CALIFORNIA JUDGES BENCHGUIDES

Benchguide 203

AB 1058 CHILD SUPPORT PROCEEDINGS: ESTABLISHING SUPPORT

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ADMINISTRATIVE OFFICE OF THE COURTS

JUDICIAL AND COURT OPERATIONS SERVICES DIVISION

CENTER FOR JUDICIARY EDUCATION AND RESEARCH

ABOUT CJER

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AB 1058 CHILD SUPPORT PROCEEDINGS: ESTABLISHING SUPPORT

I. [§203.1] SCOPE OF BENCHGUIDE

This benchguide on establishing child support and California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* (Cal CJER) cover the subject of child support cases filed by Local Child Support Agencies (LCSAs). They also cover cases in which the LCSA is providing services to establish parentage or to establish, modify, or enforce child support or spousal support.

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 in 2008 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. *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 Supp2d 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 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 5.2(b)(3); Fam C §297.5(j).

II. OVERVIEW

A. Roles and Duties

1. [§203.2] Department of Child Support Services

The state Department of Child Support Services (DCSS) administers all services and performs all functions necessary to establish, collect, and distribute child support. Fam C §17200. Before January 2000, the state Department of Social Services was the designated agency under federal and state law, and it contracted with the district attorney in each county to perform the required establishment and enforcement activities.

2. [§203.3] Local Child Support Agency

The child support enforcement program is sometimes referred to as the "IV-D Program." Title IV-D of the Social Security Act (42 USC §§651 et seq) requires that each state establish and enforce support orders when public assistance has been expended and on request of a parent who is not receiving public assistance. Title IV-D requires each state to designate an agency that is responsible for establishing parentage and obtaining and enforcing child support orders. 42 USC §654. California has designated the state Department of Child Support Services (DCSS) as that agency. The DCSS website is www.childsup.ca.gov. The local child support agency (LCSA) is the office established in each county by the DCSS.

The LCSA does not represent either parent or the child in the proceeding, but rather acts in the public interest. There is no attorney-client relationship between the LCSA attorney and either parent or the child, despite the incidental benefit to the custodial parent. Fam C §17406(a); *Marriage of Ward* (1994) 29 CA4th 1452, 1457–1458, 35 CR2d 32.

The DCSS statewide child support enforcement computer system (CSE) now allows for assignment of a different LCSA to manage a case, even though the court case has not moved. Notice must be given both to the court and the parties when there is a change in managing county responsibility by filing Judicial Council form FL-634. A change in managing LCSA does not

change the jurisdiction or authority of the court where the proceedings are heard or where pleadings must be filed.

The LCSA is required by law to be involved in any paternity or support proceeding involving public assistance payments, including TANF (Temporary Assistance for Needy Families) or CalWORKS and Medi-Cal. In addition, any party can request the assistance of the LCSA in setting and enforcing child support, as well as enforcing spousal support in certain cases. Not all local child support cases are TANF cases. The LCSA may intervene in an ongoing family law support proceeding in the public interest or initiate a complaint to establish parental relations or enforce a support obligation when its services are requested or required by law.

When the LCSA becomes involved in a case (other than the cases it initiates), it can issue a notice directing that payments be made to the State Disbursement Unit (SDU). See Judicial Council form FL-632 (notice regarding substitution of payee). This notice must be served on both the support obligor and obligee in compliance with CCP §1013, and it must be filed in the action in which the support order was issued. Fam C §4204; Cal Rules of Ct 5.360; see Fam C §4901(*l*), (m) (defining, in part, an "obligee" as individual to whom a duty of support is owed and an "obligor" as individual who owes a duty of support). The notice is used anytime the LCSA becomes involved, or ceases to be involved, in a case, and assists courts in determining whether IV-D services are being provided or not.

3. Child Support Commissioner

a. [§203.4] In General

Effective July 1, 1997, each county must have a child support commissioner whose primary responsibility is to hear Title IV-D support matters. Fam C §4251(a). The commissioners are variously referred to as child support commissioners, Title IV-D commissioners, or AB 1058 commissioners, after the legislation establishing the commissioner system. See Stats 1996, ch 957 (AB 1058).

The Judicial Council is charged with the responsibility of determining the number of child support commissioners that each county will have, and with establishing the minimum qualifications as well as minimum educational and training requirements. Fam C §4252.

b. [§203.5] Duties and Responsibilities

A child support commissioner has the same powers as other court commissioners under California law but is specifically responsible for hearing actions to establish paternity and to establish and enforce child support under Fam C §4251(a). CCP §259(f).

Mandatory referral. All Title IV-D–initiated paternity and support proceedings must be referred to a child support commissioner. The commissioner must also hear all enforcement and modification proceedings when the LCSA is "involved" (*i.e.,* providing services) in the case, whether the modification or enforcement request is brought by parties other than the LCSA itself, and in pre-1997 cases when the county is the only other party along with the respondent. These can include actions for paternity, establishment or modification of child support, including health insurance coverage, enforcement of spousal support in certain instances, interstate child support cases, as well as actions brought to set aside paternity and support judgments, quash wage assignment orders, or determine arrears. Fam C §4251(a).

Priority of duties. Child support commissioners are mandated to specialize in hearing child support cases, and their first priority is to hear Title IV-D child support cases. Fam C §4252(a). A child support commissioner may hear other contested issues, such as custody and visitation, only if the court has established procedures to segregate the costs of hearing Title IV-D matters from these other issues (*i.e.*, "time-study" non-IV-D issues).

c. [§203.6] Related Duties

In addition to the duties and responsibilities of other court commissioners, a child support commissioner must, when appropriate, do the following (Fam C §4251(d)–(e)):

- Review and determine ex parte applications for orders and writs.
- Take testimony.
- Establish a record, evaluate evidence, and make recommendations or decisions.
- Enter judgments or orders based on the voluntary acknowledgments of support liability and parentage and stipulated agreements regarding the amount of child support to be paid.
- Enter default orders and judgments under Fam C §4253.
- In actions in which paternity is at issue, order the mother, child, and alleged father to submit to genetic tests.
- On a party's application, join issues of child custody, visitation, and protective orders to the action filed by the LCSA and, after joinder, refer the parties to mediation, accept stipulated agreements concerning these issues, and refer contested issues of custody, visitation, or protective orders to a judge or another commissioner, absent a specific procedure to segregate the time spent on those issues from the Title IV-D matters.

d. [§203.7] Status as Temporary Judge

A child support commissioner must act as a temporary judge absent an objection from the local child support agency or any other party. Fam C §4251(b). A specific notice to this effect is contained on the Judicial Council summons and complaint forms filed by the LCSA, and this notice will be used in other forms regarding Title IV-D proceedings.

The child support commissioner must advise the parties before the start of a hearing that the matter is being heard by a commissioner who acts as a temporary judge unless any party objects. Fam C §4251(b). The preferred method of giving this advisement is by oral announcement at the start of any Title IV-D support proceeding or calendar. However, this advisement may be given in writing. This writing can be provided to the litigant or attorney and may include a signature block for that individual to acknowledge that they have been so advised. The advisement may also be posted in a conspicuous location in or outside the courtroom, but posting—by itself—is not sufficient. See *Foosadas v Superior Court* (2005) 130 CA4th 649, 653–655, 30 CR3d 358; *In re Frye* (1983) 150 CA3d 407, 409, 197 CR 755; but see *Kern County DCSS v Camacho* (2012) 209 CA4th 1028, 147 CR3d 354 (substantial evidence litigant fully aware of right to object; any error not prejudicial). Procedures vary from county to county. For sample scripts, see §§203.166 and 203.167.

e. [§203.8] Special Considerations

Ordinarily, a temporary judge only hears a matter on the stipulation of the parties. In the absence of a stipulation, however, an objection to a commissioner acting as a temporary judge may be deemed waived by the actions of the parties. *In re Horton* (1991) 54 C3d 82, 90–91, 248 CR 305; *Stein v Hassen* (1973) 34 CA3d 294, 298–299, 109 CR 321.

No stipulation is necessary in order for a child support commissioner to hear a Title IV-D support matter. Unless one of the parties objects, the child support commissioner will hear the matter as a temporary judge. The commissioner may continue to act as a temporary judge until the final determination of that proceeding. *Anderson v Bledsoe* (1934) 139 CA 650, 651, 34 P2d 760. The advisement must be given before each new motion is filed. However, a separate notification is not required to hear a motion to set aside a ruling made by the same commissioner. *Kern County DCSS v Camacho* (2012) 209 CA4th 1028, 147 CR3d 354.

Ancillary proceedings, such as contempt and other enforcement actions, are not a continuation of the original cause; the commissioner does not have the power to hear them as a temporary judge without giving the parties a new opportunity to object. *Reisman v Shahverdian* (1984) 153 CA3d 1074, 1095, 102 CR 194.

Parties are free, of course, to use other challenges to the child support commissioner, including the procedures set forth in CCP §§170.1 et seq.

4. [§203.9] Reviewing Judge

If a party objects to the child support commissioner hearing the matter as a temporary judge, the commissioner may hear the matter and make findings and a recommended order. Within 10 court days, a judge must ratify the recommended order, absent an objection from a party or an error in the recommended order. If there is an objection or an error, the judge must issue a temporary order and set a de novo hearing within 10 court days. Under the de novo standard of review, the judge must hear the case "anew," as if it had not been previously tried. Any party may waive the right to the review hearing at any time. Fam C §4251(c). Judicial Council forms FL-665–FL-667 must be used for this process.

5. Family Law Facilitator

a. [§203.10] In General

Effective January 1, 1997, each superior court is required to maintain an office of the family law facilitator. The office must be staffed by an attorney licensed to practice law in California who has mediation or litigation experience in family law. The facilitator is appointed by the superior court. Fam C §10002. The Judicial Council has adopted minimum standards for the office of the family law facilitator. Fam C §10010; Cal Rules of Ct 5.430.

b. [§203.11] Facilitator Services

The free services provided by the family law facilitator include (Fam C §10004):

- Providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child support and spousal support.
- Distributing necessary court forms and voluntary declarations of paternity.

- Providing assistance in completing forms.
- Preparing support schedules based on statutory guidelines.
- Providing referrals to the local child support agency, family court services, and other community agencies and resources that provide services for parents and children.

By local rule, the superior court may designate additional duties of the facilitator, including (Fam C §10005):

- Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance.
- Drafting stipulations to include all issues agreed to by the parties.
- Reviewing paperwork, examining documents, preparing support schedules, and advising the judge whether the matter is ready to proceed.
- Assisting the clerk in maintaining records.
- Preparing formal orders consistent with the court's announced order in cases when both parties are unrepresented.
- Serving as a special master, unless previously provided services as a mediator.
- Providing services concerning the issues of custody and visitation as they relate to calculating child support.
- Assisting the court with research and any other responsibilities that would enable the court to be responsible to the litigant's needs.
- Developing programs for bar and community outreach through day and evening programs, videotapes, and any other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court.

c. [§203.12] Relationship Between Facilitator and Parties

The family law facilitator must not represent any party. No attorney-client relationship is created between the facilitator and any party as a result of any information or services provided to a party. A conspicuous notice must be posted advising that no attorney-client relationship exists between the facilitator, its staff, and the party; that communications between the facilitator and the party are not privileged; and that the facilitator may provide services to the other party. Fam C §10013.

B. Procedures in LCSA Proceedings

1. Pleadings

a. [§203.13] Complaint

Most LCSA support matters are initiated by the filing of a complaint under Fam C §§17400 et seq. There are specific Judicial Council forms for these governmental complaints. See, *e.g.*, form FL-600. The complaint is usually filed in the name of the county against the parent or alleged parent against whom a support order is sought. The complaint may seek to establish:

- Parentage;

- Child support;
- Arrears (which may include reimbursement for aid expended on behalf of a child); and
- Healthcare coverage for a child (to be provided by one or both parents).

The LCSA must serve the summons and complaint on the respondent, along with a statement of rights, a proposed judgment (form FL-610), a blank simplified answer (form FL-610), a blank income and expense declaration (form FL-150) or simplified financial statement (form FL-155), and a booklet explaining support establishment and enforcement. Fam C §§17400, 17434. Information concerning how a respondent can obtain appointed counsel in parentage cases must also be contained in these documents.

If the other parent is receiving Title IV-D services, the other parent must also be served with a copy of the summons and complaint and all other pleadings relating to the action. Service on the other parent may be made personally or by mail. Fam C §§17404(e), 17406(*l*)(1).

No fee may be charged to file a first paper or any subsequent pleading or document on issues relating to parentage or support in a case in which the DCSS or LCSA is providing services. Govt C §70672.

b. [§203.14] Supplemental Complaint

Supplemental complaints are used by LCSAs and other family law practitioners as a way to address all basic support and custody issues concerning all the children of the same mother and father in one case. Supplemental complaints may be filed in any case in which paternity or support for a child of the same parents is an issue. These complaints can be filed either before or after judgment. Fam C §17428. Supplemental complaints may be filed in a family law action, including dissolution, Uniform Parentage Act, and even Uniform Interstate Family Support Act cases, but that will happen far more rarely than the filings in actions under Fam C §§17400 et seq and Fam C §2330.1.

The supplemental complaint will generally list all the children, including those for whom parentage and support have already been adjudicated. Because the purpose of supplemental complaints is to have support for all children established in the correct amounts in a single case, it is likely that a judgment on a supplemental complaint will change the amount of any previously awarded support due to the standard allocation set forth in the Statewide Uniform Child Support Guideline.

The supplemental judgment forms provide that the judgment "does not modify or supersede any prior judgment or order for support or arrearage, unless specifically provided." See form FL-630. Therefore, both the original and supplemental judgments are enforceable with regard to arrears, and the supplemental judgment will only supersede the original judgment with regard to current support and healthcare coverage.

c. [§203.15] Answer

The respondent has 30 days from the date of service to file an answer to the complaint. See form FL-610. This specific form used in LCSA cases is different from the form used in Uniform Parentage Act cases. It is served on the respondent with the summons and complaint.

d. [§203.16] Stipulated Judgment

The court must accept a stipulation to judgment in LCSA-initiated cases on the issue of parentage, provided the stipulation is accompanied by an executed advisement and waiver of rights. Fam C §17414. No appearance is needed to establish parentage in this instance. See, *e.g.*, form FL-615.

A stipulated agreement to child support is not valid unless the LCSA joined in the stipulation by signing it in any case in which the LCSA is providing support enforcement services. Fam C §4065(c). The LCSA is an indispensable party to any proceeding that would reduce, suspend, or terminate a child support obligation when the county was providing public assistance to the obligee parent. *Marriage of Mena* (1989) 212 CA3d 12, 17–19, 260 CR 314. The LCSA is also an indispensable party to a stipulation to terminate parental rights when the child was receiving public assistance. *In re Olivia A.* (1986) 181 CA3d 237, 241, 226 CR 382.

e. [§203.17] Declaration for Amended Proposed Judgment

The LCSA must file a declaration for an amended proposed judgment if, within 30 days of service of the complaint, it receives income information that would result in a support order different from that contained in the proposed judgment. If such a declaration is filed, it and the amended proposed judgment must be served by mail, and the time to answer or otherwise appear is extended by 30 days from the date of service. Fam C §17430(c).

2. [§203.18] Default

If the respondent fails to file an answer within 30 days of having been properly served or at any time before a default judgment is entered, the proposed judgment (or amended proposed judgment, if a proper declaration is filed and served) will become the judgment. When there is no timely answer filed, and proof of service of all required documents is filed, a judgment must be entered without hearing and without presentation of any other evidence or further notice to the respondent. Fam C §17430(a)–(b). A judicial officer may not refuse to approve a default judgment that complies with the statutory scheme. *County of Yuba v Savedra* (2000) 78 CA4th 1311, 1322, 93 CR2d 524.

The default in LCSA-initiated cases is usually initiated by filing a request to enter default, which is not required to be served on the respondent. See form FL-620. A declaration in support of default judgment will also generally be filed. See form FL-697.

If the LCSA does not have information about the respondent's income or income history, the income of the respondent is presumed to be the amount of the minimum wage, at 40 hours per week. Fam C §17400(d)(2); see Lab C §1182.11.

3. [§203.19] Motion for Judgment

Rather than filing an at-issue memorandum, the LCSA may file a motion for judgment in order to obtain judgments in its cases. Fam C §17404. This motion may accompany the original complaint or may be filed after an answer has been filed.

If a respondent appears at the hearing on the motion, the court must ask whether the respondent wants to subpoena witnesses or evidence, whether paternity is an issue, whether genetic tests have been done or are requested, and whether the respondent wants a trial. Fam C

§17404(b). A respondent who wants a trial is entitled to one continuance as a matter of right, but the continuance cannot be for more than 90 days from the date of the service of the motion. Fam C §17404(b). If a continuance is granted, the court may make a temporary support order pending the next hearing. A prima facie case for parentage must be made in order to set temporary support.

4. Contested Trials

a. [§203.20] In General

Some of the following topics are covered in more detail elsewhere in this benchguide and in California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* (Cal CJER).

b. [§203.21] Rights of Respondent

A respondent in a Title IV-D case has the following rights and privileges:

- The right to an attorney, including the right to court-appointed counsel in parentage cases, if the party cannot afford counsel. *Salas v Cortez* (1979) 24 C3d 22, 34, 154 CR 529. There is no right to an attorney if the contested issue is solely welfare reimbursement. *Clark v Superior Court* (1998) 62 CA4th 576, 586–587, 73 CR2d 53.
- The right to genetic tests if parentage is an issue in the case. Fam C §§7550–7557. It is an abuse of discretion to order genetic tests if there is an existing parentage judgment with regard to the child and alleged father. *City & County of San Francisco v Cartagena* (1995) 35 CA4th 1061, 1065, 41 CR2d 797. Similarly, genetic tests should not be ordered after a respondent has stipulated to parentage. *Robert J. v Leslie M.* (1997) 51 CA4th 1642, 1648, 59 CR2d 90. But see Fam C §§7645 et seq (motion to set aside paternity judgment), discussed in §203.77.
- The right to present and cross-examine witnesses.
- The right to testify.
- The privilege against self-incrimination.

A respondent does not have the right to a jury trial in a parentage action under Fam C §17402. *County of Butte v Superior Court* (Filipowicz) (1989) 210 CA3d 555, 558–559, 258 CR 516; *County of El Dorado v Schneider* (1987) 191 CA3d 1263, 1269–1271, 1280, 237 CR 51.

See form FL-694 for an advisement and waiver of rights when a stipulation is reached in an LCSA case. For a script for advising of rights in a parentage hearing, see §203.168.

c. [§203.22] Appointment of Attorney

On a respondent's request in a Title IV-D case, the court may be required to appoint an attorney in the following situations:

- If parentage is an issue, an indigent respondent has the right to court-appointed counsel. *Salas v Cortez* (1979) 24 C3d 22, 34, 154 CR 529.

- If the respondent is in the military, he or she may be entitled to a court-appointed attorney under the Servicemembers Civil Relief Act (50 USC §§521 et seq). The LCSA should be directed to provide the attorney with the respondent's current address, and the court must extend the time to file a response to the complaint. See §§203.153 et seq regarding military issues.
- If the respondent is in prison or is indigent and has bona fide interests at stake in the case, it may be necessary to appoint an attorney if the court determines that it is appropriate in order to provide the respondent with meaningful access to the courts. *Yarborough v Superior Court* (1985) 39 C3d 197, 200–201, 203–204, 207, 216 CR 425; *Payne v Superior Court* (1976) 17 C3d 908, 919, 922–924, 132 CR 405; *Hoversten v Superior Court* (1999) 74 CA4th 636, 642–643, 88 CR2d 197.

The court must inquire into the respondent's financial resources when such a request is made. If a respondent is indigent, the court may appoint the public defender or other local legal services group charged with this responsibility to represent the respondent. The court may reserve the right to order reimbursement for the costs of the attorney's services. The case may then be continued in order to allow the respondent time to evaluate the matter. Specific reference orders with time frames in which to contact the public defender or the appointed attorney are recommended to avoid further delays in the case.

If the respondent requests a continuance to obtain an attorney, the court must grant a short continuance for this purpose. See Fam C §17404(b).

d. [§203.23] Ordering Genetic Tests

If a respondent requests genetic tests in a non-marital case when parentage has not been previously determined, the court will order the alleged parent, the other parent, and the child or children to participate in genetic testing. An alleged father does not have the right to select a private facility to conduct the paternity test in place of the laboratory contracted by the county. See *County of San Diego v Mason* (2012) 209 CA4th 376, 381–382, 147 CR3d 135. The court should advise the respondent that failure to submit to genetic tests can lead to an order finding the respondent to be the parent of the child. Fam C §7551. See Fam C §7558 for circumstances in which an LCSA may issue an administrative genetic testing order.

Genetic tests are admissible into evidence without foundation testimony if the results are accompanied by a declaration from the custodian of records, are served on the parties no later than 20 days before the hearing, and no written objection to the results has been filed before 5 days before the hearing. Fam C §7552.5(a)–(b).

See also discussion in §§203.66, 203.72, and 203.77.

e. [§203.24] The Hearing

Many contested hearings or trials in LCSA cases are short, roughly the equivalent of law and motion matters on the family law calendar (under 20 minutes). The majority of obligors are unrepresented, and many have not spoken with the LCSA before the date scheduled for the hearing.

☛ JUDICIAL TIP: Some judges call the calendar and then take a short recess before holding hearings to give the parties an opportunity to discuss settlement of their cases

with LCSA representatives. Cases often settle when this is done, and issues in the remaining contested hearings can be narrowed.

In order to determine what issues are being contested at the outset of a hearing, some courts use a form (an "issue sheet") that the parties can complete for this purpose. Other courts have the LCSA, appearing in the public interest, summarize the contested issues for the court, and allow the parties to supplement them as needed. Often, parentage may not be contested, but disputes exist as to timeshare only, or on the requested amount of current child support or arrears.

If the court is going to continue the case, *e.g.*, due to incomplete information, the court should advise the parties and include in its order that it is specifically reserving jurisdiction over child support, and set a hearing date. See *Marriage of Gruen* (2011) 191 CA4th 627, 120 CR3d 184; compare *Marriage of Freitas* (2012) 209 CA4th 1059, 1074–1075, 147 CR3d 453 (distinguishes *Gruen*).

With a high volume of unrepresented litigants, there is often little documentation to work with on the Title IV-D calendar. In many instances, parties have not filed Income and Expense Declarations (form FL-150) or Financial Statements (Simplified) (form FL-155). Some courts require parties to fill these out before beginning a hearing. Others work with pay stubs or testimony only. The family law facilitator is present at the Title IV-D calendar in some counties and will help the parties complete the required financial forms. In other counties, the commissioner refers the parties to the facilitator for assistance before holding the hearing. The facilitator may prepare support calculations for the court.

Each side is required to produce evidence regarding their positions. The commissioner may ask questions, which is often essential to get the information needed to calculate child support.

If the court makes a determination of parentage, a finding must be made.

See further discussion of hearing procedures in §§203.100 et seq.

f. [§203.25] Calculating Child Support in Title IV-D Case

With the exceptions noted below, child support in a Title IV-D case is calculated under Fam C §§4050 et seq just as it is calculated in any family law action. The child support statewide Uniform Guideline, the Family Code, and child support case law apply to LCSA actions. For more information on calculating child support in family law actions, see §§203.78 et seq and California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER).

Presumed income. When the order or judgment results from the filing of a summons and complaint, if the LCSA does not have income information about the respondent, the respondent's income is presumed to be the amount of the minimum wage, at 40 hours per week. Fam C §17400(d)(2); see Lab C §1182.11.

Percentage of custodial time. The percentage of custodial time is calculated in the same manner as it is in other family law proceedings. There are, however, a substantial number of default proceedings on Title IV-D calendars. In default proceedings, when no evidence of the custodial time-share is presented, a zero percentage time-share must be used for the noncustodial parent. However, this zero percentage must not be used if the moving party in the default proceeding is the noncustodial parent or if the party who fails to appear is the custodial parent. A statement by a party who is not in default regarding the time-share is deemed sufficient evidence to be used in the case. Fam C §4055(b)(6).

Low-income adjustment. If the net income of the obligor is under $1000 per month, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in a particular case. The court's ruling is based on the impact of the potential adjustment on the incomes of the parents and on general child support guideline principles. Fam C §4055(b)(7).

Social Security, Railroad Retirement, and Veterans Affairs beneficiaries. Social Security, Railroad Retirement, and Veterans Affairs payments made by the federal government to the custodial parent *on behalf of the minor children* as a result of the retirement or disability of the noncustodial parent (also known as "derivative benefits") are fully credited toward the current support obligation of that parent, unless the payments made by the federal government were taken into consideration in determining the amount of support to be paid. Fam C §4504(b); see *Sullivan v Stroop* (1990) 496 US 478, 485, 110 S Ct 2499, 110 L Ed 2d 438. This applies to benefits of the payor parent only, not to benefits of the custodial parent or benefits of the child. *County of Napa v Combs* (1990) 222 CA3d 1077, 1080–1081, 272 CR 282. See further discussion in §203.88.

g. [§203.26] Modifying Support Orders

Modifications of support orders should be granted when there has been a "substantial change in circumstances" (affecting the amount of support by at least 20 percent or $50, whichever is less). 22 Cal Code Regs 115535(a)(3). A "material change in circumstances" is the same as "substantial change in circumstances" for purposes of modifying child support. *Marriage of Bodo* (2011) 198 CA4th 373, 389–392, 129 CR3d 298.

In support modification proceedings, the modified order may only be made effective back to the date of the filing, or to any subsequent date, of the request for order or notice of motion to modify, except in cases involving unemployment or under federal law. Fam C §3653(a); see Cal Rules of Ct 5.92(a)(3) (notice of motion or order to show cause (OSC) in local child support action may be filed on Judicial Council form FL-300, request for order). Under federal law, procedures establishing support judgments may permit modifications to be retroactive to the date of service. 42 USC §666(a)(9); Fam C §3653(a).

If an order modifying or terminating a support order is made due to the unemployment of either parent, the order must be made retroactive to the later of the date of service or date of unemployment, unless the court finds good cause not to make the order retroactive and states the reasons on the record. Fam C §3653(b).

If a modification order is entered due to a change of income resulting from the activation to United States military service or National Guard duty and deployment out of state for either the obligor or obligee, the order must be made retroactive to the later of the date of service of the notice of activation, notice of motion, order to show cause, or date of activation, unless the court finds good cause not to make the order retroactive and states its reasons on the record. Fam C §3653(c).

If an order decreasing support is entered retroactively, the obligee may be ordered to pay back any amounts paid in excess of the modified order. In determining whether to order a repayment, the court considers the amount to be repaid, the duration of the support order before modification or termination, the financial impact on the support obligee of any particular method

of repayment such as an offset against future support payments or wage assignment, and any other facts and circumstances that the court deems relevant. Fam C §3653(d).

Courts are not bound by any language in orders that purport to make child support "non-modifiable." *Marriage of Alter* (2009) 171 CA4th 718, 728–729, 89 CR3d 849.

See further discussion in California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER).

h. [§203.27] Reconsideration

A party may seek reconsideration under CCP §1008. The court may sua sponte reconsider its orders and is not bound by the limitations contained in CCP §1008; *Marriage of Barthold* (2008) 158 CA4th 1301, 70 CR3d 691. However, a trial court may not expand a reconsideration hearing into a full evidentiary hearing amounting to granting a new trial. *Marriage of Herr* (2009) 174 CA4th 1463, 1469–1471, 95 CR3d 464.

5. [§203.28] Child Support Arrears

The LCSA is required to seek reimbursement for public assistance expended on behalf of a minor child from an absent parent or parents. California does not have the statutory authority to establish retroactive child support orders before the date of the filing of the petition, complaint, or other initial pleading for nonpublic assistance cases. Fam C §4009. Effective January 1, 2005, Fam C §17402 was amended to make it consistent with Fam C §4009 by eliminating the authority to establish a retroactive child support order in public assistance cases. Before January 1, 2005, child support orders in public assistance cases could be established for no more than one year before filing (or three years in cases before January 1, 2000).

Reimbursement for aid paid to minor mother. Child support cannot be pursued against a parent whose child willfully left home when the parent was ready, willing, and able to provide support. *County of San Diego v Lamb* (1998) 63 CA4th 845, 850–851, 73 CR2d 912. Minor children who become parents cannot (absent some special circumstances, *i.e.*, abuse, abandonment) obtain their own public assistance grant. However, the LCSA will generally seek a child support order against the baby's other parent.

Foster care and juvenile placement reimbursement. Any petition to commence proceedings to declare a child a dependent child or a ward of the court under Welf & I C §300, §601, or §602 must contain a notice to the father, mother, spouse, or other person liable for support of the child regarding the statutes making such persons liable for the costs to the county for the placement, maintenance, care, and other costs rendered to the child. Welf & I C §§332(h), 656(h). Required referrals are thereafter made to LCSAs by the agency that has expended moneys or incurred costs on behalf of the child under a detention or placement order or voluntary placement regarding these expenses.

The LCSA may petition the court for an order for continuing support and reimbursement of costs. The order is enforceable as any other support order. Welf & I C §§903, 903.4, 903.41, 903.5.

See further discussion in California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* (Cal CJER).

6. [§203.29] Party Status of Custodial Parent

Once a support order, including an order for temporary support or an order for medical support only, has been entered, the custodial parent must become a party to the action for issues relating to support, custody, visitation, and restraining orders. Fam C §17404(e)(1).

The LCSA is not required to serve or receive service of any documents relating to custody or visitation issues and is not required to attend any hearings on those issues. This presents some difficult problems when the LCSA may be the only party that has access to the custodial parent's address for service purposes. For more discussion regarding confidentiality of records and access to locate information, see §§203.105 et seq.

7. [§203.30] Application or Allocation of Payments

Payments, other than intercepts of the Internal Revenue (IRS) or Franchise Tax Board (FTB) refunds in public assistance cases, are applied first to current child support. If no public assistance has been paid, payments towards any arrears owing are first applied to the principal amount, and then to the interest. In general, when there are "mixed" arrears (public assistance and nonpublic assistance), once a family no longer receives public assistance, payments received will be applied to current support first, then to arrears owed to the family (nonaid arrears), and finally to arrears owed to the county. For those still receiving public assistance, payments to arrears are applied first to permanently assigned principal and interest, and then to temporarily assigned principal and interest.

C. [§203.31] Custody and Visitation in Title IV-D Cases

Custody and visitation issues generally cannot be heard in actions filed before 1977 by the district attorney (because the other parent is not a party). Instead, the parties are required to file separate actions under the Uniform Parentage Act or actions for dissolution or legal separation in order to deal with these issues. In some counties, however, the court will allow it but only if the other parent is joined in the action and personally served (or served in the same manner as a summons and complaint) with the order to show cause for custody and visitation.

In actions filed after January 1, 1997, once a support order has been entered and the custodial parent is joined, custody, visitation, and restraining orders may be raised in Title IV-D initiated cases (with proper service). Orders regarding custody and visitation issues may be made only if no other orders for custody or visitation exist, and the court is the proper venue for such determinations. Fam C §17404(e)(4). The LCSA will not participate in the litigation of these issues.

D. [§203.32] Spousal Support in Title IV-D Cases

Infrequently, a party to a Fam C §17400 action may file a motion to establish or modify spousal support. Although federal funding limits a child support commissioner to enforcing spousal support (see 45 CFR §302.17), Fam C §4251(a) provides that a child support commissioner may establish, modify, or enforce spousal support.

☛ JUDICIAL TIP: The commissioner may need to keep separate time records to delete time spent on establishing and modifying spousal support from any federal funding reimbursement.

There are a number of reasons, however, why motions to establish or modify temporary or permanent spousal support filed by a party in a Fam C §17400 proceeding should be transferred to the family law judge hearing the dissolution action. Family Code §2330.3(a) states that all decisions in a family law case must be made by the same judicial officer to the greatest extent possible, unless significant delay will result, in which case the parties may still stipulate otherwise. Moreover, the establishment of spousal support should not be determined in a vacuum.

Unlike the calculation of guideline child support, the determination of a spousal support order is usually inextricably intertwined with other decisions in a dissolution case, such as pretrial debt management, disposition of the family residence, asset management, and custody and visitation issues—all issues properly and exclusively before the family law judge. Temporary spousal support is typically ordered to maintain the living conditions and standards of the parties as close to the status quo as possible pending trial and the division of the parties' assets and obligations. The family law judge may look to the parties' accustomed marital lifestyle as the main basis for a temporary support order and then may set temporary spousal support in an amount after considering the moving party's needs and the other party's ability to pay. The family law judge is in the best position to make that global assessment.

Permanent spousal support may be awarded in a judgment following trial and in an amount and for a period of time that the family law judge determines is just and reasonable, based on the parties standard of living established during the marriage and taking into consideration the factors in Fam C §4320. The amount and duration of support is within the court's discretion and subject to modification. Again, the family law judge will have a panoramic view of the parties' circumstances, the application of the relevant Fam C §4320 factors, and the adjudication of other issues and orders bearing on the determination of permanent spousal support. For all these reasons, notwithstanding the authority to establish spousal support, a child support commissioner should transfer the issue of establishing spousal support to the family law judge.

DCSS policy regarding enforcement of spousal support is contained in CSS Letter 13-06 dated 12/2/2013. Regulations and policies are discussed generally at §§203.123–203.125.

III. UIFSA (INTERSTATE) AND INTRASTATE SUPPORT ORDERS

A. Uniform Interstate Family Support Act

1. [§203.33] Introduction

The Uniform Interstate Family Support Act (UIFSA) (Fam C §§4900 et seq) governs the establishment, enforcement, and modification of child and spousal support orders in interstate cases. UIFSA replaces the former URESA and RURESA (Uniform or Revised Uniform Reciprocal Enforcement of Support Act). Support orders under those acts may remain enforceable until they expire of their own terms or are replaced by new UIFSA orders. *Lundahl v Telford* (2004) 116 CA4th 305, 315, 9 CR3d 902.

The primary principle of UIFSA is to ensure the existence of only one support order at a time concerning the same obligor and the same child or children. The "one-order" system contemplates a great deal of cooperation between the states and allows for a state to either make a parentage or child or spousal support order directly or request the assistance of another state in making an order.

The state that initiates the process to establish support is called the *initiating state*. The court or administrative agency with authority to establish or enforce parentage or support judgments or orders within that state is called the *initiating tribunal.* The initiating state may ask another state for assistance in either establishing a support order or enforcing a support order. This second state is called the *responding state*, and the court or administrative agency with authority to establish or enforce parentage or support judgments or orders within that state is called the *responding tribunal.*

The first order made by any state is the *controlling order*, and the state that actually made that order, either directly or at the request of another state, is called the *issuing state*. The issuing state has continuing exclusive jurisdiction (CEJ) to modify the child support order with very limited exceptions. Even if the parties and the child leave the issuing state, the controlling order continues and is fully enforceable until a modification takes place under Fam C §§4950 et seq.

☛ JUDICIAL TIP: In 2002 the Legislature conditionally revised portions of UIFSA to conform to the 2001 changes by the National Conference of Commissioners on Uniform State Laws. See Stats 2002, ch 349, §47. Although the 2001 uniform law provides guidance on intent and direction, the statutory conditions have not been met and the revisions are not operative in California. Both versions of affected UIFSA sections appear in published editions of the Family Code. However, until the conditions are met, judicial officers should follow the "First of Two" versions listed in the Family Code.

The main focus of the 2001 federal changes and the matching 2002 state revisions to UIFSA is to facilitate the enforcement of orders from another country. Other changes include:

- Allowing the parties to agree to return to the original issuing forum for modifications even when all parties have left the forum state.
- Compelling a tribunal to provide for telephonic participation.
- Clarifying that the law of the issuing state (or controlling order state in multiple order cases) governs the charging of interest. See Appendix E in California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support*, for a chart of each state's interest rates.
- Supplementing the registration process in multiple order cases to have an allegation of the controlling order along with an allegation of consolidated arrears.
- Specifying the findings a tribunal should make in its determination of the controlling order.

2. [§203.34] Acquiring Subject Matter Jurisdiction

Parents have equal duties to support their minor children (Fam C §3900) or their incapacitated adult children (Fam C §3910). Either parent or the child through a guardian ad litem may bring an action for support against a parent. Fam C §4000. The court has authority to make an order that requires either parent or both parents to provide support for their child. Fam C §4001. For UIFSA purposes, subject matter jurisdiction may be acquired by a state that has personal jurisdiction over the obligor if the nonresident obligee or the support agency for another state files the appropriate pleading to establish support in that state. Fam C §4915(c).

3. Acquiring Personal Jurisdiction Over Nonresident

a. [§203.35] Methods

The "one-order" objective is facilitated by the use of a long-arm statute that is as broad as constitutionally permitted. Under UIFSA, the petitioner has two options to acquire jurisdiction over the nonresident respondent: either (1) use the long-arm statute or (2) initiate a two-state proceeding requesting that the respondent's state of residence establish the judgment or order. The petitioner may also use any other proceedings allowed under California law to establish parentage or support, such as an action for dissolution of marriage or legal separation. Fam C §4903. That support order may then be enforced by UIFSA proceedings and California would have continuing exclusive jurisdiction. Fam C §4909(a).

b. [§203.36] Long-Arm Statute

Fam C §§4905 and 4906 establish what is commonly described as long-arm jurisdiction over a nonresident respondent.

A state has jurisdiction over a nonresident to establish or modify *its own support orders* if any of the following apply:

- The nonresident is served while in California. Fam C §4905(1).
- The nonresident submits to jurisdiction by entering a general appearance or by filing a responsive document that has the effect of waiving any objection to jurisdiction. Fam C §4905(2).
- The nonresident resided with a child in California. Fam C §4905(3). This provision contemplates reasonableness in asserting personal jurisdiction such that the assertion does not offend due process. *Examples:* (1) The parents and the child resided in California; the respondent moved to another state but the other parent or the child remained in California; (2) both parents and the child moved from California and one parent or the child returns to California within a relatively short period. Most courts, however, would hold that jurisdiction is not properly asserted if the parents and child left California and were absent for many years and then one parent and the child returned to California. See *Katz v Katz* (NJ Sup Ct Div 1998) 707 A2d 1353, 1356.
- The nonresident resided in California and provided prenatal expenses or support for the child. Fam C §4905(4).
- The child resides in California as a result of the acts or directives of the nonresident. Fam C §4905(5). This provision contemplates an act by the nonresident that would cause the child to locate in California, such as sending the child to California to live with relatives or abuse on the child or custodial parent that would cause the parent or child to separate from the other parent and relocate in California. *Marriage of Malwitz & Parr* (Colo 2004) 99 P3d 56, 59. Mere consent to allow the child to reside in California, however, does not give the state personal jurisdiction over the nonresident. *Marriage of Nosbisch* (1912) 5 CA4th 629, 634, 6 CR2d 817.
- The nonresident engaged in sexual intercourse in this state, and the child may have been conceived by that act of intercourse. Fam C §4905(6).

- The nonresident has filed a declaration of paternity under Fam C §7570. Fam C §4905(7). *Note:* Not all states maintain putative father registries.
- There is any other basis for personal jurisdiction consistent with the constitutions of California and the United States. Fam C §4905(8).

☛ JUDICIAL TIP: Exercise of personal jurisdiction to establish child support under UIFSA *does not* grant jurisdiction over the issues of child custody or visitation.

Except in limited circumstances, support orders are excluded from the home state jurisdictional limitation of custody determinations. *Marriage of Richardson* (2009) 179 CA4th 1240, 1243, 102 CR3d 391.

4. [§203.37] Establishing Support

An initiating state may establish support orders consistent with its own laws.

A responding state may issue a support order if one has not been previously issued (Fam C §§4919(b)(1), 4935) and:

- The individual seeking the order is a nonresident (Fam C §4935(a)(1)); or
- The support enforcement agency seeking support is located in another state (Fam C §4935(a)(2)).

Note: These requirements assume that the requesting state has personal jurisdiction over the obligor such that a valid order may be issued.

A responding state may issue a temporary support order if any of the following conditions apply (Fam C §4935(b)):

- The respondent is a parent as determined by or under applicable law.
- The respondent has signed a verified petition acknowledging parentage.
- There is other clear and convincing evidence that the respondent is the child's parent.

☛ JUDICIAL TIP: Making an order for *temporary* support does not confer continuing exclusive jurisdiction. Fam C §4909(e).

5. [§203.38] Simultaneous Proceedings in Another State

If a pleading to establish a support order is filed in California after a similar pleading is filed in another state, California may exercise jurisdiction only if (Fam C §4908(a)):

- The pleading is filed in California before the expiration of the time to file a response challenging jurisdiction in the other state;
- The contesting party timely challenges the exercise of jurisdiction in the other state; and
- If relevant, California is the child's home state.

California *may not* exercise jurisdiction if a pleading to establish support was filed in California before a similar pleading was filed in another state if (Fam C §4908(b)):

- The pleading is filed in the other state before the expiration of the time to file a response in California;
- The contesting party timely challenges the exercise of jurisdiction by California; and

- If relevant, the other state is the child's home state.

☛ JUDICIAL TIP: This provision requires cooperation between states in order to avoid issuing multiple orders regarding the same obligor and child. Tribunals should take active roles in communicating with each other. Fam C §4931. Depending on the circumstances, one state should decline to exercise jurisdiction in favor of the other state.

6. [§203.39] Modification Jurisdiction and Continuing Exclusive Jurisdiction

The controlling order remains controlling until it is modified, even if the party and the child have left the state. No other state has modification jurisdiction until the issuing state loses jurisdiction and a new state acquires jurisdiction to modify and actually modifies the order. Modification of an order establishes a new controlling order, and the tribunal that modifies the order acquires continuing exclusive jurisdiction (CEJ) for future modification and becomes the issuing tribunal.

The issuing tribunal has CEJ of its child support order:

- As long as either party or the child resides in the issuing state. Fam C §4909(a)(1). Continuing residency in the issuing state is not necessary if a parent or the child resides in the state when the request to modify is filed. The issue is one of residency and not domicile; or
- Until the parties file written consents that another state's tribunal may modify the order and assume CEJ. Fam C §4909(a)(2). The parties' signatures are not required on a stipulation to transfer CEJ when their attorneys have signed it. *Knabe v Brister* (2007) 154 CA4th 1316, 1323, 1327, 65 CR3d 493.

The doctrine of forum non conveniens is not a ground to transfer CEJ to another state; furthermore, subject matter jurisdiction cannot be conferred by estoppel. *Stone v Davis* (2007) 148 CA4th 596, 600, 602–603, 55 CR4th 833.

A temporary support order, however, issued ex parte or pending hearing on a jurisdictional challenge, does not create CEJ in the issuing tribunal. Fam C §4909(e).

The issuing tribunal may *not* exercise CEJ to modify a support order if the order was modified by another state's tribunal under UIFSA or a substantially similar law. Fam C §4909(b).

If a California support order is modified by another state under UIFSA or substantially similar law, the California tribunal loses its CEJ to enforce the order and may only (Fam C §§4909(c), 4961):

- Enforce the modified order as to amounts that accrued before the modification;
- Enforce nonmodifiable aspects of the order; and
- Provide other appropriate relief for violations of the order that occurred before it was modified.

A California tribunal must recognize a modifying order, on registration, for the purpose of enforcement. Fam C §4961(4).

If another state has modified a California order under UIFSA or similar law, California must recognize the CEJ of the modifying state. Fam C §4909(d).

A California tribunal may initiate a request that another state enforce or modify the order issued in that state. Fam C §4910(a).

Note: An issuing state retains CEJ over a *spousal* support order, and no other state may acquire modification jurisdiction. Fam C §§4909(f), 4910(c).

7. [§203.40] Multiple Orders

Because of the effects of URESA or RURESA (see §203.33), there may be multiple orders from different states regarding the same obligor and the same child. A state that receives a request to enforce an established order and has personal jurisdiction over both the obligor and the individual obligee is required to decide which of the multiple orders is the controlling order. Jurisdiction for this purpose is satisfied only if both parties are individuals and are present in the state. Fam C §4911(c). The jurisdictional requirements are not satisfied if the enforcing state's child support agency is the only obligee present within the state.

Either the obligor, the obligee, or the support agency may request determination of which order is the controlling order and the request may be filed as registration for enforcement, a registration for modification, or as a separate proceeding. The requesting party must supply a copy of every support order in effect and the applicable record of payments and must give notice to every party affected by the determination. Fam C §4911(c). The state that issued the controlling order has CEJ. Fam C §4911(d).

If California is a responding state and has personal jurisdiction over both of the parties who are individuals, California must apply the following rules in determining which is the controlling order:

- If only one of the tribunals issuing an order has CEJ, that tribunal's order is the controlling order. Fam C §4911(b)(1).
- If more than one tribunal has CEJ, an order issued by the tribunal that sits in the current home state of the child is the controlling order. Fam C §4911(b)(2).
- If an order has not been issued by the child's home state, the most recent order is the controlling order. Fam C §4911(b)(2).
- If none of the issuing tribunals have CEJ, California must issue a support order, and that becomes the controlling order. Fam C §4911(b)(3).

Once a court has determined which is the controlling order, it must:

- State in the order the basis for determining the controlling order. Fam C §4911(e).
- State the amount of prospective support, if any.
- State the amount of consolidated arrears and accrued interest, if any, after all payments are credited under Fam C §4913.
- Prospectively apply the laws of the state issuing the controlling order, including that state's law on interest on arrears, on current and future support, and on consolidation of arrears. Fam C §4953(d).
- Give full faith and credit to an order that has been determined to be the controlling order or judgment of consolidated arrears and interest under UIFSA.

Within 30 days of the court determining which order is controlling, the party requesting determination must file a certified copy of the order with each tribunal that issued or registered an order. Fam C §4911(f).

☛ JUDICIAL TIP: UIFSA does not resolve conflicting claims regarding arrears. This is left to the state on a case-by-case basis or to federal regulations. Nor does UIFSA resolve which of several orders is the controlling order. The finality of the order determining the controlling order may turn on other principles such as estoppel on a case-by-case basis.

A state responding to a request for enforcement of two or more orders in effect at the same time and for the same obligor but different obligees must enforce those orders in the same manner as if the orders had been issued by the responding state. Fam C §4912.

Any amounts collected and credited for a particular period under the support order of another state must be credited to any support orders issued by California for the same period. Fam C §4913. This statute is further recognition of UIFSA's application of the laws of the responding state to enforcement procedures, including enforcement by wage assignment sent to an employer from another state. Fam C §4917.

8. [§203.41] Duties of Initiating Tribunals

An initiating state's functions are primarily ministerial. If a California court has issued a support order, it may serve as an initiating state and may request that another state enforce the order so long as it remains controlling and has not been modified by another state under UIFSA. Fam C §4910(a).

On the filing of petition under UIFSA, the initiating state must forward three copies of the petition and its accompanying documents to the responding tribunal or its state support agency (Fam C §4918(a)(1)), or if the initiating party or support agency doesn't know where the obligor may be located and the venue of the responding tribunal is unknown, then to the responding state's information agency with a request that the documents be forwarded to the appropriate tribunal and that receipt be acknowledged (Fam C §4918(a)(2)).

If a responding state has not enacted UIFSA or a law or procedure substantially similar to UIFSA, a tribunal in this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought (*e.g.*, convert into equivalent currency) and provide other documents necessary to satisfy the requirements of the responding state. Fam C §4918(b).

☛ JUDICIAL TIP: Most countries recognize the fact that the value of their currency fluctuates on the daily market, and the value is reported in the financial sections of many daily newspapers. Some foreign countries continue to maintain an official exchange rate for its currency.

California may act as a responding state in a proceeding to determine parentage under UIFSA or a substantially similar law. Fam C §4965(a). This section authorizes a pure parentage action not linked to a claim of support.

9. Duties and Powers of Responding Tribunals

a. [§203.42] California as Responding Tribunal

California may act as a responding state to enforce a child support order at the request of another state. A California court that has CEJ may also act as a responding state to enforce its own order. Fam C §4910(b). A California court may also serve as a responding tribunal in a proceeding to determine parentage under UIFSA or a substantially similar law. Fam C §4965(a). In a parentage proceeding, a California court must apply the UPA (Fam C §§7600 et seq) and California's procedural and substantive law and choice-of-law rules. Fam C §4965(b).

When a California court receives a petition or pleading to establish or modify support, it must file the petition or pleading and notify the initiating state where and when it was filed. Fam C §4919(a). Unless otherwise prohibited by law, a California court may issue, enforce, or modify a support order; determine a controlling support order; determine parentage; or make any other order specified in Fam C §4919(b)(1)–(12), including the granting of any other available remedy.

If the initiating state or person requests that California issue a support order, a California court must include the calculations used as the basis for support in the order or the accompanying documents, and send a copy of the order to the petitioner, respondent, and initiating tribunal, if any. Fam C §4919(c), (e).

A California court may not condition the payment of support on compliance with provisions for visitation. Fam C §4919(d).

☛ JUDICIAL TIP: If requested to enforce a support order, arrears, or judgment or to modify a support order stated in foreign currency, the court should convert the amount ordered into the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

b. [§203.43] Inappropriate Tribunal

If a petition or comparable pleading is received by an inappropriate California tribunal, it must forward the pleadings to the appropriate tribunal in California or in another state and notify the petitioner where and when the pleading was sent. Fam C §4920. A petition or pleading received by the LCSA or superior court in an inappropriate county (without jurisdiction for trial), must be forwarded to the appropriate county or jurisdiction of another state without filing the pleadings, and notice must be given to the petitioner, the California Central Registry, and the child support agency of the appropriate tribunal where and when the pleadings were sent. Fam C §5001(a).

If, after the pleadings have been filed, after an order is entered by a California court, or after another state's order has been registered in a California county, it appears that the respondent is no longer a resident of that county, then on ex parte application by the LCSA or petitioner, the court must transfer the pleadings to the appropriate California court or the appropriate jurisdiction of another state. The court must also notify the petitioner, respondent, California Central Registry, and the LCSA of the receiving county where and when the pleadings were sent. The transfer requirements of the section are met with a transfer of certified copies of the documents. Fam C §5001(b)–(c).

10. Choice of Law

a. [§203.44] Generally Apply Forum Law

A responding tribunal must apply its procedural and substantive law, including choice-of-law rules, that are applicable to similar proceedings initiated within the state. The state may also exercise all powers and provide all remedies that are available in those proceedings. Fam C §4917(a). A responding tribunal must also determine the duty of support and the amount payable according to its law and child support guideline. Fam C §4917(b).

If California is exercising jurisdiction over a nonresident under law other than a UIFSA proceeding, or if it recognizes the support order of a foreign country on the basis of comity, California may apply the provisions of Fam C §4930, regarding receiving evidence from another state, Fam C §4931, regarding communication between the tribunals of both states, and Fam C §4932, regarding obtaining discovery through another state. It must apply California procedural and substantive laws. Fam C §4913.5. Regarding tribal courts, see §§203.147–203.148.

b. [§203.45] Special Evidence Rules

Special rules of evidence apply to UIFSA proceedings (see Fam C §4930(a)–(j)):

- The physical presence of an individual nonresident party is not required.
- An affidavit or document submitted by a nonresident party or witness that substantially complies with federally mandated forms, or a document incorporated by reference into any of them, that would not otherwise be excluded under the hearsay rule, is admissible in evidence if given under penalty of perjury.
- A copy of the record of child support payments, certified by the custodian of record as a true copy of the original and forwarded to a responding tribunal, is evidence of the facts asserted in it and admissible to show whether payments were made.
- Copies of bills for genetic testing and pre- and postnatal health care of the mother and child, if given to the adverse party at least 10 days before trial, are admissible to prove the amount of charges billed and that they were reasonable, necessary, and customary.
- Documentary evidence transmitted to the responding tribunal by telephone, telecopier, or other means that do not provide an original copy may not be excluded on an objection based on the means of transmission.
- California courts must permit a nonresident party or witness to be deposed or to testify by telephone, audiovisual, or other electronic means at a designated tribunal or other location in that state. California courts must cooperate with tribunals of other states to designate an appropriate location.

☛ JUDICIAL TIP: Cal Rules of Ct 5.324 implements the provisions of Fam C §4930(f). See §§203.126 et seq. Testimony or deposition by telephone or other electronic means is also permitted in cases where the LCSA is providing services, both parents are California residents, and the hearings are conducted in accordance with Cal Rules of Ct 5.324. Fam C §5003.

- If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, an adverse inference may be drawn from the refusal. Fam C §4930(g).
- The spousal privilege against disclosure of communications between spouses or the defense of immunity based on the relationship between a husband and wife or child and parent do not apply. Fam C §4930(h)–(i).

c. [§203.46] Cooperation Between Courts

California courts are encouraged to communicate with an out-of-state tribunal to facilitate decisions. Communication may be in a record, by telephone, or by other means available to obtain information concerning the laws of that state, the legal effect of a judgment, decree or order of the other tribunal, and the status of a proceeding in either state. A California court may furnish similar information to the tribunal of another state. Fam C §4931.

☛ JUDICIAL TIP: Communications are also encouraged with a tribunal of a foreign country.

California courts may request the assistance of another state in obtaining discovery and may compel a person over whom it has jurisdiction to respond to a discovery order issued by another state or tribunal. Fam C §4932.

11. Registration of Support Orders

a. [§203.47] Purpose and General Procedures

Registration of another state's support order is the first step to enforcement or modification (and probably for determination of a controlling order). The registration process is the same for either purpose. Fam C §§4950, 4958. An order is registered once it is filed for registration in the appropriate court. Fam C §4952(a). A registered order of another state is enforceable in the same manner and is subject to the same procedures as a California order. Fam C §4952(b). It may not be modified, however, unless the UIFSA requirements for modification are met. Fam C §4952(c).

Another state's support order may be registered in California by sending to the appropriate California court a letter of transmittal, two copies (one certified) of all orders to be registered, and a sworn statement by the person requesting registration *or* a certified statement by the custodian of the records showing the amount of any arrearage. Fam C §4951(a)(1)–(3). Identifying information must also be provided on both the obligor and the obligee, including:

- Obligor name and, if known: address and social security number (redacted to last 4 digits if filed with the court), name and address of any employer and any other source of income, and a description and location of any property in the state not exempt from execution (Fam C §4951(a)(4)); and
- Obligee (or person to be paid) name and address, unless such information is not allowed to be disclosed under Fam C §4926 (Fam C §4951(a)(5)).

When a court receives a request for registration, it must file the order as a foreign judgment, together with one copy of the documents and information, regardless of their form. Fam C

§4951(b). If the responding party or state is seeking other affirmative relief that is allowable under California law, the pleadings must specify the grounds for the remedy being sought. The pleadings may be filed at the same time as the request for registration or later. Fam C §4951(c).

☛ JUDICIAL TIP: If two or more orders are in effect, the requesting party should furnish a copy of each support order, specify any alleged controlling order, specify any arrears, and notify all affected parties.

b. [§203.48] Notice of Registration

When an order is registered, the registering county must notify the nonregistering party and send that party a copy of the registered order and documents and any relevant information accompanying the order. Fam C §4954(a). The notice must contain the following information (Fam C §4954(b)):

- That a registered order is enforceable from the date of registration in the same manner as an order issued by a tribunal of this state.
- That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after registration.
- That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted.
- The amount of any alleged arrearages.

☛ JUDICIAL TIP: If the registering party asserts that two or more orders are in effect, the notice should also designate the alleged controlling order, identify any consolidated arrears, and state the result of failing to object.

c. [§203.49] Registration for Enforcement

California may enforce a support order issued by another state that has been registered in the appropriate California court. Fam C §4950. When registered for enforcement, the law of the issuing state governs the nature, extent, amount, and duration of the current payments and other obligations of support and the payment of arrearages. The issuing state's laws also govern the computation and payment of arrearages and accrued interest and the existence and satisfaction of other obligations under the support order. Fam C §4953(a). If there is an issue regarding which of two or more statutes of limitations apply, the statute that imposes the longest limitation period applies. Fam C §4953(b).

When an income withholding order has been registered for enforcement, the registering tribunal must notify the obligor's employer under Fam C §5200 et seq. Fam C §§4954(d).

A nonregistering party may contest the validity or enforcement of a registered order by requesting a hearing within 20 days after receiving notice of the registration. The contesting party may seek an order to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, and to contest the remedies being requested or the amount of any arrearages being alleged. Fam C §4955(a). If the contesting party requests a hearing, the tribunal must schedule the matter for hearing and give notice to the parties of the

date, time, and place of the hearing. Fam C §4955(c). If the nonregistering party fails to contest the validity or enforcement of the order in a timely manner, it is confirmed by operation of law. Fam C §4955(b).

The nonregistering party bears the burden of proving one or more of the following defenses (Fam C §4956(a); *Willmer v Willmer* (2006) 144 CA4th 951, 960, 51 CR3d 10):

- The issuing tribunal lacked personal jurisdiction over the contesting party.
- The order was obtained by fraud.
- The order has been vacated, suspended, or modified by a later order.
- The issuing tribunal has stayed the order pending appeal.
- There is a defense under the law of this state to the remedy sought.
- Full or partial payment has been made.
- The statute of limitation under Fam C §4953 precludes enforcement of some or all of the alleged arrearages.

☛ JUDICIAL TIPS:

— If a party's parentage of a child has been previously determined, the party may not plead nonparentage as a defense. Fam C §4929.

— Because an understatement of arrearages is not included as one of the defenses listed in Fam C §4956(a), a nonregistering obligee is not provided with an opportunity to object, and therefore is not precluded from objecting later. *de Leon v Jenkins* (2006) 143 CA4th 118, 126–128, 49 CR3d 145.

If a contesting party is successful in establishing a full or partial defense, a court may stay enforcement or the order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. Any uncontested portions of the order may be enforced. Fam C §4956(b). If the contesting party is not successful, the registering tribunal must issue an order confirming the registered order. Fam C §4956(c). An order that is confirmed either after a contested hearing or by operation of law precludes any further contest of the order that could have been asserted at the time of registration. Fam C §4957.

d. [§203.50] Registration for Modification

A registering party may request modification of a support order either at the time of registration or later. The request must specify the grounds for modification. Fam C §4958. An order that was registered for modification may also be enforced in the state of registration, but a registered order may be modified only if the requirements of Fam C §4960 or §4962 are met. Fam C §4959.

Jurisdiction to modify may exist if both parties who are individuals reside in California and if the child does not reside in the issuing state. Fam C §4962(a). The registering state must apply UIFSA provisions, including applying the procedural and substantive law of California to the modification proceedings. Fam C §4962(b); see also §203.39.

If Fam C §4962 does not apply, a California court may modify a support order from another state that is registered in California only if (Fam C §4960(a)):

- The child, individual obligee, and obligor do not reside in the issuing state, a nonresident petitioner seeks modification, and the respondent is subject to personal jurisdiction of the California court; or
- The child, or a party who is an individual, is subject to personal jurisdiction of the California court, and all the parties who are individuals have filed written consents in the issuing tribunal for the California court to modify the support order and assume CEJ.

If the issuing state is a foreign jurisdiction that has not enacted a law or procedures substantially similar to UIFSA, the consent otherwise required of an individual residing in California is not required for the tribunal to assume jurisdiction to modify the order. Fam C §4960(a)(2).

If another state asserts modification jurisdiction over a California support order, California may enforce its own order as to arrears and interest accruing before the modification, may provide appropriate relief for violations of its orders that occurred before modification, and must recognize an order modifying California's original order if registered for enforcement. Fam C §4961.

Within 30 days after the modification of an order, the requesting party must file a certified copy of the modification order with the state that formerly had CEJ and with each tribunal in which the prior order had been registered if the party knows those tribunals. Failure to file certified copies with these states subjects the party to sanctions by the tribunal in which the issue of failure to file arises; however, such failure does not affect the validity or enforceability of the modified order of the new tribunal having CEJ. Fam C §4963.

California may act as an initiating state or responding state in a proceeding to determine parentage under UIFSA, URESA, or RURESA. Fam C §4965(a). If California is a responding state, the California court must apply the UPA (Fam C §§7600 et seq) and California's procedural and substantive law and the rules on choice of law. Fam C §4965(b).

12. Miscellaneous Provisions

a. [§203.51] Special Nondisclosure Rules

On a finding that the health, safety, or liberty of a party or child would unreasonably be put at risk by disclosing identifying information, or if an existing order so provides, the court must order that the information not be disclosed in a pleading or other document. Fam C §4926. The application for such an order can be made by a child, parent, guardian, or other caretaker of the child, without prior notice, and must be executed under penalty of perjury, setting forth sufficient facts demonstrating the risk. Fam C §4977(a).

The order must be served by first-class mail on the other party and the district attorney and must include a mailing address for service of process on the protected party. The protected party must file notice of any change of address, and a copy of the notice must be sent to the other party and the district attorney. The designated address must not be that of a governmental agency unless that agency consents in writing to the use of its address. Fam C §4977(b).

The order does not expire until further order of the court, issued on a noticed motion filed by the other party to the proceeding, and served by first-class mail on the protected party at the mailing address provided by the protected party. Fam C §4977(d).

Note: This section does not require a party to obtain an order before using a confidential address on court pleadings except as required by Fam C §4925. Fam C §4977(g). See also discussion of confidentiality of information generally in §§203.107 et seq.

b. [§203.52] Employment of Private Attorney

A party may employ private counsel for representation in UIFSA proceedings. Fam C §4923.

c. [§203.53] Declaration of Reciprocating State Status

The Attorney General may declare that a foreign jurisdiction is a reciprocating state for purposes of establishing and enforcing support obligations if the Attorney General is satisfied that the foreign jurisdiction will establish reciprocal provisions for the establishment and enforcement of California support orders. Any such declaration may be revoked by the Attorney General, and reviewed by the court. Fam C §5005.

The Federal Republic of Germany is a reciprocating state as declared by the California Attorney General. *Willmer v Willmer* (2006) 144 CA4th 951, 957, 51 CR3d 10. Certain states in Mexico have also been the subject of declarations by the Attorney General.

B. Registration of Orders From Other California Counties

1. [§203.54] Who May Register

Either the local child support agency (LCSA) or the obligee may register a support order obtained in another California county. Fam C §5600(a).

2. [§203.55] Venue

A support order may be registered in (Fam C §5600(b)):

- The obligor's county of residence,
- The obligee's county of residence,
- The county where the child who is the subject of the order resides, or
- Any county where the obligor has income, assets, or other property.

3. Procedure for Registration

a. [§203.56] Registration by LCSA

A local child support agency may register a support order from another county when it is responsible for the enforcement of the order under Fam C §17400. It may use the procedures of either Fam C §5601 or Fam C §5602. Fam C §5601(a).

The LCSA may register an order under Fam C §5601 by filing all of the following documents in the agency's county (Fam C §5601(b)):

- An endorsed file copy or a copy of an endorsed file copy of the most recent support order. Fam C §5601(a)(1).

- A statement of arrearages, including an accounting of the amounts ordered and paid each month and any added costs, fees, and interest. Fam C §5601(a)(2).
- A statement of registration by the agency showing the following (see form FL-650):
  - The agency's P.O. box address.
  - The obligor's last-known place of residence or P.O. box address.
  - The DMV's listing of the obligor's most recent address, if known.
  - A list of states and California counties in which the order and any modifications are registered. Fam C §5601(a)(3).

The LCSA may also register an order under Fam C §5602 by filing all the documents listed under Fam C §5601(a), as well as a verified statement signed by the obligee showing the following (Fam C §5602(a)–(b)):

- The obligee's mailing address.
- The obligor's last-known place of residence or mailing address.
- A list of states and California counties in which the order and any modifications are registered.

The agency must serve the documents on the obligor promptly after registration. Service must comply with the requirements of CCP §1013 or be completed in any other manner as provided by law. Fam C §5601(c).

Now that all counties and LCSAs have transitioned onto their new statewide computer system, by which LCSAs have access to all information from all other counties, the state DCSS has implemented a new policy that they will not register the order just because there has been a move by a party to another county. DCSS has created the concept of a "managing county," which may or may not be the county in which the child support order was last entered. See CSSIN Letter 08-05.

Note: Unless and until there is an actual registration, the court that last had jurisdiction is where any modification motion should be filed, notwithstanding what county within DCSS is the "managing county." This policy may create some confusion, especially with self-represented litigants and when a party has multiple cases, as to the appropriate jurisdiction for filing a motion for modification in a particular case.

b. [§203.57] Registration by Obligee

An obligee may register a support order by filing all the documents listed under Fam C §5601(a), except that the obligee must prepare the verified statement of registration showing all of the following (Fam C §5602(a); see form FL-440):

- The obligee's mailing address.
- The obligor's last-known place of residence or mailing address.
- A list of states and California counties in which the order and any modifications have been registered.

The obligee's mailing address may be different from a home address due to the prohibition against disclosure of identifying information provided under the Domestic Violence Prevention Act. Fam C §§6200 et seq.

The documents must be served on the obligor promptly after registration. Service must comply with the requirements of CCP §1013 or be completed in any other manner as provided by law. Fam C §5601(c).

c. [§203.58] Duties of Court Clerk

The clerk must file the documents without fees or costs. Fam C §5602(b).

On registration by a LCSA, the clerk must forward notice of registration to the courts in all other counties or states that issued the original order or modifications of the order. Fam C §5601(e); see form FL-651.

On registration by an obligee, the clerk must promptly send notice of the registration to the obligor with a copy of the registered support order and the obligee's mailing address. Fam C §5602(c); see form FL-570. The documents shall be sent using any form of mail requiring a return receipt from the addressee alone. The clerk must provide proof that the obligor personally received the notice of registration by mail or other method of service. A return receipt signed by the obligor is satisfactory proof. Fam C §5602(c).

☛ JUDICIAL TIP: Registration has the effect of vesting the court with venue and continuing exclusive jurisdiction. Fam C §5601(e). Courts differ in their treatment and consideration of orders that modify an order registered in a sister county. Some courts treat the order as issued in excess of the authority of the court and therefore void or voidable. If it is discovered that an order has been registered in another county, the better practice is to decline to rule on the pending motion and refer the moving party to the county where the order is registered or, if the request is to set aside the underlying order or judgment, to the county that made the original order or judgment.

4. Motion to Vacate Registration

a. [§203.59] Timing and Hearing

An obligor has 20 days after service of the notice of registration of a California support order to file a motion to vacate the registration or ask for other relief. Fam C §5603(a); see form FL-575. If the obligor fails to file a motion within 20 days, the order and all accompanying documents are confirmed. Fam C §5603(a).

The obligor must serve the motion personally or by mail on both the LCSA and the obligee's private attorney or the obligee if self-represented. Fam C §5603(a).

Notice of the hearing must be served at least 15 days before the hearing, with standard extensions for service by mail. Fam C §5603(a); see CCP §1013(a).

At the hearing on the motion, there is no joinder of actions, coordination of actions, or cross-complaints. The hearing is strictly limited to claims and defenses dealing with the obligor's identity, the validity of the underlying California support order, or the accuracy of the obligee's statement of the support arrears unless that amount has been previously established by a judgment or order. Fam C §5603(a).

b. [§203.60] Stay of Enforcement

If the obligor shows, and the court finds, that an appeal is pending or that a stay of execution has been granted, and the obligor has furnished security for payment of the order, the court must stay enforcement of the order until (1) the appeal is concluded, (2) the time for appeal has expired, or (3) the order is vacated. Fam C §5603(b).

If the obligor shows, and the court finds, any grounds for staying a California support order, the court must stay enforcement of the order for an appropriate time period if the obligor furnishes security for payment of support. Fam C §5603(b).

c. [§203.61] Obligor's Defenses

The obligor may only present defenses that would be available to him or her as a defense in an action to enforce a support judgment. Fam C §5603(b).

☛ JUDICIAL TIP: If parentage was previously decided by another state whether by administrative or judicial process or by voluntary acknowledgment procedures, that determination must be given full faith and credit and has the same effect as a California parentage determination. Fam C §5604.

Subject to the conditions discussed below, the court has the discretion to consider the *equities* of the situation in the case before it. *Kenneth G. v Suzanne H.* (1998) 62 CA4th 853, 861, 72 CR2d 525; *Marriage of Trainotti* (1989) 212 CA3d 1072, 1075, 261 CR 36; *Marriage of Utigard* (1981) 126 CA3d 133, 140, 178 CR 546.

Laches. In an action to enforce child support, the respondent may not raise, and the court may not consider, the defense of laches except as to any portion of a judgment owed to the state. Fam C §4502(c). Family Code §4502(c) is the legislative response to pre-2003 cases that recognized laches as a defense to a support judgment against an obligor who is an individual.

Estoppel by concealment. If the custodial parent actively concealed the child while the child was a minor, if the subject child is an adult at the time of the arrearages action, and if the arrearages are not owed to the county for public assistance reimbursement or to any other governmental agency or public trustee, the obligee parent may be equitably stopped from collecting child support that accrued during the months of active concealment. *Marriage of Damico* (1994) 7 C4th 673, 685, 29 CR2d 787; *Marriage of Comer* (1996) 14 C4th 504, 510, 516, 59 CR2d 155.

IV. PARENTAGE

A. Establishing Parentage

1. [§203.62] Introduction

Paternity (fatherhood) and maternity (motherhood) establish a legal parental relationship between an alleged parent and a child. Most cases coming before the court are requests to establish paternity. Requests to establish maternity will generally arise in the case of registered domestic partners or in foster care cases.

"Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the

father and child relationship. Fam C §7601(b). "Natural parent" means a nonadoptive parent established under the Uniform Parentage Act (UPA), whether biologically related to the child or not. Fam C §7601(a). The UPA does not preclude a finding that a child has a parent and child relationship with more than two parents. Fam C §7601(c). For purposes of state law, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, benefits, responsibilities, obligations, and duties of parents, any reference to two parents must be interpreted to apply to every parent of a child when that child has been found to have more than two parents under this part. Fam C §7601(d).

Parentage must be established before any support orders can be made. However, if a respondent appears on a motion to determine parentage and requests a continuance, the court may order temporary support before determining parentage. Fam C §17404(b).

☛ JUDICIAL TIP: Before the court sets a temporary support order, the court should identify the reasonable possibility of parentage.

The following discussion provides a broad overview of the complex topic of determining parentage in child support proceedings. Detailed discussion is beyond the scope of this publication.

2. [§203.63] Action To Establish Paternity

In general, the child (or child's personal representative), the DCSS (or LCSA), the child's natural parent a presumed parent, an alleged parent , a party to an assisted reproduction agreement, or an adoption agency to whom the child has been relinquished may bring an action to establish paternity and support. Fam C §7630. *Note:* If any of the parent-types listed above are themselves a minor or deceased, then that individual's personal representative may bring the action.

The LCSA will file a summons and complaint or supplemental complaint regarding parental obligations. See form FL-600; see also §203.13. To determine if the LCSA is seeking to establish parentage, the bench officer should look to see if the box to "Establish Parentage" in item one of the complaint is checked for any children.

There is no statute of limitations in establishing parentage. A parentage action may be brought at any time, and laches may not be asserted as a bar. The action may be brought in any county in which the child resides or is found. Fam C §7620(b)(1).

3. [§203.64] Defaults

If the respondent does not file an answer, the LCSA will file a request to enter a default judgment. See form FL-620. The LCSA must establish proper service. The date of service (coupled with the date of filing) will also be relevant to establish any retroactivity of the child support order. See Fam C §4009.

A prove-up hearing is not necessarily required. A default may be taken on the papers.

The LCSA will rely on one or more of the following theories to establish parentage:

- A voluntary declaration of paternity (POP declaration) (see §203.69);
- A prior judgment or stipulation (see §§203.67, 203.68);

- The other parent's testimony;
- The marital presumption (Fam C §7540);
- Genetic testing (see §203.66); or
- Other presumption or theory.

If parentage is based on the other parent's testimony or the conclusive presumption of marriage and if the other parent is present, the court may proceed on a written declaration or take the testimony of the other parent.

For scripts for use in establishing biological parentage or parentage by presumption, see §203.169 and §203.170.

A judicial officer may not refuse to approve a default judgment that complies with the statutory scheme. *County of Yuba v Savedra* (2000) 78 CA4th 1311, 1322, 93 CR2d 524. Judgment is entered using the form of judgment regarding parental obligations. See form FL-630.

☛ JUDICIAL TIP: If the respondent files an answer admitting parentage, then the LCSA must file a motion for judgment, in which case the admission can be used to establish parentage. See §203.68.

4. Contested Parentage

a. [§203.65] Advisement of Rights and Setting for Trial

The respondent may appear at the hearing and may not want to admit parentage. The court should advise the respondent of rights insofar as the parentage issue. For a script for advising of rights, see §203.168.

If the alleged parent waives rights and admits parentage, enter a judgment regarding parental obligations. See form FL-630. If the alleged parent denies parentage, the matter may be set for trial. Before the date set for trial, the court may set a status conference to give the parties another chance to reach a stipulation or narrow the issues.

☛ JUDICIAL TIP: Instead of setting the case straight for trial, if a person has denied parentage at a hearing on a motion for judgment after an advisement, the court may order genetic testing if it has not been previously ordered or completed. See form FL-627.

b. [§203.66] Evidence and Findings

The LCSA will usually offer the genetic testing report, which is admissible by operation of law unless an objection was lodged with the court 5 days before the hearing. Fam C §7552.5(b). The court should receive the test results and announce that the paternity index exceeds 100. An index of over 100 creates a rebuttable presumption of paternity. Fam C §7555(a); see §203.73. The LCSA may submit the issue on the basis of the genetic tests. However, they will generally present testimony or other evidence to establish a conclusive or rebuttable presumption of parentage.

The court should ask if the respondent wants to present any evidence to rebut the genetic tests or offer any other evidence on the issue of parentage.

If a timely objection to the genetic tests is made, despite the records' possible admission as a business record, the respondent's ability to subpoena analysts does not obviate DCSS's Confrontation Clause obligation to produce analysts for cross-examination. It is the burden of DCSS to present its witnesses, and not the respondent's burden to bring those adverse witnesses into court. *Melendez-Diaz v Massachusetts* (2009) 129 S Ct 2527, 2540, 174 L Ed 2d 314.

For a script of findings regarding parentage, see §203.171.

B. Theories of Parentage

1. [§203.67] Parentage by Res Judicata

A prior judgment or order determining the existence (or nonexistence) of a parent and child relationship is determinative of parentage, even if subsequent blood tests establish that the party was not the child's biological parent. Unless the underlying judgment is set aside, parentage cannot be challenged anew, and the court has no authority to order genetic testing. *City & County of San Francisco v Cartagena* (1995) 35 CA4th 1061, 1068–1069, 41 CR2d 797.

For methods of attacking a judgment determining parentage, see §203.77.

2. [§203.68] Parentage by Admission or Stipulation

The respondent may file and serve an answer and not appear for the hearing. If the answer admits parentage, it serves as an admission, and the court may enter a judgment on that basis.

☛ JUDICIAL TIP: Sometimes the respondent does not file the answer with the court but instead, returns the answer directly to the LCSA. At the hearing, the LCSA will ask the court to receive the respondent's unfiled answer and file it with the court. Most child support commissioners will accept the unfiled answer from the LCSA and order it filed or consider it evidence and will enter a judgment of parentage on that basis.

On occasion, the respondent's answer will identify the children and contain certain statements, yet fail to admit or deny parentage. Every material allegation of a complaint not controverted by answer must be taken as true. CCP §431.20(a). On that basis, the court may enter a judgment of parentage.

In DVPA proceedings to determine temporary custody, the court may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity, subject to set-aside provisions. Fam C §6323(b)(2). Such a judgment would then be res judicata as to those parties.

3. Voluntary Declaration of Paternity

a. [§203.69] In General

Family Code §§7570 et seq provides a process by which paternity can be established by the father and mother signing a declaration in a form provided by the hospital (if at birth) or by the court or the LCSA thereafter (Paternity Opportunity Program or "POP" form). Once signed and filed with the state DCSS, this voluntary declaration has the same force and effect as a judgment of parentage issued by a court of competent jurisdiction. Fam C §7573. If the voluntary declaration is signed by a minor, it takes effect 60 days after the minor emancipates. Fam C

§7577(a). Because a voluntary declaration has the force of a judgment, it trumps a presumption under Fam C §7611(d).

For example, a biological father's voluntary declaration of paternity trumps the mother's former boyfriend's rebuttable presumption of paternity based on receiving the child into his home and holding out the child as his natural child. The biological father rather than mother's former boyfriend is the child's legal father, even if the biological father had not taken meaningful steps to maintain contact with the child or provided for his support, when the voluntary declaration of paternity was properly signed and filed and never rescinded or set aside. *Kevin Q. v Lauren W*. (2009) 175 CA4th 1119, 1137–1138, 95 CR3d 477. For further discussion, see §§203.73 and 203.74.

A voluntary declaration of paternity is not to be given to a married woman and, thus, is voidable when executed by a married woman. *H.S. v Superior Court* (2010) 183 CA4th 1502, 1507–1508, 108 CR3d 723.

A 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).

A voluntary declaration is also invalid if it is not validly witnessed and timely filed. *In re D.R.* (2011) 193 CA4th 1494, 1509–1510, 122 CR3d 753.

For a chart outlining the use of a POP form, see Appendix A.

b. [§203.70] Rescission of or Setting Aside Voluntary Declaration

Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the Department of Child Support Services within 60 days of the date that the attesting father or attesting mother executed the declaration, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. Fam C §7575(a).

A presumed parent may file a petition to set aside a voluntary declaration of paternity within 2 years of its execution. Fam C §7612(e); see California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §204.177 (Cal CJER).

4. Conclusive Presumption

a. [§203.71] In General

Family Code §7540 provides that a child of a wife cohabiting with her husband, who is not impotent or sterile, is presumed conclusively to be a child of the marriage.

Under Fam C §297.5, any statute pertaining to "spouses" also applies to registered domestic partners. Therefore, a conclusive presumption of parentage may be created between same sex domestic partners. The rights and obligations of registered domestic partners with respect to a child of either of them are the same as those of spouses. Fam C §297.5(d).

b. [§203.72] Exception to Conclusive Presumption

If the conclusive presumption applies, a motion for genetic testing may be filed by the presumed father or the child's guardian ad litem. It may also be filed by the mother if the child's biological father has filed an affidavit with the court acknowledging paternity of the child for genetic testing. The motion must be filed within two years of the birth. If the court finds that the conclusions of all the experts are that the husband is not the father of the child, the question of the husband's paternity must be resolved accordingly. Fam C §7541(a)–(c).

The motion is not available in certain limited situations (paternity judgments that predate October 1980, artificial insemination, or conception by surgical procedure). Fam C §7541(e).

5. Rebuttable Presumptions

a. [§203.73] Presumed Parent Status

Family Code §7610 provides that a parent/child relationship may be established between (a) a child and the natural parent by proof of having given birth to the child or under the UPA, or (b) a child and an adoptive parent by proof of adoption. A rebuttable presumption of maternity applies only in cases of surrogacy, relinquishment, abandonment of child, or when a nonbiological parent in a same-sex relationship seeks to establish parentage against the biological parent. The Legislature did not intend to establish statutory authorization for maternity actions to be brought against California mothers who give birth to a child and intend to raise it as their own. *In re D.S.* (2012) 207 CA4th 1088, 143 CR3d 918.

Family Code §7611 defines the ways that a person can achieve the status of a presumed parent. In addition to the conclusive presumption (see §203.71) and the voluntary declaration of paternity (see §203.69), other methods of achieving that status include the following:

- The man and the child's natural mother are or have been married to each other, and the child is born during the marriage or born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court. Fam C §7611(a).
- Before the child's birth, the man and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true (Fam C §7611(b)):
  - If the attempted marriage could be declared invalid only by a court, and the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.
  - If the attempted marriage is invalid without a court order, and the child is born within 300 days after the termination of cohabitation.
- After the child's birth, the man and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true (Fam C §7611(c)):
  - With his consent, he is named as the child's father on the child's birth certificate.

— He is obligated to support the child under a written voluntary promise or by court order.

- The man receives the child into his home and openly holds out the child as his natural child. Fam C §7611(d). The receipt of the child into the home must be sufficiently unambiguous to be a clear declaration of the nature of the relationship but need not continue for any specific duration. *Charisma R. v Kristina S.* (2009) 175 CA4th 361, 374, 96 CR3d 26 (court found 13 weeks sufficient under the circumstances of this case); *In re D.M.* (2013) 210 CA4th 541, 549–550, 148 CR3d 349 (2-hour court ordered visits were insufficient to show that a boyfriend had accepted the child into his home).
- The child is in utero after the decedent's death, and the conditions set forth in Prob C §249.5 are satisfied. Fam C §7611(f).

If two or more presumptions arise under Fam C §7610 or §7611 that conflict, or if a presumption under Fam C §7611 conflicts with a claim under Fam C §7610, the court must rule in favor of the presumption that on the facts is founded on the weightier considerations of policy and logic. Fam C §7612(b); see, *e.g.*, *Gabriel P. v Suedi D.* (2006) 141 CA4th 850, 864, 46 CR3d 437.

An alleged biological father has no standing to challenge a mother's husband's presumption of paternity, even though the mother and husband were not cohabiting at the time of conception, when the alleged biological father has no standing as a presumed father (other than through a voluntary paternity declaration executed by the married mother, which the mother successfully moved to set aside). *H.S. v Superior Court* (2010) 183 CA4th 1502, 1507–1508, 108 CR3d 723. Even in a contest between competing presumptions of paternity, the biological father does not automatically prevail against the mother's husband; rather, the court must weigh all relevant factors, including biology, in determining which presumption is founded on weightier considerations of policy and logic. *H.S. v Superior Court*, *supra*, 183 CA4th at 1508; *In re P.A.* (2011) 198 CA4th 974, 981–983, 130 CR3d 556.

An alleged biological father also has no standing to challenge a mother's husband's presumption of paternity, when the alleged biological father has no standing as a presumed father (other than through his proposed prenatal relationship theory, which viewed the relationship from the alleged biological father's perspective, not the child's, and thus did not advance the policy considerations recognizing the value to the child of an established parent-child relationship). *Neil S. v Mary L.* (2011) 199 CA4th 240, 131 CR3d 51. An alleged biological father, however, may have standing when the mother precluded him from becoming a presumed father. See *J.R. v D.P.* (2012) 212 CA4th 374, 390, 150 CR3d 882.

Another method for establishing paternity is for the court to order genetic tests under Fam C §§7550 et seq. If the experts disagree on whether the alleged father is the child's father, or the tests show the probability of paternity, the question is submitted on all the evidence. Fam C §7554(b). There is a rebuttable presumption of paternity if the court finds that the paternity index, after appropriate genetic testing, is 100 or greater. Fam C §7555(a).

Although the paragraphs above refer to paternity, in light of Fam C §297.5, the domestic partnership law, and *Marriage Cases* (2008) 43 C4th 757, 76 CR3d 683, they should read to be gender neutral and also apply to females. Furthermore, *Elisa B. v Superior Court* (Emily B.) (2005) 37 C4th 108, 119–120, 33 CR3d 46, *Charisma R. v Kristina S.* (2006) 140 CA4th 301, 304, 44 CR3d 332, *S.Y. v S.B.* (2011) 201 CA4th 1023, 134 CR3d 1, and *E.C. v J.V.* (2012) 202

CA4th 1076, 136 CR3d 339 (includes factors to be considered by the trial court in making a Fam C §7611(d) determination involving same-sex couples) all confirm the application of Fam C §7611(d) to same-sex couples. See also *L.M. v M.G.* (2012) 208 CA4th 133, which held that a single-parent adoption does not necessarily preclude the court from determining that a child may have a second same-sex presumptive parent.

In an appropriate action, a 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. In determining detriment to the child, the court must consider all relevant factors, including the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and psychological needs for care and affection, and who assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage. Fam C §7612(c). By adopting §7612(c), the Legislature intended to abrogate *In re M.C.* (2011) 195 CA4th 197, 223, 123 CR3d 856, which held that when three people qualify as presumed parents for a child, the trial court must reconcile the competing presumptions and find only two parents. Stats 2013, ch 564, §1(b).

b. [§203.74] Rebuttal Evidence

Presumed father status under Fam C §7611 may be rebutted in an appropriate action by clear and convincing evidence. Fam C §7612(a). A father's admission that he is not the biological father does not necessarily rebut the presumption when he has taken the child into his home and held the child out as his natural child. *In re Nicholas H.* (2002) 28 C4th 56, 63, 70, 120 CR2d 146. Nor does a parent's failure to stay in contact or support the child necessarily rebut the presumption. *In re J.O.* (2009) 178 CA4th 139, 147–150, 100 CR3d 276.

Unless the court orders otherwise when more than two persons claim parentage (see discussion in §203.73), the presumption is rebutted by a judgment establishing paternity of the child by another man. Fam C §7612(d). A judgment of paternity for "child support purposes" is a paternity judgment within the meaning of Fam C §7612(d) and rebuts Fam C §7611(d) presumptions. *In re Cheyenne B.* (201 2) 203 CA4th 1361, 138 CR3d 267.

☛ JUDICIAL TIP: When the children are in foster care, there may already be a finding of parentage in the juvenile court. It is worthwhile to establish a protocol for cross-referencing cases to avoid duplication of effort. Note also that at times the man found to be the presumed father in the dependency case is *not* the biological father. If he is found to be presumed in the juvenile court, he is the legal father for support purposes. (The reverse is not always true!)

If the court ordered genetic tests under Fam C §§7550 et seq and finds that the conclusions of all the experts is that the alleged father is not the child's father, it must resolve the question accordingly. Fam C §7554(a).

A presumption of paternity resulting from genetic tests that produced a paternity index of 100 or greater may be rebutted by a preponderance of the evidence, even when the paternity index is high. Fam C §7555(a); *City & County of San Francisco v Givens* (2000) 85 CA4th 51, 55–56, 101 CR2d 859.

A voluntary declaration of paternity, if properly signed and filed after 1996 and never rescinded or set aside, rebuts a rebuttable presumption of paternity under Fam C §7611(d). *Kevin*

Q. v Lauren W. (2009) 175 CA4th 1119, 1136–1139, 95 CR3d 477; *In re Levi H.* (2011) 197 CA4th 1279, 1287–1290, 128 CR3d 814. [*Note*: These cases only involved the Fam C §7611(d) presumption, and may or may not rebut the other rebuttable presumptions.]

6. [§203.75] Parentage by Estoppel

The elements of parentage by estoppel exist where, although biological parentage is unknown or lacking, the facts show that (*Clevenger v Clevenger* (1961) 189 CA2d 658, 671, 11 CR 707; see *Marriage of Johnson* (1979) 88 CA3d 848, 850, 152 CR 121; *Marriage of Valle* (1975) 53 CA3d 837, 840–841, 126 CR 38; *Guardianship of Ethan S.* (1990) 221 CA3d 1403, 1415–1417, 271 CR 121):

- The father or mother has expressly or implicitly represented to the child that he or she is the father or mother;
- He or she has intended that his or her representations be accepted and acted on by the child;
- The child relied on the representations and treated him or her as its father or mother and gave its love and affection to the father or mother; and
- The child was ignorant of the true facts.

The court in *County of San Diego v Arzaga* (2007) 152 CA4th 1336, 1347–1348, 62 CR3d 329, added a new element to parentage by estoppel: the doctrine of parentage by estoppel cannot be applied to an alleged father unless he knows he is not the father of a child even though he represents to the child he is the father.

The rationale of *Clevenger* is that "[t]he relationship of father and child is too sacred to be thrown off like an old cloak, used and unwanted." *Clevenger v Clevenger, supra,* 189 CA2d at 674. A man who has lived with and treated a child as his son or daughter has developed a relationship that should not be lightly dissolved. This social relationship is much more important, at least to the child, than a biological relationship of actual paternity. *Guardianship of Caralyn S.* (1983) 148 CA3d 81, 86–87, 195 CR 646.

Although the case law in this area refers to "fathers," it may also be applied to females to establish maternity

Other equitable doctrines apply, including, but not limited to, laches. In practice, laches is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party such as to render the granting of relief to the other party inequitable. *Marriage of Plescia* (1997) 59 CA4th 252, 256, 69 CR2d 120, citing *Wells Fargo Bank v Bank of America* (1995) 32 CA4th 424, 439, 38 CR2d 521.

☛ JUDICIAL TIP: *Family Code §7611(d) versus parentage by estoppel.* Although these bases for parentage may seem to be similar theories at first glance, they are quite different. Family Code §7611(d), which establishes parentage by receiving the child into the home and openly holding out the child as one's natural child, involves representations the alleged parent makes to the world with respect to parentage that leads the world to believe this person is the child's biological parent. Parentage by estoppel is established based on the representations of parentage the alleged parent makes to the child, leading the child to believe that this person is the child's biological

parent. The court looks to whom the representation is made and if it is believed and relied on by that party or parties.

7. [§203.76] DVPA Parentage

Under the DVPA (Domestic Violence Prevention Act, Fam C §§6200 et seq), the court may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity, subject to the set-aside provisions in Fam C §7646. Fam C §6323(b)(2).

C. [§203.77] Challenging Parentage

Some methods of attacking parentage determinations are discussed above, *e.g.*, rescission of a voluntary declaration of paternity (see §203.70), a motion for genetic tests following application of the conclusive presumption of parentage (see §203.72), and rebuttal evidence to presumed father status and other presumptions (see §203.74).

Other methods of challenging parentage determinations include the following:

- A motion to set aside a voluntary declaration of paternity based on genetic tests. Fam C §7575(b).
- A motion to set aside a voluntary declaration of paternity on CCP §473 grounds. Fam C §7575(c).
- A petition to set aside a voluntary declaration of paternity on grounds of the validity of the declaration or the child's best interest. Fam C §7612(e).
- A motion to set aside a judgment when genetic evidence excludes the adjudicated parent from being the biological parent (or "paternity disestablishment"). Fam C §§7645 et seq.
- Other procedures such as a motion for new trial, an appeal, or an action in equity.

For more discussion of these methods of challenging a parentage determination, see California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support*, Part IV (Cal CJER).

V. SETTING CHILD SUPPORT

A. Statewide Uniform Child Support Guideline

1. [§203.78] Based on Federal Requirements

Federal regulations require states to establish one set of guidelines, by law or by judicial or administrative action, for setting and modifying child support award amounts within a state. 45 CFR §302.56(a). The California Legislature adopted the Statewide Uniform Child Support Guideline in 1992. Fam C §§4050 et seq. Under 45 CFR §302.56(f), the state guideline must provide that there be a rebuttable presumption, in any judicial or administrative proceeding, that an award of child support under the statewide guideline is the correct amount of child support to be awarded. See Fam C §4057(a). Under Federal certification requirements related to DCSS's statewide computer system, all Title IV-D courts are required to use the DCSS created Guideline Calculator program in calculating support. See §203.79.

This part is intended to be an overview regarding the setting of child support. See California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER), for a more in-depth coverage of this topic.

2. Overview of Statewide Guideline Formula

a. [§203.79] Guideline Principles

Implementation of the Statewide Uniform Child Support Guideline is based on the following principles (Fam C §4053):

- A parent's first and principal obligation is to support minor children according to the parent's circumstances and station in life.
- Both parents are mutually responsible for the support of their children.
- The guideline takes into account each parent's actual income and level of responsibility for children.
- Each parent should pay for the support of children according to the parent's ability.
- The guideline seeks to place the interest of children as the state's top priority.
- Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children. See *Marriage of Cheriton* (2001) 92 CA4th 269, 292 n13, 111 CR2d 755 (children have right to share in lifestyle of high-earning parent even if parent chooses to live modestly).
  - — When a parent is wealthy, the children's needs are measured by the parent's current station in life, not by the children's historic expenses or by their basic needs. *Marriage of Cheriton*, *supra*, 92 CA4th at 293, 297–298.
  - — Unlike spousal support awards that require a consideration of the parents' standard of living during marriage, child support awards must reflect a minor child's right to be maintained in a lifestyle and condition consonant with the parents' position in society after dissolution of the marriage. *Marriage of Kerr* (1999) 77 CA4th 87, 95–96, 91 CR2d 374.
- Child support orders in cases in which both parents have high levels of responsibility for the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.
- Children's financial needs should be met through private financial resources as much as possible.
- It is presumed that a parent having primary physical responsibility for children contributes a significant portion of available resources for support of the children.
- The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

- The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.
- Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to those of other states.

The Uniform Guideline also applies when a child has more than two parents. The court must apply the guideline by dividing child support obligations among the parents based on income and the amount of time spent by the child with each parent, pursuant to Fam C §4053. Fam C §4052.5(a). After calculating the amount of support owed by each parent under the guideline, the presumptively correct amount may be rebutted if the court finds that the guideline's application in such a case would be unjust or inappropriate. See Fam C §4057(b)(5)(A)–(D). If the court makes that finding, it must divide child support obligations among the parents in a manner that is just and appropriate based on income and amount of time spent with the child by each parent, applying the principles set forth in §4053 and the Uniform Guideline. Fam C §4052.5(b).

The formula for determining the amount of the child support order under the guideline is very complex (Fam C §4055); however, it is mainly based on the following major factors:

- Each parent's net disposable income;
- The number of children; and
- The time-share factor (*i.e.*, the percentage of time that each parent has primary physical responsibility for the children).

☛ JUDICIAL TIP: You should have an understanding of the formula and the relationship of each of the factors. However, given the complexity of the formula, almost all family law judges, attorneys, and parties rely on computer software programs to calculate the guideline. Instead of manually calculating the guideline, you should use the software employed by your court. See California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER). As of May 9, 2008, all LCSAs and California courts must use the California Guideline Child Support Calculator developed by DCSS to calculate child support in cases where one of the parties is seeking the assistance of the LCSA to establish or enforce a child support order (Title IV-D proceedings). See Welf & I C §§10080 et seq; Fam C §3830. All LCSAs must use only the DCSS Guideline Calculator when presenting calculations to the court in its motions and pleadings, and courts may not require the LCSA to use any other program. Cal Rules of Ct 5.275(j)(1). Non-Title IV-D Courts remain free, however, to use any certified program to calculate guideline support in non-IV-D proceedings. The Guideline Calculator is located online at the DCSS website (see www.childsup.ca.gov; click on Resources/Calculate Child Support).

b. [§203.80] Adjustments and Departure Criteria

The California guideline provides for other adjustments to income or the support order amount itself, including adjustments for additional support in cases involving factors such as

low-income obligors, uninsured health-related expenses, and work-related child-care expenses. *E.g.*, Fam C §§4055(b)(7), 4061–4063; see §§203.83, 203.93.

Finally, the guideline sets out departure criteria in accordance with federal requirements. Fam C §§4056, 4057. To comply with federal law, whenever the court is ordering an amount for support that differs from the guideline formula, the court must state in writing or on the record all the following information (Fam C §4056(a)):

- The guideline formula amount.
- The reasons the support amount ordered differs from the guideline.
- The reasons the support amount ordered is consistent with the children's best interests.

If requested by any party, the court must also state the following information used in determining the guideline amount (Fam C §4056(b)):

- The net monthly disposable income of each parent.
- The actual federal income tax filing status of each parent.
- The deductions from gross income for each parent.
- The approximate percentage of time that each parent has primary physical responsibility for the children compared to the other parent.

See §203. for a sample script for use when finding grounds to depart from the guideline amount. For further discussion of departure grounds, see California Judges Benchguide 201: *Child and Spousal Support* §§201.45 et seq (Cal CJER).

3. Time-Share Calculations

a. [§203.81] Primary Physical Responsibility

The California guideline is unique among state child support guidelines in that each calculation of support considers the approximate percentage of time that a parent has or will have primary physical responsibility for the children compared to the other parent. Fam C §4055(b)(1)(D). In other states, an adjustment for parenting time is not considered until it reaches a determined threshold for a noncustodial parent (NCP) (most commonly 20–35 percent per year). By including the amount of time the child spends with each parent in all calculations, ordered amounts change gradually with incremental changes in time-sharing.

☛ JUDICIAL TIP: The existence or enforcement of a duty of support owed by a noncustodial parent for the support of a minor child is not affected by a failure or refusal by the custodial parent to implement any court ordered custodial or visitation rights granted to the noncustodial parent. Fam C §3556. Rather, under Fam C §3028, the court may order financial compensation for interference with visitation. Certain types of conduct, however, such as active concealment of the child until the age of majority by the custodial parent, may be a defense to enforcement of a child support order. *Marriage of Damico* (1994) 7 C4th 673, 679–684, 29 CR2d 787.

Certain child-related activities are shared by both parents to some degree. In recognition of this reality, courts are asked to "approximate" hours of responsibility and have the discretion to apportion time for school hours depending on the particular parent's overall level of involvement

in the school-day routine. The test is what parent has "primary physical responsibility" rather than physical "custody." Thus, time-sharing may properly be imputed to a parent (or between parents) when the child is not in either parent's physical custody. Conversely, however, no time-sharing adjustment should be made in the guideline formula when the child is not under either parent's physical supervision.

☛ JUDICIAL TIP: The court may apportion school hours when the parent shows significant involvement in the child's school-day routine.

For further discussion of time-share calculations, see California Judges Benchguide 201: *Child and Spousal Support* §201.34 (Cal CJER).

b. [§203.82] Imputing Time-Share

Under limited circumstances, the court can impute a time-share to a parent. See *Marriage of Katzberg* (2001) 88 CA4th 974, 981–984, 106 CR2d 157. In *Katzberg*, the Third District held that a trial court had not erred in attributing (imputing) a child's time at boarding school to the time-share of the primary custodial parent. The *Katzberg* court "imputed" a time-share percentage to the father, not based on actual visitation, but instead based on fact that (1) the custodial father was the primary caretaker; (2) the father was responsible for the boy's tuition, maintenance, and travel while at the boarding school; and (3) the NCP mother refused to do so. Under these facts, the court imputed a time-share factor to father, notwithstanding that neither the father nor the mother had actual physical custody of the boy while he was residing at the boarding school. Still, *Katzberg* does not rewrite Fam C §4055(b)(1)(D), which states that time-share represents the approximate percentage of time that the NCP has primary physical responsibility for the child. *Katzberg* only holds that primary physical custody need not equate to actual physical custody. The *Katzberg* holding seems limited to its unique facts and would not apply if there is no debate who has actual physical responsibility and custody.

If a parent desires time-share credit for times they are not physically present with the child, then the parent has the burden of producing admissible evidence demonstrating primary responsibility for that child during those challenged times. Relevant factors include:

- Who pays for transportation or who transports the child;
- Who is designated to respond to medical or other emergencies;
- Who is responsible for paying tuition (if any) or incidental school expenses; and
- Who participates in school activities, fundraisers, or other school-related functions.

☛ JUDICIAL TIP: If the NCP does not raise the issue and come forth with competent evidence on the point, most trial courts will credit the time the child spends in daycare or school to the custodial parent.

If the child is older and refuses to visit with the NCP, there is no basis to impute a time-share factor to the NCP. Depriving the noncustodial parent of the right to visit a child does not diminish that parent's obligation to provide child support.

☛ JUDICIAL TIP: Unrepresented NCPs often complain about the other parent refusing to allow visitation. They should be referred to the family law facilitator for assistance in obtaining information regarding their parental rights and how to obtain, modify, or

> enforce a custody and visitation order. Also, parties may urge the court to use an existing parenting plan to determine a time-share percentage. Unless the plan is currently being followed or was recently agreed to or ordered by the court, it should not be used. Instead of relying on the existing "paper" order, courts typically look to the actual custodial arrangement being exercised. As one court observed: "A trial court is more likely to arrive at a fair and just adjudication of the parties' custody situation if it examines the realities of the present situation rather than the possible fictions of a prior order or judgment." *Marriage of Lasich* (2002) 99 CA4th 702, 716, 121 CR2d 356, disapproved on other ground in 32 C4th 1072, 1097.

For further discussion of imputed time-sharing, see California Judges Benchguide 201: *Child and Spousal Support* §201.35 (Cal CJER).

4. [§203.83] Low-Income Adjustment

Another key component of the California guideline is a low-income adjustment that applies to obligors with less than $1500 in net disposable income per month. There is a rebuttable presumption that the obligor is entitled to the low-income adjustment amount (a calculated reduction in the base support amount). Fam C §4055(b)(7). The Judicial Council annually modifies the low-income adjustment amount based on changes to the Consumer Price Index for urban consumers. Fam C §4055(b)(7); see US Dept of Labor, Bureau of Labor Statistics at www.bls.gov/cpi/tables.htm. For more discussion of the low-income adjustment, see California Judges Benchguide 201: *Child and Spousal Support* §201.42 (Cal CJER).

5. [§203.84] Imputed and Presumed Income

Although most state guidelines provide for income attribution when a parent's income is unknown or the parent is unemployed or underemployed, California is unique because it has two types of income attribution: (1) income imputation and (2) income presumption.

Income imputation is allowed in the California guideline under Fam C §4058(b). It gives a court discretion to consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interest of the child. See, *e.g.*, *Marriage of Sorge* (2011) 202 CA4th 626, 134 CR3d 751. However, income cannot be imputed to a parent on CalWORKS. *Mendoza v Ramos* (2010) 182 CA4th 680, 686, 105 CR3d 853. Imputing income to a custodial parent must be supported by substantial evidence that doing so is in the children's best interests. *Marriage of Ficke* (2013) 217 CA4th 10, 13, 22, 157 CR4th 870.

For further discussion of earning capacity and imputed income, see California Judges Benchguide 201: *Child and Spousal Support* §§201.18 et seq (Cal CJER) and *Marriage of Bardzik* (2008) 165 CA4th 1291, 83 CR3d 72.

Presumed income is an entirely different concept. Fam C §17400(d)(2) provides that if a support obligation is being established by a local child support agency and the obligor's income or income history is not known, income is presumed at minimum wage for 40 hours per week. Once made, presumed income judgments or orders can be set aside and replaced with orders based on actual income, beyond the customary time limits for orders under CCP §473. Fam C §17432. See discussion of this set-aside procedure in California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* (Cal CJER).

6. [§203.85] Calculating Child Support

Calculate child support under the following guidelines, which are discussed in more detail in California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER), Parts IV and V.

(1) Determine each parent's gross income.

(2) If a parent has fluctuating income, analyze gross income over at least a 12-month period or longer. Remember to use a "representative" period of time.

(3) Exclude consideration of income of either parent's new spouse or nonmarital partner, unless this is an "extraordinary case" in which excluding this income would lead to extreme and severe hardship to the children. You may consider this income, however, when determining a parent's actual tax liability under Fam C §4059(a) for purposes of computing the parent's net disposable income.

(4) If a parent is underemployed, unemployed, or is structuring income to reduce child support obligations, consider the parent's earning capacity instead of the parent's actual income. You may consider the earning capacity of a parent who is unemployed or allegedly underemployed if it is shown that this parent has both the ability and an opportunity to work. *Marriage of Regnery* (1989) 214 CA3d 1367, 1372–1373, 263 CR 243. Consideration of earning capacity must be consistent with the children's best interests. Fam C §4058(b). If a parent is incarcerated, the trial court may reserve jurisdiction on the amount of current child support until there is an ability to pay. *El Dorado County DCSS v Nutt* (2008) 167 CA4th 990, 992–994, 84 CR3d 523. See discussion of seek-work orders in §203.86.

(5) Determine each parent's net disposable income available for child support by deducting amounts listed in Fam C §4059 from each parent's gross income. These include tax liabilities, union dues and employee expenses, and spousal and other child support actually being paid.

(6) Rule on a parent's request for a hardship deduction from net disposable income for health expenses or uninsured losses, or for support of other children residing with parent. If the deduction is allowed, the reasons supporting the deduction must be stated on the record. Fam C §4059(g).

(7) After computing each parent's net disposable income, divide this income by 12 to arrive at each parent's net monthly disposable income. Use these income amounts in computing the amount of child support using the Uniform Guideline formula, taking into consideration the percentage of time the children will be living with each parent. The income and percentage should be entered in the software program to calculate the child support amount.

(8) If the child support amount is a positive number, order the higher earner to pay this amount to the lower earner; if the child support amount is a negative number, order the lower earner to pay the absolute value of that amount to the higher earner. Fam C §4055(b)(5).

(9) Determine whether the parent ordered to pay support is entitled to a low-income adjustment reducing the child support amount. See §203.83.

(10) Order child-care costs related to employment or education, and the children's reasonable uninsured health-care costs, as additional child support. Fam C §4062(a); see §203.93.

(11) Determine whether to order the costs related to the children's educational or other special needs, or travel expenses for visitation, as additional child support. Fam C §4062(b); see §203.95.

(12) Rule on any request to depart from the guideline formula amount of support based on one or more of the factors set forth in Fam C §4057(b). The guideline formula amount is presumed to be the correct amount of support in all cases. Fam C §4057(a). This presumption may be rebutted only by admissible evidence showing that applying the formula would be unjust or inappropriate. Fam C §4057(b). Also state the information required under Fam C §4056(a). A script for departure under Fam C §4057(b) is set forth in §203..

(13) In a proceeding for modification of support, determine whether there are changed circumstances warranting a different support order. A modified child support order must be calculated under the guideline formula.

(14) The court may accept a stipulation for child support, provided that it meets the conditions of Fam C §4065.

Note: The LCSA cannot sign a stipulation for a below-guideline amount if the children are receiving CalWORKS benefits, if there is a pending application for public assistance, or if the parent receiving support has not consented. Fam C §4065(c).

(15) A script for an order for child support is set forth in §203.173. See also forms FL-630 (judgment regarding parental obligations), FL-665 (commissioner's findings and recommendations), FL-687 (order after hearing), and FL-692 (minutes and order or judgment).

7. [§203.86] Seek-Work Orders

After considering the earning capacity of each parent in calculating child support, 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 regular participation so the court may make a finding of good faith attempts at job training and placement. Fam C §3558.

Note: Under Fam C §4505(a) some counties include, in the default judgments submitted to the court, a separate court-ordered work search provision in the event the respondent is unemployed; the provision requires log sheets to be submitted to the LCSA.

With the advent of "realignment" of certain state criminal cases down to the local level (as the result of the 2012 state budget), counties are now grappling with more prisoners and consequently, are instituting more alternatives to pure incarceration (*e.g.*, ankle monitoring, restricted half-way housing, etc.). Courts will need to take into consideration any such restrictions before issuing a traditional seek-work order.

If a parent is on CalWORKs (a form of public assistance; see Welf & I C §§11200 et seq) and is complying with the terms of that welfare-to-work program, the court may not order that parent to seek work. *Barron v Superior Court of Santa Clara County* (2009) 173 CA4th 293, 300, 92 CR3d 394.

☛ JUDICIAL TIP: Some courts have established *specialized* calendars to address these cases when one or both parents are under a seek-work order and must return to court regularly to determine if they are in compliance. This gives the court some flexibility and an opportunity to develop a more focused approach to addressing any barriers that

may exist for individuals seeking work (*e.g.*, a criminal record, lack of high school education, etc.) and make appropriate referrals for resources that may exist within that county.

When the party being brought to court for a seek-work order is in default of their payments, an "alternative" order may be effective to get the party back on track. For example, the seek-work order requires the obligor to comply with all of the work-search requirements, *or in the alternative,* relieves the obligor from those requirements if they pay their current order in full, plus something towards any arrears, each and every month. This relieves the LCSA from having to review work-search logs if a person gets themselves back on track, and can be helpful when a person claims to be self-employed.

In cases where you have a party who is in essence not looking in good faith, the court does have alternatives, on the appropriate request and proof, for example, to impute income, or the LCSA may pursue another legal remedy, such as contempt.

It is up to the court to manage the cases involving seek-work orders, as it deems appropriate, including by calendaring regular compliance review dates as needed. The party is ordered to return to court for work-search review, and a failure to appear may result in the issuance of a civil bench warrant. See §203.130.

8. [§203.87] Suspension of Support Obligation Due to Incarceration

Effective July 1, 2011, every money judgment or order for child support that is being enforced by a LCSA must provide that (1) the support obligation is suspended for any period exceeding 90 consecutive days when the obligor is incarcerated or involuntarily institutionalized, unless the obligor has the means to pay support during such time, and (2) the support obligation immediately resumes in the amount specified in the order when the period of incarceration or involuntary institutionalization ends. Fam C §4007.5(a), (g). The court must provide notice to the parties of this support obligation suspension at the time the order is issued or modified. Fam C §4007.5(b). See also CSS Letter 11-08.

"Incarcerated or involuntarily institutionalized" includes, but is not limited to, involuntary confinement to a state prison, county jail, certain juvenile facilities, or mental health facility. Fam C §4007.5(e). "Suspend" means that the child support order is modified and set to zero dollars ($0.00) for the period when the obligor is incarcerated or institutionalized. Fam C §4007.5(f).

For discussion of the process to adjust arrears for suspension of the support obligation, see California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §204.202 (Cal CJER).

B. Governmental Benefits

1. [§203.88] Social Security

Social Security benefits are commonly seen on the Title IV-D calendars. The judicial officer must look carefully at the type of benefit to determine if:

- It is income for support purposes;
- It is taxable;

- It is benefits payable to supported children.

See the benefits chart in Appendix B for a quick reference regarding use for income and taxability.

Social Security Disability Insurance (SSDI)/Retirement: Benefits available to workers based on a disability or old age (including survivor's benefits) are income for calculating child support. Minor children may be eligible for a derivative benefit if the disabled parent is receiving SSDI; that benefit is payable to the custodial parent on behalf of the child. If the disabled parent is the obligor, the benefit is a credit against the child support obligation. Fam C §4504(a)–(b). Until January 1, 2005, dependent benefit payments (derivative benefits) that exceeded the monthly child support obligation could not be credited to support arrears. *Marriage of Robinson* (1998) 65 CA4th 93, 96–98, 76 CR2d 134. The excess of social security derivative benefits over current support may be applied to support arrearages. Payments are credited in the order set forth in CCP §695.221. Fam C §4504(b). Child support arrears can be enforced against SSDI benefits or retirement benefits.

If notice of these benefits is given, the custodial parent or other child support obligee must contact the appropriate federal agency within 30 days of receiving notification that the noncustodial parent is receiving those payments to verify eligibility for each child to receive the payments because of the disability of the noncustodial parent. If the child is potentially eligible for those payments, the custodial parent or other child support obligee must apply for and cooperate with the appropriate federal agency for the receipt of those benefits on behalf of each child. The noncustodial parent must cooperate with the custodial parent or other child support obligee in making that application and must provide any information necessary to complete the application. Fam C §4504(a).

If the custodial parent or other child support obligee refuses to apply for those benefits or fails to cooperate with the appropriate federal agency in completing the application when the child or children are otherwise eligible to receive those benefits, the noncustodial parent is entitled to a credit against the court-ordered amount of child support to be paid for that month. The credit must be in the amount of payment that the child or children would have received that month had the custodial parent or other child support obligee completed an application for the benefits, so long as evidence is provided indicating the amount the child or children would have received. The credit for those payments must continue until the child or children would no longer be eligible for those benefits, or the order for child support for the child or children is no longer in effect, whichever occurs first. Fam C §4504(c).

Supplemental Security Income (SSI): Benefits available to disabled persons who are indigent are not income for calculating child support because SSI is means-tested like welfare. Fam C §17516; *Elsenheimer v Elsenheimer* (2004) 124 CA4th 1532, 1536–1537, 22 CR3d 447; *In re S.M.* (2012) 209 CA4th 21, 29–30, 146 CR3d 659; see also CSS (Child Support Services) Letter 02–15. An SSI award for a California resident may have an SSP (State Supplemental Payment) portion that compensates for food stamps. If there is a small SSP portion, only that amount can be used to set and enforce child support.

☛ JUDICIAL TIP: When obligor is only receiving SSI or SSI/SSP, child support is typically reduced to zero, along with a zero payback on arrears, and the DCSS case is closed without further enforcement on existing arrears.

2. [§203.89] State Disability

Benefits received by injured workers through the State Disability Insurance program are nontaxable income that can be used to set and enforce child support.

3. [§203.90] Workers' Compensation

Workers' compensation benefits received by injured workers are nontaxable income that can be used to set and enforce child support.

☛ JUDICIAL TIP: Workers may elect a taxable benefit for private plans.

4. [§203.91] Unemployment Compensation

Benefits received by unemployed workers are income for setting support; the benefits are subject to federal but not California state tax.

☛ JUDICIAL TIP: There are detailed lines in the support programs for inputting unemployment to get the right tax effect.

5. [§203.92] Military Pay and Veteran's Benefits

The availability of military pay and veteran's benefits for support is discussed in §§203.162–203.164.

C. Additional Child Support

1. [§203.93] Mandatory Add-Ons

A court must order the following as additional child support (Fam C §4062(a)):

- Child-care costs related to employment or to reasonably necessary education or training for employment skills.
- Reasonable uninsured health-care costs for the children as provided by Fam C §4063.

See California Judges Benchguide 201: *Child and Spousal Support* §201.54 (Cal CJER) for further discussion of mandatory add-ons.

☛ JUDICIAL TIPS:

— When the court has ordered parents to share or reimburse actual costs for child care or reasonable uninsured health care, and the parents do not agree or have not complied with reimbursement, the court may require that a motion be filed so that it can determine the actual reimbursement owed that can be added to child support arrearages to be enforced by DCSS or offset if appropriate. See Fam C §4063(a), (c). Health insurance is rebuttably presumed to be accessible if services can be provided within 50 miles of the supported child's residence. Fam C §4063(g)(1); CSS Letter 11-02. All orders must contain a provision stating that reasonable uninsured health-care costs must be shared by the parents. CSS Letter 11-02. See also form FL-692, which sets forth parents' rights and responsibilities regarding uninsured health-care costs and reimbursement procedures, including when it is appropriate to file a motion.

— When the court has ordered parents to pay a set amount for child care, unless the court specifically reserves jurisdiction over the issue or limits the recoverable amount to actual child-care expenses incurred, the set amount cannot be modified retroactively, even if no child-care expenses continue to be incurred. *Marriage of Tavares* (2007) 151 CA4th 620, 625–626, 60 CR3d 39.

2. [§203.94] Health Insurance and Patient Protection and Affordable Care Act

All child support orders must include a provision for health insurance if it is available at no cost or at a reasonable cost. Fam C §3751(a)(2); see Fam C §§3750 et seq. The cost of coverage is rebuttably presumed to be reasonable if the cost to the responsible parent providing medical support does not exceed 5 percent of gross income (cost calculated as the difference between self-only and family coverage). If the obligor is entitled to a low-income adjustment, medical support is deemed not reasonable unless the court determines that it is unjust and inappropriate to not require medical support and states its reasons on the record. Fam C §3751(a)(2).

The responsible parent also may be able to obtain coverage for the minor children through the California Health Benefit Exchange (also called Covered California). Govt C §§100500 et seq. If a responsible parent is eligible to claim the children as a dependency tax exemption on the federal tax return, the parent also may be eligible for income-based federal subsidies for reduced cost coverage through the California Exchange. The parent eligible to take the children as a dependency exemption is the parent responsible under the individual mandate of the federal Patient Protection and Affordable Care Act (42 USC §§300gg-11, 18001 also referred to as the "ACA") to provide health insurance coverage for the minor children unless determined to be exempt. The implications under the ACA regarding which parent is eligible for the dependency exemption should be considered when evaluating whether to allocate the dependency exemption. In addition to private health insurance, other health care coverage such as Medi-Cal, Healthy Families in California, other state coverage plans, and cash medical support meet the requirement for medical support. CSS Letter 11-02.

Support orders must also require continuation of health insurance coverage for disabled adult children. Fam C §3751(c). Health insurance coverage will automatically be enforced by DCSS through a health insurance coverage assignment (or "HICA") order, or service of a national medical support notice (or "NMSN") on the employer. Fam C §§3761, 3773; see Fam C §§3760 et seq.

If a parent is incarcerated, the trial court may still order health insurance for the child, should it become available at reasonable cost. *El Dorado County DCSS v Nutt* (2008) 167 CA4th 990, 994, 84 CR3d 523.

For issues relating to enforcement of such orders, see California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §204.55 (Cal CJER).

3. [§203.95] Discretionary Add-Ons

A court *may* order the following as additional child support (Fam C §4062(b)):

- Costs related to the children's educational or other special needs.
- Travel expenses for visitation. See *Marriage of Gigliotti* (1995) 33 CA4th 518, 527–529, 39 CR2d 367; *Wilson v Shea* (2001) 87 CA4th 887, 893–898, 104 CR2d 880.

See California Judges Benchguide 201: *Child and Spousal Support* §201.55 (Cal CJER) for additional discussion of discretionary add-ons.

D. [§203.96] Multiple Families

If the obligor is actually paying child support for another child (who is not the subject of the order to be established by the court), the amount of the support payment is to be put on the appropriate line in the computer program as a deduction from the obligor's net disposable income. The parent must have a legal obligation to support that child whether the amount is established by a court order or is a voluntary payment that does not exceed the guideline amount. Fam C §4059(e).

☛ JUDICIAL TIP: If a previously set order is so high in another jurisdiction that it is unfair for the subject child, some judicial officers will temporarily adjust the order to give the obligor a chance to pursue an adjustment and review in the other jurisdiction.

If the obligor has child support obligations for more than one family (one or more children with different mothers) that are before the court at the same time, the judicial officer must calculate the child support obligations simultaneously to ensure that an appropriate guideline amount can be determined for each case. It may be necessary to toggle back and forth between calculations (adjusting the other child support amount deduction each time) to reach an equitable amount that the obligor can pay and that complies with the guideline.

E. [§203.97] Foster Care, Caretaker, or Third-Party Cases

The formula for computing child support in foster care situations is clearly outlined in Fam C §17402(c). Both parents have an equal duty to support their minor children. Fam C §3900. The child support obligation owed by the parent or parents of a minor child placed into a facility or with a caretaker is not based on the amount of monies the government spends to care for the minor child but on the respective incomes of the parent or parents. Fam C §17402(d); *Ohio v Barron* (1997) 52 CA4th 62, 69–70, 76–77, 60 CR2d 342.

Parents are responsible for reimbursing the county if their minor child or children are placed voluntarily or involuntarily into a foster care placement receiving public assistance. *County of San Mateo v Dell J.* (1988) 46 C3d 1236, 1244, 1246, 1250–1252, 252 CR 478. If neither parent remains the custodial parent but the parents reside together, the guideline child support is computed by combining both noncustodial parents' incomes. No income, wages, or earnings are attributed to the caretaker or the governmental agency. Because both parents have a duty to support the minor child based on their respective incomes, the guideline support resulting from the combined use of the parents' incomes is proportionately shared between the noncustodial parents based on their net monthly disposable incomes. Fam C §17402(c)(2).

When the parents of a minor child do not reside with each other or with the minor child, then the guideline child support is calculated separately, treating each parent as the noncustodial parent. Again, no income is attributed to the child's caretaker or the government. Fam C §17402(c)(3). Because each parent has a separate and independent obligation, the cases do not need to be heard simultaneously.

Whether the guideline child support is reached based on combining the incomes of cohabitating noncustodial parents or parents who live separately, the visitation factor is based on

the actual visitation (H% factor) exercised by one or both of the parents. See Fam C §4055(b)(1)(D). The issue for the court when attempting to calculate the visitation in these situations is one of *primary physical responsibility*. The court has to decide when calculating time-share if the noncustodial parent or parents should be credited for visitation time spent with a minor child at a government-funded facility or home.

For example, should the noncustodial parent receive credit for visiting with the minor child for two hours every Saturday at a children's home? Or is no visitation credit given because primary physical responsibility remains with the government facility or caretaker? See *Marriage of Katzberg* (2001) 88 CA4th 974, 106 CR2d 157, discussed in §203.82. Additionally, the court needs to look at the financial expenditures of the noncustodial parent when exercising visitation with the minor child. The legislative intent is to reduce the child support obligation for a noncustodial parent who is visiting with a minor child and therefore expending monies for the child's care. These are issues of fact that must be addressed on a case-by-case basis.

A parent is not bound to compensate another for the voluntary support of the parent's child without an agreement for compensation. Fam C §3951; *Plumas County Child Support Servs. v Rodriquez* (2007) 161 CA4th 1021, 1028, 76 CR3d 1. In response to *Plumas*, DCSS issued a policy letter stating that *Plumas* should be limited on its facts, and the ruling only impacts cases where public assistance is not being provided. The policy letter instructs LCSAs to continue to provide services to third-party applicants who are guardians of the person for the child in their custody. In existing cases payments may be redirected to a third-party caregiver, if the custodial parent submits a notarized written authorization, or signs an authorization at the LCSA. CSS Letter 10-04.

A parent has agreed to the payment of child support to a stepparent by appearing at a child support hearing, asking the court to order child support, not appealing the decision, and paying the ordered child support. *Marriage of Schopfer* (2010) 186 CA4th 524, 530, 112 CR3d 512.

F. [§203.98] Expedited Orders

A pilot project that existed in specific counties under which the LCSA could seek an expedited modification order expired by its own terms on January 1, 2010. See former Fam C §17441.

There is a procedure for obtaining an expedited child support order that can be found in Fam C §§3620 et seq. However, it appears to be little used given that it may be just as efficient to have the LCSA obtain an order through its standard process. For more details, see California Judges Benchguide 201: *Child and Spousal Support* §201.60 (Cal CJER).

G. [§203.99] Deduction for Federal Dependency Exemption

The state court may allocate a deduction for the federal dependency exemption between parents when child support is at issue in order to maximize the amount of support for the children. Monterey County v Cornejo (1991) 53 C3d 1271, 1280, 283 CR 405.

To claim the exemption deduction, however, the noncustodial parent must attach IRS form 8332 ("Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent"), signed by the custodial parent, or a "written equivalent" to the return. See *Moody v CIR* (8-19-2012) TC Memo 2012-268 at *2 (husband not entitled to dependency exemption due to failure to attach IRS form 8332 to return); *Shenk v IRS* (5-6-13) 140 TC No 10 at 4–5 (husband not entitled

under IRC §152(e)(2)(A) to claim dependency exemption or child tax credit when wife did not execute and husband did not attach form 8332 or equivalent to his return); *Armstrong v CIR* (2012) 139 US Tax Ct 468, 473–476 (conditional order that allowed father to claim a dependency exemption deduction for one child if he is current on his child support and directing mother to execute a release (form 8332) was not a written equivalent of form 8332)..

☛ JUDICIAL TIP: Keep copies of IRS form 8332 available in the court (forms are available at the IRS website at www.irs.gov/pub/irs-pdf/f8332.pdf), so that you can direct the custodial parent to execute the form at the hearing if you award the federal dependency exemption deduction to the noncustodial parent. Alternatively, some courts have put language in their orders that authorize the court clerk to sign the form if a parent who has been ordered to sign is unable or has refused to do so (sometimes called an *elisor* order).

VI. COURT PROCEDURES

A. [§203.100] LCSA Discovery Tools

Special discovery tools are available to the local child support agency (LCSA):

- The Employment Development Division must provide access to information to the LCSA to verify employment of applicants and recipients of aid for enforcement purposes. Fam C §17508(a).
- Employers and labor organizations must provide employment and income information in their possession to the LCSA for purposes of establishing, modifying, or enforcing a support obligation. Fam C §17512(a).
- All state, county, and local agencies must cooperate with the LCSA in the enforcement of any support obligations and must supply the LCSA with all information in their possession relative to the location, income, or property of any parents, putative parents, spouses, or former spouses of persons who have fraudulently obtained aid for a child. The statewide child support automation system is entitled to the same cooperation and information provided to the California Parent Locator Service, and to criminal offender record information to the extent access is allowed by law. Fam C §17505(a)–(c).
- LCSAs may now inspect juvenile court case files for the purpose of establishing paternity and establishing and enforcing child support orders. Welf & I C §827(a)(1)(N).
- Special evidence rules under UIFSA and Fam C §4930 are discussed in §203.45.

B. Tax Returns and Other Financial Information

1. [§203.101] Access to Tax Returns

Although tax returns are generally considered to be privileged (Rev & T C §§14251, 19542), no party to a proceeding involving child, family, or spousal support may refuse to submit copies of the party's state and federal income tax returns. Fam C §3552(a). The court, however, must provide clear safeguards. Fam C §3552(c). Thus, the statute provides (Fam C §3552):

- Parties cannot refuse to submit copies to court.
- Parties can examine copies of other party's tax returns.

- Parties can examine the other party regarding the contents of the tax returns.
- The court must:
  - — Seal and maintain tax returns as confidential records if the court finds they are relevant to retain, or
  - — Return all copies of the return to the party who submitted them if not relevant to disposition of the case.

☛ JUDICIAL TIP: If copies of the tax returns have been voluntarily exchanged by the parties or attorneys, it is often easier to simply use the copies in court during the proceedings and return them at the conclusion of the hearing, as sealing and maintaining confidential records can be a cumbersome process. Social security numbers should be redacted by the parties before submitting copies. Fam C §2024.5(a).

In addition, DCSS can request tax information directly from the Franchise Tax Board in accordance with federal and state privacy laws. Fam C §17452(a), (c). However, DCSS is prohibited from disclosing certain FTI (federal tax information) source information, even to the court. See CSS Letter 11-04 (3/17/11).

2. [§203.102] Discovery Before Modification or Termination Proceedings

Family Code §§3660 et seq provide an inexpensive discovery method for certain financial information before starting a modification or termination of support proceeding. This is the only method of discovery if there is no motion pending, and in the absence of a motion, a request under this statute cannot be done more than once every 12 months. Fam C §§3662, 3663. Under these circumstances following a judgment of dissolution or legal separation or a determination of paternity that provides for support, a party may request:

- A completed current income and expense (I&E) declaration from the other party. Fam C §3664(a); see form FL-150.
- A copy of the prior year's tax returns, which must be attached to the I&E declaration. Fam C §3665(a).
- Income and benefits information from the other party's employer (see form FL-397) if the other party fails to respond to the I&E declaration request or if the information on the I&E declaration is incomplete as to wage information, including missing pay stubs and tax return attachments. Fam C §3664(b). Notice to the employee must be given before the date set in the request from the employer. Fam C §3664(c); see form FL-397.

3. [§203.103] Production of Tax Returns at Expedited Hearing

The parents must produce for examination their most recently filed federal and state income tax returns at the hearing on an application for an expedited support order. Fam C §3629(a)–(b). A parent who fails to do so may not be granted the relief requested (Fam C §3629(c)), except the court may grant the relief sought if the party submits a sworn declaration that (Fam C §3629(d)):

- No such documents exist, or
- The tax return cannot be produced, but a copy has been requested from the IRS or Franchise Tax Board.

4. [§203.104] Confidentiality of Tax Returns

A party is prohibited from disclosing the contents of any tax returns produced or attached to discovery or from providing copies to anyone except (Fam C §3665(b)):

- The court,
- The party's attorney,
- The party's accountant,
- Other financial consultant assisting with matters related to the case, or
- Other person permitted by the court.

The court must control the tax returns as provided in Fam C §3552. Fam C §3665(c); see §203.101.

C. Confidentiality and Locate Information

1. [§203.105] Uniform Parentage Act Cases

Actions filed under the Uniform Parentage Act (UPA) to determine the existence or nonexistence of a parent and child relationship are confidential, including all papers and records—other than the final judgment—whether part of the court file or a public agency file. Fam C §7643(a). The parties or their attorneys (or their agents with proper authorization) may inspect and copy any of the court's permanent records (Fam C §7643(b)), but any other inspection or copying is only allowed in exceptional circumstances on a showing of good cause. Fam C §7643(a). An attorney must obtain the party's consent before authorizing an agent to inspect and copy the permanent record. The attorney must state in the written authorization that the party's consent was obtained. Fam C §7643(b).

Court hearings under the UPA may be held in closed court without admitting anyone except those necessary to the proceeding. Fam C §7643(a).

2. [§203.106] Other Court Proceedings

General family law proceedings are public, with the following exceptions:

- Conciliation proceedings under Fam C §§1800 et seq.
- Mediation proceedings under Fam C §§3175 et seq.
- A private trial on issues of fact. Unless otherwise provided, the court can direct the trial of any issue of fact joined in a proceeding to be private, "when it considers it necessary in the interests of justice and the persons involved," and exclude all persons except officers of the court, the parties, their witnesses, and counsel. Fam C §214.

3. Records and Documents

a. [§203.107] In General

Generally, the public must be provided with reasonable access to trial court records unless there are confidentiality laws or rules protecting their privacy. Many courts also have electronic

records, which are governed specifically by Cal Rules of Ct 2.500 et seq, under which such records are to be made publicly available under specified circumstances.

Specific confidentiality and related statutory provisions exist for the following types of documents or information.

b. [§203.108] Department of Child Support Services Records

Family Code §17212(b)(1) and its identical counterpart, Welf & I C §11478.1(b)(1), provide the exclusive authorization for disclosure of information. Except as otherwise provided by these sections, "all files, applications, papers, documents, and records established or maintained by any public entity" under the support enforcement program are "confidential" and "not … open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program."

No information may be released or the whereabouts of a party or child disclosed when (Fam C §17212(b)(2); Welf & I C §11478.1(b)(2)):

- A protective order exists,
- A good cause claim under Welf & I C §11477.04 is pending or approved, or
- The public agency establishing or enforcing support has reason to believe that release of the information may result in physical or emotional harm to the party or child.

In all these situations, the agency must omit such information from pleadings and documents submitted to the court and cite those sections in its place. Such information can only be released by court order on noticed motion under Fam C §17212(c)(6) or Welf & I C §11478.1(c)(6) as noted below. Fam C §17212(b)(2); Welf & I C §11478.1(b)(2).

☛ JUDICIAL TIP: Despite statutory authority for the agency to omit the information on pleadings or documents filed with the court, the court has a right and responsibility to make inquiry, and examine as needed, the actual address or locate information for purposes of determining due process issues and whether service was proper in any given case.

Disclosure of agency files, records, or information is authorized as follows (Fam C §17212(c)(1)–(9); Welf & I C §11478.1(c)(1)–(8)):

- For agency use in administering its duties.
- If requested by a person or designee who wrote, prepared, or furnished the document to the agency.
- The payment history of an obligor under a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.
- Income and expense information of either parent to the other for purposes of establishing or modifying a support order.
- Public records subject to disclosure under the Public Records Act under Govt C §§6250 et seq.

- On noticed motion, when the court finds that release or disclosure is required by due process, and after the court has inquired if there is a reason to believe release of the information may result in physical or emotional harm.
- Information relating to an imminent threat or crime against a child or the location of a concealed or abducted child (or of a person concealing or abducting) may be released to an appropriate law enforcement agency or judicial proceeding on the same issue, to extent not prohibited by federal law.
- Release of social security number, most recent address, and place of employment of the absent parent may be released to an "authorized person" as defined in 42 USC §653(c), on request and only if the information has been provided to the California Parent Locator Service (CPLS) by the Federal Parent Locator Service (FPLS). See also CSS Letter 09-04 (request and authorization for release of specified information to authorized person or agency).

The circumstances under which a person, agency, or court can access information in the FPLS is outlined in chart form in Appendix C.

☛ JUDICIAL TIP: Courts often face the situation of a parent seeking "locate information" for service of a related OSC or motion involving custody or visitation when the child support agency is enforcing support and knows where the other parent is located but is not willing to release it. When appropriate, the court may consider authorizing the release of information to a single specified source—*e.g.*, the child abduction unit or sheriff—for purposes of service only, with an express provision that the information is not to be disclosed to the other parent, nor put on any proof of service submitted for filing. The filed proof of service can state it was served "at the address on file with the child support agency under Fam C §17212(b)(3) and/or (c)(6) [or Welf & I C §11478.1(b)(3) and/or (c)(6)]" with the address available for the court to view in camera as needed. Note that the LCSA is required to release to a party who was served the address where service was effected. Welf & I C §11478.1(b)(3). However, this is very different than a party seeking to locate information of another parent.

c. [§203.109] Child Support Registry Forms

The court must require the parties to file a completed child support case registry form (form FL-191) each time an initial order for child or family support, or a modification of such order, is made (except for cases the local child support agency is pursuing under Fam C §17400). The court may keep a copy of the form, or the information on the form, in an electronic format provided all information is kept confidential. Cal Rules of Ct 5.330(c), (g).

d. [§203.110] Tax Returns

There is limited disclosure of contents and copies of tax returns. Fam C §3665(b); see §203.104. Tax return information provided by the Franchise Tax Board to DCSS must be done in accordance with privacy and confidentiality laws of the state and the United States. Fam C §17452(c). Any tax returns retained by the court are confidential and must be sealed. Fam C §3552(c).

e. [§203.111] UIFSA Protections

Under the Uniform Interstate Family Support Act (UIFSA) (see §§203.33 et seq), if a party alleges in an affidavit or pleading under penalty of perjury that the health, safety, or liberty of a party or child would be jeopardized by disclosing identifying information, that information must be sealed and may not be disclosed to the other party or the public, unless a hearing is held where the court considers the health, safety, or liberty of the party or child and orders disclosure of information determined to be in the interest of justice. Fam C §4926. Procedures for nondisclosure orders and duties of the support enforcement agency are contained in Fam C §§4977 and 4978.

f. [§203.112] Child Abduction Records

Child abduction records are confidential. Fam C §17514.

g. [§203.113] Child Psychological Evaluations, Custody Reports and Recommendations

Psychological evaluations of a child regarding custody or visitation, as well as reports prepared by court-appointed evaluators and recommendations submitted to the court by mediators, must be maintained in the confidential portion of the file and may not be disclosed except to certain individuals. Fam C §3025.5.

h. [§203.114] Domestic Violence Criminal Search Information

Relevant information obtained by the court during the required criminal history search for restraining order hearings must be kept in a confidential case file. Fam C §6306(d). At the request of either party, the court must release the information it relied on to the party or counsel. Fam C §6306(c)(2). The court must disclose the information to court-appointed mediators or custody evaluators, who are made subject to the California Law Enforcement Telecommunications System (CLETS) policies, practices, and procedures under Govt C §15160. Fam C §6306(d).

i. [§203.115] Protective Orders and Other Domestic Violence Orders

In connection with a protective order, the court may issue an ex parte order prohibiting disclosure of address or other identifying information of a party, child, parent, guardian, or other caretaker. Fam C §6322.5. The court must also order that any restrained party be prohibited from taking any action to obtain the address or location of any protected person unless there is good cause not to make such an order. Fam C §6322.7(a).

4. [§203.116] Social Security Numbers

In marital proceedings, either party may redact any social security number from a document filed with the court. Fam C §2024.5(a). Judicial Council forms now contain a notice of that right. As a general rule, parties must not include, or must redact when inclusion is necessary, social security numbers and financial account numbers from the pleadings or other papers filed in a court's public file, unless otherwise provided by the law or ordered by the court. If financial account numbers are required, only the last four digits may be used. On court order, a

confidential reference list may be filed with the redacted documents. Cal Rules of Ct 1.20(b)(2), (4); see form MC-120.

Civil Code §1798.85 provides protection of an individual's social security number, both to its use and disclosure. The provisions of the statute cannot be waived. CC §1798.86. An abstract of judgment that includes an order requiring payment of child support must also contain only the last four digits of the payor's social security number. Fam C §4506(a) (for documents created on or after January 1, 2010).

5. [§203.117] State Agencies

All state, county, and local agencies must cooperate with the local child support agency in exchanging and providing locate and other information for enforcement purposes to the support agency or to the California Parent Locator Service (CPLS), notwithstanding any other confidentiality laws. Fam C §17505. CPLS is authorized to collect and disseminate a variety of locate, financial, and other identifying information, and there are provisions to protect the information providers, as well as the information itself. Fam C §17506.

Generally, the collection, maintenance, and dissemination of personal data by agencies is governed by the Information Practices Act of 1977. CC §§1798 et seq. When such records are used to make any determination about the individual, the agency must maintain them accurately and with completeness to the extent possible. When a record is transferred out of state government (*e.g.*, credit reporting), the agency must correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely. CC §1798.18. Failure to maintain records accurately or other violations of the Information Practices Act can lead to a civil action against the agency and the imposition of attorney fees and costs, as well as injunctive relief. See CC §§1798.45 et seq.

D. Attorney Fees, Costs, and Sanctions

1. [§203.118] Scope

This section provides a very general background of attorney fees, costs, and sanctions. There are a number of specific Family Code provisions relating to attorney fees, costs, and sanctions in specific types of situations or circumstances that are not discussed here. For a complete list, see the table of attorney fee and sanction provisions in Appendix D.

This section does not cover statutory bases for an award that may arise in the court under other codes, such as CCP §§128.5 and 128.7 (bad-faith actions that are frivolous or cause unnecessary delay) or CCP §177.5 (sanction for violating court order, up to $1500 payable to the county). These sections are listed in Appendix D. Attorneys who represent themselves cannot be awarded attorney fees as sanctions under CCP §128.7. *Musaelian v Adams* (2009) 45 C4th 512, 517, 520, 87 CR3d 475.

For a discussion of attorney fees and sanctions awarded on appeal, see *Marriage of Gong & Kwong* (2008) 163 CA4th 510, 77 CR3d 540. For a discussion of sanctions against an attorney, see *In re Henry James Koehler* (2010) 181 CA4th 1153, 104 CR3d 877.

2. [§203.119] General Types of Awards

In family law proceedings generally, an award of attorney fees and costs can be made against a party to the case on either the basis of *need* under Fam C §§2030 et seq or as a *sanction* under Fam C §271. However, needs-based fees are not allowed against governmental agencies. Fam C §§273, 2030(a)(1). Indeed, Fam C §273 makes it clear that when governmental agencies are involved in family law matters or child support proceedings, courts may only award attorney fees against governmental agencies if sanctions are appropriate under CCP §128.5 or Fam C §271. See *Orange County DCSS v Superior Court (Ricketson)* (2005) 129 CA4th 798, 804, 28 CR3d 877 (sanctions recoverable under CCP §128.5).

☛ JUDICIAL TIP: Because most LCSA cases involve a governmental agency (DCSS), in which the court's authority to award fees against the agency is limited, the court should require any party or attorney seeking an award to state the specific statutory basis of the request for fees before making any ruling. When the request for fees is made in connection with a corollary motion (such as in a motion to modify spousal support in conjunction with a child support matter in the IV-D court), the court's authority is not necessarily so limited as between the other parties.

3. [§203.120] Needs-Based: Disparity in Access and Ability To Pay Findings

When there is a needs-based fee request (whether under Fam C §2030 (marital case generally), §3557 (order enforcing support order), §3652 (order modifying, terminating, or setting aside support order), or other fee statutes), the court must first make a finding regarding an ability to pay. Fam C §270. The "need" aspect of an analysis is a *relative* need. *Marriage of Sorge* (2011) 202 CA4th 626, 134 CR3d 751 (both parents had substantial assets; award of attorney's fees upheld). If a party frustrates the court's ability to make the necessary finding regarding ability to pay, the court is not precluded from awarding attorney's fees. *Marriage of Hofer* (2012) 208 CA4th 454, 459, 145 CR3d 697 (husband "disentitled" from filing an appeal to trial court's order requiring him to pay $200,000 in attorney's fees, due to multiple failures to comply with discovery and disclose information regarding his income and assets).

In ruling on a request for attorney's fees under Fam C §2030(a) or §3557(a), the court must make findings on whether an award of attorney fees and costs is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court must make an order awarding fees and costs. Fam C §§2030(a)(2), 3557(a). When fees are sought to essentially equalize the parties' litigation power (Fam C §2032), whether to help pay for an existing attorney or to help provide a party with sufficient resources to adequately present the case and obtain access to legal representation, the court is required to consider, to the extent relevant, the circumstances of the respective parties described in Fam C §4320. Fam C §2032(b). See, *e.g.*, *Alan S., Jr. v Superior Court* (Mary T.) (2009) 172 CA4th 238, 254–255, 91 CR3d 241 (lower court failed to consider all relevant factors in Fam C §4320 in determining fee award); *Marriage of Tharp* (2010) 188 CA4th 1295, 1313–1314, 116 CR3d 375 (trial court abused its discretion and failed to do an appropriate needs-based analysis). These are the same 14 factors the court must consider in ordering permanent spousal support. These factors are discussed more fully in California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER).

4. [§203.121] Sanctions and Civil Contempts

When there is a request for sanctions, an award can be based on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigations, and when possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. There is no requirement to demonstrate any harm or need for the award. Fam C §271(a); see *Marriage of Feldman* (2007) 153 CA4th 1470, 1479–1480, 64 CR3d 29 (sanctions awarded during course of litigation affirmed); *Marriage of Tharp* (2010) 188 CA4th 1295, 1317–1318, 116 CR3d 375 (trial court abused its discretion in denying attorney fees as sanctions; record replete with instances of misuse of discovery process); *Marriage of Falcone and Fyke* (2012) 203 CA4th 964, 138 CR3d 44 (trial court affirmed; case involved multiple sanctions orders and appeals); *Parker v Harbert* (2012) 212 CA4th 1172, 1178–1180, 151 CR3rd 642 (upheld award of $92,000 in attorney fees as sanctions for bringing unwarranted contempt allegations).

In making a determination under this statute, the court must find that there has been some evidence that the party's conduct, or that of the party's counsel, frustrated the promotion of settlement and the reduction of litigation costs, such as engaging in obstreperous conduct. See *Marriage of Daniels* (1993) 19 CA4th 1102, 1106–1107, 23 CR2d 865; *Marriage of Davenport* (2011) 194 CA4th 1507, 125 CR3d 292 (affirmed $100,000 sanctions award based on clear and convincing evidence of uncivil, rude, aggressive, and unprofessional conduct). The court must also "take into consideration all evidence concerning the parties' incomes, assets, and liabilities," and in no event can the court make an award "that imposes an unreasonable financial burden on the party against whom the sanction is imposed." Fam C §271(a); *Marriage of Fong* (2011) 193 CA4th 278, 123 CR3d 260 ($100,000 award not excessive based on disclosed assets). The amount of the award is not limited to the costs resulting from any bad conduct. *Marriage of Quay* (1993) 18 CA4th 961, 970, 22 CR2d 537.

In civil contempt proceedings under CCP §1209.5, a party who has been found guilty of contempt may also be ordered to pay to the party initiating the contempt proceeding reasonable attorney fees and costs incurred. CCP 1218(a). See further discussion of contempt proceedings in California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §§204.8 et seq (Cal CJER).

5. [§203.122] Jurisdiction and Procedural Requirements.

The court must have personal jurisdiction over the party against whom any order is made. The court's jurisdiction to award fees and costs in family law proceedings is set forth in Fam C §2010(f). Under Fam C §2030, needs-based fees apply in marriage cases and in any proceeding subsequent to entry of a related judgment. Fam C §2030(a). There is no such limitation under the sanctions provision of Fam C §271.

Generally, the court has broad discretion in awarding fees, costs, or sanctions, so long as the request was properly made and the court makes the requisite findings and determinations specific to the applicable statutes. See *Marriage of Sorge* (2011) 202 CA4th 626, 134 CR3d 751 (lack of specificity as to amount of sanctions awarded under different statutory bases required reversal; attorney fees award upheld).

Due process considerations require that there be a noticed motion or order to show cause when attorney fees and costs are requested, except where temporary orders are being sought.

Fam C §2031(a)(1). When a temporary order for fees is requested, it can be done orally without notice either at the hearing of the cause on the merits or any time before the entry of judgment against a party whose default has already been entered under CCP §585 or §586. Fam C §2031(b).

An award of fees and costs as a sanction can only be imposed after the party against whom the sanction is sought has been given notice and opportunity for that party to be heard. Fam C §271(b); *Marriage of Duris & Urbany* (2011) 193 CA4th 510, 513–515, 123 CR3d 150 (trial court erred in awarding attorney fees as sanctions at support hearing without notice and based on insufficient evidence).

Whether by noticed motion, orally, or by the court sua sponte, the specific statutory basis for the request must be set forth, along with a specific description of the underlying conduct, as well as the identity of the person or entity against whom the order is sought. The court does not have the authority to make an award under a statute that was not specified. *Levy v Bloom* (2001) 92 CA4th 625, 638, 112 CR2d 144. Before ordering sanctions or attorney fees, the court should take care to make all necessary or requisite findings. Regarding procedures for requesting attorney fees under Fam C §2030, see Cal Rules of Ct 5.427; Judicial Council forms FL-300 (request for order), FL-319 (request for fees and costs attachment), FL-158 (supporting declaration).

When sanctions have been requested against the DCSS, the hearing should be held in front of the same commissioner. See *Orange County DCSS v Superior Court* (Ricketson) (2005) 129 CA4th 798, 805–807, 28 CR3d 877.

☛ JUDICIAL TIP: When faced with a request for attorney fees and costs or for sanctions, check the following:

- Jurisdiction over the party against whom the award is sought.
- Properly noticed request (except where temporary order sought).
- Specific statutory grounds identified in the request.
- Evidence to support the underlying request (*e.g.*, predicate conduct for sanctions), to support the amount requested when required (*e.g.*, needs-based), and to support any factors the court may have to consider (*e.g.*, income information of the parties).
- Consider all factors that may be required by the statute under which the award is requested, and make findings where required.
- Consider any limitations in the court's authority, such as the limitations on awards against governmental agencies (see §203.119).

E. Regulations and Policies

1. [§203.123] In General

In addition to the operative federal and state laws and rules of court (Cal Rules of Ct 5.2 et seq, 5.300 et seq) governing LCSA proceedings, there are other rules and regulations that the court must at times consider. The director of the state Department of Child Support Services is charged with the responsibility to adopt uniform policies, forms, and procedures to be employed statewide by all local child support agencies. Fam C §§17306, 17310, 17312. The director also

has the authority to adopt regulations, orders, or standards to implement, interpret, or make specific the law enforced by the department. Fam C §17312(a).

2. [§203.124] Applicable Rules and Regulations

The state DCSS has both general rulemaking authority (Fam C §§17310, 17312), as well as limited emergency rulemaking authority to implement the provisions of the Family Code via child support letters or similar instructions from the director. Fam C §17306(e). The general rulemaking authority of the state DCSS must be done in accordance with the Administrative Procedure Act (APA) in Govt C §§11340 et seq. Fam C §§17306(e)(1), 17310(a), 17312. There is no such requirement for emergency rulemaking authority; rather, the director can issue and publish policy letters periodically as needed. DCSS's emergency rulemaking authority has now expired.

Under Fam C §17310(b), notwithstanding any other provision of law, "all regulations, including, but not limited to, regulations of the State Department of Social Services and the State Department of Health Services, relating to child support enforcement shall remain in effect and shall be fully enforceable by the department."

Thus, the court must consider, whenever appropriate, the following:

- California Code of Regulations (CCRs):
  - — Title 22, Division 13, Department of Child Support Services.
  - — Title 22, Division 2, Department of Social Services, Department of Health Services.
- Policy Letters issued by the state DCSS.

The policy letters, usually designated as CSS or DCSS Letters, can be found on the state DCSS website at www.childsup.ca.gov (under Resources/Policies tab). This website also provides a separate link to the CCRs.

3. [§203.125] Other Policies and Information

The state DCSS also releases and issues a number of other documents on its website for informational, clarification, and training purposes. These can be helpful to learn about technical or other problems that may relate to something going on in the system and may have useful contact information for referrals to facilitators or otherwise. They can take a number of forms, such as:

- CSSIN Letters (informational letters).
- LCSA Letters (letters generally relating to local agency issues).
- E-blast notices (quick "alerts" to users in the system, often about other agencies' actions that may have an impact on individuals in the child support system, *e.g.*, social security changes to automated garnishments).
- Other letters and notices.

F. Telephone Appearances

1. [§203.126] Permitted in IV-D Proceedings

In contrast to the general rule regarding telephone appearances at Cal Rules of Ct 3.670, there is a specific rule—Cal Rules of Ct 5.324—that applies to all Title IV-D hearings and conferences and requires the use of form FL-679 to request a telephone appearance. Courts that do not have the technical equipment for appearances are exempt from this rule. Cal Rules of Ct 5.324(k).

"Telephone appearance" includes any appearance by telephone, audiovisual, videoconferencing, digital, or other electronic means. Cal Rules of Ct 5.324(b). The rule permits telephone appearances on request, and in the court's discretion, in any hearing or conference related to an action for child support when the local child support agency is providing services under IV-D, with the following exceptions (Cal Rules of Ct 5.324(d)):

- Contested trials;
- Contempt hearings;
- Orders of examination;
- Any matters when the party or witness has been subpoenaed to appear in person; and
- Any hearing or conference when the court, in its discretion and on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

Interstate cases. Courts cannot require a personal appearance in interstate cases brought under UIFSA. Fam C §4930(a). There are special rules of evidence and procedure in such cases set forth in Fam C §4930, including permitting a party or witness to testify by telephone. Fam C §4930(f); see §203.45.

2. [§203.127] Who Can Make Request

The request to appear by telephone can be made by a party, an attorney, a witness, a parent who has not been joined to the action, or a representative of a local child support agency or government agency. An LCSA appearing in a Title IV-D support action may request a telephone appearance on behalf of a party, parent, or witness. The court may also allow a telephone appearance on its own motion. Cal Rules of Ct 5.324(e)(1).

3. [§203.128] Additional Court Authority

The court has express authority to shorten the time limits to file, submit, serve, respond, or comply with any of the procedures set forth below. Cal Rules of Ct 5.324(g). Further, if at any time during the hearing, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance. Cal Rules of Ct 5.324(i). The court may use a private vendor for teleconferencing that charges a reasonable fee (Cal Rules of Ct 5.324(j), 3.670(i)–(o)), but the court must ensure that all participants can be heard and that the identity of the participant is verified. Cal Rules of Ct 5.324(j), 3.670(m). For telephone appearance fees and fee waivers generally, see Cal Rules of Ct 3.670(j) and (k). Your court may not charge a fee for telephone appearance services in a Title IV-D child or family support

proceeding brought by or otherwise involving a LCSA. Cal Rules of Ct 5.324(j), 3.670(*l*). The proceedings must be reported to the same extent and in the same manner as if the participants had appeared in person. Cal Rules of Ct 5.324(j), 3.670(n).

☛ JUDICIAL TIP: Use of telephone appearances can be an effective tool in managing certain types of cases, especially on high-volume calendars, *e.g.*, review hearings and certain compliance review hearings. Many courts use an outside call provider, designated by local rule, who verify, manage, and "cue" the calls, while other courts have their own system, including initiating the call for verification purposes and then requiring the person to call right back to pay for the call. Some providers also have a policy of waiving costs in approved fee-waiver cases. This rule does not prevent courts from tailoring the order, such as allowing telephone appearances until the privilege is revoked so as to minimize the need for multiple motions, and from making conditional orders, such as allowing the appearances on certain reasonable conditions.

4. [§203.129] Required Procedure

Individuals or any agency representatives who want to appear by telephone must file a request (form FL-679) with the court at least 12 court days before the hearing and serve it on the other parties, the local child support agency, and any attorneys in the case. An LCSA filing a request for a party, parent, or witness also must file the request at least 12 court days before the hearing. Service must be by personal delivery, fax, express mail, or other means reasonably calculated to ensure delivery by the close of the next court day. Cal Rules of Ct 5.324(e)(2)–(3)); see form FL-679-INFO.

Any opposition to the request must be made by declaration under penalty of perjury and must be filed with the court and served at least 8 court days before the court hearing. Service on the person requesting the appearance and all parties, including the other parent or a parent who has not been joined, the local child support agency, and any attorneys, must be done using one of the same methods listed above. Cal Rules of Ct 5.324(f).

At least 5 court days before the hearing, the court must notify the requestor, the parties, and any attorneys of its decision. The court can direct the clerk, the court-approved vendor, the local child support agency, a party, or an attorney to provide the notification. The notice can be given in a variety of ways, including in person or by telephone, fax, express mail, e-mail, or other means reasonably calculated to ensure notification by the 5 court days required. Cal Rules of Ct 5.324(h).

Each court must publish a notice providing the parties with the particular information necessary to appear by telephone in covered proceedings. Cal Rules of Ct 5.324(j), 3.670(m).

G. [§203.130] Civil Bench Warrants or Body Attachments

The term "bench warrant" is not defined in the codes, but in civil actions it is generally understood to mean a process issued by the court itself (or from the "bench") for the attachment or arrest of a person to compel attendance before the court.

☛ JUDICIAL TIP: Different counties have adopted different nomenclature, and will sometimes use the term civil bench warrant, civil arrest warrant, warrant of attachment, or civil body attachment. All these terms essentially mean the same thing, but may have

different jurisdictional and issuing requirements depending on the situation and type of proceeding. No specific Judicial Council forms for bench warrants exist.

The Government Code grants commissioners general judicial authority: "Within the jurisdiction of the court and under the direction of judges, commissioners are authorized to exercise all the powers and perform all of the duties prescribed by law." Govt C §72190. If directed to perform such duties by the presiding judge, a commissioner "may conduct arraignment proceedings on a complaint…, including the issuance and signing of bench warrants" (Govt C §72190.1), and "may issue and sign a bench warrant for the arrest of a respondent who fails to appear in court when required to appear by law or who fails to perform any act required by court order." Govt C §72190.2.

The following specific bench warrants or attachments are also authorized:

- *Contempt.* When an individual is brought before a court on contempt proceedings *(e.g.*, an order to show cause re contempt) and fails to appear, the court may issue a warrant of attachment (or bench warrant) and must set bail. CCP §§1209, 1209.5, 1212, 1213; see also California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §§204.13–204.16 (Cal CJER).
- *Absent Witness (subpoena or court order).* As an alternative to issuing a warrant for contempt under CCP §1209(5) (disobedience of any lawful judgment, order, or process of the court) or §1209(9) (any other unlawful interference with court process or proceedings), the court may issue a warrant for the arrest of a witness who fails to appear pursuant to a subpoena or court order, on proof of service of the subpoena or order. CCP §1993(a)(1); see also Silvagni v Superior Court (1958) 157 CA2d 287, 291–292, 321 P2d 15 (no blanket inherent power to order physical presence of a party at any stage in civil proceedings other than as a witness).

☛ JUDICIAL TIP: Some LCSAs regularly serve an actual subpoena along with, for example, an OSC re: Seek Work, to provide unquestionable authority for the court to issue a bench warrant.

The court must issue a "Failure to Appear" notice *before* issuing the actual bench warrant for a failure to appear pursuant to a subpoena. This notice may be omitted, however, on a showing that the appearance of the person subject to the subpoena is material to the case and that urgency dictates an immediate appearance. CCP §1993(a)(2). The warrant must contain specific information, including the title and case number, information that identifies the person to be arrested, reasons for issuance, information regarding bail, and whether the person can be released on a promise to appear. CCP§1993(b). There is no direct guidance on how much notice a person must be given.

☛ JUDICIAL TIP: The "Failure to Appear" notice warns individuals that if they do not appear they will be subject to arrest, and provides an element of due process. CCP §1993(a)(2) refers to a failure to appear pursuant to a subpoena (a type of court order); it is unclear whether the Legislature intended to exclude failures to appear otherwise pursuant to a court order. Given the due process implications, it is prudent to provide this notice for all failures to appear under CCP §1993, to give obligors (who, *e.g.*, moved, were briefly incarcerated, or forgot a hearing date) an opportunity to cure their

failure, and to allow the court to manage its calendar. For example, on a failure to appear on a "work search" review hearing, many courts will order a bench warrant to be issued, but stay its service to a date certain on a future calendar, after which the stay is lifted if the person fails to appear. Courts can direct DCSS to provide the notice by, *e.g.*, serving the order after the hearing at which the person first failed to appear (*i.e.*, the order warns about possible arrest if no one shows up at the continued hearing date).

- *Uniform Interstate Family Support Act*. When a UIFSA petition has been filed, and "to the extent otherwise authorized by law" (Fam C §4919(b), first of two versions applies until amendment by Stats 2002 ch 209 (AB 2934) §47 becomes operative), a responding tribunal may "[i]ssue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the . . . warrant in any local and state computer systems for criminal warrants." Fam C §4919(b)(9).
- *Debtor/Creditor Examinations*. If an order to appear for examination was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear, the court may either have the person brought in pursuant to a warrant and punish the person for contempt, or issue a warrant for the arrest of the person who failed to appear, pursuant to CCP §1993. See CCP §708.170(a)(1)(A)–(B); see also California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* §204.107 (Cal CJER).

The need to *recall* a previously ordered bench warrant or body attachment, as opposed to simply vacating a prior order to prepare it, depends on whether the previously ordered warrant or body attachment was in fact *issued* or actually prepared.

If the court ordered the warrant but it had not yet been issued, *i.e.*, separately prepared with all identifying information and signed by the judicial officer, an order from the court vacating its prior order will stop the process. There is nothing to recall if the warrant was in fact never issued.

However, if the court ordered the warrant and the actual warrant was issued, the court must issue a new order that states that the warrant is recalled as of that date, irrespective of whether it had been received or served by the sheriff. Case law does not specify the exact procedure for notifying the sheriff of a recall, but it is clear that the court clerk must notify the sheriff when the court orders a recall. Cf. People v Willis (2002) 28 C4th 22, 34, 44–46, 120 CR2d 105.

☛ JUDICIAL TIP: When recalling a bench warrant, state clearly on the record both the date that the order for the warrant was made and the date that the bench warrant was actually issued. Many case management systems, or register of actions, document when the warrant itself was issued, which is itself a court order. Also make sure the clerk has an adequate system in place to formally notify the sheriff of all recalls so that an individual is not inadvertently arrested.

H. Limited Scope Representation

1. [§203.131] Defined

Limited scope representation refers to when an attorney and a person seeking legal services agree that the scope of the legal services to be performed will be limited to specific tasks (also known as "unbundling" of services), in contrast to the traditional notion of an "attorney of record" for all purposes.

The Judicial Council adopted forms and rules relating to attorneys who assist clients under specified circumstances. See Cal Rules of Ct 5.425. These rules allow pro per litigants, especially those who cannot afford full representation, to obtain the assistance of an attorney for parts of their cases when needed. They also set forth the procedures for stepping "in" and "out" of the case on a limited scope basis.

2. [§203.132] Assistance With Document Preparation

In contrast to the situation of making an appearance, limited or otherwise, on behalf of a client, Cal Rules of Ct 5.425(f) addresses the issue of an attorney assisting behind-the-scenes in preparing legal documents only, sometimes referred to as "ghostwriting." The rule provides guidance on when the attorney must disclose the fact of involvement in the preparing the documents. An attorney who contracts with a client to draft or assist in drafting legal documents, but not make an appearance, is not required to disclose his or involvement within the document's text. Cal Rules of Ct 5.425(f)(1). But if a litigant seeks an order for attorney fees incurred as a result of such document preparation, disclosure of pertinent information is required, including the attorney's name, the time involved, the tasks performed, and billing information. Cal Rules of Ct 5.425(f)(2).

3. Limited Scope Representation Procedures

a. [§203.133] Stepping In

Attorneys who have an agreement with their client in which they are to be responsible for only a part of the case, and who do not wish to be held responsible as attorney of record for the entire case, must file the mandatory notice of limited scope representation (form FL-950) with the court. This is known as "stepping in."

The form allows an attorney to check certain boxes and serve as "attorney of record" only for the issues specified, whether to establish, enforce, modify, or otherwise assist on issues regarding:

- Child support,
- Spousal support,
- Restraining order,
- Child custody and visitation,
- Division of property,
- Pension issues,
- Contempt, or
- "Other" issues that must be described in detail.

The form also allows the attorney to specify the duration of the representation, including:

- A single hearing date and any continuation of that hearing,
- Until submission of the order after hearing,
- Until resolution of the specified issues, or

- Some other specified duration.

Once the notice of limited scope representation is filed, it is important to note that the attorney becomes the "attorney of record" for service of documents, but only to those specified issues. For all other matters the party must be served directly.

☛ JUDICIAL TIP: Check with court operations to determine whether its systems have the ability to recognize the difference between a limited scope representation attorney versus an attorney of record for all purposes (*e.g.*, in the register of actions or somewhere in the court's computer system). If so, you can avoid manually searching the court's file to know when an attorney has stepped in or out or is attorney of record for all purposes. The judicial officer should be able to quickly tell the difference to rule on service issues or objections and to determine whether it is appropriate to go forward on the merits of the pending motion. The court clerks should know who to contact for setting hearings and sending orders or notices.

b. [§203.134] Stepping Out

There are three ways to withdraw (or step out) from limited scope representation once the specified representation has been completed. First, the attorney can file the standard civil substitution of attorney, form MC-050. CCP §284(1). Second, the attorney can file a formal noticed motion to withdraw under Cal Rules of Ct 3.1362.

There is a third option designed to meet the requirements of CCP §284(2) and notwithstanding the noticed motion requirements of Cal Rules of Ct 3.1362: The attorney can file form FL-955, an application to be relieved as counsel, on completion of limited-scope representation. Cal Rules of Ct 5.425(e)(1). California Rules of Ct 5.425(e)(4) sets forth a simplified procedure that essentially places the burden on the litigant to file an objection if the litigant does not want the attorney to be relieved. See form FL-956. Depending on whether an objection is filed, the court then rules on the application. See form FL-958.

I. [§203.135] Consolidated Support Orders

Generally, no cases may be consolidated with a family law case unless the case has issues of law and fact that are common to the pending family law action. Fam C §2010; Cal Rules of Ct 5.17. The court, however, may consolidate or combine support or reimbursement arrearages owed by one obligor to one obligee in two or more court files into a single court file. The LCSA may only bring the motion if it is seeking to enforce the orders being consolidated, and the motion must be brought only in the court file the LCSA is seeking to have designated as the primary file. Fam C §17408(a); see Cal Rules of Ct 5.365(a).

Consolidation is only proper if the children subject to the support orders have the same mother and father. Fam C §17408(b).

Orders may be consolidated regardless of the nature of the underlying action, whether initiated under the Welfare and Institutions Code, the Family Law Code, or another law. Fam C §17408(b). Absent a showing of good cause, the support orders are consolidated according to a list of priorities, for example, whether an order arises from an action for dissolution, legal separation, or nullity, an action under the Uniform Parentage Act, or an action for custody and support commenced by form FL-260. See Cal Rules of Ct 5.365(a)(1)(A)–(D).

At the time that the court orders cases or support orders to be consolidated, the court must designate which court file is the primary file and which court files are subordinate. Fam C §17408(c); Cal Rules of Ct 5.365(a)(1). No further support orders may be issued in the subordinate files, and all future orders are entered in the primary file. Fam C §17408(d).

The court must also order the LCSA to file a notice in the subordinate files stating that the support orders in those actions were consolidated into the primary file, the date of the consolidation, the name of the court, and the primary file number. Fam C §17408(c); Cal Rules of Ct 5.365(a)(2); see form FL-920.

A single wage assignment based on the consolidated orders may be issued when possible. Fam C §17408(e).

☛ JUDICIAL TIP: Although the decision to consolidate cases is discretionary, as a practical matter, it allows all prior orders of the court to be available for the court's consideration in any future proceedings and generally makes the file easier to work with. This is particularly true when the parties disagree about the issues of time-share, assets available for support, or hardships.

J. Crossover Issues

1. [§203.136] In General

Although Title IV-D proceedings deal primarily with determining parentage and establishing, modifying, and enforcing child support and related spousal support matters, there are many times when an individual or family appearing in the court may have other active cases in different areas of the law going on in other courts or jurisdictions that relate to the same child, and that may relate to the issues pending in a IV-D child support case. For example, orders made in juvenile court, including genetic testing or an order terminating parental rights, can have an impact on the issue of parentage or even whether a child support order can be imposed at all in the IV-D court. Similarly, child support orders made in a IV-D court can have a profound impact on the ability of a parent to comply with orders previously made as part of a reunification plan in the related dependency proceeding, causing that parent to fail in the reunification process.

This section is intended to raise the court's awareness of the existence of crossover issues as they relate to the issues in a IV-D court and to assist the court in understanding when it is appropriate and why it is important to consider possible crossover issues when ruling on parentage, support, or enforcement matters.

2. Juvenile Dependency and Delinquency Cases

a. [§203.137] General Crossover Issues

When a child has either voluntarily been put in a placement or, as is more often the situation, has been removed from the home by Child Protective Services (CPS), or the child has entered the delinquency system, the state DCSS is responsible for seeking reimbursement from both parents in those cases when a referral has been made from the Title IV-A agency to the IV-D agency (DCSS). Thus, for example, for every dependency case, there can potentially be two IV-D cases opened and pursued in the IV-D court: one against each parent. The state Department of Social Services and DCSS are required to promulgate regulations regarding the timing and

circumstances under which cases are to be referred to the LCSA for child support services. Fam. C §17552; Welf & I C §§903 et seq; 22 CCR §§112150, 112154, 112155 (processing CalWORKS, foster care, and non-public assistance referrals).

There are a number of junctures in an active juvenile case when decisions made by the juvenile court can possibly have an impact on a matter that is pending in a related child support hearing. Very generally, cases proceeding on the juvenile side go through the following stages of hearings:

- Detention (within 48 hours of case opening);
- Jurisdiction (15 days after detention hearing);
- Disposition (10 days after jurisdiction hearing);
- Review hearings set at 6 months, 12 months (from disposition, but no more than 18 months from detention), and 18 months;
- Implementation (120 days from the order terminating reunification services); and
- Postpermanency planning hearing (every 6 months until the case is dismissed).

Delinquency proceedings may differ somewhat from the above. Also, counties may vary with regard to what entity is responsible for recouping certain costs in delinquency versus dependency proceedings (*e.g.*, a county's probation department may be responsible for certain costs incurred in delinquency proceedings, whereas the state DCSS may file actions in both types of proceedings). This section only deals with those actions brought by the state DCSS through the local child support agencies. For a more detailed understanding of dependency proceedings, see California Judges Benchguides 100–104 (Cal CJER); for delinquency proceedings, see California Judges Benchguides 116–119 (Cal CJER).

At these various hearing stages, the juvenile court may make findings and orders in the areas outlined below, each of which can have an impact or may be something that needs to be considered during a child support proceeding. Therefore it is important to keep in mind that on the "child support side" the court may want to make certain inquiries when the case has been identified as having a related active juvenile court case (often referred to as a "foster care" case, whether involving federal or nonfederal foster care monies).

Also note that LCSAs have the authority under Welf & I C §827(a)(1)(N) to inspect juvenile court case files for the purpose of establishing paternity and establishing and enforcing child support orders, allowing them to access information regarding juvenile court orders and findings.

☛ JUDICIAL TIP: If the court is unsure whether a child support case before it is a "foster care" case, a notation system (*e.g.*, special code on the pleadings) can be arranged with the local child support agency that allows identification of such cases without compromising any confidentiality requirements. This allows the court to consider making any of the following relevant inquiries:

- At what stage is the juvenile proceeding? This helps to determine if further inquiry is needed.
- Is there any new or different locate (whereabouts) information? If so, check for proper service.

- Have there been any parentage findings made? If so, analyze basis and timing.
- Is there a reunification plan? If so, are there any terms to consider when determining any issue regarding child support or enforcement?
- Have parental rights been terminated? If so, when?
- Is there an IEP (individualized education plan) for the child? If so, does it require the placement of the child in a facility?
- Has the child been returned? If so, when and to whom?

Why should a IV-D court consider making these inquiries? The importance and reasons for making such inquiries are briefly set forth below.

b. [§203.138] Parentage Determinations

At the initial hearing on the petition in a dependency or delinquency proceeding, the juvenile court is under a duty to make a "parentage inquiry." Welf & I C §316.2; Cal Rules of Ct 5.635(a)–(b), 5.668(b). California Rules of Ct 5.635 sets forth the following procedure:

- The juvenile court must ask the parent or the person alleging parentage, and others present, whether any parentage finding has been made, and if so, what court made it, or whether a voluntary declaration has been executed and filed under the Family Code. Cal Rules of Ct 5.635(d)(1).
- The juvenile court clerk must prepare and transmit a form of parentage inquiry (form JV-500) to the local child support agency inquiring whether parentage has been established by judgment or a voluntary declaration under the Family Code. Cal Rules of Ct 5.635(d)(2).
- The local child support agency must complete and return the form within 25 judicial days, with certified copies if parentage is already established. Cal Rules of Ct 5.635(d)(3).
- The juvenile court must take judicial notice of the prior determination of parentage. Cal Rules of Ct 5.635(d)(4).
- Where there is no prior determination of parentage, the juvenile court may order the child and any alleged parents to submit to genetic testing, or may determine parentage based on the testimony, declarations, or statements of the mother and alleged father. Cal Rules of Ct 5.635(e). If parentage is established, that determination must be transmitted to the local child support agency on form of parentage finding and judgment (form JV-501). Cal Rules of Ct 5.635(f).
- If the juvenile court obtains information, after the filing of a dependency or delinquency petition, that there are one or more alleged parents, then under certain circumstances the court clerk must send out copies of the petition, the next hearing notice, and a parentage inquiry (form JV-505) to each of them. If a person appears and requests a judgment of parentage, the juvenile court must determine whether that person is (1) the biological parent of the child and, if requested, (2) the presumed parent of the child. Cal Rules of Ct 5.635(g)–(h).

☛ JUDICIAL TIP: In any "foster care" case (dependency or delinquency), a basic inquiry regarding any parentage determinations by the juvenile court should be considered. Where genetic testing has resulted in an alleged parent in a juvenile proceeding being excluded, particularly before a judgment has been entered in the IV-D child support proceeding, this information needs to be communicated to the local child support agency in a timely fashion.

Many courts and county agencies do not have computer systems that are fully compatible or linked. If the two county agencies (IV-A and IV-D) are not regularly exchanging appropriate information, such as updating each other when test results come back, two different people may be adjudicated in different courts. The same potential problem is true with regard to exchanging information in the other categories listed below.

c. [§203.139] Return-to-Home Orders

When appropriate, the juvenile court can issue an order that returns the child to the home of one or both parents (if the family is intact); this can occur at different stages of the juvenile proceedings, depending on the progress of the case. Making an inquiry about the status of the juvenile case and whether the child has been returned home can assist the IV-D court in making the appropriate referrals or determinations in a child support case.

Clearly, when the child has been returned to a parent, any active current child support order as to that parent needs to be modified. Also, if the child is returned to an obligor, it is possible that parent may be eligible for a compromise of arrearages on accumulated arrearages. Fam C §17550; see California Judges Benchguide 204: *AB 1058 Child Support Proceedings: Enforcing Support* (Cal CJER). If, however, the two agencies (IV-A and IV-D) are not regularly communicating with each other after the initial referral, then it may take some time before the court will see the issue come up on the child support side, whether in a later modification proceeding, request for direct care and custody credits, or a judicial determination of arrears.

d. [§203.140] Parental Rights Termination Orders

The dependency court has the authority to terminate the parental rights of one or both parents. When a child is determined to be eligible for adoption, the court will terminate the parental rights of both parents, as well as all those who may have any claim of parentage. Generally, this is done at the implementation hearing (often referred to as a ".26 hearing"). Welf & I C §366.26.

It is important for the IV-D court to be informed or inquire about whether parental rights have been terminated because once parental rights are terminated, child support stops as a matter of law. *County of Ventura v Gonzales* (2001) 88 CA4th 1120, 1122, 106 CR2d 461. This includes inquiring about any tribal custom adoption order, which must be given full faith and credit. Welf & I C §366.26(i)(2).

Note, however, that it is possible for a parental rights termination order to be rescinded if a child is not adopted within three years, and adoption is no longer the permanent plan. Welf & I C §366.26(i)(3). Thus, the possibility exists that a child support obligation may once again arise.

e. [§203.141] Reunification Plans and Orders

For a period of time before the implementation stage, the juvenile court may order that services be provided to one or both parents in an effort to see if the parents can reunify with the children. If this occurs, a reunification plan is developed, and the juvenile court can make orders requiring the parents to complete a number of steps before the court will consider returning the child home. These include such things as entering substance abuse treatment programs, getting counseling, attending therapy, or obtaining housing that has room for the children.

In some situations, individuals under such orders in the juvenile court may be put in a difficult situation if they are then placed under separate orders in the IV-D court. For instance, they may not be able to save the deposit necessary to obtain housing if their wages are garnished under a guideline child support order, or they may not be able to comply with a standard work search because of other commitments ordered under the reunification plan. Unless the IV-D court is made aware of these factors, there can be separate orders out of two courts that are operating in a negative fashion, putting the obligor in a "Catch-22" situation that could lead to a failure to comply in one court or the other. Thus, when appropriate, an inquiry in this area may provide the IV-D court with enough information that may justify, for example, a departure from guideline child support under Fam C §4057(b)(5). See discussion of departures from the guideline formula in California Judges Benchguide 201: *Child and Spousal Support* (Cal CJER). The information obtained on an inquiry may justify a denial of a standard work search or a tailoring of an order that allows the obligor to complete the terms of the reunification plan.

☛ JUDICIAL TIP: In departing from the guideline, the court may want to consider some creative solutions that will allow the obligor to achieve the goal in the other court. For example, instead of simply making the necessary findings for a downward departure from the guideline when the obligor must save for housing under the reunification plan, you could consider imposing conditions, such as setting child support at zero if the obligor opens and maintains a bank account to save for the housing deposit at a certain rate per month and provides proof to the LCSA each month of the amount being saved.

f. [§203.142] Locate Information

The Title IV-A agency (social services) on the juvenile side and the Title IV-D agency (DCSS) on the child support side are not only mandated to deal with each other regarding referrals for aid reimbursement and parentage inquiries, but they are also responsible for cooperating and exchanging information, including locate information, *i.e.*, the whereabouts of the parents. Failure to do so can have consequences for an entire case.

For example, *County of Orange v Carl D.* (1999) 76 CA4th 429, 90 CR2d 440, involved a North Carolina family where the mother disappeared with their three girls in 1984. The father searched for them without success for 11 years; he then moved to Northern California in 1990, not knowing that the mother and girls had moved to Southern California four years earlier. Dependency proceedings began in Los Angeles in 1990, and the mother stated she did not know the father's whereabouts. In 1992, the girls were put in foster care when the mother was arrested, and the dependency case was transferred to Orange County. In 1993, the social services agency (SSA) gave a referral to the district attorney's office for aid reimbursement. The district attorney found the father through the California Parent Locator Service, yet the SSA repeatedly informed the juvenile court that the father's whereabouts were unknown, and further inquiry would be

futile. Once the father was served with the summons and complaint, he promptly contacted the SSA and successfully reunified with the girls in 1995. The trial court, relying on *Marriage of Comer* (1996) 14 C4th 504, 59 CR2d 155 (cannot use concealment by other parent as excuse not to reimburse county), ordered the father to pay nearly $16,000 in reimbursement. The appellate court reversed, distinguishing *Comer* because the county repeatedly informed the juvenile court that it was unable to locate the father. Because the information was available through the district attorney (now LCSA) at the time, the county failed in its constitutional responsibility to use due diligence to locate the father and inform him of the dependency case, which deprived him of his due-process right to participate in those proceedings and, in turn, caused the girls to be kept in the foster care system with aid expended. This failure prejudiced both the father and the children, and the county was therefore estopped from collecting any reimbursement for that time frame. *County of Orange v Carl D., supra*, 76 CA4th at 437–440.

☛ JUDICIAL TIP: The *Carl D.* case is a very good example of when the lack of communication between the two respective agencies can cause problems. Although that case involved the failure of the IV-A agency to "discover" the locate information that the IV-D agency had in its system, it would appear that the due process principles are applicable in both directions.

Confidentiality issues notwithstanding (both agencies must maintain confidentiality of information), the respective Title IV-A and IV-D agencies should be "talking" to one another on certain matters, *e.g.*, parentage and locate information. Likewise, both the juvenile and child support courts should have the ability to determine that such information exists on the other side (inquiry access) and should compare this information when necessary to satisfy such due process considerations.

g. [§203.143] Individualized Education Plans

In California, school districts often prepare individualized education plans (IEPs) for children who have special needs or disabilities. Sometimes these plans recommend or require a residential placement to address that child's specialized and educational needs. In a situation when a child becomes a dependent or ward of the court and there is an IEP that essentially requires a residential placement to address the child's educational needs, the county is not entitled to seek either ongoing support or reimbursement for the aid being paid for the child (which DCSS would normally do in a foster care case under Fam C §17402). *County of Los Angeles v Smith* (1999) 74 CA4th 500, 518–522, 88 CR2d 159. The rationale behind the *Smith* case is based on provisions of the Individuals With Disabilities Education Act (IDEA) (20 USC §§1400 et seq), in which children eligible under the Act are entitled to free appropriate public education.

☛ JUDICIAL TIP: The court should review the entire IEP (or series of IEPs) to make the appropriate determination of whether the child's placement is a result of the IEP (necessary given the child's needs), as opposed to the child being placed in a dependency system facility and happening to have an IEP that simply recommends certain specialized classes or assistance.

h. [§203.144] AWOL Child

If a child who has been placed by the juvenile court runs away for any extended period of time (AWOL), monies usually expended by the county for the placement will cease until the child is found and returned. This raises an issue of whether it is appropriate to have an order for child support during those months in which the child was AWOL. Depending on whether the Title IV-D case is in the process of establishing child support, as opposed to enforcing an existing order for child support, there may be different views in the courts and the various counties.

Some may view the matter as one in which a monetary child support order is not appropriate (*i.e.*, there is no need or responsibility to reimburse the county) for those months in which the county did not actually support the child, regardless of whether the issue comes up at the establishment stage, during a determination on modifications, or on arrearages.

Others may view the issue differently and treat it as one in which there can be no retroactive modifications, nor judicial determination of arrearages, and that the AWOL status of the child cannot be considered, even though the county did not support the child during the AWOL periods.

If the IV-A and IV-D agencies are communicating with one another, the local child support agency may be aware of this issue, whether through monitoring and reporting of what months monies are expended on behalf of the child in the system or whether through limited access to specific information in juvenile court records that show AWOL status, and should bring it to the attention of the court. If not, however, then the court will not know unless an inquiry is made or if an obligor presents the issue in a noticed motion.

i. [§203.145] Exceptions to Liability for Child Support

It is standard practice for a referral to be made to DCSS when a child is in an out-of-home placement either through the juvenile dependency or delinquency court because IV-D funds are being expended on behalf of the child. Generally the parents are jointly and severally liable for support. In dependency there is an exception when the petition that resulted from the child being removed from the parents' custody is ultimately dismissed. Welf & I C §903(d). In delinquency there is an exception when the parent is the victim of the child's crime. Welf & I C §903(e). The parent must be a direct victim of the crime. *Yolo County DCSS v Lowery* (2009) 176 CA4th 1243, 1247, 98 CR3d 490.

For a discussion of child support in foster care cases, see §203.97.

☛ JUDICIAL TIP: Considering the number of potential crossover issues, it becomes extremely important for the IV-D court to know whether the courts (juvenile and child support) and agencies (IV-A and IV-D) are regularly communicating and exchanging appropriate information. If they are not, then the risk of creating conflicting orders increases dramatically, such as two different fathers for the same child or improper charging of child support when parental rights were terminated. Collaboration between the various courts and agencies is key. Some creative solutions that ensure accurate information is used include:

- A standing order establishing procedures for disclosure of juvenile court records (see Welf & I C §827; Cal Rules of Ct 5.552; see, *e.g.*, San Francisco County).

- Cross-designation of judicial officers, who hear both child support and juvenile cases (see, *e.g.*, Sacramento County).

3. [§203.146] Probate Cases

The probate court has the authority, among other things, to appoint guardians. Prob C §§1500–1543. These are essentially private actions that begin on the filing of a petition by any interested individual, not just a relative. The probate court will conduct an investigation and give notice to all family members. If a parent objects, the probate court will make a determination based on clear and convincing evidence that custody to the parent would be detrimental to the child, and custody to the guardian would be in the child's best interest. If there is no objection, the probate court makes a determination based on what is in the child's best interest; there is no requirement to determine unfitness of a parent. There is also a specific process to terminate a probate guardianship. These probate court orders can affect issues relating to custody and visitation.

Once appointed, the guardian has full responsibility to care for that child's needs, and if that guardian wants help for support of the child from a parent, the probate court will generally direct them to the local child support agency for services.

When there is information or evidence that the child was or is living with a relative, the IV-D court should consider asking whether there is or whether there has ever been a guardianship. It is important to know if any guardianship exists whenever there are claims by an obligor that the child is now in their custody or that there is a big change in visitation. Such information can also be helpful, for example, in a case where there may be disputes over any claimed "direct care and custody" credits under *Jackson v Jackson* (1975) 51 CA3d 363, 368, 124 CR 121.

☛ JUDICIAL TIP: In circumstances where the parents are unclear about their rights, duties, or responsibilities when there is a relative caretaker, it is helpful to give a referral to the family law facilitator for more information.

4. Tribal Court Cases

a. [§203.147] Jurisdiction in General

Native American tribal governments are sovereign entities separate from both the state and federal government. The legal relationships between them can be quite complex based on the U.S. Constitution, treaties, statutes, and court decisions. California state courts do have concurrent jurisdiction with tribes in certain areas of criminal and civil law, including family law. See "Public Law 280" Pub L No 280, codified and amended at 18 USC §1162, 28 USC §1360; *California v Cabazon Band of Mission Indians* (1987) 480 US 202, 207–208, 107 S Ct 1083, 94 L Ed 2d 244; *Sanders v Robinson* (9th Cir [Mont] 1988) 864 F2d 630, 632–633.

Tribal governments are not *subject* to state court jurisdiction in actions involving child support. *Bryan v Itasca County* (1976) 426 US 373, 388–389, 96 S Ct 2102, 48 L Ed 2d 710. However, a number of tribes in California have recently included provisions in their gaming compacts requiring tribes to honor wage withholding and medical support notices sent directly to casinos. In contrast, an individual tribal member can be subject to a state's jurisdiction. *County of Inyo v Jeff* (1991) 227 CA3d 487, 277 CR 841.

As of 2012, there are over 107 federally recognized tribes in California and many more federally recognized tribes in the United States. There are at least 19 tribal courts and/or tribal court consortiums operating in California, serving about 40 of California's tribes. Each tribal court exercises the jurisdiction granted to it under the codes and constitution of the particular tribe, and each has its own rules of practice and procedure and forms. Currently, there is at least one tribe in the process of establishing a comprehensive tribal Title IV-D child support program (the Yurok tribe).

☛ JUDICIAL TIP: If it appears that a person in a child support proceeding might be a member of a tribe or eligible for membership, or a tribal child support order is submitted, carefully check any notice requirements and other procedural steps. There may also be a separate agreement or memorandum of understanding (MOU) entered into between a particular tribe and the state DCSS, with provisions that may affect establishment or enforcement aspects of a case. See also 28 USC §1738B (full faith and credit for child support orders).

b. [§203.148] Transfer of Title IV-D Case to Tribal Court

The procedure for transfer of Title IV-D child support cases from a California superior court to a tribal court are set forth in Cal Rules of Ct 5.372. A party must disclose in superior court whether there is any related action in tribal court in the first pleading, in an attached affidavit, or under oath. Before the filing of any motion for case transfer, the party requesting the transfer, DCSS, or the tribal IV-D agency must provide the parties with notice of the right to object to the case transfer and the procedures to make such an objection. Cal Rules of Ct 5.372(c)–(d).

On motion of any party, and after notice of the right to object, a superior court may transfer a child support and custody provision of an action in which the state is providing services under Fam C §17400. The motion can be made in both prejudgment and postjudgment cases. In ruling on the motion, the court must first make a threshold determination that concurrent jurisdiction exists, and if it is found to exist, the transfer will occur unless a party has objected in a timely manner. Cal Rules of Ct 5.372(e).

On the filing of a timely objection, the court must conduct a hearing on the record, and must consider the following factors [Cal Rules of Ct 5.372(e)–(f)]:

1. Nature of the action;
2. Interests of the parties;
3. Identities of the parties;
4. Convenience of the parties and witnesses;
5. Whether state or tribal law will apply;
6. The remedy available in the superior court or tribal court; and
7. Any other factors deemed necessary by the superior court.

The court must issue a final order on the transfer request that includes a determination of whether concurrent jurisdiction exists. Once the application is granted, the superior court clerk

must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court. Cal Rules of Ct 5.372(g)–(h).

5. Other Court Cases

a. [§203.149] General Inquiries

Given the reality that individuals and families can have multiple cases going on that cross over into different areas of the law and different jurisdictions, as well as the current lack of communication between agencies and between the various courts themselves, it remains important to be aware of the fact that other cases may be ongoing, and that a "status inquiry" or other factual inquiries may be appropriate. Asking a litigant if they have ever been to court regarding the child may help uncover other cases where a support order or parentage finding may already exist, whether in a dissolution action, a UPA case (Fam C §§7600 et seq), or otherwise. See, *e.g.*, *Moore v Bedard* (2013) 213 CA4th 1206, 1211, 152 CR3d 809 (trial court has continuing jurisdiction to make child support orders even though protective order not granted under DVPA).

b. [§203.150] Restraining Orders

Restraining orders are an area where issues in the various cases and courts may "intersect." Knowledge of the existence of the following types of cases and orders may be helpful: criminal domestic violence (DV) cases, juvenile court restraining orders, probate restraining orders, family law restraining orders, and/or civil harassment restraining orders.

☛ JUDICIAL TIP: Just asking in court if such restraining orders exist in other departments can be useful. Such restraining orders occur with frequency, and orders out of a different court may be something the IV-D court needs to consider. For example, a criminal stay-away order has priority over any family law order that deals with visitation, as does a juvenile court order. The IV-D court needs to be aware of such orders in the event an obligor is in court on a child support matter claiming the obligor now has custody or a much higher visitation factor.

c. [§203.151] Criminal Cases

Criminal cases may affect child support. If there are no other sources of income, an incarcerated individual does not have the ability to pay child support. *Oregon v Vargas* (1999) 70 CA4th 1123, 1126–1129, 83 CR2d 229. Nevertheless, an incarcerated individual may still have other sources of income that may be used to set support. *Brothers v Kern* (2007) 154 CA4th 126, 134–136, 64 CR3d 239 (court imputed interest income on criminal defense attorney's retainer). If an obligor is about to be incarcerated for a lengthy period of time or has felony convictions, these issues can impact the type of support order that is put in place and can impact the terms and conditions the IV-D court may want to consider on a seek work order. For discussion of how money judgments and support orders must include provisions regarding the suspension of support obligations when the obligor is incarcerated or involuntarily institutionalized for more than 90 days (Fam C §4007.5(a), (g)), see §203.87.

☛ JUDICIAL TIP: Because of the various crossover issues, it may be helpful to have informational handouts and referrals available in court to give to individuals to deal with such issues or barriers as they arise. For instance, many counties have programs to help an individual obtain a clean record after successfully completing probation or parole.

K. [§203.152] Minor Parent as Party

A minor who is a parent of the child who is the subject of the proceeding may appear without a guardian ad litem in family court proceedings under the Uniform Parentage Act, or any other proceedings concerning child custody, visitation, or support. CCP §372(c)(1)(A), (D).

VII. MILITARY ISSUES

A. Servicemembers Civil Relief Act

1. [§203.153] Scope of SCRA

Effective December 19, 2003, PL 108–189 enacted the Servicemembers Civil Relief Act (SCRA), which revised and replaced the Soldiers' and Sailors Civil Relief Act of 1940. 50 USC App §§501 et seq. Among other changes, the SCRA covers administrative as well as judicial proceedings, and it specifically applies to political subdivisions of the states, including the Department of Child Support Services. 50 USC App §512(a)–(b). The SCRA thus applies to child support actions against servicemembers.

In addition to the other branches of the armed forces (including reserves), the SCRA extends relief to National Guard members who have been called to active service for more than 30 consecutive days. 50 USC App §511(2). It also defines a servicemember's legal representative as including someone who has power of attorney, and it specifies that any reference to a servicemember in the SCRA includes a legal representative. 50 USC App §519.

☛ JUDICIAL TIP: For more detailed information on military issues, including a trainer guide for child support workers who process cases involving military members, see the Office of Child Support Enforcement web page at www.acf.hhs.gov/programs.2. Protection Against Default Judgments

a. [§203.154] Affidavit of Military Status

Before the court enters a default judgment in any case when the respondent has not made an appearance, the SCRA requires that the petitioner file an affidavit stating whether the respondent is on active duty in the military. The affidavit must show facts supporting that statement and, if the petitioner does not know whether the respondent is in the service, must state that fact. 50 USC App §521(b)(1).

b. [§203.155] Appointment of Attorney

In any case in which the respondent is apparently serving in the military and has not appeared, the SCRA prohibits the court from entering a default judgment until it appoints an attorney to represent the respondent. An appointed attorney who has not been able to contact the

servicemember may not waive any of the servicemember's rights or take any actions that will bind the servicemember. 50 USC App §521(b)(2).

If the court has not been able to determine whether the respondent is a servicemember (based on the affidavit), it may require the petitioner to file a bond that will indemnify the respondent if it turns out that the respondent is in the service for any loss or damage resulting from a judgment that is later set aside. The bond will stay in effect until the time to appeal or set aside the judgment has expired. The court may also make any other order that it deems necessary to protect the servicemember's rights. 50 USC App §521(b)(3).

There is no specific provision in the act regarding payment of the appointed counsel. A comment to the former Soldiers' and Sailors Civil Relief Act of 1940 indicates that an attorney appointed to represent a servicemember under the act does so as his "patriotic duty." Many counties have a policy or local rule in place that provides for payment of these appointed attorneys. The court can order the servicemember to pay the attorney for their services.

c. [§203.156] Setting Aside Default Judgment

When a default judgment has been entered against a servicemember during (or within 60 days after) active duty, the SCRA requires the court to grant an application to reopen the judgment. The application must be filed within 90 days of the servicemember's termination or release from military service. It must show that (50 USC App §521(g)):

- The respondent's military service "materially affected" the ability to defend the action, and
- The servicemember has "a meritorious or legal defense" to all or part of the action.

However, if a default judgment is vacated, set aside, or reversed based on a provision in the act, the right or title that a bona fide purchaser acquired under the judgment is not impaired. 50 USC App §521(h).

In *Allen v Allen* (1947) 30 C2d 433, 435–436, 182 P2d 551, which reversed an order denying husband's motion to vacate support modification, the California Supreme Court found that the trial court's error in failing to appoint an attorney to represent a servicemember rendered its order voidable, but not void. Therefore, the attack on the judgment must be direct as provided under the act, not collateral. For discussion of direct versus collateral attacks, see 8 Witkin, CALIFORNIA PROCEDURE, *Attack on Judgment in Trial Court* (5th ed 2008).

3. Stays Under SCRA

a. [§203.157] Stay of Proceedings

When the respondent has not appeared because of active military duty, the court must grant a stay (either on its own motion or on counsel's application) for at least 90 days if it finds that (50 USC App §521(d)):

- A potential defense cannot be presented without the servicemember's presence, or
- Counsel has diligently tried but has not been able to contact the respondent or otherwise determine if the respondent may have a meritorious defense.

In proceedings when the servicemember has received notice, the respondent may apply for a stay while on active duty or within 90 days after it ends. The application must include (50 USC App §522(b)(2)):

- A letter describing how the servicemember's military duties materially affect the ability to appear and providing a date when the servicemember can appear; and
- A letter from the servicemember's commanding officer confirming that military duty prevents an appearance, and that there is no authorization for a military leave.

At any point before final judgment, the court must grant the application and may do so on its own motion. The stay must last at least 90 days. 50 USC App §522(b)(1). The servicemember may apply for an additional stay either at the time of the initial application or when it becomes apparent that the servicemember is unavailable to prosecute or defend the action, based on the continuing impact of military duty. 50 USC App §522(d)(1). An application for a stay under this section does not constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense. 50 USC App §522(c).

The SCRA must be liberally construed to prevent any disadvantage to a servicemember litigant resulting from military service, even if the servicemember has not strictly complied with the requirements of the Act. *In re Amber M.* (2010) 184 CA4th 1223, 1231, 110 CR3d 25. There is nothing in the SCRA that indicates that a telephonic appearance is sufficient to protect a servicemember's rights. Rather, the SCRA's requirement that a servicemember demonstrate inability to appear in the proceeding or obtain leave to do so, contemplates a physical appearance at the proceedings. *In re Amber M.*, *supra*, 184 CA4th at 1231.

The court has discretion to deny an additional stay under the SCRA when it finds that military duties have not adversely affected a servicemember's ability to appear and participate in an action. *George P. v Superior Court* (2005) 127 CA4th 216, 224–226, 24 CR3d 919.

☛ JUDICIAL TIP: The best practice is to appoint counsel and stay the matter 90 days.

b. [§203.158] Stays of Execution

A servicemember may move to stay execution of a judgment, or move to vacate or stay any attachment or garnishment of property or money, at any time during active military duty and within 90 days after it ends. The court must grant the motion (and may order the stay on its own motion) if it finds that the member's ability to comply with the judgment is materially affected by military status. 50 USC App §524.

4. [§203.159] Modifications Due to Deployment

Family Code §3651(c) adds an exception to the prohibition of retroactive modifications of child and spousal support before filing the notice of motion or OSC. It applies when either party is deployed out of state on active military service or National Guard duty. Instead of a notice of motion or OSC, the servicemember may file and serve a notice of activation (including the deployment date) and modification request based on the change of circumstances. If possible, the court must schedule the hearing before the deployment date; if that is not possible, it must grant a stay in accordance with the timelines provided in the SCRA, as long as the servicemember has met the relevant requirements. If the court declines to grant an additional, discretionary stay, it may not proceed until it appoints counsel for the servicemember unless the servicemember

already has an attorney. In cases where the stay extends throughout the deployment, the servicemember must ask the court to set a hearing within 90 days after returning; otherwise, the retroactivity exception does not apply, and the matter will be taken off calendar. Fam C §3651(c)(2). For a notice of activation and request for modification of a *non-IV-D child support order*, see form FL-398. See also CSS Letter 06-15.

Even if the servicemember does not file the notice of activation and modification request before deployment, the servicemember is not subject to penalties on any amount of child support that would not have accrued if there had been a modification per Fam C §3651(c)(2), unless the court finds that there is good cause for a penalty and states the reasons on the record. Fam C §3651(c)(3).

No interest may accrue on any child support that the servicemember would not have owed if there had been a modification, unless there was no good cause for failing to request one or delaying such a request. Fam C §3651(c)(4); see also §203.161.

In addition, Fam C §3653 provides that in case of a modification based on a deployment-related income change, the order must be retroactive to the later of (1) the date that the notice of activation, notice of motion, or OSC was served on the opposing party; or (2) the activation date itself. However, there is an exception when the court finds and states on the record good cause for denying retroactivity, including an unreasonable delay in requesting the modification. Fam C §3653(c).

The DCSS must develop a form that will allow the local child support agency to bring a modification motion without an appearance by the active servicemember. Fam C §17440(b). Within 5 days after receiving a properly completed form, the agency must bring such a motion if the changed circumstances would affect the amount of the support order. Fam C §17440(c). For the notice of deployment and request for review of a *IV-D child support order*, see form DCSS 0585. See also CSS Letter 06-15.

5. [§203.160] Compromise of Arrearages

It should be considered in the state's best interest to accept an offer in compromise for arrearages that accrued because a reservist or member of the National Guard experienced an income reduction while called to active duty but failed to modify the support order. An exception applies when there is good cause to the contrary, including circumstances in which the lack or tardiness of a modification request was unreasonable. DCSS must promulgate rules for compromising at least the amount of support that would not have accrued if the order had been modified to reflect the income reduction during active service. Fam C §17560(f)(l)(B).

The 2005 amendments to Fam C §17560 (which language is continued in the current section) apply to all servicemembers who are deployed outside California, whether before or after the bill's effective date. Stats 2005, ch 154, §6.

6. [§203.161] Interest Limitations

Under the SCRA, creditors are limited to 6 percent interest on all *preservice* balances, notwithstanding the fact that the obligations provided for higher interest rates. This limitation applies (a) during military service and one year thereafter to a mortgage, trust deed, or similar security, or (b) during military service to any other obligation or liability, and applies to obligations or liabilities incurred by the servicemember or of the servicemember and spouse

jointly, including child support. 50 USC App §527(a)(1). Interest in excess of 6 percent per year that would otherwise be incurred but for this prohibition is forgiven. 50 USC App §527(a)(2).

In order for an obligation or liability to be subject to this interest-rate limitation, the servicemember must give the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from service. 50 USC App §527(b)(1). On receipt of the notice, the creditor must limit interest on the debt to 6 percent, effective on the date that the servicemember is called to military service. 50 USC App §527(b)(2).

The court may grant a creditor relief from this limitation if the servicemember's ability to pay interest at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service. 50 USC App §527(c).

Penalties for knowing violations of these interest limitations do not preclude other remedies, including consequential or punitive damages. 50 USC App §527(e), (f).

B. Military Pay

1. [§203.162] Pay Versus Allowances

Generally, pay categories on a military leave and earnings statement (LES), which is what a military servicemember's pay stub is called, are divided between pay (base pay, sea pay, hazardous duty pay, etc.) and allowances (basic allowance for housing, basic allowance for subsistence, etc.).

The major distinction for child support purposes is that if it is a "pay" it is taxable and if it is an "allowance" it is not taxed. Both should be used in calculating gross monthly income for calculating child support. See Appendix B, Benefits Chart.

Federal statutes making military allowances for housing and food nontaxable and exempting them from garnishment do not preempt the inclusion of such allowances in a party's gross income for purposes of calculating child and spousal support. *Marriage of Stanton* (2010) 190 CA4th 547, 556–557, 118 CR3d 249. There is some disagreement on the characterization of these allowances. Some argue that they must be included in gross monthly income for support per Fam C §4058(a)(1); others argue that they are employee benefits, and it is within the court's discretion to either include them or exclude them from the gross monthly income per Fam C §4058(a)(3).

2. [§203.163] Determining Amount of Pay

The servicemember's LES should contain all necessary information to determine the income for support. If the LES does not include a Basic Allowance for Housing (BAH), the government is providing housing for the servicemember. The value of this housing may be included in the gross monthly income for support. This amount is equal to the BAH the servicemember would receive if not in military quarters.

Military pay charts are posted on the Defense Finance and Accounting Services website at www.dfas.mil/militarymembers/payentitlements/militarypaytables.html. This site also contains pay charts for civilian Department of Defense employees and retired military employees, general information regarding military pay, and links to other important sites.

To find a servicemember's BAH rate, refer to www.defensetravel.dod.mil/site/bahCalc.cfm and enter the servicemember's pay grade and duty station ZIP code.

Every LES will indicate the servicemember's home state for tax purposes. In many cases, California tax rates will not apply for state taxes.

SCRA provides that nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders. 50 USC App §571(a)–(b). Similarly, the income of a military spouse is not taxable by the jurisdiction when the spouse is present due to the servicemember's military service. 50 USC App §571(c). The state is also prohibited from using the military pay of the nonresident servicemember to increase the state income tax of the spouse. 50 USC App §571(e).

C. [§203.164] Veteran's Disability Benefits

The Social Security Act provides for the garnishment of certain federal payments for the enforcement of child support obligations. Benefits paid by the Department of Veterans Affairs (VA), however, are specifically excluded, with some exclusions. 42 USC §659(h)(1)–(2). The test to determine if a payment is subject to garnishment is whether the payment is remuneration for employment. 42 USC §659(a), (h)(1).

VA disability compensation, entitlement to which is generally based on disability from a service-connected injury or disease, is usually not considered to be remuneration for employment. Nevertheless, dependents are authorized to obtain financial support from veterans' benefits under certain circumstances:

- If the veteran is eligible to receive military retired/retainer pay and has waived a portion of his or her veteran's pay in order to receive disability compensation from the VA, that portion of the VA benefit received in lieu of retired/retainer pay is subject to garnishment. 42 USC §659(h)(1)(A)(ii)(V).
- If the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her the veteran's responsibility for the children's support, all or any part of the veteran's pension, compensation, or emergency officers' retirement pay may be apportioned. 38 CFR §3.450(a)(1)(ii).
- When a hardship is shown to exist, a special apportionment of a beneficiary's pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be made between the veteran and his or her dependents. The apportionment is based on the facts in the individual case, and may not cause undue hardship to the other persons in interest. 38 CFR §3.451.

The *VA disability pension* is a form of need-based aid paid to veterans who meet financial need requirements. It is *not* compensation for a service-connected disability. The veteran must have served at least 90 days, of which at least one day must have been during wartime. The disability need not be service connected, but it must prevent the veteran from being able to perform regular full-time work. The income of the veteran and the dependents is considered and results in a dollar-for-dollar reduction of the pension amount. The award is roughly the same as SSI benefits. The award is not taxable. Because this is a federal need-based aid, it is *not* considered in setting child support, nor is it reachable for enforcement purposes.

☛ JUDICIAL TIP: To distinguish between the two types of veteran's disability benefits, look to the veteran's award letter. If the veteran is receiving countable "disability compensation," those words will appear in the letter. If the veteran is receiving a different exempt need-based pension, the letter will refer to "countable income."

See the benefits chart in Appendix B for a quick reference regarding use for income and taxability of some veteran's benefits. For an Information Memorandum issued by the federal Office of Child Support Enforcement regarding garnishment of VA benefits, see www.acf.hhs.gov/programs/cse/pol/IM/1998/im-9803.htm. See also Final Rule: Processing Garnishment Orders for Child Support and/or Alimony (June 21, 1983) Office of Child Support Enforcement, AT-83-11.

D. [§203.165] Health Insurance

The NMSN (National Medical Support Notice), which is used by local child support enforcement agencies to secure coverage for children under their noncustodial parent's group health plans, does *not* apply to health insurance provided by servicemembers. Health insurance provided by a servicemember for their dependents is called Tricare. There are various options available, as with any other health insurance company. Health insurance for the military and their children is administered through DEERS (Defense Eligibility Enrollment System). DEERS is a computerized database that identifies military sponsors, families, and others worldwide who are entitled to Tricare benefits. DEERS registration is required for Tricare eligibility. The servicemember must register family members and ensure that they are correctly entered in the database.

☛ JUDICIAL TIP: An obligor servicemember with children should be ordered to enroll the children into DEERS and obtain dependent ID cards for them so they can access dependent benefits, including health benefits. The court may also inform the custodial parent that the military will allow him or her to sign up to get the servicemember's children enrolled into DEERS; the custodial parent does not have to wait for the noncustodial parent to sign up.

VIII. SCRIPTS AND FORMS

A. [§203.166] Script: Oral Advisement re Status as Judge Pro Tem

Before I call the cases individually, I need to make a general advisement. I am the Commissioner assigned to hear all cases in this Department. I have also been appointed by the Presiding Judge [*or:* I am authorized by statute] to act as a Judge Pro Tem and will be so acting in your case unless you object, on the record, *before* I hear your case.

The reason I distinguish between a Commissioner and a Judge Pro Tem is that under California law, a Court Commissioner cannot enter final judgments or orders in contested matters unless the Commissioner also sits as a Judge Pro Tem [*or:* a Child Support Commissioner by law sits as a Judge Pro Tem unless an objection is made]. If you do object today, I will still hear the case today and would then make written findings and recommendations that are sent to a judge for review. You would only be entitled to a new hearing, however, if you then filed written objections within 10 days of those findings.

Counsel (for LCSA), are you ready to proceed?

B. [§203.167] Script: Oral Advisement and Opening Statement

[*Sample script—exact procedures vary from court to court*]

Good Morning everyone. I am Commissioner _____. Before I call the calendar, I need to make some announcements and introductions.

As a Court Commissioner, California law gives me authority to hear cases, take evidence, and make findings of fact and proposed rulings. Those rulings are then reviewed by a judge, except when there is a stipulation that I sit as a judge pro tem with the full powers of a superior court judge, or when I sit on a child support calendar such as this one. When I preside over this calendar, it is presumed that I sit with the full powers of a judge, unless someone objects. If you want a judge to hear your case instead of a court commissioner, you need to object when I first call your case. You cannot wait until later appearances or part way through today's hearing. If you do object, your matter will likely not be heard today, but may be continued until another date to be heard by a judge.

I have two agencies present in court today to help you. Present is [*name*], our family law facilitator. [*He/She*] is an attorney but does not represent any party. [*He/She*] is here to answer your questions and give you information about the child support process. [*He/She*] can help you identify the forms you may need, where to get them and file them, and where to get information that goes on the forms. [*He/She*] can explain how child support is established and collected, and the formula that the State Legislature has adopted for calculating child support.

Also present are representatives from the [*name of county*] County Department of Child Support Services. If you have a file with that office, and almost everyone here should, they are here to answer any questions concerning that file. They can also answer questions about the child support process and what their office can and cannot do.

Feel free to talk with any of these people to get help and answers to your questions.

C. [§203.168] Script: Advisement of Rights

The county alleges that you are the parent of the child John Doe and seeks a judgment of parentage. If a judgment of parentage is established, then you will be considered the legal parent resulting in various obligations, including the responsibility to support the child. In that regard, you have certain rights.

1. You have the right to be represented by an attorney:

- You may select and pay for an attorney, or
- You may represent yourself, or
- If you cannot afford an attorney, you may ask the court to appoint one for you at no expense to you. If I appoint an attorney to represent you, the scope of representation is limited to the parentage issue, and no other issue.

2. You have the right to a trial on the issue of parentage at which the county must prove you are the father by admissible evidence. The standard of proof is a preponderance of the evidence.

3. Under Family Code section 7551, and depending on the circumstances, you may have the right to request genetic testing to prove or disprove biological parentage.

4. To prepare for trial, you have the right to subpoena witnesses and documents into court and at trial.

5. During the trial, you have the right to:

- Confront and cross-examine any witnesses that may be called against you,
- Present evidence on the issue of parentage, and
- Testify or remain silent, and if you exercise your right to remain silent, your silence will not be used against you.

6. Finally, you may decide to waive or give up one or more of the rights I have announced, and knowing your rights, you may elect to admit you are the [*father/mother*] of the child[ren].

7. Do you understand the rights and options I have announced?

8. How do you want to proceed?

D. [§203.169] Script: Establishing Marital Presumption/Registered Domestic Partner

[*Were/Are*] you married to respondent?

[*Or*]

[*Were/Are*] you registered as a domestic partner with respondent?

[*If yes to either question, ask the following:*]

1. When were you [*married/registered*]?

2. When did you separate?

3. When was this child born?

4. Between the date of [*marriage/registration*] and the date of separation, did you continuously live together as [*husband and wife/registered domestic partners*]?

5. During that time, to your knowledge, was respondent ever impotent or sterile?

6. Were you living together at the time of conception? At time of birth?

[*If satisfied that the conclusive marital presumption applies, make the following findings*]

The court finds that there is a factual basis to support the marital presumption under Family Code section 7540 and, based on that conclusive presumption, finds that respondent is the [*father/mother*] of child John Doe, and a judgment of parentage is now entered.

[*If not satisfied (e.g., the mother and father were not continuously living together during the conception time frame or otherwise), make the following findings*]

The court is not satisfied that the marital presumption applies because [*state reason(s)*]. Therefore, unless the Local Child Support Agency is ready to prove up another basis to establish parentage, the court will order the parties to submit to genetic testing under Family Code section 7551 or 7558. The LCSA is ordered to serve the genetic testing order on the respondent with the additional notice that a party's refusal to submit to the test is admissible in evidence in any proceeding to determine paternity under Family Code section 7551 or 7558(e). The matter is now continued to receive the genetic testing results. The new date and time for hearing is [*date/time*], and LCSA is to give notice.

E. [§203.170] Script: Establishing Biological Parentage

1. Are you the [*mother/father*] of child John Doe?

2. What is the child's date of birth?

3. Whom do you believe to be the biological [*father/mother*] of child John Doe?

4. Was the child born full term?

5. Approximately 9 months [*or other date if not full term*] before the child's birth, did you have sexual intercourse with the respondent, which resulted in the conception of the child John Doe?

6. At one month before or one month after the date of conception, did you have sexual intercourse with anyone else?

7. Could the [*father/mother*] of John Doe be anyone other than the respondent?

F. [§203.171] Script: Parentage Findings

[*If parentage was established by a preponderance of the evidence*]

Based on the evidence presented to the court, the court finds that respondent [*name*] is the [*father/mother*] of the minor child(ren), [*name(s)*], born on [*date(s)*], who are the subject of this action, and respondent is therefore responsible for [*his/her/their*] financial support.

[*If parentage was not established by a preponderance of the evidence*]

Based on the evidence presented to the court, the court finds that the respondent [*name*] is not the [*father/mother*] of the minor child(ren), [*name(s)*], born on [*date(s)*], who are the subject of this action, and enters a judgment of [*nonpaternity/nonmaternity*].

G. [§203.172] Script: Departure From Guideline Formula

[*Under Fam C §4056, whenever you order an amount for support that differs from the guideline formula, you must state in writing, or on the record, the following information*]

1. The guideline formula amount is $[*amount*].

2. The court finds the application of the guideline formula would be unjust or inappropriate because [*recite one or more of the following factors/grounds*]:

[ ] **Stipulated Agreement** [Fam C §4057(b)(1)]. The parties and local child support agency have stipulated to an amount below guideline under Family Code §4065(a), and the court finds the agreement to be in the best interest of the children. The parties have declared [*or* have agreed that]:
- They've been informed of their rights concerning child support;
- The order is being agreed to without coercion or duress;
- The agreement is in the best interests of the children involved; and
- The needs of the children will be adequately met by the stipulated amount.

[ ] **Special Circumstances** [Fam C §4057(b)(5)]. Application of the formula is unjust or inappropriate due to the following special circumstance(s):
[ ] The parents have different time-sharing arrangements for different children.
[ ] Both parents have substantially equal time-share of the child[ren], and one has a much [*lower/higher*] percentage of income used for housing than the other.
[ ] The child[ren] [*has/*have] special medical or other needs that could require child support that would be greater than the formula amount.
[ ] The child[ren] [*has/*have] more than two parents.
[ ] [*Other; specify*]:
[*Example; see City & County of San Francisco v Miller (1996) 49 CA4th 866, 56 CR2d 887*]: After paying guideline support, the obligor's remaining disposable income is insufficient to meet [*his/her*] necessary basic monthly living expenses [and provide for basic necessary expenses arising during obligor's custodial time with the children *and/or* considering the needs of obligor's other child(ren)].
[*Example; see County of Lake v Antoni (1993) 18 CA4th 1102, 22 CR2d 804*]: Consideration of high consumer debt incurred for purpose of "living needs" of other child(ren) is a special circumstance rendering guideline inappropriate.
[*Example; see Edwards v Edwards* (2008) 162 CA4th 136, 143–144, 75 CR3d 458]: The child has reached the age of majority and is supporting [*himself/herself*] in college, and neither parent retains primary physical responsibility.

[ ] **High Income of Payor and Needs Exceeded** [Fam C §4057(b)(3)]. The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

[ ] **Disparity Between Support and Custodial Time** [Fam C §4057(b)(4)]. A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

[ ] **Deferred Sale of Home Order** [Fam C §4057(b)(2)]. Sale of the family residence where the children reside is deferred by court order, and the court finds its rental value exceeds the mortgage payments, insurance, and property taxes. [*Note: Amount of adjustment must not be greater than the excess amount.*]

3. The reasons the support amount ordered is consistent with the best interests of the child[ren] are: [*specify*].

4. [*On request by any party, you must state in writing, or on the record, the following under Fam C §4056(b)*]: The following information was used in determining guideline amount:

- The net monthly disposable income of each parent: [*specify*].
- The actual federal income tax filing status of each parent: [*specify*].
- The deductions from gross income for each parent: [*specify*].
- The approximate percentage of time each parent has primary physical responsibility for the child(ren) compared to other parent: [*specify*].

H. [§203.173] Script: Order for Child Support

The court orders [*name*] to pay to [*name*] child support in the amount of $____ per month commencing [*date*], and continuing on the first day of each month thereafter until further court order or statutory termination. The court's findings are set forth in the computer printout attached to the court's child support order [*or, if not providing a computer printout, state the specific findings*].

Appendix A: Voluntary Declaration of Paternity ("POP") Chart
Family Code §§7570–7577, 7612

§7572(b)(1)	A signed POP (Paternity Opportunity Program declaration) that is filed with DCSS legally establishes paternity.
§7572(b)(4)	By signing the POP, the father is voluntarily waiving his constitutional rights.
§7573 & §17412(b)	A completed and filed POP shall have the same force and effect as a judgment of paternity issued by a court of competent jurisdiction.
§7612(f)	POP is invalid if, when signed, (1) child already had a presumed parent under §7540, (2) child already had a presumed parent under §7611(a), (b), or (c), or (3) man signing declaration is a sperm donor, consistent with §7613(b).
	Setting Aside POP (4 ways):
§7575(a)	**(1) 60 days from execution of POP:** Filing a rescission form with DCSS within 60 days of execution of the declaration, unless a court order for custody, visitation, or child support has been entered in an action.
§7575(b)(3)(A)	**(2) 2 years from child's date of birth:** Filing request for order for genetic tests no later than 2 years from the date of the child's birth.
§7575(b)(4)	The request for order for genetic tests must be supported by a declaration under oath submitted by the requesting party stating the factual basis for putting the issue of paternity before the court.
§7575(c)(1)	**(3) Setting aside POP under CCP §473:** CCP §473 time period begins to run when court makes an initial order for custody, visitation, or child support based on a POP. Must prove mistake, inadvertence, surprise, or excusable neglect in signing POP.
§7575(c)(3)	**If POP set aside:**
§7575(c)(5)	Child support order remains in effect until court orders POP set aside.
§7575(b)(1)	Order CP, MC, and NCP to genetic testing.
	If genetic tests demonstrate that the man who signed the POP is not the father of the child, then the court may still deny the request after finding it is in the best interest of the child to deny the request to set aside the POP.
§7612(e)	**(4) Setting aside POP under Fam C §7612(e):** Person presumed to be parent under §7611 may file petition to set aside voluntary declaration of paternity within two years of its execution.
	Court must take into account declaration's validity and child's best interest, based on factors in §7575(b) and on nature, duration, and quality of petitioner's relationship with child and the benefit or detriment of continuing that relationship. If any conflict between presumption and declaration, weightier considerations of policy and logic control.

§7576(a) §7576(d)	**POPs signed on/before December 31, 1996:** The child of a woman and man executing a POP on or before December 31, 1996, is conclusively presumed to be the man's child. Filing request for order for genetic tests no later than 3 years from date of mother or father's signature, whoever signed last.
§7577(a) §7577(b)	**POPs signed by minor parents:** POP establishes paternity 60 days after both parents have reached the age of 18 or are emancipated, whichever occurs first. Minor parent can rescind POP at any time up to 60 days after the parent reaches the age of 18 or becomes emancipated, whichever occurs first.

Appendix B: Benefits Chart

Use this chart to determine if a benefit is income for support purposes, taxable, and payable to supported children.

Program	Law	Eligibility	Dependent Benefits	Time Limits	Child Support	Rehabil-itation	Federal Income Tax	State Income Tax	FICA	SDI
Social Security (Title 2) SSA	20 CFR Part 404	62 yrs and sufficient money paid in [full retirement starts at 65 yrs, or 66 if born 1943–1954, or 67 if born after 1960]	Spouse also eligible under certain conditions	None	50% maximum withholding or garnishment; can use to set support [CCP §706.052; Fam C §5246; 22 CCR §116100]	No	Partially taxable according to formula (1/2 if other income). IRC §§86, 861(a)(8)	Not taxable. Rev & Tax C §17087(a)	Exempt	Not deducted
Social Security Disability (Title 2) SSDI	20 CFR Part 404	Disabled and sufficient money paid in (5 month wait)	Dependents may be eligible for benefits	None if remain disabled or age 62	50% maximum withholding or garnishment and 5% for arrears; can use to set support [CCP §706.052; Fam C §5246; 22 CCR §116100]	Refer for rehab-no additional money	Partially taxable according to formula (1/2 if other income). IRC §§86, 861(a)(8)	Not taxable. Rev & Tax C §17087(a)	Exempt	Not deducted
Supplemental Security Income (Title 16) SSI	20 CFR Part 416	Disabled and indigent; no possible gainful employment	Death benefit to surviving spouse	None if remain disabled or age 62	No garnishment; can't use to set support [Fam C §§4058 (c), 17156; Welf & I C §10051]	Refer for rehab-no additional money	Not taxable.	Not taxable. Rev & Tax C §17087(a)	Exempt	Not deducted

Program	Law	Eligibility	Dependent Benefits	Time Limits	Child Support	Rehabil-itation	Federal Income Tax	State Income Tax	FICA	SDI
Workers' Compensation	Labor Code	Injured in course of employment	Death benefit or on incarceration	Depends on medical severity of injury	25% garnish-ment; temp. disab. or lien on lump sum; can use to set support [CCP §704.160]	Rehab services available	Not taxable. IRC §104(a)(1)	Not taxable. Rev & Tax C §17131	Exempt	Not deducted
Unempl. Compensation Insurance	Unempl. Ins. Code	Fired for other than misconduct, left for good cause, or laid off for lack of work (paid in 100% by employer)	None	6 months (up to 18 months depending on national unempl. figures)	25% garnish-ment; can use to set support [Fam C §17518; Unemp Ins C §§1255.7, 2630]	Up to 12 months benefits if in JTPA-program pays for school	Taxable. IRC §85(a)	Not taxable. Rev & Tax C §17083	Exempt	Not deducted
State Disability Insurance	Unempl. Ins. Code	Disability preventing return to previous job (money paid in by employee)	None	12 months maximum	25% garnish-ment; can use to set support [Fam C §17518; Unemp Ins C §§1255.7, 2630]	Refer for rehab-no additional money	Not taxable. IRC §105(e)(2)	Not taxable.	Exempt	Not deducted
Military Pay		Active duty military, Coast Guard, USPHS, NOA, etc.	Yes	None	50% of net disposable; can be used to set support		Taxable	Taxable	Not exempt	Not deducted
Military Allowances		Active duty military, Coast Guard, USPHS, NOA, etc.	Yes	None	No garnishment; can be used to set support		Not taxable	Not taxable	Exempt	Not deducted

Program	Law	Eligibility	Dependent Benefits	Time Limits	Child Support	Rehabil-itation	Federal Income Tax	State Income Tax	FICA	SDI
Military Retired Pay		Retired military, Coast Guard, USPHS, NOA, etc.	Yes	None	50% of net disposable; can be used to set support		Taxable (other)	Taxable (other)	Exempt	Not deducted
VA Disability Insurance Compensation	38 USC Pt II, Ch 11; 42 USC §659; 38 CFR §§3.450, 3.451	General or honorable discharge or retired from military, Coast Guard, USPHS, NOA, etc.	Yes	None	Up to amount of waived retirement pay; can be apportioned by VA on applic.; not used to set support	Yes	Not taxable	Not taxable	Exempt	Not deducted
VA Disability Pension (treated same as SSI)	38 USC Pt II, Ch 15; 42 USC §659; 38 CFR §§3.450, 3.451	Nonservice connected disability, wartime service, and need based	Yes	None	No garnish-ment; can be apportioned by VA on applic. ; can't be used to set support	Yes	Not taxable	Not taxable	Exempt	Not deducted

Appendix C: Access to FPLS Information Chart

This chart outlines the circumstances under which a person, agency, or court may access information in the Federal Parent Locator Service. See 42 USC §§653, 663.

ACCESS TO FPLS INFORMATION

Who	Why	How	What	Exceptions
Agent/Attorney of a State who has authority/duty to collect child support and spousal support, which may include a State IV–D agency. Resident parent, legal guardian, attorney or agent of a child not receiving IV–A benefits. 453(c)	Establish paternity, establish, modify or enforce child support obligations. § 453(a)	Request filed in accordance with regulations, 45 CFR § 303.70. Only SPLS can request information from FPLS. —Must contain specified information including attestation. —Fee must be paid. § 453(d)	Information (including SSN, address, and name, address and FEIN of employer) on, or facilitating the discovery of, the location of any individual— —Who is under an obligation to pay child support, —Against whom a child support obligation is sought, —To whom a child support obligation is owed, —Who has or may have parental rights with respect to a child. Information on the individual's wages, other income from, and benefits of employment (including health care coverage). Information on the type, status, location and amount of any assets of, or debts owed by or to, the individual. § 453(a)	Disclosure would contravene national policy or security interests of the US, or confidentiality of census data. Notification from State of reasonable evidence of child abuse or domestic violence. § 453(b)
State Agency that is administering a program operated under a State Plan under subpart 1 of part B or a State plan approved under subpart 2 of part B or under part E. § 453(c)	To administer such program. § 453(a)	Same as above. § 453(d)	Same as above. § 453(a)	Same as above. § 453(b).
Court (or agent of the court) with authority to issue an order against an NCP for child support, or to serve as the initiating court in an action to seek a child support order. § 453(c)	Establish paternity, establish, modify or enforce child support obligations. § 453(a)	Request filed in accordance with regulations. § 453(b) Request must be processed through the SPLS, 45 CFR § 303.70 SPLS may process request from court to FPLS. 45 CFR § 302.35(c)(2)	Same as above, except can get it despite child abuse or domestic violence notification. § 453(b)	However, upon notification that FPLS has received notice of child abuse or domestic violence, court must determine whether disclosure of the information to any other person would be harmful. § 453(b) Above restrictions on information that would compromise national security etc. still apply.
Agent/Attorney of a State who has the authority/duty to enforce a child custody or visitation determination. Agent/Attorney of the US or a State who has authority/duty to investigate, enforce or prosecute the unlawful taking or restraint of a child. § 463(d)(2)	Make or enforce a child custody or visitation determination. Enforce any federal or State law regarding taking or restraint of a child. § 463(a)	Request filed in accordance with regulations. State agency receives request and transmits it to Secretary. § 463(b)–45 CFR § 302.35 SPLS made request to FPLS in standard format. SPLS shall identify these cases to distinguish them from other requests. 45 CFR § 303.15	Most recent address and place of employment of parent or child. § 463(c)	Disclosure would contravene national policy or security interests of the US, or confidentiality of census data. Notification from State of reasonable evidence of child abuse or domestic violence. § 463(c)

ACCESS TO FPLS INFORMATION—Continued

Who	Why	How	What	Exceptions
Court (or agent of court) with jurisdiction to make or enforce a child custody or visitation determination. §463(d)(2)	Same as above. §463(a)	Request filed in accordance with regulations. §463(c) Request must be processed through the SPLS. 45 CFR §303.70 SPLS may process request from court to FPLS. 45 CFR §303.35 SPLS makes request to FPLS in standard format. SPLS shall identify these cases to distinguish them from other requests. Upon receipt of response from FPLS, SPLS shall send information directly to the requester, then destroy information related to the request. 45 CFR §303.15	Same as above, except can get it despite notice of child abuse or domestic violence. §463(c)	However, no disclosure shall be made to anyone else. However, upon notification that FPLS has received notice of child abuse or domestic violence, and receipt of information the court must determine whether disclosure of the information to any other person would be harmful. §463(c) Above restrictions on information that would compromise national security still apply.
US Central Authority (under the Hague convention on international child abduction). §463(e)	Locate any parent or child on behalf of an applicant to central authority in a child abduction case. §463(e)	Upon request, pursuant to agreement between Secretary of DHHS and the central authority. No fee may be charged. §463(e)	Most recent address and place of employment. §463(e)	Restrictions under §453 (national security etc., domestic violence). §453(b) and §463(c)
Secretary of the Treasury §453(h)(3) and (i)(3)	Administration of federal tax laws. §453(h)(3) and (i)(3)	Pursuant to procedures developed between the Secretary of Treasury and DHHS.	FCR data and NDNH data. §453(h)(3) and (i)(3)	
Social Security Administration §453(j)(1) §453(j)(4)	Verification. §453(j)(1) For any purpose. §453(j)(4)	Pursuant to procedure developed between the Social Security Administration and DHHS.	FPLS data. §453(j)(1) NDNH data. §453(j)(4)	
State IV–D agencies §453(j) (2) and (3)	Location of individual in paternity or child support case. §453(j)(2) Administration of IV–D program. §453(j)(3)	Every 2 business days information comparison in NDNH with the FCR and report back to States within 2 business days after a match is discovered. This would be an automatic match with the statewide automated system. §453(j)(2)(A & B) When the Secretary determines a data match would be necessary to carry out the purposes of the IV–D program. §453(j)(3)	FPLS matches. §453(j) (2) and (3)	Disclosure would contravene national policy or security interest of the US, or confidentiality of census data. Notification from State of reasonable evidence of child abuse or domestic violence. §453(b)
Researchers. §453(j)(5)	Research purposes found by the Secretary to be likely to contribute to achieving purposes of IV–A or IV–D programs. §453(j)(5)	At Secretary's discretion. §453(j)(5)	Data in each component of the FPLS.	Personal identifiers removed. §453(j)(5)
State IV–A agencies. §453(j)(3)	Administration of IV–A program. §453(j)(3)	When the Secretary determines a data match would be necessary to carry out the purposes of the IV–A program. §453(j)(3)	FPLS matches. §453(j)(3)	Disclosure would contravene national policy or security interests of the US, or confidentiality of census data. Notification from State of reasonable evidence of child abuse or domestic violence. §453(b)

Appendix D: Attorney Fees Chart

Attorney Fees Under the Family Code		
Provision	**Section**	**Criteria**
General Rule	§270	Ability to pay
Sanctions	§271	Frustrate settlement or not reduce cost of litigation; cannot award if unreasonable financial burden; no requirement of need
Government Agencies	§273	No attorney fees against government agencies except under CCP §128.5 or Fam C §271
Marital Cases		
General Rule	§2030	Must award reasonable attorney fees (AF) if court finds fees appropriate, there is a disparity in access to funds to retain counsel, and an ability to pay for both parties
Notice or Oral Motion	§2031	AF award after notice or oral motion; no notice if default entered
Equalize Litigating Power	§2032	Need is having sufficient resources to present case adequately; payor must have ability to pay; can order from any type of property
Attempt to Murder Spouse	§274	AF as sanction to injured spouse; not need based; no ability to pay requirement; notice required
Recovering for Assigned Debt	§916	Debt assigned to spouse; money taken from other spouse by judgment by creditor; may award AF for enforcing right of reimbursement; §270 ability required
Breach of Fiduciary Duty	§1101	Breach of fiduciary duty; mandatory AF sanction; §270 ability required
Compel Declaration of Disclosure	§2107	Mandatory AF for motion to compel preliminary or final declaration of disclosure; unless noncompliance was with substantial justification or sanction is unjust
Void or Voidable Marriages	§2255	AF provisions apply to void or voidable marriages
County Enforcement of Spousal Support	§4303	Discretionary AF to county for enforcing duty to support spouse; §270 ability required
Uniform Parentage Act Actions		
General Rule	§7640	May award reasonable AF; in proportion and at times determined by court; §270 ability required

Domestic Violence Restraining Orders		
Provision	**Section**	**Criteria**
General Rule	§6344	May award AF to prevailing party; §270 ability required; notice and hearing required
Appointed Counsel	§6386	May appoint counsel to petitioner to enforce protective order and may order respondent to pay AF; §270 ability required
Specific Child Custody Proceedings		
False Abuse or Neglect Allegations	§3027.1	May award AF sanctions incurred for defending knowingly false allegations; OSC required; §270 ability required
Thwarting Parenting	§3028	Financial compensation for non-assumption of care-taking responsibility or thwarting visitation; AF to prevailing party; §270 ability required
Minor's Appointed Counsel	§3153	Court apportions all or part of reasonable fee unless inability to pay
Declining Jurisdiction Because of UCCJEA Violation	§3428	No UCCJEA jurisdiction in this court due to unjustifiable conduct; must assess AF unless clearly inappropriate; §270 ability required
Hague Proceedings	§3452	Must award AF to the prevailing party unless clearly inappropriate; §270 ability required
Specific Support Provisions		
Enforcing Child/Spousal Support Order	§3557	Must award AF for enforcing existing support order if court finds fees appropriate, there is a disparity in access to funds to retain counsel, and an ability to pay for both parties
Modifying Child/Spousal Support Order	§3652	May award AF to prevailing party for order modifying, terminating, or setting aside support order; §270 ability required
False Income and Expense Declaration	§3667	May award costs as sanction on motion to modify if I&E incomplete or inaccurate or missing tax returns; §270 ability required
Government Enforcement	§4002	County may be awarded AF in securing child support award; §270 ability required
Foreign Support Order	§4919	Responding court may award AF in action to register foreign support order (UIFSA); §270 ability required
Resisting Foreign Support Order	§4927	Obligor fails in resistance to order; may award AF to obligee as prevailing party; §270 ability required

Attorney Fees Under the Civil Code		
Provision	**Section**	**Criteria**
Violating Information Practices Act	§§1798.46, 1798.48	Must assess reasonable AF for failure to comply with inspection request, or for failure to properly maintain records or comply with other provisions of the Act

Attorney Fees Under the Code of Civil Procedure		
Provision	**Section**	**Criteria**
Violating Lawful Court Order	§177.5	Sanctions to court; $1500 maximum; findings required; notice and opportunity to be heard
Civil Contempt	§1218	May award reasonable AF to party who initiated contempt proceeding
Bad Faith Conduct	§128.5	Bad actions, frivolous tactics; intended to cause unnecessary delay; findings required; notice and opportunity to be heard; against party or attorney; pre-1995 actions
Bad Faith Conduct	§128.7	General bad faith conduct with statute outlining specific conduct; 21-day notice to correct or withdraw; notice and opportunity to be heard; against party or attorney; post 1994 actions
Set Aside Defaults Taken Through Mistake, Inadvertence, Surprise, or Excusable Neglect	§473	May award AF to be paid by attorney at fault
TRO re Harassment	§527.6	May award AF and costs to prevailing party
Failure to Comply with Local Rules	§575.2	Local rules may provide that reasonable AF may be awarded for violation of local rules
Discovery Violations	§§2023.010 et seq	Noncompliance with discovery requests and misuse of discovery process; notice required

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