

# 28<sup>th</sup> Annual AB1058 Child Support Training Conference

## Best Practices Roundtable 2024

### List of Citations

1. Mutual duty to support: Family Code sections 3900, 4001
2. Establishment of Parentage:
  - a. Genetic testing: Family Code section 7550 et seq.
  - b. Marital Presumption of Parentage: Family Code section 7540
  - c. Voluntary Declaration of Parentage (VDOP) is to be Given the Same Force and Effect as Judgment: Family Code sections 7573, subdivision (d), 7644
  - d. Establishing Parent-Child Relationship: Family Code section 7611
  - e. No Statute of Limitations to Bring Action to Assert Parentage: *Dent v. Wolf* (2017) 15 Cal.App.5<sup>th</sup> 230
  - f. Right of Biological Father to Contest Adoption: *Adoption of Kelsey S.* (1992) 1 Cal.4<sup>th</sup> 816
  - g. Weighing of Conflicting Presumptions: Family Code section 7612
  - h. More Than 2 Parents: Family Code sections 7601, 7612
  - i. Required Joinder of Indispensable Party: Code of Civil Procedure section 389
  - j. Assisted Reproduction and Parentage: Family Code section 7613
  - k. Parentage in Adoption Case: Family Code section 7664
  - l. Child Support Judgment Does Not Grant Presumed Parent Status in Dependency Court because questions of parentage in Dependency Court (i.e., eligibility for reunification services) are different from those in the child support setting: *In re E.O.* (2010) 182 Cal.App.4<sup>th</sup> 722
  - m. Biological (Non-Presumed) Father's Lack of Standing to Establish Parentage with Offspring of Married Woman: *Dawn D. v. Superior Court* (Jerry K.) (1998) 17 Cal.4<sup>th</sup> 932
3. Disestablishment of Parentage:
  - a. Challenging the Marital Presumption: Family Code section 7541
  - b. Setting Aside Judgment of Parentage: Family Code section 7646
    - i. Vacate Parentage Judgment, Then Parentage Testing: *City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4<sup>th</sup> 1061
    - ii. No Set Aside of Judgment, Then No Genetic Testing: *County of Orange v. Superior Court* (2007) 155 Cal.App.4<sup>th</sup> 1253
  - c. Rescission of the VDOP: Family Code section 7575
  - d. Set Aside of the VDOP by SIGNATORY: Family Code section 7576 (fraud, duress, mistake; strict 2-year time limit)
  - a. Set Aside of VDOP by NON-SIGNATORY: Family Code section 7577 (child(ren)'s best interests; slightly less strict 2-year time limit; standing defined in Fam. Code, §§ 7611 and 7630)
  - b. Order for Genetic Testing: Family Code sections 7551, 7552, 7647.7

4. Current Judgment of Parentage Acts as *Res Judicata*:
  - a. Judgment of Parentage is Determinative: Family Code section 7636
  - b. In further support—court order not in excess of fundamental jurisdiction is treated as valid until and unless set aside: *People v. Ford* (2015) 61 Cal.4<sup>th</sup> 282, 287.
  - c. In further support—*res judicata*, collateral estoppel: *Estate of Redfield* (2011) 193 Cal.App.4<sup>th</sup> 1526, 1534
5. Set Aside of Judgments Generally:
  - a. Due process/void judgment/Code of Civil Procedure section 473, subdivision (d).
  - b. Mistake/inadvertence/surprise/excusable neglect OR fault of counsel: Code of Civil Procedure section 473, subdivision (b).
  - c. Lack of actual notice until after judgment entered: Code of Civil Procedure section 473.5; Family Code section 3691, subdivision (c) (though valid service defeats the latter, making that section of dubious usefulness).
  - d. Dissolution judgments: Family Code section 2122.
  - e. Equity/extrinsic fraud: e.g., *Olivera v. Grace* (1942) 19 Cal.2d 570; *Yolo County DCSS v. Myers* (2016) 248 Cal.App.4<sup>th</sup> 42.
6. Set Aside of Presumed Income Judgments:
  - a. Presumed Income defined: Family Code section 17400(d)
    - i. Operative through 12/31/2025
    - ii. Changes are operative beginning 01/01/2026: earning capacity instead
  - b. Set Aside of Presumed Income Judgments: Family Code section 17432
    - i. Operative through 12/31/2025
    - ii. Changes are operative beginning 01/01/2026
7. Set Aside of Support Order: Code of Civil Procedure section 473; Family Code section 3691
8. Additional Child Support:
  - a. Family Code section 4062: Defined
    - i. Operative through 08/31/2024
    - ii. Changes are operative beginning 09/01/2024
  - b. Family Code section 4061: Apportionment
    - i. Operative through 08/31/2024
    - ii. Changes are operative beginning 09/01/2024