

**PARALEGAL ROUNDTABLE**

23<sup>rd</sup> Annual AB 1058  
Child Support  
Training Conference  
August 27-30, 2019

**CO-PRESENTERS:**  
Evelina Nishizawa & Miriam Gaeta,  
Family Law Facilitator Paralegals



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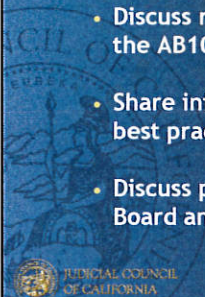
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**Roundtable Goals**

- Discuss relevant issues affecting the AB1058 Courts & Child Support.
- Share information and exchange best practices.
- Discuss proposed FLFO Message Board and Court Contacts.



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**ICE BREAKER QUESTIONS**

*"I do not have to pay child support if I am no longer employed."*

TRUE  
 FALSE



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# FALSE

- **FC §4058(b)** The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.
- **IRMO Berger (2009) 170 Cal.App.4th 1070; IRMO McHugh (2014) 231 Cal.App.4th 1238**
- Earning capacity has been defined as the income the person is reasonably capable of earning based upon the person "age, health, education, marketable skills, employment history, and the availability of employment opportunities."

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*"Once my child turns 18, I no longer have to pay child support."*

- TRUE
- FALSE

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# FALSE

- **FC §3901(a)(1)** The duty of support imposed by Section 3900 continues as to an unmarried child who has attained 18 years of age, is a full-time high school student, unless excused pursuant to paragraph (2), and who is not self-supporting, until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first.
- **(2)** A child is excused from the requirement to be a full-time high school student for purposes of paragraph (1) if the child has a medical condition documented by a physician that prevents full-time school attendance.
- **(b)** This section does not limit a parent's ability to agree to provide additional support or the court's power to inquire whether an agreement to provide additional support has been made.

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*“The other parent and I share 50/50 custody, so I do not have to pay child support.”*

TRUE

FALSE



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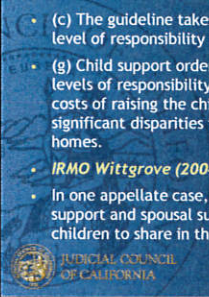
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**FALSE**

- **FC §4053** In implementing the statewide uniform guideline, the courts shall adhere to the following principles:
- (c) The guideline takes into account each parent’s actual income and level of responsibility for the children.
- (g) 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.
- **IRMO Wittgrove (2004) 120 Cal.App.4th 1317**
- In one appellate case, a father was ordered to pay temporary child support and spousal support, respectively, to allow the minor children to share in the standard of living of both parents.



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*“My only income is Supplemental Security Insurance (SSI). It should not be imputed as “income” to determine child support.”*

TRUE

FALSE



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## TRUE

- **FC §4058(c)** Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.
- **Elsenheimer v. Elsenheimer (2004) 124Cal.App.4th 1532**
- SSI (Supplemental Security Income) and SSP (State Supplemental Program) are need-based programs and cannot be reached or considered in setting child support.

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*"I found out the other parent has been making more money for the past six months. I want to modify the child support based on his new income. The new child support order should go back to the time he started his new job."*

- TRUE
- FALSE

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## FALSE

- **FC §3651(c) (1)** Except as provided in paragraph (2) and subdivision (b), a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

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*“The other parent and I can agree to a below guideline child support order.”*

TRUE

FALSE



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**TRUE, but there may be times when the agreement is not accepted by the Court.**

- FC § 4065 (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:
  - (1) They are fully informed of their rights concerning child support.
  - (2) The order is being agreed to without coercion or duress.
  - (3) The agreement is in the best interests of the children involved.
  - (4) The needs of the children will be adequately met by the stipulated amount.
  - (5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.



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*“I am incarcerated so I do not have to pay child support during my incarceration.”*

TRUE

FALSE



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**TRUE.** However, this law will expire on January 1, 2020 and the current law only applies to orders issued on or after October 8, 2015.

- FC § 4007.5(a) Every money judgment or order for support of a child shall be suspended, by operation of law, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless either of the following conditions exist:
  - (1) The person owing support has the means to pay support while incarcerated or involuntarily institutionalized.
  - (2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support.

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*“If I support my children from a different relationship, I can ask the court to reduce the amount of child support I pay for the children in this case.”*

- TRUE
- FALSE

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**TRUE**

- FC § 4070 The court may allow income deductions if a parent is experiencing “extreme financial hardship due to justifiable expenses.”
- FC § 4071(a)(2) The minimum basic living expenses of either parent’s natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, on its own motion or on the request of a party, may allow these income deductions as necessary to accommodate these expenses after making the deductions allowable under paragraph (1).
- *Haggard v. Haggard* (1995) 38 Cal.App.4th 1566; *County of San Diego v. Sierra* (1990) 217 Cal.App.3d 126; *IRMO Butler and Gill* (1997) 53 Cal.App.4th 462
- A parent cannot obtain a hardship for step-children, parents, or siblings.

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*“Bonus” income must always be included in the non-custodial parent’s “net monthly disposable income” when determining child support orders.”*

TRUE  
 FALSE



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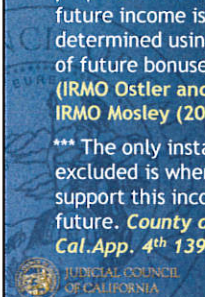
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**TRUE**

**FC § 4058.** Bonus income is considered income for purposes of calculating support. However, when no future income is guaranteed, support may be determined using base salary income with a portion of future bonuses allocated by way of a percentage. (IRMO Ostler and Smith (1990) 223 Cal.App.3d 33; IRMO Mosley (2008) 165 Cal.App.4th 1375)

\*\*\* The only instance when bonus income might be excluded is when there is credible evidence to support this income is unlikely to continue in the future. *County of Placer v. Andrade (1997) 55 Cal.App. 4th 1393.*



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*“The interest rate charged for child support arrears for Active Duty non-custodial parents serving in the military cannot be more than 6% a year.”*

TRUE  
 FALSE



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## TRUE

- **50 USC § 3937(a)** Prior to activation, the interest rate on child support arrears cannot be more than 6% during the period of military service.
- All “Active Duty” military members have the ability to reduce interest rates to 6% under certain circumstances. Protection generally terminates within 30-60 days of discharge of active duty. (**Servicemembers Civil Relief Act**)

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## Discussion Topics

- (1) The Court’s commitment to provide the public with equal access to justice.
- (2) The Court’s use of technology to provide the public with electronic access to court services and more efficient business practices.
- (3) Effective January 1, 2020, incarcerated litigants will no longer be able to ask for credit for periods of prior incarceration per Family Code § 4007.5. How will this affect your court?

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## Equal Access to Justice

The Judicial Council of California has made a commitment to provide the public with equal access to the courts by increasing funding.

The Courts have expanded hours, hired more employees, re-opened closed locations and invested in new technology to increase the public’s access to the courts and the services provided by the courts.

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How do we provide accommodations to customers with physical disabilities without giving them preferential treatment or legal help?

- *What are some common issues?*
- *Solutions*
- *Takeaways*

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How do we help non-English speaking customers when an interpreter is not available to assist them in their language?

- *What are some common issues?*
- *Solutions*
- *Takeaways*

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How do we assist people who are not physically able to come to the courts, such as incarcerated, out-of-state or physically disabled customers?

- *What are some issues?*
- *Solutions*
- *Takeaways*



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How do we help customers who insist we help them complete their forms because they are clueless on how to answer the questions and they cannot afford an attorney?

- *What are some common issues?*
- *Solutions*
- *Takeaways*



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**Implementation of New Technology**

Orange County Superior Court is now utilizing the following technology:

- Self-Help Portal: Litigants can get case information, register for workshops & get access to "How to Videos."
- Odyssey Guide & File: Self-represented litigants can open new court cases and file court documents online.
- Texting Project, *in collaboration with Stanford University*: Provides text updates for divorce cases.
- In Fall 2019, Self-Help Mobile App: User Friendly & will integrate the Self-Help Portal with Odyssey Case Management System.



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The Judicial Council's goal is to increase the public's access to qualified interpreters. The courts are now providing interpreting services by telephone and online. Video Remote interpreting(VRI) is now utilized in courtrooms.

- *Have you experienced any issues or problems with the implementation of new technologies and services provided by the courts?*
- *Takeaways*



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### Family Code § 4007.5

- Effective January 1, 2020, litigants will no longer be able to ask the Courts for an adjustment of child support arrears due for periods of prior incarceration for orders/judgments made or modified after October 8, 2015.
- *How will you assist litigants when they will discover they will not be able to receive credit for prior incarceration due to the expiration of this law?*
- *What type of resources or options can you provide for the litigant?*



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### Best Practices

#### Scenario #1

A customer comes to the Facilitator's Office with a big bag of receipts and asks for your help with organizing their receipts and filling out the court forms because she cannot write legibly. The customer wants a hearing to get an order for unreimbursed medical expenses.



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### Scenario #1 (Cont'd)

- *How do you help this customer?*
- *Have you encountered any issues assisting customers with disabilities?*
- *What are some solutions or best practices?*

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### Best Practices - Scenario #2

A customer with an active case with the Department of Child Support Services comes to the court and wants assistance with modifying her child support, custody and visitation orders under the same court case number.

- *How does your county keep track of the time you spend on non-AB1058 matters?*
- *What are your challenges in keeping accurate timekeeping records?*

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### Best Practices - Scenario #3

How do you assist a customer at the window/counter who asks too many questions or wants you to provide them with detailed procedures on how to fill out the forms?

- *What are some solutions?*
- *Best Practices*

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## Best Practices - Scenario #4

A customer comes to the court and wants to open a new court case; however, she is not certain if her court case in Riverside County was dismissed.

- *How do you verify the customer's case was dismissed in the other county?*
- *If the courts had a statewide database to look up filed documents from other counties, would this help reduce the number of duplicate cases and provide customers with better customer service?*



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## Proposals

### Discussion Board with Notification

- Discuss important topics or issues.
- Disperse information to colleagues.
- Get assistance from other counties to resolve customer issues/problems.
- Get feedback.



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## Proposals (cont'd)

### Designated Contact Person

Each county has a designated contact person if you need to get court case information from that county.



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# QUESTIONS?



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