judgments of the superior court. CCP §904.1(a)(1)(B). Thus, the contempt judgment is not appealable.

A party convicted of contempt that is final may obtain review only by petitioning an appellate court for an appropriate extraordinary writ. CCP §904.1(a). Usually the proper writ is a writ of certiorari; however, sometimes a writ of habeas corpus may be appropriate. *People v Turner* (1850) 1 C 152, 156; *In re Kreitman* (1995) 40 CA4th 750, 756, 47 CR2d 595 (writ of habeas corpus issued).

If the writ of certiorari—also known as the writ of review—is used, the issuing court may require the trial court to stay further proceedings in the matter to be reviewed. CCP §§1071, 1072.

Once the order of commitment is entered, there will be no further proceedings in the trial court. Unless the trial court has stayed execution, the order will be executed forthwith. In that event, the convicted party should petition for the writ of habeas corpus.

The convicted party’s right to review is not affected by his or her compliance with the order in question after being convicted of contempt. *Wilson v Superior Court* (1948) 31 C2d 458, 459, 189 P2d 266.

### C. [§204.50] Other Contempts

Discussed below are some other contempts that the LCSA may bring, in addition to contempt for failure to pay support orders as described above. Although these contempts are not for ongoing amounts of support or attorney fees, the same rules and procedures as described above should be used. When there is a difference or a unique issue, it is pointed out.

#### 1. [§204.51] Arrears

Arrears in support payments are enforceable by contempt because support includes past due support or arrearages. Fam C §150. An order for an arrears payment is considered a *separate and distinct order* from an ongoing support order. For example, a monthly order for \$300 current (ongoing) support and \$100 toward arrearages is actually two orders. Two counts of contempt can be charged each month for nonpayment.

Arrears payment orders, however, are treated differently than support payment orders. For example, orders for arrears payments do not require the court to make an “ability to pay” finding first as it does for other monetary support orders. An order for *an amount to be paid* toward liquidating any arrearage is required as part of the earnings assignment order required to be made under Fam C §5230. A payment to liquidate the arrears must be meaningful. See *Marriage of Ramer* (1986) 187 CA3d 263, 274, 231 CR 647, superseded by statute on other ground as stated in *Marriage of Romero* (2002) 99 CA4th 1436, 1440 n3, 122 CR2d 220 (error to permit parent to satisfy \$10,500 arrearage at \$100/month).

- **JUDICIAL TIP:** If the order to pay arrears is set without regard to the ability to pay, then the permissive inference of “ability to pay” (as with the setting of a current guideline order) is not available when seeking contempt under CCP §1209. The ability to pay would have to be proven in the case in chief. See §204.132. Additionally, it is unclear whether arrears payment orders are considered a “support order” within the definition of CCP §1209.5 (for purposes of a prima facie case). See §204.8.

## 2. [§204.52] Welfare Reimbursement

Welfare reimbursement (also known as past support obligation) is defined as support owed to a governmental agency for a period before the effective date of an order for support. This is in contrast to arrearages, which is the accrual of missed payments under an order for support.

Child support is an integrated issue and includes amounts due counties for reimbursement of public assistance or otherwise under their child support enforcement obligations. See CCP §1218(c); Fam C §§150, 17402. Counties may enforce such obligations in the same manner as a custodial parent, including enforcement by contempt. *Monterey County v Banuelos* (2000) 82 CA4th 1299, 1305, 98 CR2d 710.

## 3. Employer Contempts

### a. [§204.53] In General

Typical situations encountered by the LCSA that may lead to contempt proceedings against an obligor's employer include:

- Failure to honor an earnings assignment order by withholding wages.
- Failure to remit payments in a timely manner. Fam C §§5235(c), 5241(c).
- Failure to comply with a National Medical Support Notice (NMSN).

### b. [§204.54] Failure To Withhold or Forward Wages

An employer may be liable for contempt for a willful failure to either withhold the appropriate amount or timely remit payments under a valid earnings assignment order. Fam C §5241(c).

In addition to the punishment under CCP §1218 generally for contempt (*e.g.*, up to \$1000 fine, up to 5 days imprisonment, or both), an employer faces the following:

- *Liability for underlying support amount plus interest.* For each willful failure, the employer is liable to the obligee “for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.” Fam C §5241(a).
- *Civil penalty for multiple failures.* When the court finds that an employer has willfully failed to comply on three separate occasions within a 12-month period, the court may impose a civil penalty, in addition to any other penalty required by law, of up to 50 percent of the support amount that has not been received by the obligee. Fam C §5241(d).

If an employer withholds support as required by assignment order, the obligor cannot be held in contempt or subject to criminal prosecution for nonpayment, such as when the employer fails to remit the amount withheld. Fam C §5241(b).

### c. [§204.55] Health Insurance Coverage Assignment or NMSN

An employer or other health insurance provider who willfully fails to comply with a valid health insurance coverage assignment order, or a National Medical Support Notice (NMSN), can be punished for contempt under CCP §1218. Fam C §3768(b). NMSNs are used by local

child support agencies to secure coverage for children under their noncustodial parent's group health plans.

In addition to the punishment under CCP §1218 generally for contempt (up to \$1000 fine, up to 5 days imprisonment, or both), an employer or other health insurance provider is liable for underlying health care services costs. An employer or other person providing health insurance who willfully fails to comply with a valid health insurance coverage assignment order entered and served on the employer or other person is liable to the applicant for the amount incurred in health care services that would otherwise have been covered under the insurance policy but for the conduct of the employer or other person that was contrary to the assignment order. Fam C §3768(a).

- **JUDICIAL TIP:** The vast majority of cases involving employer contempts result in the employer paying the money or complying with the NMSN. However, what if the employer does not comply, who goes to jail? The best practice is to impose a fine, unless a specific individual is identified who had notice of the order, had a duty to comply with the order, and willfully violated the order, such as the owner of a small business or payroll manager of a larger business. The specific elements must be proved about that individual beyond a reasonable doubt.

#### **4. [§204.56] Job Training and Seek-Work Orders**

Orders made in child or family support proceedings that require a parent to participate in job training, vocational rehabilitation, or work placement programs (Fam C §3558), or require an unemployed parent who has defaulted in support payments to submit to periodic proof of applications for employment (Fam C §4505), are enforceable by contempt. *Moss v Superior Court* (Ortiz) (1998) 17 C4th 396, 420, 423, 71 CR2d 215.

#### **D. [§204.57] Effect of Bankruptcy Stay**

Generally, the filing of a bankruptcy petition stays any type of formal or informal action against the debtor or property of the estate. 11 USC §362(a). This is called the automatic stay and applies to all entities, including governmental units, such as the LCSA. 11 USC §101(27).

Actions taken in violation of a stay are void. Willful violations will subject the creditor to the contempt powers of the Bankruptcy Court that may include civil penalties for actual damages, costs, attorney fees, and punitive damages. See 11 USC §362(k). Punitive damages, however, may not be assessed against a governmental agency. 11 USC §106(a)(3).

In contrast to civil actions, criminal actions are generally not stayed. 11 USC §362(b)(1); see *People v Gruntz* (1994) 29 CA4th 412, 420, 35 CR2d 55. Contempt actions brought under CCP §1209 or §1209.5 could be criminal or civil in nature. See §204.5. If the action is civil in nature, it is coercive by definition and would be in violation of the automatic stay, unless it is directed to the collection of support from non-estate property. See *In re Beaoza* (Bankr SDNY 2002) 271 BR 46, 51. If the action is criminal in nature because the intent is to punish and not to coerce payment from estate property, the action falls within the criminal prosecution exception.

For further discussion of exceptions to the automatic stay, see §204.126.

## E. Probation Revocation

### 1. [§204.58] In General

This section provides a general overview of the probation revocation process in the context of support proceedings. At any time during the probationary period, when a probationer is in violation of the terms of the probation, the LCSA can proceed with a probation revocation hearing. It is an evidentiary hearing where both the LCSA and the probationer are allowed to present evidence on the issue of violation of probation terms. Pen C §1203.3(a).

- **JUDICIAL TIP:** Judicial officers need to be aware that the State Disbursement Unit (SDU) (see §204.102) distributes all child support collections among all cases involving an obligor, whether subject to a probation order or not. This may cause an obligor with multiple cases to be in violation of the terms of the probation order. Pursuant to a DCSS Letter (CSS Letter 06-21), the LCSA will not file a violation of probation in these circumstances.

For a checklist of probation revocation procedures, see Appendix A. For in-depth coverage of this topic and scripts for all phases of the proceedings, see California Judges Benchguide 84: *Probation Revocation* (Cal CJER).

### 2. [§204.59] Authority

The United States Supreme Court has given its cursory approval to grants of probation in contempt cases. See *Hicks v Feiock* (1988) 485 US 624, 637 n8, 108 S Ct 1423, 99 L Ed 2d 721, cited in *In re Feiock* (1989) 215 CA3d 141, 145 n5, 263 CR 437, disapproved on other grounds in *Moss v Superior Court (Ortiz)* (1998) 17 C4th 396, 428, 71 CR2d 215; see also Pen C §1203.3(a). Thus, it follows that if the court has authority to grant probation, it has the authority to revoke and modify it. This authority appears to emanate from the inherent powers of the court to enforce its orders. CCP §128.

### 3. [§204.60] Two-Step Process

Normally, probation revocations involve a two-step process (*People v Coleman* (1975) 13 C3d 867, 894, 120 CR 384):

- *Prerevocation determination.* Probation is summarily revoked based on a judge's finding of probable cause in the prerevocation decision.
- *Revocation hearing.* The formal revocation hearing itself, which is also referred to as an evidentiary hearing.

A single unitary hearing, however, will usually suffice to serve the purpose of due process safeguards (*People v Coleman, supra*, 13 C3d at 894), especially if the probationer is not arrested based on the prerevocation decision.

### 4. [§204.61] Due Process Rights

As in any matter when an individual's right to liberty is in jeopardy, the probationer does have certain due process rights that must be observed. At the revocation hearing, however, the

probationer is not entitled to the full panoply of rights normally afforded to a defendant charged with a crime. The probationer is entitled to minimum due process as follows (*People v Vickers* (1972) 8 C3d 451, 105 CR 305):

- Written notice of the claimed violations;
- Disclosure to the probationer of the evidence against him or her;
- An opportunity to be heard in person and to present witnesses and documentary evidence;
- The right to be represented by counsel;
- The right to remain silent;
- The right to confront and cross-examine adverse witnesses;
- A neutral and detached hearing officer; and
- A written statement of reasons for revocation of probation.

#### **5. [§204.62] Timeliness of Motion**

The motion to revoke must be made before the end of the term of probation. A summary revocation order, however, tolls the running of the term of probation, allowing the court to sentence after the original time of probation expired. *People v Mosley* (1988) 198 CA3d 1167, 1175 n1, 244 CR 264.

The LCSA is required to file and serve the pleadings to revoke probation within a reasonable time after the violation. *People v Young* (1991) 228 CA3d 171, 181, 278 CR 784. Additionally, the probationer needs to be served with the pleadings at least 21 days before the hearing if using an OSC. The probationer should have at least enough time to investigate and prepare against the specific allegation. *People v Mosley, supra*, 198 CA3d at 1174.

#### **6. [§204.63] Initiating Formal Proceedings**

Probation revocation proceedings can be initiated at any time during the probationary period by giving notice to the probationer.

A probationer may waive written notice when orally advised by the court of the alleged violations. If the probationer waives written notice, the court should have the record specify the date of the original conviction, the date the probationer was placed on probation, the terms of probation, and the nature of the alleged violations. *In re Moss* (1985) 175 CA3d 913, 929, 221 CR 645.

#### **7. [§204.64] Multiple Procedures Available**

The two procedures suggested below may vary depending on whether the LCSA is using probation review hearings. The procedures should not limit other procedures utilized by the LCSA or court, as long as the process conforms with the probationer's due process rights. The distinction between the two procedures centers around the absconding probationer and the authority of the court to issue a bench warrant before probation is terminated.

- *Review hearings.* If probation review hearings are being utilized and the probationer is present, the court may order the probationer to appear at a date certain. The LCSA should then be directed to prepare either a petition or notice of motion (NOM) to

revoke probation. The NOM would use the same date that the probationer was ordered to appear.

- *No review hearings.* If a review hearing was not set, an order to show cause (OSC) or petition to revoke probation may be filed and served on the probationer personally in the same manner as service for an OSC for contempt. If the probationer fails to appear at the hearing, the court may issue a bench warrant, based on CCP §1212 and the revocation OSC being analogous to a contempt OSC.

## 8. [§204.65] Arraignment

At the first appearance on the revocation hearing, the court will make a judicial determination whether probable cause exists to revoke. In order to proceed with the revocation hearing, the court must have reason to believe (probable cause) that a violation of probation has occurred. *People v Coleman* (1975) 13 C3d 867, 889, 120 CR 384. If probable cause is found, the court will arraign the defendant, and the probationer admits or denies the violation of probation (VOP).

If the probationer admits the VOP, the court can order that the previously suspended sentence or judgment is in full force and effect and that the probationer is remanded or delivered over to the proper detention facility to serve the sentence. In order for the court to accept the probationer's admission of VOP, the probationer must be advised of due process rights, and those rights must be knowingly waived.

If the probationer denies the VOP, a formal revocation hearing date is set. The probationer is entitled to counsel, or court-appointed counsel if indigent, and may request a continuance of the arraignment to obtain counsel.

Alternatively, a plea bargain can be reached. A plea bargain at this stage is usually a "revoke and reinstate" of the existing probation terms with a new period. However, new probation terms could be added. See §204.71.

- **JUDICIAL TIP:** This latter alternative can often be the most efficient course for all parties, especially when the violation was one missed payment (when otherwise there is substantial compliance), and there is simply a need for extended monitoring.

## 9. [§204.66] Summary Revocation

When the court finds sufficient probable cause to support a probation violation and "revokes probation," it is called a summary revocation to distinguish it from the formal revocation order that occurs after the formal revocation hearing. This task is accomplished at the probation review hearing, at the "arraignment" for the revocation hearing, on a noticed motion, or, if necessary, through an ex parte request. Usually an offer of proof or the filing of a declaration setting forth facts constituting probable cause is required.

Summary revocation allows the court to retain jurisdiction over the probationer because it tolls the running of the probationary period. *People v Vickers* (1972) 8 C3d 451, 460, 105 CR 305.

Summary revocation is only a temporary suspension; it does not terminate the terms and conditions of the probation grant. *People v Barkins* (1978) 81 CA3d 30, 33, 145 CR 926.

## 10. [§204.67] Time for Formal Hearing

On arraignment, the court must set a hearing date within a reasonable time. Although there is no statute specifying what constitutes reasonable time, case law indicates that 2 to 3 months is not unreasonable. *Morrissey v Brewer* (1972) 408 US 471, 485, 92 S Ct 2593, 33 L Ed 2d 484 (2-month delay not unreasonable); *People v Buford* (1974) 42 CA3d 975, 980, 117 CR 333 (hearing in felony case 21 days after revocation petition filed not unreasonable); *In re Williams* (1974) 36 CA3d 649, 653, 111 CR 870 (almost 3-month delay following filing of parole revocation petition not unreasonable).

## 11. Formal Hearing

### a. [§204.68] Relaxed Rules of Evidence

The rules of evidence are relaxed to allow the admission of hearsay, illegally seized evidence, and evidence of crimes not resulting in convictions. *People v Maki* (1985) 39 C3d 707, 714, 217 CR 676.

### b. [§204.69] No Criminal Discovery

The reciprocal discovery provisions do not apply to a probation revocation hearing because a probation revocation proceeding is not a criminal trial within the meaning of Pen C §1054. *Jones v Superior Court* (2004) 115 CA4th 48, 61, 8 CR3d 687.

### c. [§204.70] Burden of Proof

The LCSA has the burden to prove by a preponderance of evidence (not beyond a reasonable doubt) that the probationer violated a term of probation. *People v Rodriguez* (1990) 51 C3d 437, 441, 272 CR 613.

### d. [§204.71] Possible Outcomes

After a finding of a violation of probation, the court has the following options:

- *Revoke probation and order sentence executed.* On formal revocation, the court can order that the previously suspended execution of the sentence or judgment be put in full force and effect, and that the probationer be remanded into custody and delivered over to the proper detention facility to serve his or her sentence. If the imposition of sentence was suspended, then the court must first follow the appropriate sentencing procedures. The court does not have jurisdiction to reduce the previously imposed sentence once it revokes probation although it could execute part of the sentence and stay the other part. *People v Howard* (1997) 16 C4th 1081, 1095, 68 CR2d 870.
- *Reinstate probation on the same terms and conditions.* *People v Medina* (2001) 89 CA4th 318, 322, 106 CR2d 895.
- *Reinstate probation and impose new conditions.* If warranted, the court may impose new conditions that it feels appropriate, such as additional community service, additional term of probation, or jail time when the sentence was already imposed and only execution of sentence was suspended.

The maximum length of probation is 3 years. Pen C §1203a. The time probation is tolled is not counted for this purpose. If the court revokes and reinstates probation, a new 3-year period is possible. *In re Hamm* (1982) 133 CA3d 60, 66, 183 CR 626.

- JUDICIAL TIP: An appropriate and effective outcome depends on the facts and circumstances of each case. In some cases, a remand into custody to serve a portion of the sentence previously imposed (to serve 5 days out of 30), along with an order for release and reinstatement of probation on specified terms, can be a very effective “wake-up call” for probationers who fail to comply with the court’s summary probation terms.

## 12. [§204.72] Written Findings

Written findings are generally required. See *Morrissey v Brewer* (1972) 408 US 471, 92 S Ct 2593, 33 L Ed 2d 484; *People v Vickers* (1972) 8 C3d 451, 457–458, 105 CR 305. However, one appellate court has found that such findings are unnecessary when the court has stated its reasons on the record and these reasons are in the transcript. *People v Ruiz* (1975) 53 CA3d 715, 718, 125 CR 886.

## F. [§204.73] Criminal Prosecution for Willful Failure To Support

A parent’s willful failure to support a minor child by failing to “furnish necessary clothing, food, shelter or medical attendance, or other remedial care” to the child without lawful excuse is a misdemeanor. A conviction is punishable by a fine of up to \$2000, plus penalty assessments, or imprisonment for up to 1 year in county jail or both. Pen C §270.

A parent is not relieved from the criminal liability for such omission merely because the other parent of such child is legally entitled to the custody of the child nor because the other parent of such child or any other person or organization voluntarily or involuntarily furnishes such necessary food, clothing, shelter, or medical attendance or other remedial care for such child or undertakes to do so. Pen C §270.

Proof of abandonment or desertion of a child by the parent, or the omission by such parent to furnish necessary food, clothing, shelter, or medical attendance or other remedial care for a child is prima facie evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter, or medical attendance or other remedial care is willful and without lawful excuse. Pen C §270.

The court, in determining the ability of the parent to support a child, must consider all income, including social insurance benefits and gifts. Pen C §270.

The provisions of Pen C §270 are applicable whether the parents of such child are or were ever married or divorced, and regardless of any decree made in any divorce action relative to alimony or to the support of the child. A child conceived but not yet born is to be deemed an existing person insofar as this section is concerned. Pen C §270.



### III. CIVIL ENFORCEMENT

#### A. Earnings Assignment Order (Wage Garnishment)

##### 1. [§204.74] Included With Support Order

Whenever a support order is established or modified, the court must include an earnings assignment order for support in the order. The order must direct the obligor's employer to pay to the obligee (payable through the State Disbursement Unit; see §204.102) that portion of the obligor's earnings sufficient to pay the following amounts (Fam C §5230(a)(1)):

- The current support amount, and
- An amount to be paid toward liquidating any arrearage.

*Note:* Effective January 1, 2012, a federal form designed for nationwide use was implemented for use in all child support cases. Effective May 31, 2012, all payments must be directed on the form to be payable to the SDU (unless the support order was made before January 1, 1994). See Judicial Council form FL-195, Income Withholding Order. For use instructions, see Judicial Council form FL-196, Income Withholding Order—Instructions.

The obligor's subsequent payment of arrearages does not relieve the court of its duty to issue the order. Fam C §5272.

*Note:* Effective January 1, 2009, except for collected tax intercept monies (see §204.79), monies collected are to be allocated first to current child support, and then to arrears principal (if any), and finally to arrears interest (if any). CCP §695.221. This is a major shift from prior law and will assist in lessening the pace of arrearages from accumulating due to interest charges.

##### 2. [§204.75] Stay of Earnings Assignment Order

The service of an earnings assignment order may be stayed only if the court makes a finding of good cause, or if an appropriate alternative arrangement exists. Fam C §5260.

A finding of "good cause" requires that all the following conditions exist:

- A written explanation by the court of why the stay would be in the child's best interests. Fam C §5260(b)(1)(A).
- A history of uninterrupted, full, and timely payment of support by the obligor, not through an assignment order or other mandatory process, that was ordered during the previous 12 months. Fam C §5260(b)(1)(B). A payment is timely if received within 5 days after the due date. Fam C §5220.
- The obligor owes no arrearage for prior support. Fam C §5260(b)(1)(C).
- The court finds by clear and convincing evidence that service of the assignment order would cause extraordinary hardship on the obligor. Whenever possible, the court must specify a date on which any stay ordered for this reason will automatically terminate. Fam C §5260(b)(1)(D).

An alternative arrangement for staying the service of the earnings assignment order requires a written agreement by the parties that provides for payment of support. Fam C §5260(b)(2). The agreement may not preclude the obligee from seeking a termination of the stay under Fam C §5261 if the agreement is violated. The local child support agency must concur with the agreement if support is ordered to be paid through DCSS. Fam C §5260(b)(2).

A stay that has been ordered on the service of an assignment order terminates on any of the following (Fam C §5261(a), (b)):

- On the filing of a declaration by the obligee, under penalty of perjury, that the obligor is in arrears in payment of any portion of the support;
- If requested by the local child support agency or the obligor; or

If requested by any obligee, when he or she can establish that good cause to stay service (as defined by Fam C §5260, discussed above) no longer exists. On a noticed motion, the court must also terminate the service of an assignment order if past due support is paid in full, including any interest due, and if either the child who was receiving the support was emancipated or has died, or if the court determines that there is good cause, as defined in the Fam C §5260, to terminate the assignment order. This latter ground does not apply if there has been more than one application for an assignment order. Fam C §5240(a)(2)–(3).

### **3. Motion To Quash Earnings Assignment Order**

#### **a. [§204.76] Grounds**

The obligor may move to quash an earnings assignment order for support on the following grounds (Fam C §5270(a), (b)):

- The order incorrectly states an amount of current or overdue support ordered;
- The alleged obligor is not the obligor from whom support is due; or
- The amount to be withheld exceeds that allowable under federal law under 15 USC §1673(b), which is from 50 to 65 percent of “disposable earnings,” as defined in 15 USC §1672(b), depending on what persons the obligor is supporting and when the arrearage accrued.

For information on need-based exemptions, see §204.143.

Other grounds may exist to grant a motion to quash under the court’s authority to fashion an appropriate remedy through the exercise of its inherent equitable and supervisory powers. *Marriage of Johnson-Wilkes & Wilkes* (1996) 48 CA4th 1569, 56 CR2d 323 (service of earnings assignment order for support on exempt income).

*Note:* Subsequent service of an assignment order on a new employer does not entitle the obligor to move to quash the order on any grounds previously raised (when the order was served on the prior employer), or on any grounds that the obligor could have but failed to raise at the time of the earlier service. Fam C §5270(d).

#### **b. [§204.77] Procedure**

A noticed motion to quash an earnings assignment order must be filed with the issuing court within 10 days after the employer’s delivery of the copy of the assignment order to the obligor. Fam C §5271(a). The obligor must state under oath the ground on which the motion to quash is made. Fam C §5270(c).

The clerk must set a hearing between 15 and 20 days after receipt of the notice of motion. Fam C §5271(b).

Service on the obligee must be done personally or by first-class mail (postage prepaid), not less than 10 days before the hearing. Fam C §5271(c). Another 5 days' notice is required if mailed. CCP §1013(a).

If the amount of the current support or arrearage is in error, or the amount exceeds federal or state limits, the appropriate remedy is to modify the order to reflect the correct or allowable amount, not to vacate the assignment order. Fam C §5272.

### **B. [§204.78] Health Insurance Coverage Assignment (HICA) and National Medical Support Notice (NMSN)**

Service of a HICA or NMSN will occur automatically once a court order for support has been made. Fam C §§3760 et seq, 3773. A motion to quash or terminate may be brought on any of the following grounds (Fam C §§3765(a), 3773(d)):

- No order to maintain health insurance has been issued.
- The amount of premium, or increased premium, is unreasonable (too high).
- The alleged obligor is not the obligor ordered to provide coverage.
- The child is or will be otherwise provided health care coverage.
- The employer's choice of coverage is inappropriate.

➤ **JUDICIAL TIP:** If the motion to quash or terminate is on grounds of unreasonableness of cost, then the obligor should be cautioned that there is a continuing obligation to look for and obtain appropriate low cost or no cost insurance for the children.

### **C. [§204.79] Tax Refund Intercept**

DCSS submits obligor delinquency data to the state and federal taxing authorities electronically for the purpose of intercepting state and federal tax refunds. The application of these funds to amounts owed is governed by federal regulations, and they differ from funds received from other sources. Tax intercept funds are generally applied first to arrears for aid reimbursement versus non-aid amounts on account. See 26 USC §6402(c); 42 USC §664; 26 CFR §301.6305-1(b)(4)(iii).

➤ **JUDICIAL TIP:** If there is a question about the amount of arrears or the appropriateness of the intercept, the court can order the intercept terminated or modified or, if the intercept has taken place, can order the funds refunded in whole or in part, or held in trust (an exceptions account) pending further determination.

### **D. Licenses**

#### **1. [§204.80] Suspension**

Various state licensing boards may suspend or withhold state-issued licenses for obligors who are not in compliance with support orders registered in, or issued by, a California court. See Fam C §17520. Licenses that may be suspended or withheld include drivers' licenses, professional licenses, sales licenses, real estate licenses, and guards' licenses. Fam C §17520(a)(5). DCSS periodically consolidates lists of noncompliant obligors received from the LCSAs into one certified list, which it submits to the various licensing boards, such as the DMV. Fam C §17520(a)(2), (b), (c). Each board sends notice of intent to withhold issuance or

renewal of a license to noncompliant obligors. Fam C §17520(e)(2). Licenses of obligors listed on a supplemental list for being noncompliant for more than 4 months are subject to suspension. Fam C §17520(a)(3)(A). Board notices must emphasize the necessity of obtaining a release from the LCSA. Fam C §17520(f).

Obligors may file a written request for review with the LCSA. Fam C §17520(h). They may seek judicial review of license denials. Fam C §17520(k). In both the LCSA review and the judicial review, the standard for releasing the license is whether the obligor is in compliance with the order. Fam C §17520(a)(4).

Previously, obligors had to go to each LCSA that had submitted the obligor's name for license suspension for a release. In 2009, DCSS issued a new statewide policy (see CSS Letter 09-07) that allows a person whose license has been administratively suspended in multiple counties to obtain an administrative license release in all cases by applying at any one LCSA (even if that LCSA does not have "managing county" responsibility for all cases).

For Judicial Council forms of motion and order to seek judicial review of a license denial, see forms FL-670 and FL-675.

## 2. [§204.81] Judicial Review

Judicial review of an LCSA license decision must comply with the following procedures (Fam C §17520(k)):

- The obligor must file a request, stating the grounds for review.
- An evidentiary hearing must be held within 20 calendar days of the request's filing.
- Service of the request must be made on the LCSA within 7 calendar days of the filing.

The LCSA is required to mail a copy of the pleading to any nonmoving party within 5 days of receipt by the LCSA. Fam C §17404(e)(3).

The court has authority to uphold the action, grant an unconditional release, or grant a conditional release of the license. Fam C §17520(k)(4)(B). The court's review at the hearing is limited to determining the following (Fam C §17520(k)(1)–(4)(A)):

- Existence of a support judgment, order, or payment schedule on arrearages or reimbursement.
- Whether applicant is the obligor covered by the judgment or order.
- Whether the obligor is in compliance.
- Whether a conditional release is warranted, after taking into account the extent of the needs of the obligor, the obligor's payment history, and the current circumstances of both the obligor and the obligee.

If the court grants a conditional release, it must (Fam C §17520(k)(4)(C)):

- Make findings of fact stating the basis for the relief. The court should state the factors considered above as to needs of obligor, payment history, and the parties' circumstances.
- State the payments necessary to satisfy the unrestricted release without prejudice to a later determination of support arrearages, including interest.
- Specify the payment terms that are necessary to allow the release to remain in effect.

The court may set up terms for continuing release and must base its decision on the facts in each particular case. Fam C §17520(g)(2). Once a court has made a finding and order regarding the release of the hold on a license, it is DCSS's statewide policy that even though courts do not have statewide jurisdiction, the finding of the court "should be honored statewide." See CSS Letter 09-07.

- **JUDICIAL TIP:** Although not required by the code, a review date can be set by the court to review the obligor's compliance with conditions. The court may also wish to consider "step-up" type conditional terms on a payment schedule, as appropriate.

### **E. [§204.82] Passports**

The passport denial program was introduced through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 and Public Law 104-193, and added section 452(k) to the Social Security Act. 42 USC §652(k). This section requires the Secretary of State to refuse to issue a passport to any person certified by the Secretary of Health and Human Services as owing a child support arrearage in an amount greater than \$2500 (\$5000 prior to October 1, 2006). Further, the Secretary of State may take action to revoke, restrict, or limit a passport previously issued to an individual owing such an arrearage. Currently, the State Department is only denying passports at the time of application or renewal.

An obligor to whom the issuance of a passport has been denied may seek an administrative release of the passport through the LCSA, based on a variety of exemptions. Instructions relating to the passport program can be found in DCSS regulations and through DCSS Letters. See, *e.g.*, CSS Letter 05-09 located on the DCSS website at [www.childsup.ca.gov/ChildSupportProfessionals/Policies/CSSLetters.aspx](http://www.childsup.ca.gov/ChildSupportProfessionals/Policies/CSSLetters.aspx).

There is no law that specifically gives the state court jurisdiction to release the passport. It is a federal issue, and thus, arguably, legal action could be brought in federal court. Although there is currently no case law directly on point, the state court presumably has jurisdiction over DCSS (state action, including administrative and ministerial duties). Because DCSS has the ability to request the release of a passport from the State Department, it follows that the state court has authority to issue orders directed at DCSS to take all steps necessary to release the obligor's passport. Judicial review of administrative action may also be available through the writ process under the provisions of CCP §§1085, 1094.5 (administrative writs).

### **F. [§204.83] Need-Based Benefits Exempt**

Any public benefits that are awarded based on need, also known as "need-based" benefits (TANF, SSI, GA or general assistance, VA need-based), are exempt from attachment or execution. Fam C §4058(c).

### **G. [§204.84] State Disability, Unemployment, and Workers' Compensation Benefits**

DCSS can garnish up to 25 percent of State Disability Insurance (SDI) or health insurance program benefits for support. CCP §704.130; Fam C §5206(e).

DCSS can garnish unemployment insurance benefits (UIB) at the rate of 25 percent of each weekly payment, or a lesser amount by written agreement, or as ordered by the court. CCP §704.120; Fam C §17518(c).

DCSS can garnish up to 25 percent of Workers' Compensation temporary disability benefits for ongoing support and can impose a lien on the final lump-sum award. CCP §704.160; Fam C §5206(d).

#### **H. [§204.85] Social Security**

DCSS can garnish up to 25 percent of Social Security Administration (SSA) benefits for support. 20 CFR Part 404.

DCSS can garnish up to 50 percent of Social Security Disability (SSDI) benefits for ongoing support and up to 5 percent for child support arrears. 20 CFR Part 404; see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support*, Appendix B (Cal CJER).

Supplemental Security Income (SSI) cannot be garnished or used for child support because it is awarded based on need. 20 CFR Part 416.

#### **I. [§204.86] Derivative Benefits**

The children of an obligor receiving certain social security benefits, railroad retirement act benefits, or veteran's affairs (VA) benefits may be eligible for derivative benefits based on the supporting person's disability. The custodial party or other child support obligee (the social services agency in foster care cases) must apply for derivative benefits within 30 days of receiving notification of possible eligibility. Fam C §4504(a).

Any sums received by the child on account of the obligor's disability must be credited (if they were not considered in setting support) toward the obligor's support obligation, first toward the current month's ongoing support, then toward interest on arrears, then arrears. Fam C §4504(b).

If the custodial party refuses to apply for, or fails to cooperate with, the appropriate agency for the derivative benefits, the obligor's derivative benefits are credited toward the amount ordered by the court to be paid for that month. The credit is in the amount of payment that the child would have received that month had an application been completed, if the noncustodial parent provides evidence to the local child support agency indicating the amount the child would have received. The credit for those payments continues until the child would no longer be eligible for those benefits or the order for child support for the child is no longer in effect, whichever occurs first. Fam C §4504(c).

For a chart that outlines the use of various benefits and programs for child support, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support*, Appendix B (Cal CJER).

#### **J. Levy**

##### **1. [§204.87] Bank Levies**

Obligor's who are delinquent in paying their current child support or who owe arrears and are not paying (also known as "non-compliant" obligors) are submitted by the LCSA to the Franchise Tax Board (FTB) for full collection, which can include bank levies for obligor account holders. Fam C §§17500 et seq.

A “child support delinquency” means an arrearage or otherwise past-due amount that accrues when an obligor fails to make any court-ordered support payment, which is more than 60 days past due, and an aggregate amount that exceeds \$100. Fam C §17500(c).

The FTB bank levy Financial Institution Data Match (FIDM) program is a process whereby delinquent obligors (even if “compliant” as to current support obligations) are matched with accounts in financial institutions for purposes of collecting delinquent support. Rev & T C §19271.6. The provisions of the program are contained in CSS Letter 04-27, which can be found on the state DCSS website at the resources/policies link.

No referral is to be made when:

- A jurisdiction other than California is enforcing;
- The obligor has filed bankruptcy;
- The obligor is receiving SSI/State Supplementary Program benefits;
- The obligor is receiving SSDI (see *Marriage of Hopkins* (2009) 173 CA4th 281, 289–291, 92 CR3d 570); or
- The obligor is deceased.

There is an automatic exemption of \$3500 from the FIDM levy without filing a Claim of Exemption. It applies to the total of all accounts held in financial institutions, not each individual account; obligors with accounts in multiple institutions qualify for one \$3500 exemption in a 12-month period.

This process is not limited to banks. Other financial institutions such as brokerage firms are included.

DCSS does not need to provide notice to the obligor and does not need to obtain a court order authorizing the levy. *Marriage of Lamoure* (2011) 198 CA4th 807, 818–819, 132 CR3d 1.

## 2. [§204.88] Exemption Processes

If the levy causes an undue financial hardship, there is an FTB Levy Hotline at 866-820-5408. The FTB conducts an analysis of obligor’s income, expenses, and assets.

An obligor may also apply for a claim of exemption under CCP §§703.510 et seq for an amount that is less than or equal to the total amount levied. The sole basis for a claim of exemption is the financial hardship for the obligor and the obligor’s dependents. Rev & T C §19271.6(j)(3). The process works as follows:

- The obligor contacts the LCSA who is the levying officer (Rev & T C §19271.6(j)(5)), or obtains a claim form from the FTB.
- The obligee must file the claim within 10 days of levy and must include a financial statement with the claim. CCP §§703.520, 703.530.
- The LCSA must notify FTB within 2 business days after the claim is filed (Rev & T C §19271.6(j)(6)) to place a 45-day hold on the account. If it opposes the claim, the LCSA, within 10 days of claim filing, must file with the court a notice of opposition (see mandatory form FL-677), the claim, and a request for hearing. CCP §703.550.
- The funds remain on hold until the court grants, grants in part, or denies the claim.

### 3. [§204.89] Liquidation of Financial Assets

After a levy, DCSS has specific authority to order the party levied on to liquidate the financial assets and turn the proceeds over to the LCSA or the DCSS to satisfy a support obligation. Fam C §17522.5.

### 4. [§204.90] Lien Enforcement by Levy

Under Fam C §17522, if an obligor is delinquent in the payment of support for at least 30 days and the LCSA is enforcing under Fam C §17400, then the LCSA may collect or enforce any lien by levy. The levy may be issued by the LCSA, on proper notice, advising the obligor of the amount of arrearages, the right to administrative review of a determination of arrearages under Fam C §17800 (complaint resolution), and the right to seek a judicial determination of arrearages under Fam C §17526. Fam C §17522(c).

The LCSA may collect the delinquency or enforce any lien by levy served on all persons having in their possession, or who will have in their possession or under their control, any credits or personal property belonging to the delinquent support obligor, or who owe any debt to the obligor at the time they receive the notice of levy. Fam C §17522(a).

## K. Liens

### 1. Real Property Liens

#### a. [§204.91] Creation of Lien

A real property lien against an obligor's real property interests is created by recording, with the county recorder, an abstract of judgment, a notice of support judgment, a certified copy of the order or money judgment, or a federal Notice of Lien. CCP §697.320. Recording the lien prevents an obligor from selling, transferring, or refinancing real property in the county where it is recorded until the lien is extinguished. See, *e.g.*, *Cal-Western Reconveyance Corp. v Reed* (2007) 152 CA4th 1308, 1314–1316, 62 CR3d 244.

DCSS and the LCSA may use digital or digitized electronic records to transmit, file, and record a lien record. See Fam C §17523.5.

#### b. [§204.92] Property Subject to Lien

The lien attaches to all real property interests of the obligor in the county where the lien is recorded. CCP §697.340(a).

Examples of real property interests included are present or future interests, vested or contingent interests, and legal or equitable interests. CCP §697.340(a).

Examples of interests not included are rental payments, interest of a trust beneficiary, a leasehold estate with unexpired term of less than 2 years, or real property that is subject to an attachment lien in favor of the creditor and was transferred before judgment. CCP §697.340(a).

If an obligor later acquires any other interest in real property in the county where the real property lien is recorded, the lien will likewise attach to the obligor's interest in the later-acquired property at the time of acquisition. CCP §697.340(b).



**c. [§204.93] Amount of Lien**

The lien is for the amount of matured installments, plus any accrued interest and costs as they are added to the judgment or order, less the amount of any sums paid toward the judgment or order. The 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).

If the support order amount subsequently increases or decreases, the lien extends to the judgment or order as modified without having to record another abstract of support judgment, but priority for any additional amount (where support increases) dates from the time the modification is effective. CCP §697.360(d).

**d. [§204.94] Duration of Lien and Effect of Transfer**

The lien is effective during the period that the support judgment or order remains enforceable. CCP §697.320(b). A support order or judgment (child, family, spousal support, reimbursement), including accrued interest and penalties, is enforceable until it is paid in full. Fam C §§291(a), 4502. Thus, a lien on real property will stay in effect until all support obligations arising under the judgment or order are paid in full or otherwise satisfied.

If the lien is not satisfied or extinguished before a transfer or encumbrance of the obligor's interest in the property, then that real property interest remains subject to the lien, in the amount of the lien at the time of such transfer or encumbrance, plus any interest subsequently accruing on that amount. CCP §697.390. The lien amount will not include any installments that mature after the date of transfer or encumbrance, or any interest on unmatured installments. CCP §697.390.

If the obligor holds 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 title passes to the surviving tenant free and clear from any encumbrance created by the prior recorded lien. *Tenhet v Boswell* (1976) 18 C3d 150, 159, 133 CR 10; *Grothe v Cortlandt Corp.* (1992) 11 CA4th 1313, 1317-1318, 15 CR2d 38.

**e. [§204.95] Priorities of Liens**

The priority for payment on multiple or competing liens on the same property is determined by CCP §697.380. Generally, priorities depend on various factors, such as the dates the liens were created and the types of underlying judgments or orders that created the liens.

**f. [§204.96] Subordination**

Subordination refers to the establishment of priority between different existing liens, encumbrances, interests, and claims on the same parcel of land by agreement. The LCSA may subordinate a child, family, or spousal support lien to another lien encumbrance, claim, or interest on all or a part of the real property subject to the support lien, such as when a refinancing occurs. CCP §697.370(a)(2).

- **JUDICIAL TIP:** The court does not usually get involved in this issue, but may see it in connection with an arrearage determination. Typically, the LCSA will only subordinate the support lien when the obligor is not receiving any monies on close of escrow. If an obligor is taking out equity, or other loans are being paid as a result of the refinancing, subordination of the support lien is generally not allowed.

Sometimes, however, in nonaid cases, the other parent may be willing to accept a lump-sum amount of less than the total amount owed that can be negotiated as part of a subordination request.

**g. [§204.97] Recording Substitution of Payee**

A substitution of payee provides notice that payments made under a support judgment or order should be made to a particular individual or Title IV-D agency other than what was originally specified in the judgment or order. Fam C §4506.2. When the LCSA intervenes to enforce some or all of the obligations arising under the judgment or order for support, the LCSA is authorized to *file and record* a substitution of payee, if a judgment or abstract of judgment has previously been recorded pursuant to CCP §697.320 by the obligee or by a different governmental agency. Fam C §4506.2(a). The LCSA is also authorized to *file and record* a substitution of payee when it ceases enforcement of a support obligation at the request of the support obligee. Fam C §4506.2(b). By recording a substitution of payee, the named party in the substitution becomes the payee or assignee of record on the recorded lien. Prior court approval is not needed for the filing and recording under this section. Fam C §4506.2(e).

A recorded substitution of payee does not affect the priorities created by earlier recordings of abstract of support judgments, notice of support judgments, or certified copies of judgments or orders for support. Fam C §4506.2(d).

**h. [§204.98] Satisfaction of Judgment**

If an obligor's support obligation has been satisfied, in whole or in part, from escrow proceeds or otherwise, the LCSA must comply with CCP §§724.030 et seq, 724.110 et seq, and 724.210 et seq. These sections essentially require the LCSA to file with the court, and serve the support obligor or person making the demand, either a *full satisfaction* of judgment, a *partial satisfaction* of judgment, or a *matured installment satisfaction* of judgment, and to timely respond to a title or escrow company request for a demand made due to a recorded lien. CCP §697.360(e).

*Full satisfaction.* Execution of a full satisfaction of judgment is required when the LCSA has recorded an abstract or notice of support judgment or a certified copy of the support judgment or order; all support arrears have been paid in full; and all children subject to the support order or judgment have emancipated, been adopted away from the obligor, or are deceased. CCP §724.010.

*Partial satisfaction.* A partial satisfaction of judgment is a commonly misused term. It basically means that a specified number of dollars has been paid toward the amount owing on the judgment. The partial satisfaction of judgment itself must specifically state the dollar amount received in partial satisfaction. The LCSA will execute a partial satisfaction of judgment when it has recorded an abstract of support judgment, a notice of support judgment, or a certified copy of the judgment or order for support; all support arrears have been paid in full; and all children subject to the support order have not emancipated, but there is no order for current support. CCP §724.120.

*Matured installment satisfaction.* The satisfaction of judgment on matured installments is the most commonly used type of satisfaction of judgment. It means that all installments due

and owing, plus any accrued interest and costs, have been paid through the date specified on the satisfaction. CCP §724.210. The LCSA will execute a satisfaction of judgment on matured installments when all support arrears have been paid in full and some or all of the children subject to the support order have not reached emancipation.

**i. [§204.99] Release of Lien**

A release of judgment lien (CCP §697.370(a)) means that the real property interests of the obligor in the county where the release is recorded are no longer encumbered by the lien. It is commonly used and recorded when the LCSA is no longer claiming any interest in the real property of the obligor in the county where the release is recorded. Recording a release of judgment lien does not:

- Mean the support judgment or order has been satisfied;
- Affect the amount of support owed by obligor, presently or in the future; or
- Prevent the LCSA from subsequently recording another real property lien in the same county where the lien was previously released.

A partial release of lien means a release with respect to a particular piece of property, but not to all real property interests held by an obligor in the particular county where the lien is recorded. In determining whether to give a partial release, the LCSA may consider such things as:

- The type of transaction involved;
- The obligor's equity in that property;
- The obligor's other income or assets available to satisfy the lien; or
- The obligor's ability to obtain a loan to satisfy any remaining arrears.

The legal description of the particular piece of property being released must be stated on the Release of Lien. CCP §697.370(b).

**j. [§204.100] Interstate Liens**

The Notice of Lien is a federal form used to create a lien on real property owned by an obligor in states outside of California. 42 USC §652(a)(11)(B). The form must be recorded in the specific county or jurisdiction where the property is located, and requires the specific legal description of the property, although the lien should likewise attach to all real property interests of the obligor in the county or jurisdiction where it is recorded. CCP §697.320(a).

**2. [§204.101] Personal Property Liens**

Family Code §17523 establishes a procedure whereby a personal property lien is created by operation of law on the obligor's personal property for all amounts of unpaid support when a LCSA is enforcing under Fam C §§17400 and 17402. The lien is perfected by filing with the Secretary of State and has the same force and priority as a judgment lien.

**L. [§204.102] State Disbursement Unit**

Since 2006, all child support orders paid by wage assignment in California—both DCSS and non-DCSS (*i.e.*, IV-D and non-IV-D) orders—are sent to a single location called the State

Disbursement Unit (SDU). Payments by wage assignment are no longer allowed to be sent directly to the DCSS/LCSA or support obligee. See §204.74. It is a payment pass-through mechanism in all cases. When DCSS is not involved (non-IV-D cases), the only services the support obligee receives are collection, disbursement, record keeping, and limited customer service. When DCSS is involved in enforcing a support order, the support obligee receives the full range of enforcement services (including license suspensions).

As a part of this process, any child support order issued or modified must include a provision requiring the support obligor and obligee to:

- Notify the other parent or the agency named in the order (if it requires payment through an agency designated under Title IV-D) of the name and address of his or her current employer (Fam C §4014(a)); and
- File with the court, within 10 days of the court order, certain specified location and identification information, subject to applicable confidentiality provisions. Fam C §4014(b). Form FL-191 (Child Support Case Registry Form) must be used. The court has the responsibility of processing the FL-191 forms under Cal Rules of Ct 5.330; the forms are sent to the SDU and may not be stored in the court's file. When DCSS is enforcing, the parties do not have to file form FL-191 (DCSS will take care of the reporting). Fam C §4014(c).

➤ JUDICIAL TIP:

## M. Judgment Debtor Exams

### 1. [§204.103] Order Requiring Debtor's Appearance

An obligee or DCSS ("creditor") may apply for an order requiring the obligor ("debtor") to appear before the court or a court-appointed referee, at a specified time and place, to furnish information about the debtor's property and future employment prospects to aid in enforcing the money judgment. CCP §708.110(a) and accompanying Law Revision Commission Comment.

A court must issue the order on the creditor's ex parte application (or by motion if required by the court or by court rule), as long as the creditor has not caused the debtor to be examined during the preceding 120 days. CCP §708.110(b), (c). The creditor may obtain an order of examination even if the debtor has been required to respond to written interrogatories under CCP §708.020 within the 120-day period. Comment to CCP §708.110.

If the debtor has been examined during the preceding 120 days, the court may issue the order only if the creditor establishes good cause for the order. CCP §708.110(c). Examples of "good cause" might include:

- Efforts by the debtor to conceal, dissipate, waste, or transfer assets;
- Incomplete, unintelligible, vague, evasive, or untruthful responses by the debtor to prior discovery requests;
- Evidence of a material change in the debtor's financial status; or
- Evidence of the debtor's intent to flee the jurisdiction.

An examination proceeding is an alternative to proceeding against the debtor's property by levy under a writ of execution. It may precede issuance of a writ and service of a notice of levy on the debtor or a third person. *Imperial Bank v Pim Elect., Inc.* (1995) 33 CA4th 540, 549-550, 39 CR2d 432. One of the advantages of the examination procedure is the availability of a turnover order requiring the debtor or a third person to deliver the identified assets to the levying officer. Because this order (1) may require delivery of property directly to the creditor, (2) creates a lien on the property subject to it, and (3) is enforceable by contempt, it may be far more effective than levying on property under a writ of execution. 33 CA4th at 549-550.

Although these examinations often occur informally in the hallway outside the courtroom or in an adjacent room or in the DCSS office, they are public proceedings under CCP §124. *Nebel v Sulak* (1999) 73 CA4th 1363, 1368-1370, 87 CR2d 385 (injunction prohibiting public member from observing judgment debtor examinations conducted by a particular individual was improper in light of evidence that he was quietly observing and not engaging in harassing or interfering conduct).

The Judicial Council has approved an optional form for the application and order. See form EJ-125, Application and Order for Appearance and Examination. The order must contain the following statement (CCP §708.110(e)):

NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

## **2. [§204.104] Service of Order Creates Lien on Property**

The judgment creditor must personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service must be made in the manner specified by CCP §415.10 for service of a summons and complaint. CCP §708.110(d).

Service of the order creates a lien on the debtor's personal property for 1 year from the date of the order unless extended or terminated by the court. CCP §708.110(d). Courts frequently extend liens beyond the 1-year period, particularly on a showing that the creditor has been unable to satisfy the judgment due to the debtor's concealment or transfer of assets. It is unlikely that a court would terminate a lien before the 1-year period except when the judgment has been satisfied in full.

The lien may not be enforced beyond the time for enforcement of the judgment. Comment to CCP §708.110. The lien attaches whether or not the property is described in the application for the order in sufficient detail to be reasonably identifiable. In the case of an order for examination directed to a third person, the property must be adequately identified for the lien to attach. *Imperial Bank v Pim Elect., Inc.* (1995) 33 CA4th 540, 553, 39 CR2d 432. The lien continues notwithstanding the transfer or encumbrance of the property, unless the transfer or encumbrance is made to a person listed in CCP §697.740. A listed person includes someone who acquires an interest in the property for reasonably equivalent value without knowledge of the lien, a buyer or lessee in the ordinary course of business, or a holder in due course of a negotiable instrument. CCP §§697.910(a), 697.920.

### 3. [§204.105] Judgment Debtor’s Claim of Exemption

Code of Civil Procedure §708.120(d) sets forth the procedure for claiming and determining whether property is exempt from the enforcement of a money judgment in an examination proceeding involving a third person. Code of Civil Procedure §708.110, governing a judgment debtor’s own examination proceeding, does not describe the procedure to be used by the debtor in claiming an exemption in that proceeding. One appellate court has held that although a debtor might file a claim of exemption at any time after receiving notice of the examination, no waiver of the right to claim an exemption should occur from the failure to do so until, at the earliest, the judgment creditor seeks a turnover order, identifying the property sought to be turned over to a levying officer. *Imperial Bank v Pim Elect., Inc.* (1995) 33 CA4th 540, 553, 39 CR2d 432.

- JUDICIAL TIP: When an exemption issue arises, the court may consider staying any execution at the examination proceeding, and then setting a hearing on the claim of exemption on the law and motion calendar within 10 days.

### 4. [§204.106] Privileges

Despite the broad scope of inquiry permitted at the debtor examination, the debtor is usually entitled to assert the same privileges that a witness at trial may assert as a basis for refusing to answer questions or respond to requests for information. *Hooser v Superior Court* (Ray) (2000) 84 CA4th 997, 1002, 101 CR2d 341 (assertion of attorney-client privilege by attorney-debtor).

The privilege against self-incrimination applies in judgment debtor proceedings. A court may compel the witness to answer only if it clearly appears that the proposed testimony cannot possibly have a tendency to incriminate the witness. The court must conduct a particularized inquiry, deciding whether the privilege is well-founded in connection with each specific area that the questioning party seeks to explore. *Marriage of Sachs* (2002) 95 CA4th 1144, 1150–1151, 116 CR2d 273. In *Sachs*, the court held that a child-support payor may not invoke his Fifth Amendment privilege in a debtor examination on the ground that answering questions about financial information could subject him to contempt proceedings.

The marital privilege afforded by Evid C §970 does not apply in an examination proceeding. CCP §708.130(b).

### 5. Person Fails To Appear for Examination

#### a. [§204.107] Issuance of Bench Warrant and Contempt Order

If an order requiring a person to appear for an examination was served by a sheriff, marshal, person specially appointed by the court in the order, or a registered process server, and the person fails to appear, the court may issue (1) a warrant to have the person brought before the court to explain the failure to appear and may punish the person for contempt or (2) an arrest warrant under CCP §1993. CCP §708.170(a)(1).

The court will most likely issue a bench warrant, with bail set at the amount of the arrears owed or some other appropriate amount (*e.g.*, \$500, \$1000), when a person fails to appear for an examination.

- **JUDICIAL TIP:** Some courts will place a hold or stay on the bench warrant, *i.e.*, order that it not be released until a subsequent hearing date, notice of which the DCSS or creditor’s counsel is required to give to the debtor. If the debtor appears at that hearing, the court recalls the order for the warrant. If the debtor does not appear, the court releases or lifts the stay for service of the warrant on the debtor. This saves time and law enforcement resources when all that was needed to get the debtor to come in was a notice that the warrant had been ordered.

A court’s general contempt power under CCP §§1209–1222 is not limited by examination provisions for contempt. CCP §708.170 and Comment.

For more discussion of civil bench warrants, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* (Cal CJER) §203.130.

### **b. [§204.108] Imposition of Sanctions**

If the failure to appear was without good cause, the court must award the judgment creditor reasonable attorney fees incurred in the examination proceeding, if requested. Any award against the judgment debtor must be added to and becomes a part of the principal amount of the judgment. CCP §708.170(a)(2). A court may not impose sanctions against an attorney under CCP §708.170(a)(2), but only against the person who failed to appear. *Eby v Chaskin* (1996) 47 CA4th 1045, 1049, 55 CR2d 517.

This provision does not limit any right to attorney fees the parties may have by contract or statute. Comment to CCP §708.170. For example, when the statutory requirements are met (notice and an opportunity to respond), a court may impose sanctions against the person who failed to appear or against that person’s attorney or both under CCP §128.5 or §128.7 when the attorney advised or participated in the person’s failure to appear. *Marriage of Adams* (1997) 52 CA4th 911, 914–916, 60 CR2d 811; *Eby v Chaskin, supra*, 47 CA4th at 1048–1049. A court may also impose a monetary sanction against the person who failed to appear or that person’s attorney, or both, under CCP §§2023.010 et seq for misuse of the discovery process, or under CCP §177.5 for the failure to comply with a lawful court order without good cause. *First City Props., Inc. v MacAdam* (1996) 49 CA4th 507, 515–516, 56 CR2d 680.

### **N. [§204.109] Seek-Work Orders**

The court may require a parent to participate in job training, vocational rehabilitation, or work placement programs (Fam C §3558), or require an unemployed parent who has defaulted in support payments to submit to periodic proof of applications for employment (Fam C §4505(a)). These are often referred to as “seek-work orders” or “work search orders.” The parent subject to the order must document his or her regular participation so the court may make a finding of good faith attempts at job training and placement. Fam C §3558. See further discussion in California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* §203.86 (Cal CJER).

### **O. Independent Actions**

#### **1. [§204.110] Modification**

A parent who has requested or is receiving support enforcement services of the LCSA may take independent action to modify a support order while support enforcement services are being provided by the LCSA. The parent must serve the LCSA with notice of any action filed

to modify the support order and provide the LCSA with a copy of the modified order within 15 calendar days after the date the order is issued. Fam C §17404(f)(1).

## 2. [§204.111] LCSA Consent or Objection to Action

A parent who has requested or is receiving support enforcement services of the LCSA may take independent action to enforce a support order made while support enforcement services are being provided by the LCSA with the written consent of the LCSA. Fam C §17404(f)(2). The statute provides:

- The parent must give at least 30 days' written notice to LCSA before filing an independent enforcement action that includes a description of the type of enforcement action to be filed.
- The LCSA must, within 30 days of receiving the notice, either give written consent, or notice that it objects to the filing of the independent action.
- The LCSA can only object if it is currently using an administrative or judicial method of enforcement, or if the proposed independent action would interfere with an investigation being conducted.
- LCSA consent is deemed to have been given if the LCSA does not respond to the parent's written notice within 30 days.

➤ **JUDICIAL TIP:** In some counties, the LCSA routinely consents (or uses a blanket consent form) and allows such actions. However, when this does not occur, and when the parent fails to provide the appropriate notice in the first instance (particularly when the LCSA is objecting to the independent action), the parent's failure to follow the statute may be a ground for the court to deny (without prejudice) the independent relief requested. This can be particularly helpful when a self-represented litigant repeatedly files motions while the LCSA is providing enforcement services.

## 3. [§204.112] Private Agreements

DCSS must sign off on any private agreement that is made an order of the court if DCSS is providing enforcement services, or the order is voidable. This also applies to any order taken without notice being given to DCSS when they are providing services. Fam C §17404(f)(3).

## P. Writs of Execution

### 1. [§204.113] In General

Support judgments and orders are enforceable by writ of execution without prior court approval. Fam C §5100.

### 2. [§204.114] Issuance

If the judgment is conditional or a question arises as to the judgment creditor's right to enforce the judgment, a motion for an order directing the issuance of the writ may be brought. *Marriage of Farner* (1989) 216 CA3d 1370, 1376–1377, 265 CR 531.



Further, if a support order or other installment type judgment or order is sought to be enforced, an application for a judgment could be brought to establish an arrearage amount as of a specific date. These motions may be brought ex parte, but the court has the discretion to require that they be brought by a noticed motion.

The writ must be issued in the judgment debtor's name as listed on the judgment. If the judgment creditor wishes to include additional names for the judgment debtor, an affidavit of identity must be obtained from the court. CCP §680.135. The court will approve the affidavit of identity if it determines that the affidavit states sufficient facts to identify additional names used by the debtor.

### 3. Order To Recall or Quash Improper Writs

#### a. [§204.115] Bases

The court has the inherent equitable power to control the proceedings before it. Thus, the court may recall or quash a writ of execution improperly or inadvertently issued or vacate a levy of execution already effected. *Evans v Superior Court* (1942) 20 C2d 186, 187-188, 124 P2d 820. Such an order is appropriate on any of the following grounds:

- The judgment is not enforceable by execution, or a statute barred levy under a writ of execution. *Evans v Superior Court, supra*, 20 C2d at 187-188.
- The debt is already paid or the judgment is already satisfied. *Meyer v Meyer* (1952) 115 CA2d 48, 49, 251 P2d 335; *Marriage of Chapman* (1988) 205 CA3d 253, 259, 252 CR 359.
- The judgment was vacated. *Stegge v Wilkerson* (1961) 189 CA2d 1, 5, 10 CR 867.
- The writ failed to account for a legitimate setoff against the payment due. *Marriage of Peet* (1978) 84 CA3d 974, 977, 149 CR 108.
- The judgment was satisfied by an agreement or "substituted" performance. *Colby v Colby* (1954) 127 CA2d 602, 605-606, 274 P2d 417; *Jackson v Jackson* (1975) 51 CA3d 363, 368, 124 CR 101; *Marriage of Okum* (1987) 195 CA3d 176, 183-184, 240 CR 458; *Marriage of Trainotti* (1989) 212 CA3d 1072, 261 CR 36.
- A voluntary and intelligent waiver of benefits under the order sought to be enforced. *Marriage of Paboojian* (1987) 189 CA3d 1434, 1437-1438, 235 CR 65.
- Estoppel to enforce the judgment or order. This requires proof that (1) the party to be estopped (obligee/judgment creditor) knew the facts, (2) the debtor was ignorant of the true facts, (3) the creditor intended the conduct be acted on or acted in a manner that the debtor had a right to believe it so intended, and (4) the debtor detrimentally relied on the conduct. *Marriage of Thompson* (1996) 41 CA4th 1049, 1060-1062, 48 CR2d 882; *County of Orange v Carl D.* (1999) 76 CA4th 429, 438-440, 90 CR2d 440; see §§204.198-204.199.
- No amount is owing because the order on which execution is sought was terminated. *Marriage of Glasser* (1986) 181 CA3d 149, 226, 226 CR 229.
- The judgment is conditional, requiring a judicial determination as to whether the creditor is entitled to enforce it. *Adams v Bell* (1933) 219 C 503, 505, 27 P2d 757; *Marriage of Farner* (1989) 216 CA3d 1370, 1376-1377, 265 CR 531.

- The creditor falsely represented the amount due from the debtor. *Hunter v Hunter* (1959) 170 CA2d 576, 582-583, 339 P2d 247.
- The judgment is void. *Jones v World Life Research Inst.* (1976) 60 CA3d 836, 840, 131 CR 674.
- The wrong person has been named in the writ.
- The judgment debtor has filed a petition in bankruptcy before issuance of the writ.
  
- The debtor has a final judgment against the creditor that will completely offset the amount due on the judgment. *Note*: This is not an appropriate ground in all situations.

A levy on property that is exempt from execution is not a reason for recalling the writ. *Vest v Superior Court* (Astikan) (1956) 140 CA2d 91, 93, 294 P2d 988.

#### **b. [§204.116] Motion To Quash Writ**

The moving party has the burden of establishing facts justifying an order quashing the writ. *Lohman v Lohman* (1946) 29 C2d 144, 150, 173 P2d 657; *Slevats v Feustal* (1963) 213 CA2d 113, 119, 28 CR 517. When a court issues an order recalling or quashing a writ of execution, any levy under the writ is automatically canceled, and any title to the property vested in the levying officer by the levy is defeated. *Hulse v Davis* (1927) 200 C 316, 318, 253 P 136. All rights and proceedings based on a writ that has been quashed fall with it. *Moreno v Mihelis* (1962) 207 CA2d 449, 451, 24 CR 582.

#### **c. [§204.117] Motion To Quash Levy**

When the officer has already levied on the property, the debtor may file a motion to quash the levy rather than recall or quash the writ. *United Taxpayers Co. v City & County of San Francisco* (1927) 202 C 264, 265-266, 259 P 1101. When a motion to recall or quash an improperly issued writ is not an adequate remedy (*e.g.*, sale or collection and payment under the writ have been completed), the court may afford equitable relief. *Salveter v Salveter* (1936) 11 CA2d 335, 337, 53 P2d 381. Most courts would grant such relief only when the facts are compelling and the basis for relief involves the judgment's validity, and not a procedural defect in issuance of the writ.

#### **d. [§204.118] Who May File**

A motion to recall or quash a writ of execution may only be filed by a party to the action unless the judgment on which it is issued or the writ itself is void on its face. In such cases, the motion may be filed by a subsequent purchaser at an execution sale of property levied on under the writ, a lien holder, or an execution or judgment creditor. *Vest v Superior Court* (1956) 140 CA2d 91, 93, 294 P2d 988.

#### **e. [§204.119] Costs**

A motion to quash a writ of execution is a special proceeding; thus a court must allow costs to the prevailing party under CCP §1032(a). *Van Denburgh v Goodfellow* (1941) 19 C2d 217, 225, 120 P2d 20.

#### **4. Enforcement**

##### **a. [§204.120] Turnover Orders**

If a writ of execution is issued, on the judgment creditor's ex parte application (or noticed motion if the court directs or court rule requires), the court may issue a turnover order to aid in execution, directing the judgment debtor to transfer either or both of the following to the levying officer:

- Possession of the property sought to be levied on by taking it into custody. CCP §699.040(a)(1).
- Possession of documentary evidence of title to the property of or a debt owed to the judgment debtor that is sought to be levied on. The order may be served when the property or debt is levied on or thereafter. CCP §699.040(a)(2).

##### **b. [§204.121] Levy on Personal Property in Private Place**

The judgment creditor may make an ex parte application (or noticed motion if the court directs or court rule requires) for an order directing the levying officer to seize personal property that is located in a private place of the judgment debtor, irrespective of whether a writ of execution has been issued or a demand made. Both the property and the place where it can be found must be described with particularity. CCP §699.030(b). The creditor must establish that there is probable cause to believe that the property is located in the place described. CCP §699.030(b). If the application is granted, the court can order the debtor to pay the creditor's costs and attorney fees incurred to obtain delivery of the property. CCP §699.030(a).

#### **Q. Abstract of Judgment**

##### **1. [§204.122] In General**

A judgment lien may be created on the judgment debtor's real property by recording an abstract of the support judgment with the county recorder. CCP §697.320(a). Like the writ of execution, the abstract is issued by the clerk.

A LCSA enforcing a support obligation may record a notice of support judgment, which has the same force and effect as an abstract of judgment certified by the court clerk. Fam C §4506(c).

##### **2. [§204.123] Sister State Judgments**

Support liens must be given full faith and credit across state lines. 42 USC §666(a)(4). However, recording a sister state judgment for support does not directly give rise to a judgment lien on the debtor's real property located in California. The judgment creditor must first file an application under the Uniform Interstate Family Support Act (UIFSA) (Fam C §§4900 et seq) requesting entry of a California judgment based on the sister state judgment, and then record an abstract of the new California judgment to create the lien. *Kahn v Berman* (1988) 198 CA3d 1499, 1505, 244 CR 575. For more discussion of UIFSA, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support Part III* (Cal CJER).

### 3. [§204.124] Order for Release of Improper Lien

When a recorded abstract of a money judgment creates a judgment lien on the property of a person who is not the judgment debtor and the judgment creditor fails to release the lien after proper demand, that individual may file a noticed motion with the court for an order releasing the judgment lien. The court may also award damages, a \$100 penalty, and reasonable attorney fees to the erroneously named property owner. CCP §697.410. The judgment debtor's spouse may not use this procedure to release a lien on the parties' community property. Comment to CCP §697.410.

## R. Bankruptcy

### 1. [§204.125] Effect of Discharge

“Domestic support obligations” are entitled to greater preferential treatment in bankruptcy. This encompasses virtually all support obligations and obligations in the nature of support, whether assigned or unassigned, and all debts reasonably related to the establishment and enforcement of support. Thus, a discharge in bankruptcy does not free the debtor from an obligation under a judgment to pay spousal support or child support, assigned or unassigned. 11 USC §523(a)(5). The characterization of an obligation as support or property division depends on its intended function and is based on federal bankruptcy law, not state law. *In re Phegley* (BAP 8th Cir 2011) 443 BR 154, 157–158.

Interest accruing on nondischargeable child and spousal support obligations after filing of a bankruptcy petition is also nondischargeable. *In re Foross* (BAP 9th Cir 1999) 242 BR 692.

### 2. [§204.126] Automatic Stay and Exceptions

The filing of a bankruptcy petition imposes an automatic stay on activities of creditors relating to establishment, enforcement, or collection of debts. 11 USC §362(a).

There are, however, exceptions from the stay applicable to support proceedings:

- The prosecution of a criminal action (contempt under Pen C §270). 11 USC §362(b)(1). But the exception generally does not apply to purely civil contempts (*e.g.*, CCP §1219(a)). See §204.57.
- The establishment of paternity. 11 USC §362(b)(2)(A)(i).
- The establishment or modification of an order for domestic support obligations. 11 USC §362(b)(2)(A)(ii). See also CSS Letter 12-02 regarding enforcement actions when the obligor has filed for bankruptcy.
- The collection of a domestic support obligation from property that is not property of the estate. 11 USC §362(b)(2)(B).
- The withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute. 11 USC §362(b)(2)(C).
- The withholding, suspension, or restriction of a driver's license or professional, occupational, or recreational license under state law as specified in the Social Security Act (SSA) (42 USC §666(a)(16)). 11 USC §362(b)(2)(D).

- The reporting of overdue support owed by a parent to any consumer reporting agency as specified in the SSA (42 USC §666(a)(7)). 11 USC §362(b)(2)(E).
- The interception of a tax refund as specified in the SSA (42 USC §§664, 666(a)(3)) or in analogous state law. 11 USC §362(b)(2)(F). This section allows the interception even if the refund was property of the estate, unlike the general section allowing the collection of a domestic support obligation from non-estate property. 11 USC §362(b)(2)(B).
- The enforcement of a medical obligation, as specified under Title IV of the Social Security Act (42 USC §§601 et seq). 11 USC §362(b)(2)(G).

### S. [§204.127] QDRO for Support

An order assigning retirement benefits for child or spousal support is enforceable against a plan governed by the Employee Retirement Income Security Act ERISA only if it satisfies federal law requirements for a Qualified Domestic Relations Order (QDRO). 29 USC §1056(d)(3).

Notwithstanding the statutory mandate for use of the federal child support income withholding form (the standard Wage Assignment form), the federal form is not a QDRO and thus will not be effective to bind an ERISA-governed pension plan. Instead, an “earnings assignment” order for support to be served on an ERISA plan must be in the form of a QDRO for Support. See 42 USC §666(c)(3) (expedited child support collection procedures prescribed by federal law, including income withholding, do not supersede QDRO requirements when ERISA plan is involved).

The Judicial Council has approved for a Qualified Domestic Relations Order for Support (form FL-460) for optional use that, when properly completed, will satisfy QDRO requirements. A separate Statement of Confidential Information (form FL-461) can be attached to the QDRO to provide the plan with the participant’s social security number (and social security number of a spousal support alternate payee). This information will be required by the plan for tax reporting purposes but, to maintain confidentiality, should not be filed with the QDRO.

### T. Defenses

#### 1. Exemptions to Enforcement of Money Judgments

##### a. [§204.128] Scope and Application

Certain types of property of the judgment debtor are not subject to the enforcement of a money judgment against the debtor. Some are exempt automatically without making a claim of exemption. CCP §§703.030(b), 704.210. For other types of property, the judgment debtor must make an affirmative claim of exemption after a levy has been made. If property not subject to enforcement of a money judgment has been levied on or applied in any manner to satisfy the judgment, it may be released by the claim of exemption procedure. CCP §695.040; see §§204.132 et seq.

The exemptions in the Enforcement of Judgments Law or any other statute apply to all procedures for the enforcement of a money judgment, not just execution, except as otherwise provided by statute. CCP §703.010(a) and Comment; *Imperial Bank v Pim Elect., Inc.* (1995) 33 CA4th 540, 548, 39 CR2d 432. Exemptions are entirely statutory and may not be enlarged

by the courts. *Vineyard v Sisson* (1990) 223 CA3d 931, 938, 272 CR 914. A court should construe the exemption statutes, so far as practicable, to the benefit of the judgment debtor. *Schwartzman v Wilshinsky* (1996) 50 CA4th 619, 630, 57 CR2d 790.

Family Code §5103(b) authorizes a levy for child and spousal support on an obligor's right to payment of benefits from an employee benefit plan, including retirement benefits, as ERISA does not preclude levy for family support purposes. *Marriage of Lamoure* (2011) 198 CA4th 807, 822, 132 CR3d 1.

#### **b. [§204.129] Exemptions**

The following exemptions from the enforcement of judgments are authorized by statute:

- Household furnishings, appliances, provisions, wearing apparel, and other personal effects; items of extraordinary value. CCP §704.020.
- Jewelry, heirlooms, and works of art. CCP §704.040.
- Motor vehicles; equity and proceeds of sale or insurance. CCP §704.010.
- Health aids; prosthetic and orthopedic appliances. CCP §704.050.
- Paid earnings; earnings withholding order; wage assignment for support. CCP §704.070.
- Business and professional licenses. CCP §695.060.
- Personal property necessary to and used in exercise of trade, business, or profession. CCP §704.060.
- Vacation credits. CCP §704.113.
- Life insurance policies. CCP §704.100.
- Public retirement benefits; rights and benefits under public retirement system; return of contributions from public entity. CCP §704.110.
- Private retirement plans; exemption; periodic payments. CCP §704.115; but see *Marriage of Lamoure* (2011) 198 CA4th 807, 822, 132 CR3d 1.
- Social security and public benefits in deposit accounts. CCP §704.080.
- Unemployment insurance and compensation funds; child support judgments. CCP §704.120.
- Disability or health insurance benefits. CCP §704.130.
- Workers' compensation claim or award; temporary benefits. CCP §704.160.
- Personal injury causes of action, damages, or settlement; exception; periodic payment. CCP §704.140.
- Wrongful death causes of action, damages, or settlement; periodic payments. CCP §704.150.
- Family and cemetery plots. CCP §704.200.
- Financial aid for attending institution of higher education. CCP §704.190.
- Social services aid. CCP §704.170.

- Service of earnings assignment orders for support on public entity. CCP §704.114.
- Funds of debtor inmate in correctional institute. CCP §704.090.
- Material for repair or improvement of residence. CCP §704.030.
- Relocation benefits. CCP §704.180.
- Homesteads and declared homesteads. CCP §§704.710 et seq, 704.910 et seq.

Except as otherwise provided by statute, the exemptions apply to a judgment for child, family, or spousal support. See CCP §703.070; see also *Marriage of Lamoure*, supra, 198 CA4th at 822. Property that is not subject to enforcement of a money judgment is exempt without making a claim. CCP §704.210.

A list of exemptions under both California and federal statutes is set forth in Judicial Council Form EJ-155, Exemptions From the Enforcement of Judgments. It is available on the California Courts website at <http://www.courts.ca.gov/documents/ej155.pdf>.

- **JUDICIAL TIP:** Additional types of property are exempt from levy under a writ of execution but may be reached by other enforcement methods

### **c. [§204.130] Federal Benefit Payment Exemptions**

Judicial Council Form EJ-155 lists a number of federal benefit payments that may be exempt, including Civil Service Retirement Benefits (5 USC §8346), Military Retirement Benefits (10 USC §1440), Railroad Retirement Benefits (45 USC §231m), Longshore and Harbor Workers' Compensation or Benefits (33 USC §916), and Veterans' Benefits (38 USC §5301).

### **d. [§204.131] Amount of Exemptions**

The Judicial Council has published a list of the current dollar amounts of the exemptions provided in CCP §703.140(b) and §§704.010 et seq. CCP §703.150(e); Judicial Council Form EJ-156. It is available on the California Courts website at <http://www.courts.ca.gov/documents/ej156.pdf>. Commissioners should keep a copy of this form on the bench for quick reference.

The exemption amounts listed on the form are effective for 3 years, beginning April 1, 2013. CCP §703.150(a). They are adjusted at 3-year intervals. CCP §703.150(b). Adjustments are based on changes in the annual California Consumer Price Index for All Urban Consumers and are subject to legislative approval. CCP §703.150(c), (d). They do not apply to cases that began before the date of the adjustment, subject to any contrary rule applicable under the Bankruptcy Code. CCP §703.150(f); see also CCP §703.050(a) (applicable exemption amount is amount in effect when judgment creditor's lien was created or when earliest lien in series of overlapping liens was created).

## **2. Guidelines for Determining Exemption**

### **a. [§204.132] Who May Claim Exemption**

The judgment debtor or a person acting on the debtor's behalf may claim the exemption. CCP §703.020(b)(1).

If community property is sought for the satisfaction of the judgment, either the judgment debtor or debtor's spouse may claim an exemption whether or not the spouse is also a judgment debtor under the judgment. CCP §703.020(b)(2).

A purported contractual or other prior waiver of any statutory exemptions, other than a waiver by failure to claim an exemption that must be claimed or otherwise made at the time enforcement is sought, is void as against public policy. CCP §703.040.

**b. [§204.133] Time Limit To Claim Exemption**

Any exemption for property described in any statute as exempt must be claimed within the time and in the manner prescribed by the applicable enforcement procedure. Otherwise, the exemption is waived and the property is subject to enforcement of the money judgment. CCP §703.030(a); *Imperial Bank v Pim Elect., Inc.* (1995) 33 CA4th 540, 548–549, 39 CR2d 432.

The procedures for claiming an exemption are set forth in CCP §§703.510–703.610, except a homestead exemption that is governed by CCP §§704.710–704.850. If the judgment creditor is attempting to reach the property by a procedure other than levy under a writ (*e.g.*, by examination proceeding under CCP §708.120), a court hearing is required. The court may determine any exemption claims at that time or later on noticed motion. Comment to CCP §703.030.

**c. [§204.134] Relief Under CCP §473(b)**

The court has authority under CCP §473(b) to relieve the judgment debtor from a failure to timely or properly claim an exemption based on his or her mistake, inadvertence, surprise, or excusable neglect. CCP §703.030(c). In determining whether to grant relief, the court considers the same factors as on any CCP §473(b) motion (timeliness of motion, sufficiency of the allegations of mistake, inadvertence, surprise, or excusable neglect, and prejudice to the judgment creditor). Many courts require the debtor to pay attorney fees and costs incurred by the creditor as a result of the delay, as a condition for granting relief.

**d. [§204.135] Filing of Claim of Exemption**

Any claim of exemption must be executed under oath, contain specified information, and be filed with the levying officer within 10 days after the judgment debtor is served with a notice of levy on the property. CCP §703.520(a), (b). It is filed on form EJ-160, Claim of Exemption (Enforcement of Judgment). A claim of exemption from wage garnishment is filed on form WG-006, Claim of Exemption (Wage Garnishment).

If the property is claimed to be statutorily exempt as necessary for the support of the debtor and his or her spouse and dependents, the claim of exemption must include a financial statement also executed under oath and containing specified information. CCP §703.530(a)–(c). It is filed on form EJ-165, Financial Statement. A court properly denies a claim that is not supported by a financial statement. *Schwartzman v Wilshinsky* (1996) 50 CA4th 619, 627, 57 CR2d 790.



**e. [§204.136] Notice of Opposition**

The judgment creditor has 10 days after service of the notice of claim of exemption to file with the court a notice of opposition and a notice of motion for an order determining the claim. CCP §703.550. The opposition notice must be executed under oath and must allege, and contain a statement of facts to support, either that (1) the property is not exempt, or (2) the equity in the property claimed to be exempt exceeds the amount provided by the applicable exemption. CCP §703.560(a), (b). The appropriate form is form FL-677, Notice of Opposition and Notice of Motion on Claim of Exemption.

Copies of the opposition notice and motion must be filed with the levying officer during this 10-day time limit. On their receipt, the levying officer must file the claim of exemption with the court. If copies are not filed with the levying officer within the 10-day time limit, the officer must immediately release the property to the extent it is claimed to be exempt. CCP §703.550. The 10-day time limit is extended under CCP §684.120(b) when notice of the claim of exemption is served on the judgment creditor by mail. Comment to CCP §703.550.

**f. [§204.137] Setting Hearing**

The hearing on the motion for an order determining the claim of exemption must be held no later than 30 days from the date the motion is filed with the court. The court may continue the hearing date for good cause. CCP §703.570(a).

Not less than 10 days before the hearing, the judgment creditor must serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor if other than the claimant. Service may be made personally or by mail (CCP §703.570(b)), but if served by mail, an additional period of notice is required under CCP §684.120(b). Comment to CCP §703.570.

**g. [§204.138] Disposition of Property Pending Hearing**

At any time while the exemption proceeding is pending, a court may, on its own motion or the motion of the judgment creditor or claimant, make such orders for the disposition of the property as may be proper under the circumstances. CCP §703.610(b). For example, a court might issue an order:

- Prohibiting the transfer of the property.
- Prohibiting the commission of waste on the property.
- Appointing a receiver to manage the property.
- Requiring the proceeds of any sale of the property to be held in escrow pending the court's resolution of competing claims to the proceeds.
- Requiring the property to be listed for sale with a qualified, neutral broker.
- Requiring the completion of a pending sale of the property.
- Requiring any income from the property to be paid to the judgment creditor.

A court might, for example, sua sponte make an order to dispose of the property when the levying officer notifies the court of circumstances warranting the order, such as when the property is perishable or likely to diminish in value before the hearing. See CCP §699.070. The court may modify or vacate such an order at any time during the pendency of the exemption proceedings on such terms as are just. CCP §703.610(b). Unless provided by

statute, a levying officer may not release, sell, or otherwise dispose of property for which an exemption is claimed until an appeal is waived, the time for an appeal has expired, or a final determination of the exemption is made. CCP §703.610(a).

#### **h. [§204.139] Determining Claim Based on Pleadings**

The claim of exemption and notice of opposition to the claim constitute the pleadings. The court may permit amendments to the claim or notice in the interest of justice. CCP §703.580(a). The claimant has the burden of proof at the hearing. CCP §703.580(b). The claim is deemed controverted by the notice of opposition, and the court must receive both in evidence.

If no other evidence is offered, the court may determine the matter on the claim and the notice if satisfied that sufficient facts are shown in these pleadings. If not satisfied, the court must order the hearing continued for the production of other oral or documentary evidence. CCP §703.580(c). The court must accept the claimant's factual assertions as true if the judgment creditor does not controvert them. *Schwartzman v Wilshinsky* (1996) 50 CA4th 619, 628 n5, 57 CR2d 790. Many courts find that the proof submitted by the parties is often inadequate, as parties frequently appear in pro per and are uncertain as to what evidence is required. If so, the court may find it necessary to direct one or both parties to submit additional proof (a more complete declaration or documents to support assertions made in a prior declaration, such as financial statements, pay stubs, 1099/W-2 forms). Originals should be submitted.

#### **i. [§204.140] Earliest Time When Exemption Applies**

In general, a court determines if property is exempt based on the circumstances existing at the earliest of the following times (CCP §703.100(a)):

- The time of levy on the property;
- The time court proceedings were begun to apply the property to satisfy the money judgment; or
- The time an attachment or execution lien is created.

A court has the discretion to consider any of the following changes that have occurred between any of these times and the time of the hearing on the claim of exemption (CCP §703.100(b)):

- A change in the use of the property if the exemption is based on use and the property was used for an exempt purpose at the time of (a) the levy, (b) the commencement of the enforcement proceedings, or (c) the creation of the lien, but the property is used for a nonexempt purpose at the time of the hearing;
- A change in the value of the property if the exemption is based on value; or
- A change in the financial circumstances of the judgment debtor and the debtor's spouse and dependents if the exemption is based on their needs.

Whether property is exempt and the amount of any exemption is determined by applying the exemption statutes in effect at the time the judgment creditor's lien was created or, if the creditor has a series of overlapping liens, at the time the earliest lien was created. CCP

§703.050(a). When a statute is amended to increase the exemption amount after the date the judgment lien was created but before the date of execution, the amount of the exemption is limited to that provided by the statute before the amendment. *Berhanu v Metzger* (1992) 12 CA4th 445, 447, 15 CR2d 191.

In the case of a levy of execution, the procedures to be followed in claiming and determining exemptions, and paying exemption proceeds, are governed by the law in effect at the time the levy is made on the property. The procedures to be followed in levying on, selling, or releasing the property are also governed by the law in effect at the time of the levy. CCP §703.050(c).

#### **j. [§204.141] Exemptions When Judgment Debtor Is Married**

The statutory exemptions apply to all property of the judgment debtor that is subject to enforcement of a money judgment, including the interest of the debtor's spouse in the parties' community property. The fact that one or both spouses are judgment debtors or that the property is separate or community does not increase or reduce the number or amount of the exemptions. When the exemption is limited to a specified maximum dollar amount, the two spouses together are entitled to one exemption limited to this specified maximum, unless the particular exemption statute provides otherwise. CCP §703.110(a).

A number of exemption statutes specifically provide for a separate exemption for each spouse or for an exemption in a greater amount for a married couple, for example:

- The exemption for personal property used in a trade, business, or profession. CCP §704.060.
- The exemption for the loan value of unmaturing life insurance, endowment, and annuity policies. CCP §704.100.
- The exemption for deposit accounts in which social security payments or specified public benefits are directly deposited. CCP §704.080.
- The exemption for materials for repair or improvements of the debtor's dwelling. CCP §704.030.
- The homestead exemption for the debtor's dwelling. CCP §704.730(b).

If the same exemption is claimed by the judgment debtor and the spouse for different property, and only one exemption is allowed, the court must apply the exemption as the spouses agree. If the spouses cannot agree, the court has discretion to determine how to apply the exemption. CCP §703.110(c). In exercising this discretion, the court might consider the following:

- How to apply the exemption to maximize the benefit or minimize the detriment to the community property;
- How to apply the exemption in the best interests of the spouses' children;
- Reasonableness of the spouses' respective claims;
- Judgment creditor's preference;
- Preference of the nondebtor spouse; and
- Source of the income used to acquire the two properties where exemption is claimed.

If a statute requires that the exemption be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court must be made to the community property and to the separate property of both spouses, regardless of whether this property is subject to enforcement of a money judgment. CCP §703.110(b).

**k. [§204.142] Use of Exempt Property To Satisfy Support Judgment**

Except as to property that is exempt without making a claim, if property sought to be applied to the satisfaction of a judgment for child, family, or spousal support is shown to be exempt, the court must, on noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless may be applied to the satisfaction of the judgment. In making this determination, the court takes into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court must effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to satisfy the judgment. CCP §703.070(c).

**l. [§204.143] Need-Based Exemptions**

In ruling on an exemption based on the needs of the judgment debtor and of his or her spouse, dependents, or family, the court must take into account all the judgment debtor's property and, if the debtor has a spouse, dependents, or family, all property of these persons, including community property and the spouse's separate property, whether or not this property is subject to enforcement of the money judgment. CCP §703.115.

This provision creates an exception to the general rule that property that is not liable for satisfying a judgment does not enter into an exemption determination. It provides an exception for exemptions based on the needs of the judgment debtor and of the debtor's spouse and dependents. In such cases, the court must consider both liable and nonliable property in determining need. See Comment to CCP §703.110.

The portion of a judgment debtor's earnings that the judgment debtor proves is necessary for self-support or the support of the judgment debtor's family (including a former spouse) in whole or in part is exempt from levy by wage garnishment, unless one of the following exceptions, among others, applies (CCP §706.051(a)–(b)):

- The order is a withholding order for support under CCP §706.030 (CCP §706.051(c)(3)); or
- The debt was incurred pursuant to an order or award for the payment of attorney fees under Fam C §2030, §3121, or §3557 (CCP §706.051(c)(1)).

**m. [§204.144] Tracing Exempt Funds**

A fund that is exempt remains exempt to the extent it can be traced to a deposit account or cash or its equivalent (cashier's or certified checks, or money orders). CCP §703.080(a) and Comment. The ability to trace an exempt fund is subject to any limitations provided in the particular exemption. CCP §703.080(a).

Certain proceeds may be traced as exempt only for a limited period. Comment to CCP §703.080. For example:

- Ninety days for proceeds of sale of a motor vehicle (CCP §704.010(b)), household furnishings and other personal effects (CCP §704.020(c)), or personal property used in a trade, business, or profession (CCP §704.060(b)).
- Six months for proceeds of sale of a claimed homestead (CCP §704.720(b)) or a declared homestead (CCP §704.960(b)).

The burden of tracing an exempt fund is on the exemption claimant. CCP §703.080(b). This is consistent with the general burden placed on the claimant in exemption proceedings under CCP §703.580(b). Comment to CCP §703.080.

The tracing of exempt funds in a deposit account must be by applying the lowest intermediate balance principle, unless the claimant or judgment creditor shows that some other tracing method would be more just under the circumstances. CCP §703.080(c). Under this principle, the exempt fund may not exceed the lowest balance occurring at any time between the deposit of the exempt amount of money and the time of levy. New deposits do not replenish the original exempt fund, but new deposits may themselves be exempt. See Comment to CCP §703.080 (example of applying lowest intermediate balance principle).

#### **n. [§204.145] Order on Claim of Exemption and Appeal**

The court must issue an order as to whether the property is exempt in whole or in part. Findings are not required. The order determines the creditor's right to apply the property to satisfy the judgment, subject to the right to appeal from the order under CCP §703.600. CCP §703.580(d). The clerk must promptly transmit a certified copy of the order to the levying officer, who must then release the property or apply it to satisfy the judgment. CCP §703.580(e).

A court's order granting or denying a claim of exemption is appealable. CCP §703.600; *Schwartzman v Wilshinsky* (1996) 50 CA4th 619, 626, 57 CR2d 790. Notice of any appeal must be given to the levying officer, who must hold, release, or dispose of the property in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal. CCP §703.610(c). Unless the court orders otherwise, if an exemption is not determined within the time provided by CCP §703.570, the property claimed to be exempt must be released. CCP §703.580(f).

#### **o. [§204.146] Recovery of Costs of Levy**

If the judgment creditor fails to timely oppose the debtor's claim of exemption, or a court determines the property is exempt, and the creditor thereafter levies on or seeks to apply the property to satisfy the judgment, the creditor is not entitled to recover subsequent costs of collection unless the property is applied to satisfy the judgment. CCP §703.090. This provision is intended to deter a judgment creditor from making repeated levies on the same property. It does not affect any right the debtor may have to recover damages for abuse of process. Comment to CCP §703.090.

### **3. [§204.147] No Limitations Period on Support Enforcement**

Judgments for child, family, or spousal support, including judgments for arrearages or reimbursement (Fam C §17402 public assistance reimbursement or otherwise) and all lawful

interest and penalties, are exempt from any requirement that judgments be renewed. Such judgments are enforceable until paid in full and, as to child support, notwithstanding that the child has reached age 18. There is thus no limitations period on enforcement. Fam C §§291(a)–(b), 4502, 4503, 17400(e); see *Marriage of Hamer* (2000) 81 CA4th 712, 722, 97 CR2d 195; *Marriage of Cutler* (2000) 79 CA4th 460, 473–474, 94 CR2d 156 (unenforced child support judgment that became “dormant” under prior law remains enforceable under current law).

Choice-of-law rules under the Uniform Interstate Family Support Act (UIFSA) (Fam C §§4900 et seq) and the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 USC §1738B), ensure that sister-state support orders will be enforceable in California under the same open-ended period until paid in full, even though a shorter statute of limitations might apply under the laws of the state where the order was made. 28 USC §1738B(h)(3); Fam C §4820; *Marriage of Ryan* (1994) 22 CA4th 841, 848–850, 27 CR2d 580.

California’s longer statute of limitations, however, cannot revive a “dead judgment.” Thus, a California court cannot enforce an out-of-state support order that has been declared void by the issuing state because of the passage of time. *Scheuerman v Hauk* (2004) 116 CA4th 1140, 1141–1142, 11 CR3d 125.

Although it is not required, judgments for child, family, or spousal support, including judgments for arrearages or for reimbursement, may be renewed under the general procedures for renewal of money judgments (CCP §§683.110 et seq) if the judgment was never renewed as to any past-due amounts. If it has been previously renewed, the judgment may be renewed as to the previously renewed amount and any amounts that came due after the earlier renewal, but only after at least 5 years have elapsed from the last renewal. Fam C §291(c).

*Note:* A trust deed that secures a promissory note issued in connection with a family law judgment expires 10 years after the maturity date, as provided by the Marketable Record Title Act (MRTA), because Fam C §291 does not bar the expiration. However, the underlying family law judgment is not rendered unenforceable by the MRTA. *Schelb v Stein* (2010) 190 CA4th 1440, 1448–1449, 119 CR3d 267.

For discussion of the prohibition of dismissals under CCP §583.161, see §204.193.

#### **4. Collateral Attack (Void Judgments and Orders)**

##### **a. [§204.148] Nature of Collateral Attack**

Jurisdictionally defective judgments are open to challenge at any time by “collateral attack.” Basically, a collateral attack may be raised in an independent proceeding to set aside the judgment or as a defense to enforcement of the judgment on the theory the court had no power to enter the judgment. *Armstrong v Armstrong* (1976) 15 C3d 942, 950, 126 CR 805; see *McCallum v McCallum* (1987) 190 CA3d 308, 314, 235 CR 396. A final judgment shown to be jurisdictionally defective is void and thus not entitled to full faith and credit.

A direct attack challenges the judgment in the same proceeding out of which it arose (*e.g.*, by motion to vacate, for new trial, or appeal), whereas collateral attack is available only on jurisdictional grounds and is made in an independent proceeding.

For further discussion of direct versus collateral attacks, see 8 Witkin, CALIFORNIA PROCEDURE, *Attack on Judgment in Trial Court* (5th ed 2008).

**b. [§204.149] Domestic vs. Foreign Judgments**

Both in-state and out-of-state judgments may be subject to collateral attack on like grounds, with one significant distinction: a California judgment is conclusively presumed valid unless jurisdictional defects appear on the face of the record. Collateral attack on another state's judgments, on the other hand, can be supported by extrinsic evidence, even if the judgment contains recitals of jurisdiction. *Marriage of Leff* (1972) 25 CA3d 630, 636, 102 CR 195; see *Marriage of Nosbisch* (1992) 5 CA4th 629, 635, 6 CR2d 817 (“court’s recital in its order that it had jurisdiction . . . does not make that recited statement law”).

**c. Grounds for Collateral Attack**

**i. [§204.150] Lack of Subject Matter Jurisdiction**

A marriage dissolution judgment is subject to collateral attack, for example, if based on defective “domicile” jurisdiction. A paternity order is subject to collateral attack if the rendering court lacked UPA jurisdiction.

When courts of two states have concurrent jurisdiction over the same parties and subject matter (concurrent “domicile jurisdiction” to adjudicate termination of marital status based on each party’s separate domicile), the second court to acquire jurisdiction by service of process will generally, on motion, stay its proceedings as a matter of comity in deference to the first forum’s jurisdiction. *Leadford v Leadford* (1992) 6 CA4th 571, 574, 8 CR2d 9. But neither forum’s subject matter jurisdiction to hear the case is impeded unless and until the action in the other forum proceeds to final judgment. *Leadford v Leadford, supra*, 6 CA4th at 574; compare *Marriage of Zierenberg* (1994) 11 CA4th 1436, 1444–1445, 16 CR2d 238.

**ii. [§204.151] Constitutionally Defective Notice**

A judgment entered on defective notice of the underlying proceeding is void and subject to collateral attack. See *Marriage of Van Sickle* (1977) 68 CA3d 728, 740, 137 CR 568 (substantial deviations between original complaint and copy served on respondent); *Marriage of Kreiss* (1990) 224 CA3d 1033, 1039–1040, 274 CR 226 (noncompliance with Fam C §215 (former CC §4809) requiring mandatory service of modification or other postdissolution motions on opposing party is the equivalent of failure to serve summons and complaint).

**iii. [§204.152] Defective Personal Jurisdiction**

A judgment imposing personal obligations (support) is void and subject to collateral attack if the forum court lacked personal jurisdiction over the obligor. See *Kulko v Superior Court* (1978) 436 US 84, 98 S Ct 1690, 56 L Ed 2d 132; *Marriage of Stich* (1985) 169 CA3d 64, 214 CR 919; *Marriage of Nosbisch* (1992) 5 CA4th 629, 6 CR2d 817.

**iv. [§204.153] Nonjurisdictional Errors**

Alleged “defects” in the underlying judgment that do not implicate the court’s fundamental power to act cannot be raised by collateral attack. *Armstrong v Armstrong* (1976) 15 C3d 942, 950–951, 126 CR 805; *McCallum v McCallum* (1987) 190 CA3d 308, 314, 235 CR 396. Thus once the judgment becomes final, it is no defense to enforcement that, for

example, the underlying complaint failed to state a cause of action, that the judgment was based on insufficient evidence, that the court abused its discretion, or that the court misapplied applicable law or erroneously decided the facts. These are all nonjurisdictional errors that may be raised, if at all, only by direct attack on the judgment. *Armstrong v Armstrong*, *supra*, 15 C3d at 950; *Bank of America Nat'l Trust & Sav. Ass'n v Jennett* (1999) 77 CA4th 104, 118, 119, 91 CR2d 359; see also *Marriage of Maxfield* (1983) 142 CA3d 755, 759, 191 CR 267 (a support modification without a finding of changed circumstances, though arguably exceeding the court's authority, is a nonjurisdictional mistake of law).

#### d. [§204.154] Res Judicata Limitation on Standing

If the disputed issue has already been litigated by the parties or could have been litigated in the underlying proceeding, the determination is res judicata and cannot be challenged by collateral attack in a later proceeding. *Moffat v Moffat* (1980) 27 C3d 645, 654, 165 CR 877; *County of San Diego v Hotz* (1985) 168 CA3d 605, 214 CR 658; *Smith v Smith* (1981) 127 CA3d 203, 179 CR 492 (prior judgment binding even if incorrectly decided).

Collateral attack will be barred by res judicata if (see *Sherrer v Sherrer* (1948) 334 US 343, 351–352, 68 S Ct 1087, 92 L Ed 2d 1429; *Heuer v Heuer* (1949) 33 C2d 268, 201 P2d 385; *Souza v Superior Court* (Bristow) (1987) 193 CA3d 1304, 1311, 238 CR 892):

- The challenging party participated in the underlying proceeding;
- The challenging party had a full opportunity to contest the rendering court's jurisdiction, even if the jurisdictional issue was not actually raised; and
- The judgment could not be collaterally attacked in the rendering state.

The type of participation that bars relitigation, however, is a general appearance. A spouse who makes only a motion to quash service of summons has not participated for res judicata purposes; nor is there effective participation by a spouse whose only appearance is an unsuccessful motion to set aside a default judgment. *Johnson v Johnson* (1968) 259 CA2d 139, 143–146, 66 CR 172.

The challenging party must have had a fair opportunity to participate in the proceeding on its merits. Thus, if a fair chance to litigate has been denied by extrinsic fraud or mistake, the jurisdictional issue can be raised by collateral attack. *Aldabe v Aldabe* (1962) 209 CA2d 453, 471–476, 26 CR 208. For example, the following acts constitute extrinsic fraud (*Marriage of Stevenot* (1984) 154 CA3d 1051, 1069, 202 CR 116):

- The failure to disclose to the court the inability of the other party to participate;
- Failure to give notice of an action, or obtaining a judgment without the other party knowing, while reconciled with him or her;
- Convincing the other party not to obtain counsel because the matter is not going to proceed; or
- Completing a dissolution after representing that it would not proceed without further notice.

JUDICIAL TIP: Traditional equitable relief is preempted in part by statute. See Fam C §§2120 et seq (relief from post-1992 property division or support judgments in dissolution,



legal separation, or nullity proceedings), §§3690 et seq (relief from support orders in other civil actions). For further discussions, see §204.173.

A judgment is subject to collateral attack in the rendering state, and thus not *res judicata* in the enforcing state, if it lacks recital of facts establishing jurisdiction, or if it appears on the face of the record that the court exceeded its jurisdiction. *Craig v Superior Court* (Fountaine) (1975) 45 CA3d 675, 680, 119 CR 692.

## 5. [§204.155] Contempt Bar to Enforcement

If a party to a divorce or separate-maintenance action is in contempt of court, that party generally may not enforce a judgment against the opposing party. This restriction, however, does not affect the enforcement of child or spousal support orders. CCP §1218(b). Neither an obligor parent's duty to support a minor, nor a court's attempt to enforce that duty, is affected by the other parent's failure or refusal to implement the obligor's right to custody or visitation. Fam C §3556.

## 6. Equitable Offset

### a. [§204.156] Offsetting Judgments

A judgment debtor who has obtained a judgment against the judgment creditor may file a motion, in the court where the judgment against the debtor was rendered, for an order offsetting the debtor's judgment against the creditor's judgment. The offset of judgments is a matter of right in the absence of facts establishing competing equities or an equitable defense precluding the offset. *Brienza v Tepper* (1995) 35 CA4th 1839, 1847–1848, 42 CR2d 690. The right to an equitable offset exists independently of statute and rests on a court's inherent power to afford justice to the parties who are before the court. *Aplanalp v Forte* (1990) 225 CA3d 609, 615, 275 CR 144.

### b. [§204.157] Equitable Offset Against Child Support

A trial court maintains continuing equitable jurisdiction to determine the manner in which a child support order or judgment will be paid and to consider the extent to which a defaulting parent has satisfied or otherwise discharged a support obligation. The court has the equitable power to modify the manner in which support payments are made or deemed satisfied. *Marriage of Trainotti* (1989) 212 CA3d 1072, 1075, 261 CR 36; *Dupont v Dupont* (2001) 88 CA4th 192, 105 CR2d 607; *Jackson v Jackson* (1975) 51 CA3d 363, 124 CR 101.

Accordingly, the trial court may give credit for past overpayment (*Marriage of Peet* (1978) 84 CA3d 974, 980–981, 149 CR 108) or “permit only partial enforcement or ... quash, in toto, a writ of execution directed against a parent in arrearage who, during the period in question, has had the sole physical custody of the child.” *Marriage of Trainotti, supra*, 212 CA3d at 1075; see also *Marriage of Dandona & Araluce* (2001) 91 CA4th 1120, 1126–1127, 111 CR2d 390.

## 7. [§204.158] Laches as Defense to Amount Owed to State

Family Code §291(d) provides that in proceedings to enforce judgments for child, family, and spousal support, obligors may raise the defense of laches, and courts may consider that defense, only as to any amount that the obligor owes to the state. This statute has retroactive effect and bars the defense of laches for support obligations other than to the state for support

accrued before its effective date of January 1, 2003. *Marriage of Fellows* (2006) 39 C4th 179, 186, 46 CR3d 49 (construing former Fam C §4502(c)).

### **8. [§204.159] Waiver and Estoppel**

Waiver and estoppel as defenses to actions for arrearages are discussed in §§204.196–204.198.

### **U. [§204.160] Child Support Security Deposit**

Courts have the authority to make orders to secure the payment of child support by way of an order for a parent to deposit up to 1 year’s child support or deposit other assets. Fam C §§4012, 4560 et seq, 4600 et seq.

### **V. [§204.161] Private Child Support Collectors**

A child support obligee may contract with a private child support collector to collect court-ordered support from a child support obligor. A “private child support collector” means any individual, corporation, attorney, nonprofit organization, or other nongovernmental entity who is engaged by an obligee to collect child support, and includes any private, nongovernmental attorney whose business is substantially comprised (50 percent or more) of the collection or enforcement of child support. The term excludes any attorney who addresses issues of ongoing child support or child support arrearages in the course of (1) an action to establish parentage or a child support obligation, (2) a proceeding under the Domestic Violation Prevention Act (Fam C §§6200 et seq), (3) a proceeding for dissolution or nullity of marriage or legal separation, or (4) postjudgment or modification proceedings related to any of these actions. Fam C §5610.

Family Code §§5611–5616 establish many detailed guidelines governing the agreement and actions of a private child support collector, including the following selected requirements:

- The contract must include statements that the collector is not a governmental entity, that governmental entities provide child support collection and enforcement services free of charge, that the collector collects only money owed to the obligor and not support assigned to the state or county due to the receipt of CalWORKs or Temporary Assistance to Needy Families (TANF), and that the obligee will notify the collector if he or she starts to receive program benefits from CalWORKs or TANF. Fam C §5611(a)(8), (9), (14).
- The private collector must establish a direct deposit account with the state disbursement unit (SDU) and notify DCSS when the SDU disburses funds to the account if a portion constitutes an obligor’s fee. Fam C §5614(a)(2).
- Before commencing collection activities, the private collector must give written notice of any collection contract to the LCSA enforcing the obligee’s support order, or the LCSA for the county where the obligee resides when the contract is signed. Fam C §5614(a)(6).
- Every court order, or court-approved agreement, for child support issued or entered on or after January 1, 2010, must include a separate money judgment owed by the obligor

to pay a fee (not to exceed 33 $\frac{1}{3}$  percent of the total arrears nor 50 percent of a private collector's fee) for collection efforts undertaken by a private collector. The judgment must jointly be in favor of the collector and support obligee. Fam C §5616(a). If the order makes the obligor responsible for collection fees and costs, fees deducted by a private collector may not be credited against arrearages, interest on arrearages, or any other money the obligor owes to the obligee. Fam C §5616(b). See, *e.g.*, governmental forms FL-625, Stipulation and Order; FL-630, Judgment Regarding Parental Obligations; FL-687, Order After Hearing.

For updated information from DCSS regarding the duties of a private child support collector and the availability of revised forms, see CSSIN Letter 10-01.

#### **IV. SETTING ASIDE JUDGMENTS AND ORDERS**

##### **A. [§204.162] Scope**

This part reviews the different methods and theories available to set aside an order or judgment for child support, including those under general civil procedure provisions and provisions specific to the Family Code, and in particular with regard to parentage determinations.

For a convenient chart summarizing methods for setting aside judgments or orders relating to child support and parentage, see Appendix B.

##### **B. [§204.163] General Civil Remedies**

For more detailed coverage of these remedies, see CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL, Second Edition (Cal CJER 2014) chap 1, *Relief From Default and Default Judgments*.

*Note:* Depending on the remedy invoked and the specific facts involved, an underlying judgment or order may be voidable or void.

##### **1. [§204.164] Mistake, Inadvertence, Surprise, and Excusable Neglect**

Judgments or orders that have been entered by the mistake, inadvertence, surprise, or excusable neglect of a party may be set aside. CCP §473(b). Code of Civil Procedure §473 is frequently used when a default has been entered. The cases interpreting this section state that the preference is that matters be decided on the merits and not by default. See *Rodrigues v Superior Court* (2005) 127 CA4th 1027, 26 CR3d 194. The motion must be made within a reasonable time, in no event longer than 6 months after the judgment, dismissal, order, or proceeding was taken. It must be accompanied by the proposed responsive pleading. CCP §473(b).

##### **2. [§204.165] Attorney Mistake**

If the attorney for the defaulted party provides a declaration admitting his or her own mistake, the set aside is mandatory if it is timely requested. When relief is granted, the court must order the attorney to pay attorney fees and costs to the opposing counsel or parties. CCP §473(b).

“Ineffective assistance of counsel” is not a basis to set aside a judgment in a dissolution matter because there is no right to counsel in dissolution proceedings. *Marriage of Campi*

(2013) 212 CA4th 1565, 1575, 152 CR3d 179. This principle will likely also apply in other matters where DCSS is involved, except parentage, contempt, and other criminal enforcement actions, as individuals do have the right to counsel in those matters.

### 3. [§204.166] Defective Service of Process

When service of process is defective (such as a summons and complaint served at an incorrect address), the court never properly acquires jurisdiction, and any orders or judgments taken in that proceeding by default are void and may be set aside at any time. Also, if the court never acquires personal jurisdiction (*e.g.*, no long-arm jurisdiction), the judgment is void and can be set aside. See CCP §473(d). The mere fact that a person has or had actual knowledge of the action does not “cure” a *void* judgment.

*Note:* There is an excellent discussion of the various methods of service of process and the rules governing service in *American Express Centurion Bank v Zara* (2011) 199 CA4th 383, 131 CR3d 99 (process server’s claimed personal service found defective) .

If the summons and complaint are not properly or timely served, the court may find that the judgment entered in the action was entered in excess of the court’s jurisdiction. For example, a summons and complaint must be served within 3 years of the start of an action. An action begins at the time the complaint is filed. CCP §583.210(a). If the action did not begin within this time frame, the court must dismiss the action or may find the judgment to be invalid.

Once a trial court finds that a default judgment is void, as a consequence of the filing of a false proof of service, the trial court is required to dismiss the action. *County of San Diego v Gorham* (2010) 186 CA4th 1218, 1229, 1234, 113 CR3d 147.

### 4. [§204.167] No Actual Notice

If the service of the summons did not give actual notice of the proceedings, relief may be granted if requested within 2 years after entry of judgment or 180 days after service of the notice of entry of judgment, whichever is earlier. CCP §473.5(a). Relief under this section is available if lack of notice was not the result of respondent’s avoidance of service or inexcusable neglect. CCP §473.5(c).

### 5. [§204.168] Extrinsic Fraud or Mistake

Extrinsic fraud or mistake is also a ground for relief from a default judgment. This is based on the court’s inherent equitable power when the respondent shows (1) a meritorious defense, (2) a satisfactory excuse for not presenting the defense earlier, and (3) diligence in seeking relief after discovering the default. *Gibble v Car-Lene Research, Inc.* (1998) 67 CA4th 295, 315, 78 CR2d 892. Because public policy favors the finality of judgments, the fraud must be extrinsic, not intrinsic. See *Parage v Couedel* (1997) 60 CA4th 1037, 1042, 1044, 70 CR2d 671; see also §204.182 (definition of extrinsic fraud).

## C. Family Code Remedies

### 1. [§204.169] Setting Aside Presumed Income Judgment

When the court determines that the income used to set support in a default judgment differs substantially from respondent's actual income, the court may set aside the support order and enter a new order based on the actual income. Fam C §17432(a)–(c). “Substantial” is defined as enough of a difference to cause a reduction of support of at least 10 percent. Fam C §17432(c). For a form of declaration regarding a set-aside request, see form FL-643.

This motion may be made any time within 1 year of the first collection of child support by the LCSA or the obligee. Fam C §17432(f). For a form of notice and motion to set aside an order based on presumed income, see form FL-640. Before ruling on the motion, the court must consider (Fam C §17432(h)):

- The amount of time that has passed since the order's entry;
- The circumstances surrounding the respondent's default;
- The relative hardship on the children to whom the duty of support is owed, the caretaker parent, and the respondent; and
- Other equitable factors that the court deems appropriate.

The new order begins on the same date as the order set aside. Fam C §17432(i).

### 2. [§204.170] Setting Aside Expedited Modification Order

A pilot project that existed in specific counties for establishing or setting aside an expedited modification order expired by its own terms on January 1, 2010. See former Fam C §17441.

### 3. [§204.171] Mistaken Identity

The respondent may also obtain relief from a judgment if the respondent can establish that he or she was mistakenly identified in the order or in any subsequent documents or proceedings as the person having an obligation to provide support. The motion can be brought at any time. Once mistaken identity is established, the child support collection stops, and DCSS is obligated to return all funds collected from the respondent to the extent that they have not been paid out to the other parent. Fam C §§17433, 17530.

### 4. [§204.172] Grounds Beyond CCP §473

The court is authorized to set aside a child support order in whole or in part beyond the limits of CCP §473 on the following bases:

- *Lack of notice*. There is a 6-month limitation on the motion from the date the respondent received notice or should reasonably have had notice. Fam C §3691(c).
- *Actual fraud (extrinsic fraud)*. This ground is available when the defrauded party was kept in ignorance or, in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. There is a 6-month limitation on the motion, from the date the fraud was discovered or should have been discovered. Fam C §3691(a); *Marriage of Zimmerman* (2010) 183 CA4th 900, 910, 109 CR3d 96.

- *Perjury*. There is a 6-month limitation on the motion, from the date the perjury was discovered or should have been discovered. Fam C §3691(b).
- *Equitable tolling*. Equitable tolling has been applied in carefully considered situations to prevent the unjust technical forfeiture of causes of action, when the respondent would suffer no prejudice. However, equitable tolling should not apply if it is inconsistent with the text of the relevant statute or contravenes clear legislative policy. As with other general equitable principles, application of the equitable tolling doctrine requires a balancing of the injustice to the petitioner occasioned by the bar of his or her claim against the effect on the important public interest or policy expressed by the limitations statute. The petitioner bears the burden of proving the applicability of equitable tolling. *Marriage of Zimmerman* (2010) 183 CA4th 900, 911, 143 CR3d 803.
- *Void judgment or order*. A judgment or order void on its face, or otherwise void under the law, may be set aside at any time. CCP §473(d); *Renoir v Redstar Corp.* (2004) 123 CA4th 1145, 1154, 20 CR3d 603.

Family Code §3691 does not preempt a trial court's traditional or inherent equitable power to set aside a child support order or judgment. *County of San Diego v Gorham* (2010) 186 CA4th 1218, 1232, 113 CR3d 147.

Aside from the 6-month period specified in CCP §473(b) for moving to set aside an order, Fam C §3691 is the exclusive statutory set-aside remedy. After the CCP §473(b) 6-month time limit has run, the trial court may relieve a party from a support order based only on the grounds and within the time limits set forth in Fam C §§3690 et seq. *Marriage of Zimmerman* (2010) 183 CA4th 900, 910, 143 CR3d 803.

## 5. [§204.173] Dissolution, Nullity, or Legal Separation Cases

In dissolution, nullity, or legal separation cases, once the 6-month limitation for relief under CCP §473(b) has passed, Fam C §§2120 et seq provide the exclusive statutory grounds for relief from property division and support judgments entered on or after January 1, 1993. Fam C §§2121, 2129. The court may relieve a party from a judgment in such cases on the following grounds:

- *Mistake of law or fact (whether mutual or unilateral)*. There is a 1-year limitation from the entry of judgment. Fam C §2122(e).
- *Actual fraud (extrinsic fraud)*. This ground is available when the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. There is a 1-year limitation from when the respondent discovered or should have discovered the fraud. Fam C §2122(a).
- *Perjury*. This ground is available where there is perjury in the preliminary or final declaration of disclosure, the waiver of the final disclosure declaration, or the current income and expense statement. There is a 1-year limitation from when the respondent discovered or should have discovered the perjury. Fam C §2122(b).
- *Failure to comply with disclosure requirements*. There is a 1-year limitation from the date noncompliance was discovered or should have been discovered. Fam C §2122(f).
- *Duress*. There is a 2-year limitation from the entry of judgment. Fam C §2122(c).

- *Mental incapacity*. There is a 2-year limitation from the entry of judgment. Fam C §2122(d).

A court does not have the authority to set aside a judgment “simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances cause the division of assets or liabilities to become inequitable, or the support to become inadequate.” Fam C §2123.

- **JUDICIAL TIP:** Family Code §§2120 et seq govern relief from support judgments or any parts of them in dissolution, legal separation, or nullity actions, while Fam C §§3690 et seq govern relief from support orders. Although similar, these statutory schemes are not identical; care should be taken to proceed under the correct scheme.

## 6. Parentage

### a. [§204.174] Introduction

Attacking a judgment of paternity or challenging a parentage determination can effectively cause child support judgments or orders to be set aside. Procedures to establish parentage are discussed in California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* Part IV (Cal CJER). That part includes a discussion of rescission of voluntary declarations of paternity within 60 days of execution and rebutting the conclusive and rebuttable presumptions of parentage. Other methods of attacking parentage determinations are discussed below.

### b. [§204.175] Motion To Set Aside Voluntary Declaration Within Two Years of Birth

Paternity can be established by the father and mother signing a voluntary declaration of paternity on a form provided by the hospital (if at birth) or by the court or the LCSA (Paternity Opportunity Program or “POP” form). Fam C §§7570 et seq; see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* Part IV (Cal CJER).

To set aside a voluntary declaration, a notice of motion for genetic tests may be filed not later than 2 years from the date of the child’s birth by (Fam C §7575(b)(3)):

- A local child support agency,
- The mother, or
- The man who signed the voluntary declaration as the child’s father.

The motion may be filed in (Fam C §7575(b)(3)):

- An action to determine the existence or nonexistence of a parent and child relationship under Fam C §7630, or
- Any action to establish an order for child custody, visitation, or child support based on the voluntary declaration of paternity.

Specific Judicial Council forms must be used to make and rule on the motion. See forms FL-280 (request for hearing), FL-285 (responsive declaration), FL-290 (order after hearing); see also form FL-281 (optional information sheet).

Under Fam C §7575(b), if the motion is not filed within 2 years, the court has no power to order genetic testing absent extrinsic fraud. See *County of Orange v Superior Court (Rothert)* (2007) 155 CA4th 1253, 1260–1261, 66 CR3d 689.

*Note:* This provision is separate and distinct from Fam C §7575(c), which may provide an alternative basis for ordering a genetic test outside of the 2-year time limit of Fam C §7575(b) and *Rothert*. See §204.176.

*Determining factors.* If the court finds that the conclusions of all the experts based on the results of the genetic tests performed under Fam C §7550 are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the action is in the child's best interest. The court must consider all the following factors (Fam C §7575(b)(1)):

- The child's age.
- The length of time since the execution of the voluntary declaration by the man who signed the declaration.
- The nature, duration, and quality of any relationship between the man who signed the voluntary declaration and the child, including the duration and frequency of any time periods during which the child and the man resided in the same household or enjoyed a parent-child relationship.
- The request of the man who signed the voluntary declaration that the parent-child relationship continue.
- Notice by the biological father of the child that he does not oppose preservation of the relationship between the man who signed the voluntary declaration and the child.
- The benefit or detriment to the child in establishing the biological parentage of the child.
- Whether the conduct of the man who signed the voluntary declaration has impaired the ability to ascertain the identity of, or get support from, the biological father.
- Additional factors deemed by the court to be relevant in determining the child's best interest.

If the court denies the action, the court must state on the record the basis for the denial and any supporting facts. Fam C §7575(b)(2). For compensation of experts, see Fam C §7553.

### **c. [§204.176] Motion To Set Aside Voluntary Declaration Under CCP §473**

Either parent may file a motion or action to set aside a voluntary declaration of paternity based on the grounds and within the time limits of CCP §473, which provides for relief from mistake, inadvertence, surprise, or excusable neglect. The applicable time limits under section 473 begin on the date the court makes an *initial* order for custody, visitation, or child support based on the voluntary declaration of paternity. Fam C §7575(c)(1).

*Note:* This provision is separate and distinct from Fam C §7575(b) (set aside POP declaration within 2 years of birth) discussed above.



Nothing in Fam C §7575(c) is intended to restrict a court from acting as a court of equity. Fam C §7575(c)(4). Some interpret this provision to allow expansion of the more specific time constraints in that section.

If the voluntary declaration is set aside, the court must order that the mother, child, and alleged father submit to genetic tests. Fam C §7575(c)(5).

Specific Judicial Council forms must be used to make and rule on this motion. See forms FL-280, FL-285, FL-290; see also form FL-281 (optional information sheet). For more details about CCP §473 procedures, see CALIFORNIA JUDGES BENCHBOOK: CIVIL PROCEEDINGS—AFTER TRIAL, Second Edition (Cal CJER 2014) chap 1, *Relief From Default and Default Judgments*, and chap 3, *Other Postjudgment Proceedings*.

#### **d. [§204.177] Motion To Set Aside Voluntary Declaration by Presumed Parent Under Fam C §7612(d)**

A person who is presumed to be a parent under Fam C §7611 may file a petition pursuant to Fam C §7630 to set aside a voluntary declaration of parentage within 2 years of its execution. Fam C §7612(e).

The court ruling on the petition must take into account the declaration's validity and the child's best interest, based on factors in Fam C §7575(b) and on the nature, duration, and quality of the petitioner's relationship with the child and the benefit or detriment of continuing that relationship. If there is any conflict between the presumption under Fam C §7611 and the voluntary declaration, the weightier considerations of policy and logic control. Fam C §7612(e). In an appropriate action, the court may find that more than two persons with a claim to parentage under Division 12 of the Family Code (Fam C §§7500 et seq) are parents if the court finds that recognizing only two parents would be detrimental to the child. Fam C §7612(c); see California Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Child Support* §203.73. Unless the court orders otherwise under Fam C §7612(c), a presumption under Fam C §7611 is rebutted by a judgment establishing parentage by another person. Fam C §7612(d).

The voluntary declaration is invalid if, at the time when the declaration was signed, any of the following conditions exist (Fam C §7612(f)):

- The child already had a presumed parent under Fam C §7540 (child of marriage);
- The child already had a presumed parent under Fam C §7611(a), (b), or (c) (man and natural mother married, or attempted marriage before or after birth); or
- The man signing the declaration is a sperm donor, consistent with Fam C §7613(b).

#### **d. Motion To Set Aside Parentage Judgment (Paternity Disestablishment)**

##### **(1) [§204.178] Availability**

Family Code §§7645 et seq provide a motion procedure for setting aside judgments when parentage has been established in specified cases in the family law court, in the juvenile court (whether under dependency or delinquency statutes), or by a voluntary declaration. Fam C §7645(b). The following types of cases or judgments are excluded from this process:

- Dissolutions, nullities, or legal separation proceedings. Fam C §7645(b).
- Judgments from another state. Fam C §7648.3(a).

- A judgment based on genetic tests conducted before the entry of judgment that did not exclude the previously established father as the biological father of the child. Fam C §7648.3(b).
- Adoptions. Fam C §7648.8. (“This article does not establish a basis for termination of any adoption, and does not affect any obligation of an adoptive parent to an adoptive child.”)

*Note:* This provision does not necessarily preclude the court from ordering genetic testing in a case otherwise eligible under the statute just because the child has been adopted.

- Surrogacy or assisted reproduction cases. Fam C §7648.9.
- When conclusive marital presumptions apply. Fam C §§7646(b), 7647(a)(2)(D).

Given these exclusions, UPA or child support proceedings will be the primary forum for this motion. This procedure is sometimes known as “paternity disestablishment.”

## (2) [§204.179] Motion Procedures

The motion may be brought by the previously established father or mother, the child, or the legal representative of any of these persons. Fam C §7646(a). Specific Judicial Council forms must be used to make and rule on the motion. See forms FL-272 (notice of motion), FL-273 (supporting declaration), FL-276 (response), FL-278 (order after hearing); see also form FL-274 (optional information sheet).

Although venue is not defined in the statute, DCSS has a policy that venue is proper where the support order is currently registered. See CSS Letter 06-16. Other procedural requirements for the motion are set forth in Fam C §7647.

- **JUDICIAL TIP:** If the motion is brought and determined in a court *other than* where the original judgment was entered (*e.g.*, due to registration and Fam C §5601(e)), then it is imperative that the court where the original judgment was entered be formally notified so that its records pertaining to that judgment are accurate and complete. Under such circumstances, it is suggested that a formal provision be included in any ruling that the original-judgment court be formally served with a copy of any ruling.

*Genetic testing.* The motion must be supported by genetic evidence excluding the adjudicated parent as the biological parent. Fam C §7646(a). Genetic testing must be performed by an accredited laboratory (Fam C §7552) and must be ordered if requested by any party authorized to bring the motion, or on the court’s own motion. Fam C §7647.7. A court cannot vacate a paternity judgment without conducting genetic testing. Failure of a nonmoving party and/or child to submit to genetic testing cannot be the basis for the setting aside of a judgment. *San Mateo County DCSS v Clark* (2008) 168 CA4th 834, 841–843, 85 CR3d 763.

*Statute of limitations.* The motion to set aside must be filed within 2 years from the date of the child’s birth in cases involving voluntary declarations, or within 2 years from the date on which the adjudicated parent knew or should have known of a judgment establishing parentage, or knew of the existence of an action to adjudicate parentage, whichever occurs first. Fam C §7646(a)(1)–(2).

A third deadline for a motion to set aside a default parentage judgment more than 2 years old expires by its own terms in 2006 (2 years after enactment of the legislation). Fam C

§7646(a)(3). Reconsideration of this motion may be granted if (1) the motion was filed between September 24, 2006, and December 31, 2006, (2) the motion was denied solely on the basis that it was untimely, and (3) the motion for reconsideration is filed on or before December 31, 2009. Fam C §7646(c).

### (3) [§204.180] Determining Motion

If the court grants the motion, it must vacate any ongoing order for child support and arrearages accrued based on the previous judgment of paternity. There is no right to recover any previously paid child support or arrears. Fam C §7648.4; *County of Los Angeles v James* (2007) 152 CA4th 253, 256–257, 60 CR3d 880.

If the results of the genetic tests indicate that the previously established parent is not the biological parent, the court may nevertheless deny the motion to set aside the judgment if it determines that denying the motion would be in the child's best interest, such as when the child and adjudicated parent have developed a strong bond and the child looks to that person as a parent. The court must consider the following factors before making its determination (Fam C §7648(a)–(h)):

- The child's age;
- The length of time since entry of the paternity judgment;
- The nature, duration, and quality of any relationship between the previously established parent and the child, including duration and frequency of any time they resided together or enjoyed a parent-child relationship;
- The request of the previously established parent that the parent-child relationship continue;
- Notice by the biological father that he does not oppose preservation of the relationship between the previously established parent and the child;
- The benefit or detriment to the child in establishing biological parentage;
- Whether the conduct of the previously established father has impaired the ability to ascertain the identity of, or get support from, the biological father; and
- Any additional factors the court deems relevant to its determination.

If the court denies the motion when genetic testing excludes the adjudicated parent, it must state, on the record, the basis for the denial and any supporting facts. Fam C §§7648, 7648.1.

## D. Other Attacks on Parentage Judgment

### 1. [§204.181] Motion To Set Aside Paternity Stipulation

Family Code §17416 provides a procedure by which a noncustodial parent and the LCSA may stipulate to a judgment of paternity. The noncustodial parent must specifically waive due process rights before judgment is entered. Fam C §17416(b). Such a stipulation is voidable if the parent was unrepresented by counsel and can establish that he was not advised of his right to trial, he was unaware of that right, and if he had been aware of that right he would not have executed the agreement. See *County of Los Angeles v Soto* (1984) 35 C3d 483, 486, 198 CR 779.

## 2. [§204.182] Direct and Indirect Attacks on Parentage Judgment

A judgment determining parentage may also be attacked by (*Adamson v Adamson* (1962) 209 CA2d 492, 500, 26 CR 236; *Marriage of Guardino* (1979) 95 CA3d 77, 86, 156 CR 883):

- A timely motion for a new trial,
- A timely appeal,
- A timely motion for relief under CCP §473, or
- An independent suit in equity.

If a suit in equity is brought, the general rule is that only *extrinsic* fraud provides a basis for equitable relief. See 95 CA3d at 88. Extrinsic fraud occurs when a party is deprived of the opportunity to present its claim or defense to the court and when the party was kept ignorant or, other than from the party's own negligence, fraudulently prevented from fully participating in the proceedings. *City & County of San Francisco v Cartagena* (1995) 35 CA4th 1061, 1065, 1067, 41 CR2d 797; *County of San Diego v Gorham* (2010) 186 CA4th 1218, 1228–1229, 113 CR3d 147. By contrast, fraud 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 its case and to protect itself from any mistake or fraud of its adversary but has unreasonably neglected to do so. *City & County of San Francisco v Cartagena, supra*, 35 CA4th at 1067–1068; see *Margarita D.* (1999) 72 CA4th 1288, 1295, 85 CR2d 713. A false return of summons may constitute both extrinsic fraud and mistake. *County of San Diego v Gorham, supra*, 186 CA4th at 1229.

## 3. [§204.183] Equitable Grounds for Relief From Judgment

If statutory remedies are unavailable, courts nevertheless have equitable powers to set aside judgments, although such powers may be limited. For example, even though it was intrinsic fraud, the court in *County of Los Angeles v Navarro* (2004) 120 CA4th 246, 14 CR3d 905, held that equity could be invoked to set aside a 5-year-old default paternity judgment when the county conceded that the respondent had been mistakenly charged with being the child's father. When a mistake occurs in a child support action, the county must correct it, not exploit it. The county should not enforce child support judgments it knows to be unfounded.

Compare the case of *County of Fresno v Sanchez* (2005) 135 CA4th 15, 37 CR3d 192, in which the court declined to follow *Navarro*. The respondent in *Sanchez* had filed a motion in 2003 to set aside a 1996 default paternity judgment on the ground that the alleged DNA testing excluded the respondent as the biological father. The appellate court affirmed the denial of the motion to vacate the default paternity judgment, holding that the trial court was following the law in effect at that time. In dicta, the court opined that the recently enacted statutory scheme under Fam C §§7645 et seq (see §204.178), which provides a remedy for parents in similar situations, vitiated *Navarro*.

- JUDICIAL TIP: It appears that *Navarro* and *Sanchez* may both still be good law, although possibly presenting conflicting views. A portion of Fam C §§7645 et seq, specifically Fam C §7646(a)(3), expired in 2006 (2 years from enactment). Arguably this may be a factor to consider in determining if *Navarro* remains viable.

### **E. [§204.184] Violation of Servicemembers' Civil Relief Act**

When a default judgment is entered against a military respondent, the respondent may apply, within 90 days after termination of military service, to open and vacate the judgment under the Servicemembers' Civil Relief Act (SCRA). 50 USC App §§501 et seq. The respondent must establish that (50 USC App §521(g)):

- The respondent was materially affected by reason of military service in defending the action or proceeding; and
- The servicemember has a meritorious legal defense to all or part of the action.

For further discussion of the SCRA, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* Part VII (Cal CJER).

## **V. DETERMINING ARREARS**

### **A. [§204.185] Introduction**

In a Title IV-D action, support arrearages may be determined by judgment, noticed motion, renewal of judgment, or registration of the support order. Fam C §17524(b). This part generally covers the various situations in which a request for determination of arrears arises, along with the various theories that a court may encounter or consider on such requests, aside from a straightforward accounting (*e.g.*, were completed payments properly accounted for and applied?).

This part does not cover the separate and distinct administrative review by the LCSA of arrearages under Fam C §17526, or the limited authority under DCSS's administrative State Fair Hearing complaint process, to address the issue of arrears, both of which may occur before any judicial determination of arrears. See Fam C §§17800, 17801.

### **B. [§204.186] Public Policy and General Principles**

In determining arrears, the court should consider the following policies and principles.

#### **1. [§204.187] Right To Support Cannot Be Waived by Agreement**

Under state public policy, a parent may not enter an agreement to waive or limit a child's right to support. Child support differs from spousal support in that it is a legal (law-imposed), not an equitable, right. Fam C §3585. Parents cannot agree to limit the power of the family law court with respect to the welfare of children. Thus, parents cannot abridge the court's ability to act on behalf of the children, either by direct attempts to terminate the court's power or by interference with the establishment or modification of child support orders. Stipulations between parents involving the minor children that attempt to divest the court of jurisdiction are void, and the doctrine of estoppel does not apply. *Marriage of Goodarzirad* (1986) 185 CA3d 1020, 1026, 230 CR 203; *Marriage of Lambe & Meehan* (1995) 37 CA4th 388, 393, 44 CR2d 641; *Marriage of LaBass & Munsee* (1997) 56 CA4th 1331, 1341, 66 CR2d 393; *Marriage of Alter* (2009) 171 CA4th 718, 89 CR3d 849.

#### **2. [§204.188] Parents Have Equal Duty To Support Their Children**

The responsibility to support one's children is placed on both parents equally. Fam C §3900. This mutual duty is a parent's first and principal obligation, and it requires that each

parent pay for the support of the children according to that parent’s ability. Fam C §4053(a), (d).

### **3. [§204.189] Priorities and Provisions Regarding Payment of Support**

The Statewide Uniform Guideline seeks to place the interests of children as the state’s top priority. Fam C §4053(e). Likewise, child support payments of the obligor come before debt payments to creditors. Thus, payment of child support ordered by the court must be made by the person owing the support payment before payment of any debts owed to creditors. Fam C §4011. Provisions for child support are deemed separate and severable from all other provisions of any agreement relating to property and spousal support. Fam C §3585.

#### **4. Limitations on Court’s Authority**

##### **a. [§204.190] No Retroactive Modifications of Support Order or Accrued Arrearages, Including Add-Ons**

A court lacks equitable power to forgive accrued child support arrearages in response to a motion to modify support or to determine arrears. Except for supplemental complaints or servicemembers deployed out-of-state on active duty, the court cannot modify a support order that is effective before the date of the filing of the motion or order to show cause to modify or terminate support. Fam C §3651(c); see also *County of Santa Clara v Wilson* (2003) 111 CA4th 1324, 1326–1327, 4 CR3d 653; *Marriage of Tavares* (2007) 151 CA4th 620, 625–627, 60 CR3d 39 (child-care add-on).

##### **b. [§204.191] Limited Authority To Set Arrears Retroactively or Stay Enforcement Activity**

In setting the amount of a retroactive support award for arrearages, the court has the discretion to lower the amount set by the guidelines based on a showing that the application of the formula would be unjust or inappropriate due to special circumstances in the particular case. Fam C §4057(b)(5); *City and County of San Francisco v Funches* (1999) 75 CA4th 243, 246–247, 89 CR2d 49 (accrued support reduced when child was 16, and reduced amount made support plus arrearages one-third of parent’s net monthly income).

In addition, with respect to enforcement of a child support judgment, a trial court has some equitable powers and discretion to determine and make orders regarding whether and to what extent the original support provision should be enforced by execution or otherwise (*e.g.*, power to stay enforcement activity). See *Parker v Parker* (1928) 203 C 787, 796, 266 P 283; *Marriage of Sandy* (1980) 113 CA3d 724, 728, 169 CR 747. Child support proceedings are equitable in nature. To the extent permitted by the child support statutes, the trial court is permitted the broadest discretion in order to achieve fairness and equity. *Marriage of Lusby* (1998) 64 CA4th 459, 470–471, 75 CR2d 263. Moreover, a basic equitable principle prevents a person from taking advantage of his or her own “wrong.” *Marriage of Klug* (2005) 130 CA4th 1389, 1403, 31 CR3d 327.

## 5. [§204.192] Arrears and Interest Are Owed Until Paid

Arrears are owed until paid, plus accruing interest. Interest in California on California judgments accrues at the legal rate, which is currently 10 percent per year. CCP §685.010(a). (*Note:* The interest rate before January 1, 1984, was 7 percent.) No interest accrues on an obligation for current support due in a given month until the first day of the following month. Fam C §17433.5; see CCP §685.020(b) (interest accrues on each installment as it becomes due). It is simple interest and is not compounded. Any forgiveness of accrued interest would be an impermissible retroactive modification. *Marriage of Perez* (1995) 35 CA4th 77, 81, 41 CR2d 377; *Marriage of Cordero* (2002) 95 CA4th 653, 667–668, 115 CR2d 787; *Marriage of Hubner* (2004) 124 CA4th 1082, 1089, 22 CR3d 549. However, due process considerations apply. *County of Alameda v Weatherford* (1995) 36 CA4th 666, 670–671, 42 CR2d 386 (county estopped when no notice to obligor).

- **JUDICIAL TIP:** If the original judgment was made in another state, it is possible that a different rate of interest applies, or even no interest at all. The LCSA may be charging an inappropriate rate, for example, by erroneously loading a judgment in the system as a California order when the judgment originated from a state that does not charge interest (such as Connecticut). This would be grounds for an obligor to challenge the amount owed and seek a judicial determination of arrears. See Appendix C for a chart of each state’s interest rates. The Office of Child Support Enforcement (OCSE) maintains a website with information on each state. See [www.acf.hhs.gov/programs/css/irg-state-map](http://www.acf.hhs.gov/programs/css/irg-state-map), select a particular state, then select “Support Details.” For links to child support agencies in each state, see <http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts>.

## 6. [§204.193] Duration of California Support Orders

An order for child support continues in effect until the order is terminated by the court or terminates by operation of law. Fam C §3601. The duty to support applies to children under 18. Fam C §§3601, 6500. The duty of support continues for a child that turns 18 who is a full-time high school student and is not self-supporting, until the child completes the 12th grade or turns 19, whichever occurs first. Fam C §3901(a). Parents are free to enter into agreements (*e.g.*, in dissolution judgments, marital settlement agreements) to extend the obligation to support their children to a later date. If they do so, such agreements are enforceable. The child support (and custody) provisions of a paternity judgment are *nullified* when the parents marry, and are replaced by the law governing the rights and obligations of married parents on their separation or divorce. *Marriage of Wilson & Bodine* (2012) 207 CA4th 768, 776–777, 143 CR3d 803.

*Procedural Note:* The dismissal for delay in prosecution of a dissolution or legal separation action is prohibited if there is a child or spousal support order in place that has not been terminated. CCP §583.161(a)–(b). Effective January 1, 2014, the prohibition was expanded to include custody and visitation orders, DVPA restraining orders, when issues have been bifurcated and a separate trial has been conducted, and in actions under Fam C §§299 (domestic partnerships), 2250 (annulment), and 7600 (UPA). CCP §583.161(a), (c)–(d).

The birth parents of an adopted child are relieved from all parental duties and responsibilities from the time of adoption. Fam C §8617(a). The termination of these duties

and responsibilities, however, may be waived if both the existing parent(s) and the prospective adoptive parent(s) sign and file a waiver with the court any time before finalization of the adoption. Fam C §8617(b). In dependency cases, the child support obligation ceases from the date of the order terminating parental rights. *County of Ventura v Gonzales* (2001) 88 CA4th 1120, 1123–1124, 106 CR2d 461.

## C. Motion to Determine Arrears

### 1. [§204.194] Standing

Generally, the obligor files a motion challenging the accuracy of the outstanding arrears or asking the court to apply its equitable authority to reduce or terminate unpaid child support amounts. Any party to an action involving child support enforcement services of the LCSA, however, may request a judicial determination of arrears. Fam C §17526(c).

- **JUDICIAL TIP:** If there is a prior judgment or order after a hearing that has already addressed the specific issue of arrears for the time frame in question on the merits, then that issue would be precluded by res judicata principles. For further discussion of res judicata and collateral attacks, see §204.154.

### 2. [§204.195] Forms and Showing

The Judicial Council has adopted a mandatory form Request for Judicial Determination of Support Arrearages (Governmental) (form FL-676). The court, however, may very well see the issue raised in another pleading if it is being brought in conjunction with a related or concurrent motion filed with the court, such as an “other” issue in a notice of motion or order to show cause filed to modify current support.

Any motion to determine arrearages filed with the court must include a monthly breakdown showing amounts ordered and amounts paid, in addition to any other relevant information. Fam C §17526(c). This includes setting forth facts sufficient to establish any claims or affirmative defenses raised in support of the request. The burden of proof is on the party seeking the relief. Evid C §500.

Many self-represented litigants do not necessarily use the same language in their request to the court or in the supporting papers. Thus, the obligor may ask the court to “adjust,” “reduce,” or “waive” unpaid child support for a variety of different reasons and under various factual scenarios that are discussed in following sections. Some examples include claims of the following:

- An express or implied agreement between the parents (waiver);
- Direct care and custody credits (also known as “*Jackson* credits”);
- Child concealment;
- Private agreement or arrangement regarding the monthly obligation;
- Past periods of unemployment or disability;
- Past periods of incarceration;
- Multiple or inconsistent orders; or
- Other equitable issues.



In these instances, the obligor is often asking the court to redetermine or reduce to zero unpaid child support and accrued interest for the time frame in question.

## D. Common Issues

### 1. Waiver or Compromise of Arrears

#### a. [§204.196] By Parties

A parent-obligee may affirmatively waive or compromise all or any portion of the accrued arrears so long as the waiver is done expressly, voluntarily, knowingly, and intelligently, and is not conditional upon any waiver of current or future support. An effective waiver requires the obligee to be fully informed about the rights he or she is giving up and of the consequences of waiving the arrearages. Waiver is the intentional relinquishment of a known right. *Washington ex rel Burton v Leyser* (1987) 196 CA3d 451, 460, 241 CR 812; *Marriage of Damico* (1994) 7 C4th 673, 681, 29 CR2d 787; 13 Witkin, SUMMARY OF CALIFORNIA LAW, *Equity* §193 (10th ed 2005). The elements of waiver are set forth more specifically in *Outboard Marine Corp. v Superior Court* (1975) 52 CA3d 30, 41, 124 CR 852: “To constitute waiver, it is essential that there be an existing right, benefit, or advantage, a knowledge, actual or constructive, of its existence, and an actual intention to relinquish it or conduct so inconsistent with the intent to enforce the right in question as to induce a reasonable belief that it has been relinquished.”

- **JUDICIAL TIP:** If the parties agree to a waiver of unassigned (nonaid) arrears, it is recommended that they use Judicial Council Form FL-626, a stipulation and order waiving unassigned arrears. If a waiver is going to be accepted orally in open court, the court should thoroughly voir dire the obligee who desires to waive any arrearages to ensure that the waiver or compromise is free of any undue influence, made with full knowledge of the obligee’s rights and a full understanding of the consequences of such a waiver, and that the DCSS will otherwise collect and enforce arrears with any accruing interest. Further, there is nothing to prevent a custodial parent in a nonaid case from entering into a *conditional* waiver (*e.g.*, agreeing to waive interest for a specified period on the condition of timely payment of current support for a specified period, or agreeing to waive a *portion* of the arrears owed, for a specified lesser lump-sum amount), so long as it does not involve the waiver of current or future support as noted. The LCSA might not encourage such conditional waivers due to potential special account monitoring needs; such voluntary agreements between the parents, however, can often help resolve some certain difficult arrearage disputes.

A waiver cannot be implied from the obligee’s mere acceptance of a lesser amount than is owed under the judgment or delay in pursuing full collection efforts. *Marriage of Hamer* (2000) 81 CA4th 712, 721–722, 97 CR2d 195; see also *Marriage of Brinkman* (2003) 111 CA4th 1281, 1290–1291, 4 CR3d 722 (estoppel defense predicated on obligee’s acceptance of lesser sum rejected on the facts).

Purported agreements to settle or forgive arrears, when there is no consideration or it is entered into under duress or there is no bona fide dispute as to the amount of arrears, are unenforceable. *Marriage of Sabine & Toshio M.* (2007) 153 CA4th 1203, 63 CR3d 757 (mother “was desperate and under duress” when she received settlement offer, and court found

that there was no bona fide dispute as to the amount of arrears owed and thus could not find a proper accord and satisfaction; the court also viewed it as an improper attempt to retroactively modify support). *Note*: The decision in this case may be limited to its specific facts.

### **b. [§204.197] By DCSS**

There is a statutory Compromise of Arrears Program (COAP) under which DCSS can accept offers in compromise of arrears owed the state for reimbursement. Fam C §17560. If the obligor owes current child support, the offer in compromise has to require the obligor to be in compliance with the current support order for a set period of time before any arrears and accrued interest could be compromised. Fam C §17560(b). The compromise can not include any arrears owed a custodial parent without that parent’s consent. Fam C §17560(d).

- **JUDICIAL TIP:** This compromise program is an important tool for obligors who have arrears with no current ability to pay the entire amount. Although there is no judicial oversight of the program, bench officers need to be aware of the program and make appropriate referrals. See the DCSS website for its *COAP Policy and Procedures Manual* (at tab for child support professionals).

## **2. Estoppel**

### **a. [§204.198] General Principles**

Estoppel by conduct is found when one person intentionally and deliberately leads another to believe that a particular thing is true and to act on such belief. *Washington ex rel Burton v Leyser* (1987) 196 CA3d 451, 460, 241 CR 812; *Marriage of Damico* (1994) 7 C4th 673, 681, 29 CR2d 787; 13 Witkin, SUMMARY OF CALIFORNIA LAW, *Equity* §191 (10th ed 2005). The general principle is stated in Evid C §623: “Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.”

Estoppel requires that (*Marriage of Thompson* (1996) 41 CA4th 1049, 1061, 48 CR2d 882):

- (1) The party to be estopped knew the facts;
- (2) The other party was ignorant of the true facts;
- (3) The party intended its conduct would be acted on, or acted in a manner that the party asserting the estoppel had a right to believe it so intended; and
- (4) The other party relied on the conduct to its injury.

The doctrine acts defensively only and operates to prevent one from taking unfair advantage of another but not to give an unfair advantage to one seeking to invoke the doctrine. See *Marriage of Umphrey* (1990) 218 CA3d 647, 658, 267 CR 218.

### **b. [§204.199] Defense of Estoppel in Support Actions**

Estoppel can be raised in support proceedings, although the court may or may not find the defense applicable. See *Marriage of Thompson* (1996) 41 CA4th 1049, 1060–1062, 48 CR2d 882 (county not estopped from collecting accrued interest on public assistance reimbursement debt even though it mistakenly omitted accrued interest from amount quoted to obligor as

balance due, and obligor paid same in mistaken belief it was total amount owed); cf. *County of Alameda v Weatherford* (1995) 36 CA4th 666, 670–671, 42 CR2d 386; *County of Orange v Carl D.* (1999) 76 CA4th 429, 439–441, 90 CR2d 440 (county estopped from recouping public assistance payments made for children based on its misrepresentations concerning “absent” father’s known whereabouts); see also California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* §203.136 (Cal CJER).

The estoppel defense is often raised when the obligor presents conflicting letters and accountings from one or more LCSA’s regarding arrears. The letters and conflicting information sent to the payor, while certainly sufficient to justify some confusion, are usually insufficient to justify much else. See *Marriage of Comer* (1996) 14 C4th 504, 523, 59 CR2d 155 (“unless a county has done an affirmative act or made an affirmative representation that induces reliance, no estoppel will be found.”) Thus, if an LCSA makes an accounting error in favor of the obligor, that alone does not support an estoppel defense.

### 3. [§204.200] Laches

In proceedings to enforce judgments for child, family, and spousal support, obligors may raise the defense of laches, and courts may consider that defense, only as to any amount that the obligor owes to the state. Fam C §291(d). Thus, laches is not applicable to actions to enforce child support judgments by parents. Family Code §291(d) has retroactive effect and bars the defense of laches for support obligations other than to the state for support accrued before its effective date of January 1, 2003. *Marriage of Fellows* (2006) 39 C4th 179, 186, 46 CR3d 49 (construing former Fam C §4502(c)).

Laches is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party that renders the granting of relief to the other party inequitable. *Marriage of Copeman* (2001) 90 CA4th 324, 333, 108 CR2d 801; *County of Orange v Smith* (2002) 96 CA4th 955, 963, 117 CR2d 336.

### 4. [§204.201] No Offset by Payment of Other Business Debt

Because a child support obligation runs to the child and not the parent, a debt owed by the custodial parent to the supporting parent generally cannot be offset against child support arrearages. Thus, a parent who is ordered to pay child support cannot offset a business debt against that obligation. *Williams v Williams* (1970) 8 CA3d 636, 639, 87 CR 754; *Marriage of Armato* (2001) 88 CA4th 1030, 1038–1039, 106 CR2d 395.

However, a parent may seek an offset to arrears based on payment of certain expenses or the payment of debt. See, e.g., discussion of *Jackson* credits in §204.203. And when there has been an overpayment on arrears (e.g., when a court order grants a downward modification effective back to the date of filing, effectively creating an “overpayment” and right to reimbursement when those prior months were paid), the court does have authority to offset any reimbursement against previously accrued arrears, or against an existing child support obligation under terms the court deems just and reasonable. Fam C §3653(d); *Marriage of Dandona and Araluce* (2001) 91 CA4th 1120, 1126–1127, 111 CR2d 390.

For a more detailed discussion of equitable offsets against child support payments, see §204.157.

## 5. [§204.202] Incarceration

Periods of incarceration are relevant and must be considered when first establishing a support order, or when a judgment or order has been set aside on procedural or due process grounds (*e.g.*, original judgment void on service grounds) and the support obligation must be recalculated for the time periods within the court’s jurisdiction. In these situations, absent any other evidence of assets or financial ability, during periods of incarceration there is no ability to pay and no authority to impute income. *Marriage of Smith* (2001) 90 CA4th 74, 82–85, 108 CR2d 537; *Oregon v Vargas* (1999) 70 CA4th 1123, 1126, 83 CR2d 229.

Effective July 1, 2011, a new statute provides for the suspension of support during periods of incarceration or involuntary institutionalization. Fam C §4007.5. It also contains a procedure that allows an obligor to file a petition for adjustment of arrears when released from incarceration or involuntary institutionalization. The obligor must show proof of the dates of incarceration or involuntary institutionalization, plus proof that the obligor did not have the means to pay the support during that time. Copies of the petition must be served on the support obligee and the LCSA, who may file an objection to the petition. If a petition is filed, an obligor’s arrears may not be adjusted until the court has approved the petition. Fam C §4007.5(c), (g).

The court may deny the petition if it finds that the obligor was incarcerated or involuntarily institutionalized (1) for any offense constituting domestic violence (as defined by Fam C §6211) against the support obligee or the supported child, (2) for any offense that can be enjoined by a protective order under Fam C §6320 (ex parte orders to prevent assault and harassment, which is repealed July 1, 2014, unless a later enacted statute deletes or extends that date), or (3) as a result of the obligor’s failure to comply with a court order to pay child support. Fam C §4007.5(d). See also CSS Letter 11-08.

For discussion of the provisions that must be put in judgments or orders enforced by LCSAs regarding suspension of the support obligation during an incarceration or involuntary institutionalization, see California Judges Benchguide 203: *AB 1058 Child Support Proceedings: Establishing Support* §203.87 (Cal CJER).

*Note:* The Judicial Council is required to develop forms for implementation of this statute (currently being drafted). DCSS is also in the process of drafting a policy letter regarding implementation of the statute (not yet final). This statute has yet to be interpreted in a court of law; there appears to be a possible split of opinion as to whether certain portions of the statute can be carried out administratively (whether automatically or pursuant to language to be inserted in all orders), separate and apart from the petition process.

## 6. [§204.203] Direct Care and Custody Credit (Change of Custody)

In certain situations, a parent may be deemed to have satisfied a child support obligation when there was a change in physical custody or primary residence of the minor children, yet the support order remained unchanged. *Jackson v Jackson* (1975) 51 CA3d 363, 368, 124 CR 101 (court has discretion not to enforce arrears that accrued when the obligor had primary physical custody); see also *Marriage of Trainotti* (1989) 212 CA3d 1072, 261 CR 36. This situation does not involve any retroactive modification of a support order, which is not permitted under Fam C §3653, nor an impermissible equitable forgiveness of arrears. Instead, the *Jackson* court made a finding that the obligor had met his court-ordered obligation due to

having custody. *Jackson v Jackson*, *supra*, 51 CA3d at 368. This is often referred to as an equitable offset or “*Jackson credits*.”

- JUDICIAL TIP: The facts in both the *Jackson* and *Trainotti* cases showed a change in the physical custody of the child. An obligor parent’s claim based only on a change in the timeshare, even up to a substantially equal or more time arrangement, would probably not meet that standard.

### 7. [§204.204] Minor Child Moves Out of Custodial Party’s Home

If an older but unemancipated child leaves the home of the custodial party, an issue is sometimes raised regarding to whom is the child support obligation owed, and whether the obligor is entitled to relief when determining arrears. There is no clear authority.

The trial court does have equitable powers and discretion to determine whether and to what extent the original support provision should be enforced. *Marriage of Sandy* (1980) 113 CA3d 724, 728, 169 CR 747; *Marriage of Lusby* (1998) 64 CA4th 459, 470–471, 75 CR2d 263. Time-sharing may also be imputed when the child is not in either parent’s actual physical custody. See, *e.g.*, *Marriage of Katzberg* (2001) 88 CA4th 974, 982–983, 106 CR2d 157 (child’s time living at boarding school imputed to father who had primary custody, paid for transportation and incidental expenses, and was sole signatory on school contract).

- JUDICIAL TIP: Resolution of such an issue will often depend on the unique or specific facts of each case, and may hinge on a determination as to who or whether the legal custodial parent was actually providing support to the child that was living elsewhere.

### 8. [§204.205] Child Concealment as Defense

There is a narrowly drawn estoppel defense to the enforcement of child support arrearages for child concealment. This defense applies if:

- The arrearages accrued during a period in which the custodial (obligee) parent actively concealed himself or herself and the child,
- The noncustodial parent made reasonably diligent efforts to locate them, and
- Support was not sought until the child reached majority.

In this situation, the custodial parent is estopped from later collecting child support arrearages for the period of concealment. *Marriage of Damico* (1994) 7 C4th 673, 685, 29 CR2d 787. The custodial parent is estopped if the concealment continues until the child reaches 18 even though the concealment ended before the child’s emancipation because the child was not 19 and still in high school. *Stanislaus County Dep’t of Child Support Servs. v Jensen* (2003) 112 CA4th 453, 5 CR3d 178.

The defense does not apply when (1) the concealment ends during the children’s minority or (2) the support was ordered to be paid to a county agency (*e.g.*, aid reimbursement) or other court trustee. *Willmer v Willmer* (2006) 144 CA4th 951, 962–963, 51 CR3d 10; *Marriage of Comer* (1996) 14 C4th 504, 510, 59 CR2d 155; *Marriage of Vroenen* (2001) 94 CA4th 1176, 1182, 114 CR2d 860 (no estoppel defense when concealment ended while children were minors, even though motion to collect arrearages was not filed until age of majority). In *Marriage of Walters* (1997) 59 CA4th 998, 1006, 70 CR2d 354, the court held that concealment of the child from father for 10 years did not estop the county from collecting

child support arrearages for reimbursement for welfare payments made to the mother. Estopping the county from collecting reimbursement would undermine strong public policy of protecting public funds by collecting AFDC reimbursement. Nor was there estoppel for accrued support when the mother was not collecting welfare and was entitled to the support. The payments were to be made to the county, and the mother's concealment did not prevent them from being paid.

Moreover, the estoppel defense does not apply if there is a mere failure or refusal by the custodial parent to implement any rights as to custody or visitation granted by a court. Fam C §3556; *Cooper v O'Rourke* (1995) 32 CA4th 243, 247, 38 CR2d 444 (custodial parent's failure to give notice of move from California to Florida and to provide any information about child's whereabouts for 3 months after move constituted only interference, not concealment).

### **9. [§204.206] Hold Harmless Agreement**

Although there is no direct case on point, dictum suggests that a "hold harmless agreement" between parents, coupled with the custodial parent's failure to seek child support arrearages for several years, might support an estoppel or waiver defense to the enforcement of past-due child support. *Marriage of Ayo* (1987) 190 CA3d 442, 452, 235 CR 458.

## Appendix A: Contempt and Probation Revocation Checklists

### 1. Arraignment—With Counsel

- Call case and ask the citee to state true name.
- Record counsel's general appearance.
- Accept and record stipulation for commissioner sitting as temporary judge.
- Have counsel acknowledge receipt of petition and waive reading and further advisement of rights.
- Allow citee to reserve on all motions.
- Accept not guilty plea.
- Set date for pretrial and/or trial.
- Take time waiver if trial not held within 30 days (if in custody).
- Set bail if citee in custody or release on own recognizance.
- Take time waiver if trial not held within 45 days (if out of custody).
- Ask DCSS if contempt purgeable.
- Order citee to return.

### 2. Arraignment—Without Counsel and Citee Out of Custody

- Call case and ask citee to state true name.
- Advise citee of constitutional rights:
  - o Right to counsel:
    - Right to be represented by counsel you employ or if you need time to retain, the court will continue arraignment, or
    - Right to act as your own attorney, or
    - If you desire the assistance of counsel and are indigent, the court will appoint counsel for you without charge:
      - If you claim to be indigent, you must fill out and submit under penalty of perjury a financial affidavit.
      - Appointed counsel can only represent you on the contempt, nothing else.
  - o Presumption of not guilty and entitled to a public and speedy trial within 45 days of being arraigned.
  - o Right to a (court) hearing.
  - o Right to subpoena the attendance of witnesses and have documents produced to aid in your defense.
  - o Right to confront and cross-examine witnesses called against you.
  - o Right to remain silent. You cannot be compelled to answer any questions, and no inference drawn should you decide not to testify.
- Do you understand your rights?
  - o How do you want to proceed with regard to counsel?

- If citee requests appointed counsel, citee to submit a financial affidavit. See form MC-210.
- Court finding as to indigent status.
- If citee will employ private counsel, delay arraignment.
- If self-represented, take *Faretta* waiver and continue with arraignment.
- Do you stipulate to commissioner sitting as temporary judge?
  - If no, continue arraignment and then refer matter to a judge for further proceedings.
- Do you want the court to read you the petition?
- Accept not guilty plea.
- Set date for pretrial and/or trial.
- Take time waiver if trial beyond 45 days.
- Ask DCSS if contempt purgeable.
- Order citee to return.

### 3. Guilty Plea Hearing

- Review plea agreement written on Judicial Council findings and order regarding contempt (see form FL-415) and signed by citee and counsel (if applicable).
- Confirm citee's wish to enter a change of plea.
- Advise of Fifth Amendment right to remain silent. Ask if the citee wants to give up that right and answer the court's questions during the change of plea hearing. If so, clerk to administer oath.
- Advise citee of constitutional rights:
  - Right to speedy and public trial.
  - Right to confront and cross-examine witnesses.
  - Right to remain silent and not incriminate myself.
  - Right to subpoena witnesses and produce evidence.
  - Right to be sentenced by a judge.
- By pleading guilty, you will be waiving all these rights.
- Inquire about voluntary and intelligent waiver:
  - Are you under the influence of anything that clouds or impairs your judgment?
  - Do you need any more time to reconsider your plea?
  - If represented, are you satisfied with counsel?
  - Do you have any mental or physical condition that may impair your ability to understand the proceedings or make a sound decision?
  - Go through terms and conditions contained in form with citee, specifically focusing on the factual basis for the plea.
- Ask citee to confirm.
- If represented, ask if counsel joins in the waivers and agrees there exists a factual basis for the plea.



- Review maximum punishment: 120 hours custody per count, \$1000 fine, or both.
- Review plea agreement. Ask if citee has read and understands the plea agreement and agrees to its terms and consents to the probationary terms.
- Take plea.
- Make findings:
  - Knowingly, intelligently, and voluntarily waived rights.
  - Factual basis for plea.
  - Court accepts plea and finds citee guilty.
    - On motion by DCSS, counts \_\_\_ to \_\_\_ are dismissed.
- Ask if citee waives time for sentencing. If represented, ask counsel if the citee waives time for sentencing or if there is any legal cause why sentence should not now be imposed.
- Impose negotiated sentence per plea:
  - Impose confinement and order execution of sentence suspended and place citee on negotiated term of probation under the conditions set forth in the plea agreement, including the condition that he or she pay current support and a payment on arrears, per plea agreement.
  - Mention that the current support is subject to modification on the filing of a proper motion and proof of a change of circumstances.
  - Order citee to appear on specified date to review compliance.
- Relieve any court-appointed counsel, if no further appearances.
- Order citee to return for probation review hearing (if applicable).

#### **4. Probation Revocation**

For specific scripts see California Judges Benchguide 84: *Probation Revocation* (Cal CJER). The general process involves the following:

- County requests revocation:
  - Summarily revoke probation.
  - Order county to prepare, file, and serve petition to revoke (if not done).
  - Appoint counsel (if requested and citee qualifies).
  - Order citee to return for arraignment.
- Arraignment (see above—same as Contempt).
- Revoke and reinstate probation agreement (same as plea agreement on Contempt; review written agreement).

## Appendix B: Chart for Setting Aside Judgments or Orders

Statute	Grounds	Statute of Limitations	Application	Comments
<b>CCP §473(b)</b>	Mistake, inadvertence, surprise, excusable neglect.  Usually relief from default.  Mandatory set aside if attorney declaration admits mistake, inadvertence, surprise, or excusable neglect (not client’s fault).	6 months from entry of default.	All judgments and orders (Title IV-D & non-IV-D cases).	Must file proposed <i>responsive pleading</i> with moving papers.  If attorney declaration admits fault, court may impose sanction on attorney.
<b>CCP §473(d)</b>	Void judgment.	None—can be raised at any time.	Any judgment obtained by improper service of summons (Title IV-D & non-IV-D; civil; family).	If summons is served in a manner other than that specified by statute, court acquires no jurisdiction over respondent, and any judgment rendered against him or her is void. <i>Wilson v Eddy</i> (1969) 2 CA3d 613, 616, 82 CR 826.
<b>CCP §473.5</b>	Lack of actual notice (service of summons did not result in actual notice).	No later than: 2 years after entry of default judgment, or 180 days after service of written notice of default, whichever is <i>earlier</i> .	Judgments (Title IV-D & non-IV-D cases).	Moving party must show no <i>actual</i> notice.
<b>Fam C §17416</b>	Stipulation to paternity is <i>voidable</i> if parent who was unrepresented by counsel can establish that (a) he was not advised of his right to trial, (b) he was unaware of that right, and (c) if he had been properly advised he would not have executed the agreement.	Promptly. Requires diligence and showing that agreement on which stipulation is based was not voluntary and intelligent in the constitutional sense.	Title IV-D cases only.	<i>County of Los Angeles v Soto</i> (1984) 35 C3d 483, 486, 198 CR 779.
<b>Fam C §17432</b>	Judgment based on presumed income (minimum wage at 40 hours per week).	1 year from date DCSS receives first collection.	Title IV-D CS judgments only (usually default).	Set aside does <i>not</i> address issue of paternity—only income and amount of child support ordered. Court must consider various factors, including equitable ones, in ruling. Fam C §17432(h).

Statute	Grounds	Statute of Limitations	Application	Comments
<b>Fam C §17433</b>	Mistaken identity of respondent.	None stated.	Title IV-D default child support judgments only.	If judgment set aside, respondent entitled to Fam C §17530 remedies (terminate enforcement activities, reimbursement of any funds or assets taken or seized, restoration of license(s)).
<b>Fam C §§3690 et seq</b>	Fam C §3691: (a) Actual fraud. (b) Perjury. (c) Lack of notice.	After the 6-month time limit of CCP §473(b): (a) Within 6 months after date respondent knew or should have known of the fraud. (b) Within 6 months after date respondent discovered or should have discovered the perjury. (c) No later than 6 months after respondent obtains or reasonably should have obtained notice of the CS order or earnings assignment order.	Child support orders only (Title IV-D & non-IV-D cases).	<i>Lack of notice:</i> If respondent properly served with summons—no relief allowed. Fam C §3691(c)(3). Requires party declaration regarding lack of notice not due to own conduct or neglect, <b>and</b> copy of proposed answer.  No set aside if order simply inequitable when made, or later circumstances cause order to be excessive or inadequate. Fam C §3692.  Court may only set aside the provisions materially affected by its decision to grant relief but has discretion to set aside entire order if necessary for equitable considerations. Fam C §3693.
<b>Fam C §7575</b>	Rescind or set aside POP declaration (voluntary declaration of paternity—Fam C §7571).	(a) Rescind within 60 days after execution of POP declaration, unless court order entered for custody and visitation. (b) If genetic testing determines man who signed declaration is not parent, motion to set aside must be filed within 2 years of child’s date of birth. (c) Equity: no statute of limitation. If action or motion to set aside is required to be filed within specified time frame under CCP §473, then period to set aside POP declaration commences on date court makes an initial order for custody, visitation, or CS	Title IV-D & non-IV-D cases.	Statute does not restrict court from acting as court of equity. Fam C §7575(c)(4).  See Judicial Council forms FL-280, FL-281, FL-285, FL-290.

Statute	Grounds	Statute of Limitations	Application	Comments
<p><b>Fam C §§7645–7649.5</b> <b>Paternity disestablishment</b></p>	<p>Genetic tests (Fam C §7647.7) indicate previously established father is not biological father.</p> <p>Standing to bring motion (Fam C §7646(a)):</p> <p>(a) Previously established mother.</p> <p>(b) Previously established father.</p> <p>(c) Child.</p> <p>(d) Legal representative of (a)–(c).</p>	<p>based on a POP declaration.</p> <p>(1) Within 2 years of date previously established father knew or should have known of a judgment, or knew of the existence of an action to adjudicate paternity, whichever is first.</p> <p>(2) Within 2 years of child’s birth if POP declaration.</p> <p>(3) Within 2 years of enactment of this section if paternity established by default. [Stats 2004, ch 849 (AB 252) effective September 28, 2004.] Fam C §7646(a)(3).</p>	<p>Judgments of paternity (Title IV-D &amp; non-IV-D cases).</p>	<p>Not set aside if:</p> <p>(a) Paternity judgment from another state.</p> <p>(b) Prior genetic tests did not exclude previously established father as biological dad. Fam C §7648.3.</p> <p>Arrearages set aside if respondent not biological dad; but no right to reimbursement of CS paid. Fam C §7648.4</p> <p>Not exclusive; equitable remedies not excluded. Fam C §7649.</p>
<p><b>Fam C §§2120–2129</b></p>	<p>Fam C §2122:</p> <p>(a) Actual fraud.</p> <p>(b) Perjury.</p> <p>(c) Duress.</p> <p>(d) Mental incapacity.</p> <p>(e) Mistake—mutual or unilateral, of law or fact.</p> <p>(f) Failure to comply with disclosure requirements of Fam C §2104 and §2105.</p>	<p>(a) 1 year after discovery or when moving parent should have discovered fraud.</p> <p>(b) 1 year after discovery or when moving parent should have discovered perjury.</p> <p>(c) 2 years after date of entry of judgment if duress.</p> <p>(d) 2 years after date of entry of judgment if mental incapacity.</p> <p>(e) 1 year after date of entry of judgment if mistake.</p> <p>(f) 1 year after date party discovered or should have discovered failure to comply. (Applies to judgments that become final on or after January 1, 2002.)</p>	<p>Judgments of dissolution, legal separation, and nullity entered on or after January 1, 1993. Fam C §§2121(a), 2129.</p>	<p>Fraud must be extrinsic, not intrinsic. <i>Marriage of Stevenot</i> (1984) 154 CA3d 1051, 1068, 202 CR 116.</p> <p>Cannot set aside because judgment was inequitable. Fam C §2123.</p> <p>Attorney negligence not imputed to party seeking relief. Fam C §2124.</p> <p>Set aside only portions of judgment materially affected. Fam C §2125.</p> <p>Date of valuation subject to equitable considerations. Fam C §2126.</p> <p>Statement of decision mandatory on request. Fam C §2127.</p> <p>Other available remedies. Fam C §2128.</p>

Statute	Grounds	Statute of Limitations	Application	Comments
<p><b>50 USC App §§501 et seq</b> <b>Servicemembers' Civil Relief Act</b></p>	<p>Violation of Act is grounds to vacate default judgment or order.</p>	<p>90 days after termination of military service. 50 USC App §521(g).</p> <p>For application to be granted, it must appear that:</p> <p>(1) respondent was materially affected by reason of military service in making a defense to the action; and</p> <p>(2) respondent has a meritorious legal defense to the action or some part of it.</p>	<p>All judgments (Title IV-D, non-IV-D, civil, family law, paternity).</p> <p>Plus any order modifying a judgment of dissolution, nullity, or legal separation. <i>Allen v Allen</i> (1947) 30 C2d 433, 436-437, 182 P2d 551.</p>	<p>If court aware of defendant's military status, it must stay proceedings until attorney appointed (50 USC App §521(b)(1)) unless court determines that ability to conduct defense is not materially affected by military service. 50 USC App §522.</p> <p>Petitioner must file affidavit showing respondent not in military service, or court must order entry of default judgment. 50 USC App §522; Cal Rules of Ct 5.120. If respondent is in military service, court must appoint attorney before it can order default judgment entered. 50 USC App §521(b)(1).</p>
<p><b>Equitable Relief</b></p>	<p>Fraud or mistake.</p> <p>"Extrinsic mistake" generally refers to circumstances extrinsic to the litigation that have resulted in a party's loss of a hearing on the merits. Fraud is extrinsic if it deprives a party of the opportunity to present a claim or defense.</p> <p>Under limited circumstances a court, sitting in equity, can set aside or modify a valid final judgment obtained by fraud, mistake, or accident. <i>City and County of San Francisco v Cartagena</i> (1995) 35 CA4th 1061, 1066-1067, 41 CR2d 797.</p> <p>To demonstrate extrinsic fraud, the moving party must show that the fraud could not reasonably have been discovered before entry of judgment. <i>City and County of San Francisco v Cartagena, supra</i>, 35 CA4th at 1068.</p>	<p>Promptly, upon discovery of judgment or order.</p>	<p>All judgments (Title IV-D, non-IV-D [before January 1, 1993 or judgments that do not adjudicate support or property])</p> <p>Fam C §§2120 et seq superseded equitable relief for judgments entered on or after January 1, 1993.</p>	<p>See <i>County of Los Angeles v Navarro</i> (2004) 120 CA4th 246, 14 CR3d 905; compare <i>County of Fresno v Sanchez</i> (2005) 135 CA4th 15, 37 CR3d 192.</p> <p>Trial court in <i>Sanchez</i> denied relief because <i>Navarro</i> had not been decided and was not applicable law when court denied motion. Appellate court implied party still could apply for relief per new statute.</p> <p>Blood tests <i>cannot</i> be ordered before a paternity judgment is set aside. If extrinsic fraud is established, however, paternity judgment may be set aside and blood tests ordered, as in any other paternity action. <i>City and County of San Francisco v Cartagena</i> (1995) 35 CA4th 1061, 1069, 41 CR2d 797.</p>

Statute	Grounds	Statute of Limitations	Application	Comments
<p><b>CCP §§583.210 et seq</b></p> <p><b>Mandatory dismissal for failure to timely serve</b></p>	<p>Failure to serve summons and petition within 3 years of filing. CCP §583.210(a).</p> <p>Failure to file proof of service within 60 days of service. CCP §583.210(b).</p>	<p>After 3 years, 60 days of filing action.</p> <p><i>Extension of time</i> to serve by (a) written stipulation or (b) oral agreement in court if entered in minutes or transcript is made. CCP §583.230.</p> <p><i>Exclude time</i> if (a) respondent not amenable to service, (b) there is stay of prosecution, (c) validity of service is litigated, or (d) service on defendant impossible, impractical, or futile due to causes beyond petitioner’s control. CCP §583.240.</p>	<p>Title IV-D &amp; non-IV-D cases.</p>	<p>Mandatory dismissal of entire case. CCP §583.250.</p> <p>Court can sua sponte set motion for dismissal. CCP §583.160.</p> <p>No dismissal if (a) support order in place in dissolution or legal separation action (<i>e.g.</i>, expedited CS order in DCSS case), or (b) dissolution status judgment was entered. CCP §583.161.</p>
<p><b>CCP §§583.310 et seq</b></p> <p><b>Mandatory dismissal for failure to timely bring action to trial</b></p>	<p>Failure of petitioner to bring action to trial within 5 years of commencement.</p>	<p>No judgment after case has been active for 5 years.</p> <p><i>Extension of time</i> to bring to trial by (a) parties’ written stipulation or (b) oral agreement in court if entered in minutes or transcript is made. CCP §583.330.</p> <p><i>Exclude time</i> if (a) jurisdiction was suspended, (b) trial was stayed or enjoined, or (c) bringing to trial was impossible, impractical, or futile. CCP §583.340.</p>	<p>Title IV-D &amp; non-IV-D cases.</p>	<p>Mandatory dismissal of entire case. CCP §583.360.</p> <p>Court can sua sponte set motion for dismissal. CCP §583.160.</p> <p>Only a stipulation between parties will revive an action after the 5-year period has expired. <i>Estate of Anastasio</i> (1989) 215 CA3d 486, 489, 263 CR 622.</p> <p>No dismissal if support order in place in dissolution or legal separation action. CCP §583.161.</p> <p style="text-align: right;">Rev 9-1-06</p>

### Appendix C: Interest Rates Chart\*

STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
ALABAMA	YES	7.5% per month (eff. 9/1/11); before that date, 12% per month	Ala. Code 1975 §8-8-10
ALASKA	YES	6% per year; 12% prior to 10/1/96	A.S. §§25.27.020(a)(2)(B), 25.27.025
ARIZONA	YES	10% simple interest per year	A.R.S. §44-1201(A); see A.R.S. §25-510(E)
ARKANSAS	YES	10% per year, unless the owner of the judgment or the owner's counsel of record requests prior to the accrual of the interest that the judgment shall not accrue interest	A.C.A. §9-14-233(a)
CALIFORNIA	YES	10% per year on the principal amount of a judgment remaining unsatisfied. 7% per year prior to 1/1/84	C.C.P. §§685.010(a), 685.020(a) ; Fam. C. §17433.5
COLORADO	YES	12% compounded interest (eff. 7/1/86); county CSE offices can choose whether to enforce	C.R.S.A. §§5-12-101, 14-14-106
CONNECTICUT	NO		
DELAWARE	NO		
FLORIDA	YES	Interest rate on judgments is determined annually by Chief Financial Officer	F.S.A. §§55.03, 742.08
GEORGIA	YES	7% per year simple interest (eff. 1/1/07)	Ga. Code Ann. §§19-11-7(e), 7-4-2(a)(1)(A)
HAWAII	NO	But can recover 10% per year post judgment	HRS §478-3; <i>Doe v Doe</i> (2001) 97 Hawai'i 160, 162–163
IDAHO	NO	But can recover 5% plus base rate in effect at the time of entry of judgment	Idaho Code Ann. §28-22-104(2); <i>Worthington v</i>

STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
			<i>Thomas</i> (2000) 134 Idaho 433, 437
ILLINOIS	YES	One-twelfth of current statutory rate (9% per year) on unpaid balance at end of each month	735 ILCS §5/12-109(b); 735 ILCS §5/2-1303; 750 ILCS §5/505(b)
INDIANA	YES	On request, not more than 1.5% per month, or 8% on adjudicated amount	Ind. Code Ann. §§31-16-12-2, 24-4.6-1-101
IOWA	YES	10% per year 30 days after periodic payment is due and owing	Iowa Code Ann. §535.3(2)
KANSAS	NO	Judgment interest is permitted (10% per year presumed correct), but not enforced by IV-D program	KS ST §16-204(e)(3)
KENTUCKY	YES	If case is referred to KY State Revenue (12% compounded annually on judgment) or ordered by court	KRS §360.040; <i>Thurman v Com., Cab. for H.R.</i> (1992) 858 SW2d 368, 371; <i>Young v Young</i> (1972) 479 SW2d 20, 22 (interest runs as each payment comes due but may be disallowed if inequitable)
LOUISIANA	NO		
MAINE	NO	State does not charge, but 6% per year may be collected by commissioner on debt owed to department	19-A MRSA §2354; see 14 MRSA §1602-C (T-Bill plus 6% postjudgment interest); <i>Walsh v Cusack</i> (2008) 946 A2d 414, 417-418 (party limited to postjudgment interest on total arrearages; no evidence presented regarding each missed payment)
MARYLAND	NO	Law allows 10% per annum on judgments, but	MD Code Ann., Cts. & Jud. Proc. §11-



STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
		only applied in limited cases	107(a)
MASSACHUSETTS	YES	0.5% on missed arrears (eff. 7/1/10); 1% per month on retroactive support or adjudicated arrears	Mass. Gen. Laws Ann ch. 119A, §6(a); 830 CMR §119A.6.1(3)
MICHIGAN	NO	No interest, but from 1/1/11, at judge's discretion, a surcharge for past due arrears is applied if failure to pay is willful. Surcharge is calculated at 6-month intervals at annual interest rate equal to 1% plus the average interest rate paid at auctions of 5-year US Treasury notes without compounding (surcharge suspended from 1/1/10 to 1/1/11)	M.C.L.A. §§552.603(6)(a), (11), 552.603a(1), (6)
MINNESOTA	YES	4% per annum on arrears and judgments (eff. 1/1/08); or annual judgment rate charged if court ordered obligation exists to pay retroactive support	M.S.A. §§548.091, subd. 1a, 549.09, subd. 1(c)
MISSISSIPPI	YES	Set by judge, usually 8%	Miss. Code Ann. §75-17-7
MISSOURI	YES	1% per month simple interest, for judgments entered on or after 9/1/82	VAMS §454.520
MONTANA	YES	10% per annum simple interest applied to judgments, absent other agreement or evidence of arrearages on individual payments	MCA §25-9-205; <i>Marriage of Steab &amp; Luna</i> (2013) 300 P3d 1168, 1172-1173 (10% interest applied in absence of interest provision in decree or stipulated agreement for different rate)
NEBRASKA	YES	Interest fixed at rate	Neb. Rev. Stats. 42-

STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
		equivalent to yield of average auction price for last auction of 1-year T-Bills.	358.02, 45-103
NEVADA	YES	Prime rate at largest Nev. bank, plus 2%, adjusted every 6 months	NRS §§99.040, 125B.140
NEW HAMPSHIRE	YES	Interest on judgments determined by state treasurer as prevailing discount rate of interest on 26-week T-Bills at the last auction preceding the last day of September in each year, plus 2 percentage points, rounded to nearest tenth of a percentage point	N.H. Rev. Stat. Ann. §336:1(II)
NEW JERSEY	NO		
NEW MEXICO	YES	4% (eff. 5/19/04); 8.75% (eff. 6/18/93-5/18/04)	N.M. Stat. Ann. §40-4-7.3
NEW YORK	YES	9% per year on judgments; eff. 1/1/12, at 1-year T-Bill rate + 3%	NY MCL CPLR §§5003, 5004
NORTH CAROLINA	NO		
NORTH DAKOTA	YES	Prime rate plus 3 percentage points rounded up to next one-half point (eff. 7/1/92); for 2013, 6.5% simple interest per year	N.D. Cent. Code 28-20-34, 14-09-25
OHIO	YES	Federal short-term rate, rounded to nearest whole number percentage, plus 3% on missed or adjudicated arrears	ORC Ann. §§1343.03, 5703.47
OKLAHOMA	YES	10% per year	43 Okl. St. §114
OREGON	YES	9% per year, unless parties agree otherwise	ORS §82.010
PENNSYLVANIA	NO		
RHODE ISLAND	YES	1% per month	R.I. Gen. Laws §9-

STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
			21-8
SOUTH CAROLINA	YES	If amount must be ascertained and is due, the sum or sums draws interest at 8.75% per year. For judgments or decrees entered on or after 7/1/05, interest set at prime rate plus 4 percentage points, compounded annually.	S.C. Code Ann. §34-31-20; <i>Hopkins v Hopkins</i> (2000) 343 SC 301, 307 (no postjudgment interest if no money judgment; and no prejudgment interest if not pled or requested)
SOUTH DAKOTA	YES	If interest reduced to judgment in separate court action and copy is provided to DCS, 1% per month	S.D. Codified Laws §§25-7A-14, 54-3-16
TENNESSEE	NO	But interest is available on judgment at 2% less than formula rate per year published every 6 months by commissioner	Tenn. Code Ann. §§47-14-121(a), 47-14-05
TEXAS	YES	6% simple interest per year	Texas Family Code §§157.265, 157.261
UTAH	YES	Federal postjudgment interest rate as of January 1 of each year, plus 2% on adjudicated arrears	Utah Code Ann. §15-1-4; 28 USC §1961
VERMONT	YES	Surcharge at rate of 6% per annum (simple, not compounded) on all past due arrears	15 VSA §606(b), (d); Vt. Rules of Appellate Procedure Rule 37
VIRGINIA	YES	Judgment rate of interest at 6% per year on arrearages	Va. Code Ann. §§20-78.2, 6.2-302
WASHINGTON	YES	12% on judgments for unpaid child support; otherwise at maximum legal rate at time of judgment	Wash. Rev. Code Ann. §§4.56.110, 19.52.020
WEST VIRGINIA	YES	5% simple interest per year	W. Va. Code §48-1-302(a)
WISCONSIN	YES	Simple rate of 1% per	Wis. Stat.

STATE	INTEREST ON ARREARS	AMOUNT	AUTHORITY
		month on arrearages greater than 1 month's worth of support; 1% per month on total arrearage if no current support obligation. Under pilot program (eff. 12/31/13) interest accrues at 0.5%	§767.511(6), (6m)
WYOMING	YES	10% on amount reduced to judgment	Wyo. Stat. §1-16-103
DISTRICT OF COLUMBIA	NO		
GUAM	YES	6% per annum (eff. 1/1/08); before that date, 12% per annum	5 GCA §34114
PUERTO RICO	YES	Legal rate, 6% per annum considered legal until other rate fixed	31 LPRA §3025; 32 LPRA App III, rule 44.3
VIRGIN ISLANDS	NO		

\*Chart based in part on the website maintained by the Office of Child Support Enforcement (OCSE). See [www.acf.hhs.gov/programs/css/irg-state-map](http://www.acf.hhs.gov/programs/css/irg-state-map).

## Appendix D: Index of Family Code Sections

Subject	Family Code Section	Description
ABSTRACT OF JUDGMENT	4506	<b>Abstract of judgment.</b> (a) Certification by clerk. (c) Recording notice of support judgment by LCSA has same force and effect as certified abstract.
ACCESS TO INFORMATION	17508	<b>Access to information collected by law.</b> EDD to share info with LCSA.
ADULT CHILD (AGREEMENT)	3587	<b>Court order to effectuate agreement for support for adult child.</b> Court has authority to approve, and make an order to effectuate, a stipulated agreement to continue child support after the age of 18 years.
ADULT CHILD (INCAPACITED)	3910	<b>Duty to maintain incapacitated child.</b> (a) Father and mother have an equal responsibility to maintain, to the extent of their ability, a child of any age who is incapacitated from earning a living and without sufficient means.
AGREEMENT FOR SUPPORT	3585	<b>Support order based on parents' agreement.</b> Severable from all other provisions relating to property or spousal support; order based on agreement shall be law-imposed and made under the court's power to order child support.
AID CASES: OBLIGATION OF PARENT	17402	<b>Obligation of noncustodial parent.</b> Obligation of noncustodial parent in cases of separation or desertion that results in aid by county.
ALLOCATION: ADD-ON EXPENSES (i.e., child care, uninsured health insurance, educational costs, and travel expenses)	4062	<b>Additional expenses.</b> (a) The court <i>must</i> order as additional child support: (1) Child care costs related to employment or reasonably necessary education or training for employment skills, (2) Uninsured health care costs. (b) The court <i>may</i> order the following as additional child support: (1) Education costs or other special needs of the children, (2) Visitation travel expenses. Apportionment to be one-half unless requested otherwise and appropriate.
APPEAL: ATTORNEY GENERAL	17407	<b>Appeal handled by Attorney General.</b>
APPLICATION FOR EXPEDITED SUPPORT ORDER	3622	<b>Application for order.</b> The court may make an expedited support order. Guideline or MBSAC (minimum basic standards of adequate care).
ARREARAGES: AGENCY REVIEW OF STATEMENT; REQUEST FOR JUDICIAL DETERMINATION	17526	<b>Review and judicial determination of arrearages.</b> (a) Administrative review of statement of arrearages; (c) Request for judicial determination of arrearages (must include monthly breakdown of amounts ordered and paid).
ARREARAGES: STATEMENT OF	17524	<b>Statement of arrearages.</b> (a) Statement of arrearages mandatory with application for services from LCSA.
ARREARS RECOVERY	4503	<b>Limitation period for recovery of arrearages in child support not affected by child attaining age of 18.</b>
ATTORNEY FEES (GOVERNMENT AGENCY)	273	<b>No award of attorney fees against governmental agency in a family law matter, except when appropriate under CCP §128.5 or Fam C §271.</b>
ATTORNEY FEES (SUPPORT ENFORCEMENT)	3557	<b>Attorney fees for enforcement of support order or civil penalty for child support delinquency.</b> Court determines award is appropriate, there is a disparity in access to funds to retain counsel, and one party is able to pay for both parties. Except no fees to or against government entity.
ATTORNEY-CLIENT RELATIONSHIP	17406	<b>Actions involving parentage or support.</b> (a) No attorney-client relationship may be deemed to have been created between LCSA and any party.
CHANGE IN CIRCUMSTANCE	4069	<b>Establishment of guideline as change of circumstances.</b>
CHANGE OF EMPLOYMENT: DUTY TO NOTIFY	5281	<b>Obligor to inform obligee of change of employment.</b>
CHILD CUSTODY AND VISITATION: LCSA NOT INVOLVED	17404	<b>Parties to actions; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order.</b> (e)(4) Child support agency does not handle child custody or visitation issues.
CHILD REPRESENTATION	3150	<b>Appointment of private counsel to represent child in custody or visitation proceeding.</b> Must comply with Cal Rules of Ct 5.240–5.242.
CHILD SUPPORT ORDER (DURATION)	3601	<b>Child support order continues in effect until terminated by court or by</b>

Subject	Family Code Section	Description
		<b>operation of law.</b>
CHILD SUPPORT ORDER	3621	<b>Child support order during pendency of action.</b> The court may, without a hearing, make an order requiring a parent to pay child support during the pendency of that action.
CHILD SUPPORT ORDER: ACCORDING TO PARENT'S CIRCUMSTANCES AND STATION IN LIFE	4053	<b>Child support according to parent's circumstances and station in life.</b> (a) A parent's first and principle obligation is to support minor children according to the parent's circumstances and station in life. (b) Both parents are mutually responsible for support. (d) Each parent should pay for the support of the children according to that parent's ability. (f) Children should share in the standard of living of both parents. Child support may therefore improve the standard of living of the custodial household to improve the lives of the children. (l) Child support must ensure that children receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.
CHILD SUPPORT ORDER: MUST INCLUDE EARNINGS ASSIGNMENT ORDER	5230	<b>Support order must include earnings assignment order.</b>
CHILD SUPPORT: PARENT ON WELFARE	4200	<b>Child support payable to parent receiving welfare.</b> (b) Direct LCSA to appear on behalf of welfare recipient. See Fam C §17309.
COMMISSIONERS	4251	<b>Provision of sufficient commissioners: Commissioner as temporary judge; Duties.</b> (a) All actions or proceeding in which enforcement services are being provided for an order to establish, modify, or enforce child support must be heard by a commissioner. The parties must be advised as such.
CONSOLIDATION OF ORDERS	17408	<b>Consolidation of orders.</b>
CREDIT REPORTING	4701	<b>Child support delinquency reporting.</b> Credit reporting agency information from DCSS. LCSA is not liable for any consequences for the failure of a parent to contest the accuracy of the information within the time allowed.
CUSTODIAL PARENT: INTERVIEW BY LCSA	17405	<b>Interview of custodial parent.</b> LCSA must interview custodial parent.
CUSTODY OR VISITATION RIGHTS	3556	<b>Effect of failure to implement custody or visitation rights.</b> Duty of support not affected by a failure or refusal by CP to implement any rights as to custody or visitation granted by the court to the NCP.
DCSS AUTHORITY	17000	<b>Definitions.</b>
DURATION OF DUTY TO SUPPORT CHILD	3901	<b>Duration of duty.</b> (a) The duration of duty continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and who is not self-supporting, until the time the child completes the 12th grade or attains the age of 19 years, whichever occurs first. (b) Nothing limits a parent's ability to agree to provide additional support.
DUTY OF PARENTS	3900	<b>Duty of parents.</b> Both father and mother have an equal responsibility to support their minor child in manner suitable to child's circumstances.
EARNINGS ASSIGNMENT ORDER	17420	<b>Earnings assignment order.</b> Court required to issue.
EMPLOYER: DUTY TO PROVIDE CURRENT INFORMATION, NOTIFY COURT (SUBJECT TO CONFIDENTIALITY)	4014	<b>Notice of current employer; Personal information; Filing and updating; Forms.</b> (b)(1) Residence and mailing address; (2) Social security number; (3) Telephone number; (4) Driver's license number; (5) Name, address, and telephone number by the employer.
EMPLOYER AND LABOR ORGANIZATIONS	17512	<b>Employer and labor organization cooperation with LCSA.</b>
EMPLOYER DUTIES: WAGE ASSIGNMENT ORDERS	5235	<b>Employer to withhold and forward support.</b>
EMPLOYER DUTIES: PENALTIES	5241	<b>Penalty for employer failing to comply with earnings assignment order.</b>
ENFORCEMENT BY COUNTY ON	4002	<b>Enforcement by county on behalf of child.</b> (a) The county may proceed on

Subject	Family Code Section	Description
BEHALF OF MINOR CHILD		behalf of a child to enforce the child's right of support against a parent. (b) If the county furnishes support to a child, the county has the same right as the child to secure reimbursement and obtain continuing support.
ENFORCEMENT: ERROR	17530	<b>Enforcement actions taken in error.</b> Misidentification.
ENFORCEMENT: LEVIES	17522	<b>Levies.</b>
ENFORCEMENT: LICENSE RENEWALS	17520	<b>Consolidated lists of persons not in compliance with support order; License renewals; Review procedures; Rules and regulations; Forms; Suspension or revocation or driver's license; Severability.</b> License renewals: process, hearing within 20 days; administrative remedy.
ENFORCEMENT: LIENS	17523	<b>Lien for child support.</b>
ENFORCEMENT: RETIREMENT SYSTEMS	17528	<b>Actions to enforce obligations; Retirement systems.</b>
ENFORCEMENT: UNEMPLOYMENT COMPENSATION	17518	<b>Actions to enforce support obligations.</b> Twenty-five percent of weekly unemployment compensation.
FORWARDING SUPPORT	3555	<b>Forwarding support paid through designated county officer.</b> DCSS must forward support to the payee within mandates of guidelines.
FOSTER CARE FORMULA	17402	<b>Obligation of noncustodial parent.</b> (c)(3) Foster care formula.
GENETIC TESTS TO DETERMINE PATERNITY	7541	<b>Use of blood tests to determine paternity.</b> (b) The notice of motion for blood tests may be filed no later than 2 years from the child's date of birth by the husband. (d) The notice of motion for blood tests must be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity of the child before the court.
GENETIC TESTS: ADMINISTRATIVE ORDER FOR TESTING	7558	<b>Administrative order requiring genetic testing; Costs; Motion for relief; Additional test.</b> LCSA may issue administrative order for genetic tests. Payment of genetic testing costs. Refusal to submit to testing.
GENETIC TESTS: COMPENSATION OF EXPERT WITNESS	7553	<b>Compensation of expert witness.</b> (a) Expert witness compensation set by court at reasonable amount. Court apportions between parties and/or county, and determines what amount, if any, is taxed as costs. (b) Compensation of expert witness appointed for court's needs is paid by the court.
GENETIC TESTS: OBJECTION TO RESULTS	7552.5	<b>Results of genetic tests.</b> (b) Genetic tests must be admitted into evidence unless a written objection is filed with the court and served no later than 5 days before hearing.
GENETIC TESTS: PATERNITY	7551	<b>Order for genetic tests in civil proceeding involving paternity; "Genetic tests."</b>
GENETIC TESTS: PATERNITY	7552.5	<b>Service of copies of results of genetic tests.</b> (a) No later than 20 days before hearing. (d) Paternity index of 100 or greater, results to be accompanied by voluntary declaration of paternity form.
GENETIC TESTS: REQUEST FOR GENETIC TESTS AND SET ASIDE OF VOLUNTARY DECLARATION OF PATERNITY	7575	<b>Rescission of voluntary declaration of paternity; Setting aside declaration.</b> (a) Either parent may file rescission of POP within 60 days. (b)(3)(a) The motion for genetic tests may be filed no later than 2 years from the child's date of birth. (c)(1) Set aside of paternity declaration. CCP §473. The period within which the action or motion to set aside the voluntary declaration of paternity must be filed begins on the date that the court makes an initial order for custody, visitation, or child support based on voluntary declaration of paternity.
HARDSHIP DEDUCTIONS	4071	<b>Circumstances evidencing hardship and maximum amount.</b>
HEALTH INSURANCE	3751	<b>Health insurance for supported child.</b> (a)(1) requires a provision in all support orders to keep IV-D agency informed of whether the obligor has health insurance coverage at a reasonable cost, and if so, the policy information. (a)(2) when current support is set, court must require that health insurance be maintained on the child by either or both parents if available at no cost or reasonable cost. Rebuttable presumption cost (defined as difference between self-only and family coverage) is reasonable if it does not exceed 5% of gross income of responsible party. If cost found not to be reasonable, state reasons on record.

Subject	Family Code Section	Description
HEALTH INSURANCE	3752	<b>District attorney (DCSS) designated as assigned payee; Information on policy for custodial parent.</b>
HEALTH INSURANCE	3752.5	<b>Support order must require obligor and obligee to provide information about health insurance.</b>
HEALTH INSURANCE	3753	<b>Health insurance cost in addition to child support amount.</b>
HEALTH INSURANCE	3763	<b>Time of making and effect of assignment order; Modification of order.</b> The health insurance coverage assignment order may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The assignment is binding on any existing or future employer.
HEALTH INSURANCE	3765	<b>Motion to quash assignment.</b>
HEALTH INSURANCE	3773	<b>Notice of health insurance coverage.</b> Title IV-D cases.
INCOME: ALLOWABLE DEDUCTIONS AND EXPENSES	4059	<b>Annual net disposable income of each parent.</b> Allowable deductions from gross income: (e) Any child or spousal support actually being paid by the parent under a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court. Parent must prove payment of the support.
INCOME: DEFINED	4058	<b>Annual gross income of each parent defined.</b>
INCOME: SUBSEQUENT SPOUSE OR NONMARRIED PARTNER	4057.5	<b>Income of subsequent spouse or nonmarital partner not considered except in extraordinary circumstances.</b> (b) Extraordinary circumstances may include a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or underemployed and relies on subsequent spouse's income.
INCOME AND EXPENSE DECLARATION	3664	<b>Request for production of income and expense declaration.</b> (a) At any time following a judgment of dissolution of marriage or legal separation of the parties, or a determination of paternity, that provides for a payment of support, without leave of court, may serve a request on the other party for the production of a completed current income and expense declaration. (b) If no response within 35 days of service or if the response is incomplete as to wage information, pay stubs, and income tax returns, the requesting party may serve a request on the employer of the other party for information limited to the income and benefits provided to the party on Judicial Council form.
INDEPENDENT ACTION	17404	<b>Parties to actions; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order.</b> (f)(1) Party may take independent action. (2) With written consent of LCSA.
INEQUITABLE ORDER	3692	<b>Finding of inequitable order.</b> A support order may not be set aside simply because the court finds the order inequitable when made or subsequent circumstances caused the order to become excessive or inadequate.
JOINDER	17404	<b>Parties to actions; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order.</b> (c) Joinder.
JURISDICTION (UIFSA)	4905	<b>Nonresidents.</b> (a) In a proceeding to establish, enforce, or modify a support order or determine parentage, this state may exercise personal jurisdiction over a nonresident under circumstances listed.
JURISDICTION: CONTINUING EXCLUSIVE (UIFSA)	4909	<b>Continuing exclusive jurisdiction.</b>
LACHES DEFENSE	291, 4502	<b>Exception from renewal of judgment for support.</b> (d) In an action to enforce a judgment for child, family, or spousal support, the respondent may raise and the court may consider the defense of laches only with respect to any portion of the judgment owed to the state.



Subject	Family Code Section	Description
LOCAL CHILD SUPPORT AGENCY (LCSA)	17400	<b>Obligation of county to maintain local child support agency; Summons, complaint, and answer forms; Outreach program; Order for temporary support; "Enforcing obligations"; Intervention by agency.</b> Local child support agency's obligations and actions.
LOCAL CHILD SUPPORT AGENCY (LCSA): DUTIES	17500	<b>Obligations of LCSA under the Title IV-D of Social Security Act.</b>
LOCAL CHILD SUPPORT AGENCY (LCSA): DUTY TO MONITOR CASES	3680.5	<b>Local agency's duty to monitor child support cases.</b> LCSA must monitor child support cases and seek modifications, when needed. At least once every 3 years, LCSA must review and, if appropriate, seek modification of each child support case for which assistance is provided under CalWORKs.
LOCAL CHILD SUPPORT AGENCY (LCSA): LIMITATION ON STIPULATING TO REDUCE PAST DUE SUPPORT	17406	<b>Limitation on stipulation to reduce past due support.</b> (k) LCSA may not enter into a stipulation that reduces the amount of past due support, on behalf of a person who is receiving support enforcement services and who is owed support arrearages that exceed unreimbursed public assistance, without consent of the person receiving services on own behalf or on behalf of the child.
MEDICAL: STATE INSURANCE FORM	17422	<b>State medical insurance form.</b>
MINOR PARENTS (UIFSA)	4916	<b>Minor parents.</b> Minor parent, guardian, or legal representative of minor parent may maintain proceeding for benefit of child.
MODIFICATION	3603	<b>Modification or termination of order.</b> An order may be modified or terminated at any time except as to an amount that accrued before the date of filing of the notice of motion or order to show cause to modify or terminate.
MODIFICATION OF REGISTERED ORDER (UIFSA)	4960	<b>Requirements for modification.</b> Modification of a registered order issued in another state.
MOTION TO QUASH ASSIGNMENT ORDER	5270	<b>Grounds for motion to quash</b> (assignment order).
MULTIPLE SUPPORT ORDERS: CONTROLLING ORDER (UIFSA)	4911	<b>Multiple support orders.</b> Procedures for determining controlling order(s).
MULTIPLE SUPPORT ORDERS: MULTIPLE OBLIGEEES (UIFSA)	4912	<b>Enforcement of multiple orders for two or more obligees.</b>
NOTICE OF REGISTRATION OF ORDER (UIFSA)	4954	<b>Notification of registration.</b>
NOTICE TO LCSA	4251	<b>Required notice.</b> (f) Moving party must serve notice on LCSA of any proceeding in which support is at issue. Without proper notice, any order is voidable on motion of the LCSA.
OPERATIVE DATE	4	<b>Transitional provision for amendments, additions, and repeals.</b> (c) New law applies whether an event occurred on or after operative date. (d) Proceedings taken after the operative date are governed by new law.
ORDER/NOTICE TO WITHHOLD INCOME	5246	<b>Order/notice to employer to withhold income for child support.</b> Alternative to earnings withholding order.
PARENTAGE: ACTION TO ESTABLISH	7630	<b>Action to determine existence or nonexistence of parent and child relationship.</b>
PARENTAGE: CONCLUSIVE PRESUMPTION (CHILD OF MARRIAGE)	7540	<b>Presumption arising from birth of child during marriage.</b>
PARENTAGE: FINDING THAT CHILD HAS MORE THAN TWO PARENTS	7612(c)	<b>More than two parents.</b> Court may find that more than two persons with a claim to parentage are parents if the court finds that recognizing only two parents would be detrimental to the child.
PARTY TO ACTION	17404	<b>Parties to actions; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order.</b> (e)(1) Party to the action after support ordered.

Subject	Family Code Section	Description
PATERNITY: EFFECT OF DECLARATION OF PATERNITY	7573	<b>Effect of declaration of paternity.</b> The establishment of paternity for a child has the same force and effect as a judgment of paternity issued by a court of competent jurisdiction and must be recognized as a basis for the establishment of an order for custody, visitation, or child support.
PATERNITY: ESTABLISHED IN ANOTHER STATE	5604	<b>Effect of previous determination of paternity by another state.</b> Full faith and credit.
PATERNITY: POP DECLARATION	7571	<b>Declaration of paternity.</b> POP Declaration.
PATERNITY: POP DECLARATION INVALID	7612(f)	<b>When voluntary declaration invalid.</b> Voluntary declaration invalid if any specified condition exists when declaration signed.
PLEADINGS RELATED SOLELY TO SUPPORT	17404	<b>Parties to actions; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order.</b> (e)(3) The local child support agency must, within 5 days of receipt, mail to the nonmoving party all pleadings relating solely to the support issue. Rebuttable presumption constitutes good service.
PRESUMPTION OF PARENTAGE (UPA)	7611	<b>Presumption of parentage.</b> (a) The presumed parent and the child's natural mother have been married to each other and the child was born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a judgment of separation is entered by a court.
PRESUMPTION OF PARENTAGE: HOLDING OUT	7611	<b>Presumed parent status.</b> (d) The presumed parent receives the child into a home and openly holds out the child as a natural child.
PRESUMPTION OF PATERNITY: SET ASIDE POP DECLARATION	7612(e)	<b>Petition to set aside voluntary declaration.</b> Person presumed to be parent may petition to set aside voluntary declaration within 2 years of execution; court considers declaration's validity and child's best interest as defined.
PRIORITY OF CHILD SUPPORT PAYMENTS	4011	<b>Priority of child support payments.</b> Child support ordered by court must be made before any debts owed to creditors.
PRIORITY OF PAYMENTS ON ASSIGNMENT ORDERS	5238	<b>Priorities when order includes both current support and arrearages; Multiple assignment orders for same employee.</b>
PUBLIC ASSISTANCE	3029	<b>Order for support when custodial parent is receiving public assistance.</b> Order granting custody to CP receiving assistance must include a child support order.
PUBLIC ASSISTANCE	4004	<b>Child receiving public assistance.</b> The court requires parties to reveal whether a party is currently receiving or intends to apply for public assistance.
PUBLIC ASSISTANCE: CONDITIONS FOR COMPROMISE OF PUBLIC ASSISTANCE DEBT	17550	<b>Establishing regulations for compromising obligor parent's liability for public assistance debt in certain cases; Conditions to be met.</b> Compromise of public assistance debt conditions in foster care setting.
RECONCILIATION (INTACT FAMILY)	3602	<b>Order not enforceable when parties are reconciled and living together.</b>
REGISTRATION: CONFIRMATION PRECLUDES CONTEST (UIFSA)	4957	<b>Precluding a contest.</b> Confirmation of a registered order, whether 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.
REGISTRATION: CONTEST (UIFSA)	4955	<b>Contesting a registered order.</b> A nonregistering party must request a hearing within 20 days after notice of the registration. (b) If the nonregistering party requests a hearing to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
REGISTRATION: DEFENSES AND BURDEN OF PROOF (UIFSA)	4956	<b>Defenses and burden of proof.</b> Grounds for contesting registration or enforcement of an order for child support; burden on contesting party.
REGISTRATION: JURISDICTION TO PROCEED	5601	<b>On registration, no further proceedings regarding obligor's support may be filed in other counties.</b>
REGISTRATION: OUT-OF-COUNTY ORDER	5600	<b>Registration of order obtained in other county.</b>
REGISTRATION: VACATE	5603	<b>Motion for vacation of registration or for relief; Hearing.</b> Twenty days after service of notice of registration.

Subject	Family Code Section	Description
RETROACTIVITY OF ORDER	4009	<b>Retroactivity of order.</b> Except as provided in Fam C §17402, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading served within 90 days of filing. The order may be effective no earlier than the date of service if not served within 90 days and court finds parent was not intentionally evading service.
SEASONAL OR FLUCTUATING INCOME	4064	<b>Adjustment for seasonal or fluctuating income.</b> The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.
SECURITY DEPOSIT	4560	<b>Order for child support security deposit.</b> Up to 1 year's child support.
SECURITY FOR PAYMENT; DEPOSIT OF ASSETS	4012; 4610	<b>Order for security for payment.</b> Court can order parent required to make payment of child support to give reasonable security for payment (4012). Court can order parent to deposit assets to secure future support payments (4610).
SETTING ASIDE ORDERS; SUBSTANTIALLY DIFFERENT=20%; MBSAC ORDERS	17432	<b>Setting aside support portion of judgment or order following default.</b> Relief available after time limit for CCP §473 elapsed. Respondent's income substantially different than presumed income. Change in income is "substantially different" at 10% or more. MBSAC order (minimum basic standards of adequate care).
SOCIAL SECURITY: DEPENDENCY BENEFITS	4504	<b>Applying for benefits and crediting payments made under Social Security or Railroad Retirement Acts or from Department of Veterans Affairs against amount of court-ordered support.</b> (c) Crediting if CP fails to cooperate or refuses to apply.
SPOUSE TO TESTIFY	3551	<b>Competency of spouse to testify.</b> Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable.
STATEMENT OF DECISION	3654	<b>Statement of decision.</b> On request of either party.
STATEWIDE UNIFORM GUIDELINE	4052.5	<b>Guidelines applies in any case in which a child has more than two parents.</b> Court must apply guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent.
STATEWIDE UNIFORM GUIDELINE	4055	<b>Formula for statewide guideline for determining child support.</b> (b)(6) H% Visitation Factor in default; statement by party not in default as to percentage of time is deemed sufficient evidence. (7) Less than \$1000 per month net disposable income = rebuttable presumption low-income adjustment applies.
STAY OF WAGE ASSIGNMENT	5260	<b>Grounds for stay of wage assignment.</b>
STIPULATED CHILD SUPPORT AGREEMENT	4065	<b>Stipulated child support agreement.</b> (c) A stipulated child support agreement is not valid unless the LCSA has joined in the stipulation by signing it in any case in which the LCSA is providing services. The LCSA must not stipulate to below guideline if children are receiving assistance under CalWORKS, if an application for public assistance is pending, or if the parent receiving support has not consented to the order. (d) If the parties stipulate to a below guideline amount, no change in circumstance is needed to obtain a modification.
SUPPORT OF GRANDCHILD	3930	<b>Support of grandchild.</b> A parent does not have the duty to support a child of the parent's child.
TAX RETURNS	3552	<b>Tax returns of parties.</b> In a proceeding involving child, family, or spousal support, no party may refuse to submit copies of the party's state and federal income tax returns to the court. If court finds it relevant to retain any tax return, the return must be sealed and maintained as confidential record.
TAX RETURNS	3665	<b>Tax returns.</b> (a) A copy of the prior year's federal and state income tax returns must be attached to the income and expense declaration of each party.
UNDELIVERABLE PAYMENTS	17502	<b>Return of undeliverable payments.</b> Six month locate efforts. No interest.
UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)	4900 et seq	<b>Interstate cases.</b> The Act contains provisions regarding jurisdiction, venue, registration, modification, enforcement, etc., of foreign support orders.
UIFSA: CONTINUING EXCLUSIVE JURISDICTION	4909	<b>Continuing exclusive jurisdiction.</b>

Subject	Family Code Section	Description
UIFSA: CREDITING AMOUNTS COLLECTED	4913	<b>Crediting amounts collected.</b>
UIFSA: DEFINITIONS OF TERMS	4901	<b>Definitions.</b> Definition of child, duty of support, support order, child support order, spousal support order, support enforcement agency, state, home state, initiating state, issuing state, responding state, income, income-withholding order, tribunal, initiating tribunal, issuing tribunal, law, obligee, obligor, register, registering tribunal, and responding tribunal.
UIFSA: ENFORCEMENT OF REGISTERED ORDER	4959	<b>Enforcement of order registered for modification.</b>
UIFSA: ENFORCEMENT BY REGISTRATION: OUT-OF-STATE ORDERS	4950	<b>Registration for enforcement.</b> A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.
UIFSA: EVIDENTIARY RULES: TELEPHONIC HEARINGS	4930	<b>Special evidentiary rules.</b> Tribunal must permit party or witness to testify by phone.
UIFSA: GOVERNING LAW	4953	<b>Governing law.</b> The issuing state governs the nature, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.
UIFSA: INCOME-WITHHOLDING ORDER	4940	<b>Income-withholding order.</b> Income-withholding order issued in another state may be sent to person or entity defined as obligor's employer without petition or registration.
UIFSA: JURISDICTION	4905	<b>Nonresidents.</b> (a) In a proceeding to establish, enforce, or modify a support order or determine parentage, this state may exercise personal jurisdiction over a nonresident under circumstances listed.
UIFSA: MODIFICATION OF REGISTERED ORDER	4960	<b>Requirements for modification.</b> Modification of a registered order issued in another state.
UIFSA: MULTIPLE SUPPORT ORDERS: CONTROLLING ORDER	4911	<b>Multiple support orders.</b> Procedures for determining controlling order(s).
UIFSA: MULTIPLE SUPPORT ORDERS: MULTIPLE OBLIGEEES	4912	<b>Enforcement of multiple orders for two or more obligees.</b>
UIFSA: NOTICE OF REGISTRATION OF ORDER	4954	<b>Notification of registration.</b>
UIFSA: REGISTRATION: CONFIRMATION	4957	<b>Precluding a contest.</b> Confirmation of a registered order, whether 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.
UIFSA: REGISTRATION: CONTEST	4955	<b>Contesting a registered order.</b> A nonregistering party must request a hearing within 20 days after notice of the registration. (b) If the nonregistering party requests a hearing to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
UIFSA: REGISTRATION: DEFENSES AND BURDEN OF PROOF	4956	<b>Defenses and burden of proof.</b> Grounds for contesting registration or enforcement of an order for child support; burden on contesting party.
UIFSA: RESPONDING TRIBUNALS	4917, 4918, 4919	<b>Responding tribunals.</b> Application and choice of law (4917). Duties of initiating tribunal to responding tribunal (4918). Responding tribunal authority and duties (4919).
WELFARE REFERRAL	17415	<b>Referral from county welfare department on application for public assistance when issue of nonsupport or paternity.</b>
WORK PROGRAMS: JOB LIST	4505	<b>Submitting list of places applied for employment when default in support due to unemployment.</b>
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