



Welcome to the 28th Annual AB
1058 Child Support Training
Conference

Judicial Discretion and Guideline Child Support

Commissioner Janet Frankel (Marin)

August 29, 2024





When does the court exercise discretion?

- At the beginning: when establishing the guideline formula amount
- Again at the end, if appropriate, when considering whether to it is appropriate to deviate from the guideline formula amount



ONE: Getting to Guideline

- Required findings:
 - Income
 - Deductions
 - Timeshare
 - Add-on costs
 - Effective Date



Income Available for Support

- W-2 income
- SE income (1099s, K1s, P&L)
- Disability income
- Gift income
- UIB
- Imputation of income



Deductions from Income

- Union dues
- Medical/Dental/Vision insurance
- Retirement contributions (mandatory/voluntary)
- Job-related expenses
- Spousal support paid
- Mortgage interest/property taxes
- Hardships



Time for a timeshare HYPO

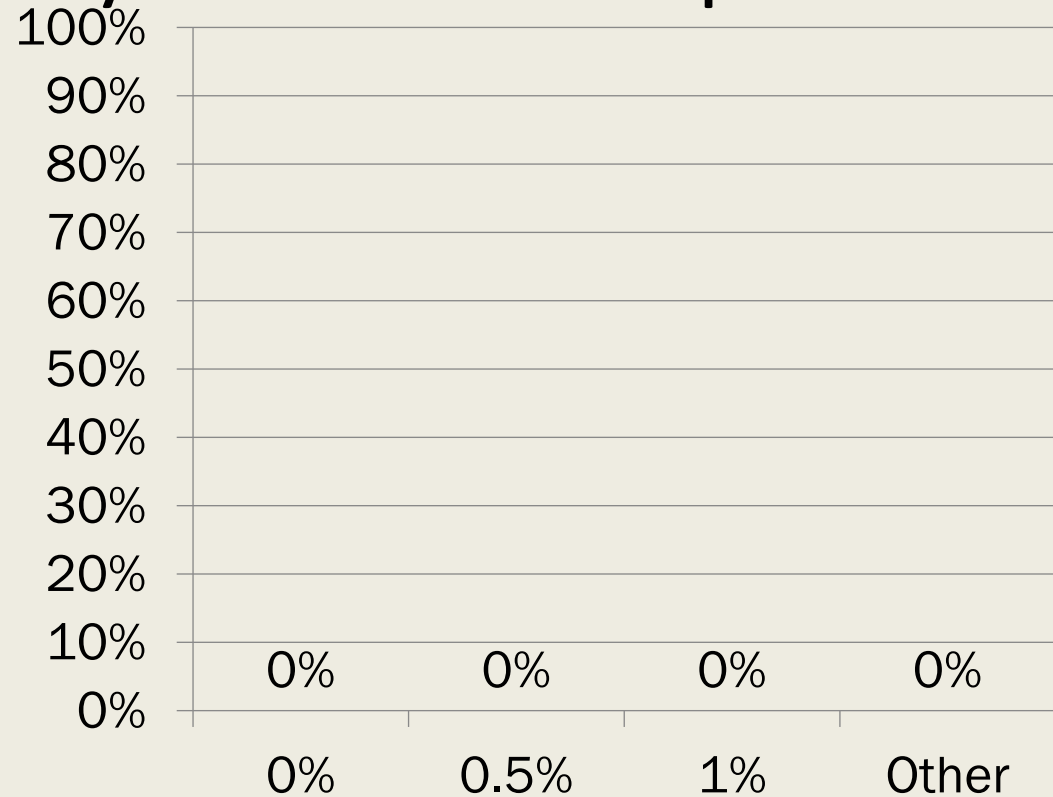
- HYPO (exercise of discretion when establishing timeshare)
- A parent with a substance abuse problem checks into an inpatient rehab for six months. Before he went into rehab, his two pre-teen children were with him from Monday morning through Saturday morning (around 70%) every week. Rehab only allows him to leave the center for one hour per week, but he misses that one hour once every other week or so due to scheduling snafus which are no fault of his own. His actual timeshare therefore is less than $\frac{1}{2}$ of 1%.



Timeshare HYP0

The other parent seeks modification of child support.
What timeshare would you use for the parent in rehab?

1. 0%
2. 0.5%
3. 1%
4. something else



Child support Add-ons

- Additional child support pursuant to FC § 4062
- Shared expenses come in two categories:
 1. Mandatory
 2. Discretionary



“Mandatory” additional child support

- FC § 4062(a)
- Childcare related to employment
- Uninsured medical costs



“Discretionary” additional child support

- FC § 4062(b)
- Education / special needs costs
 - HYP0: Does this include extra-curricular activities?
- Travel expenses for visitation



Allocation of add-ons (FC § 4061(a))

- Effective until 9/1/2024:
 - Presumption is 50/50 unless a party requests to allocate proportionately (until 9/1/2024)
- Effective 9/1/2024:
 - Presumption is proportional allocation
 - unless a party requests (or the court finds *sua sponte*) that expenses should be divided differently.



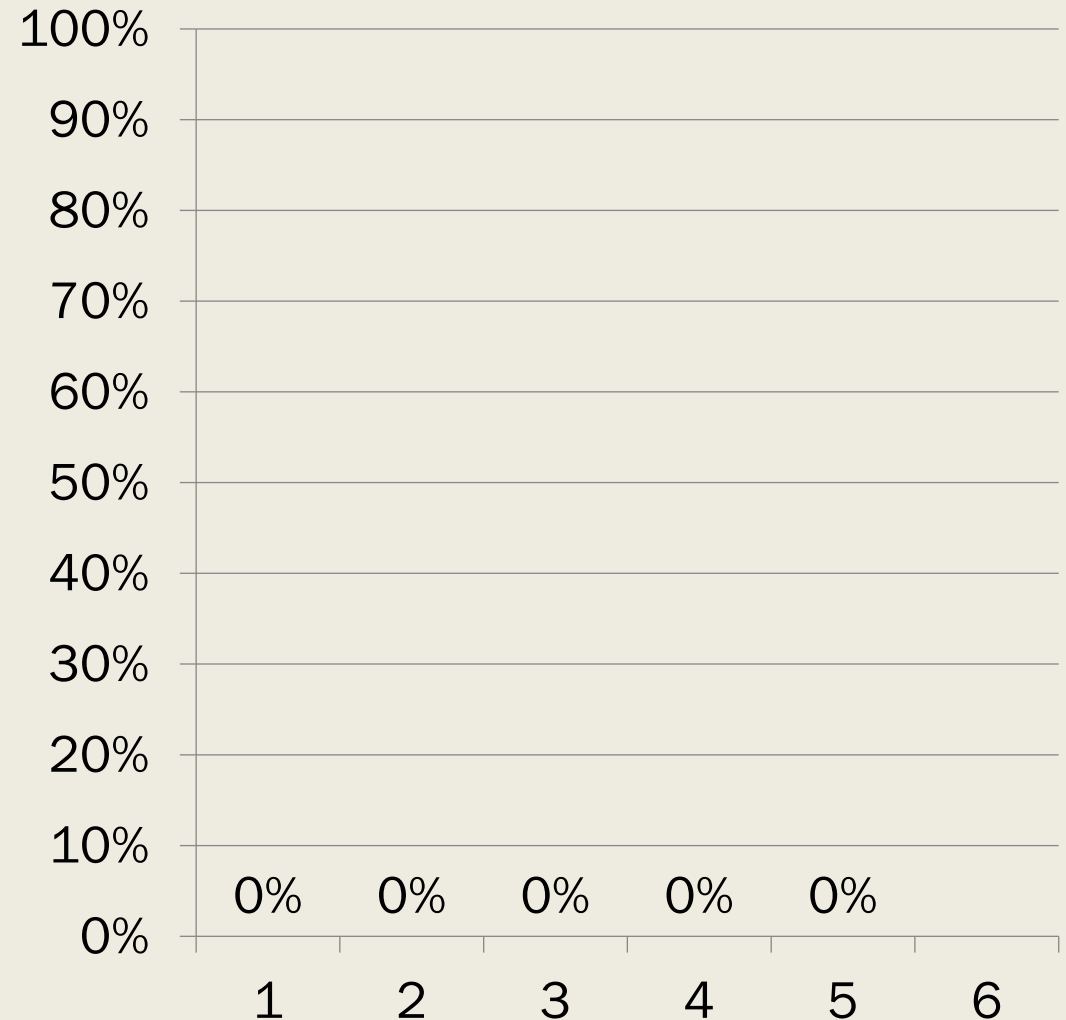
Time for an extra-curricular activity HYP0

- Johnny has a week-on, week-off schedule with his two parents. Mother is self-supporting. Father is also self-supporting, and earns twice as much as Mother.
- Mother takes Johnny to soccer practice twice weekly and to his soccer games every other Saturday. Father takes Johnny to practice, sometimes takes Johnny to soccer, but usually Father takes Johnny to Tahoe vacation home on the weekends, for water- or snow-skiing.
- Mother wants Father to share in the cost of the soccer, which averages \$350 per month. Father says Mother should share in the ski costs, which average \$700 per month, if he has to share in the soccer costs.



How do you rule?

1. Father pays for $\frac{1}{2}$ of soccer, \$175/mo
2. Father pays a proportional share of the soccer, based on his greater income.
3. Father does not have to contribute to the soccer cost.
4. Father pays $\frac{1}{2}$ of soccer, and Mother pays $\frac{1}{2}$ of the expenses for skiing; net result Mother owes Father \$175.
5. Father pays a proportional share of the soccer, and Mother pays a proportional share of the skiing.
6. Continue the hearing to find out what Johnny likes best.



Effective date

- Jurisdiction retroactive to date of filing

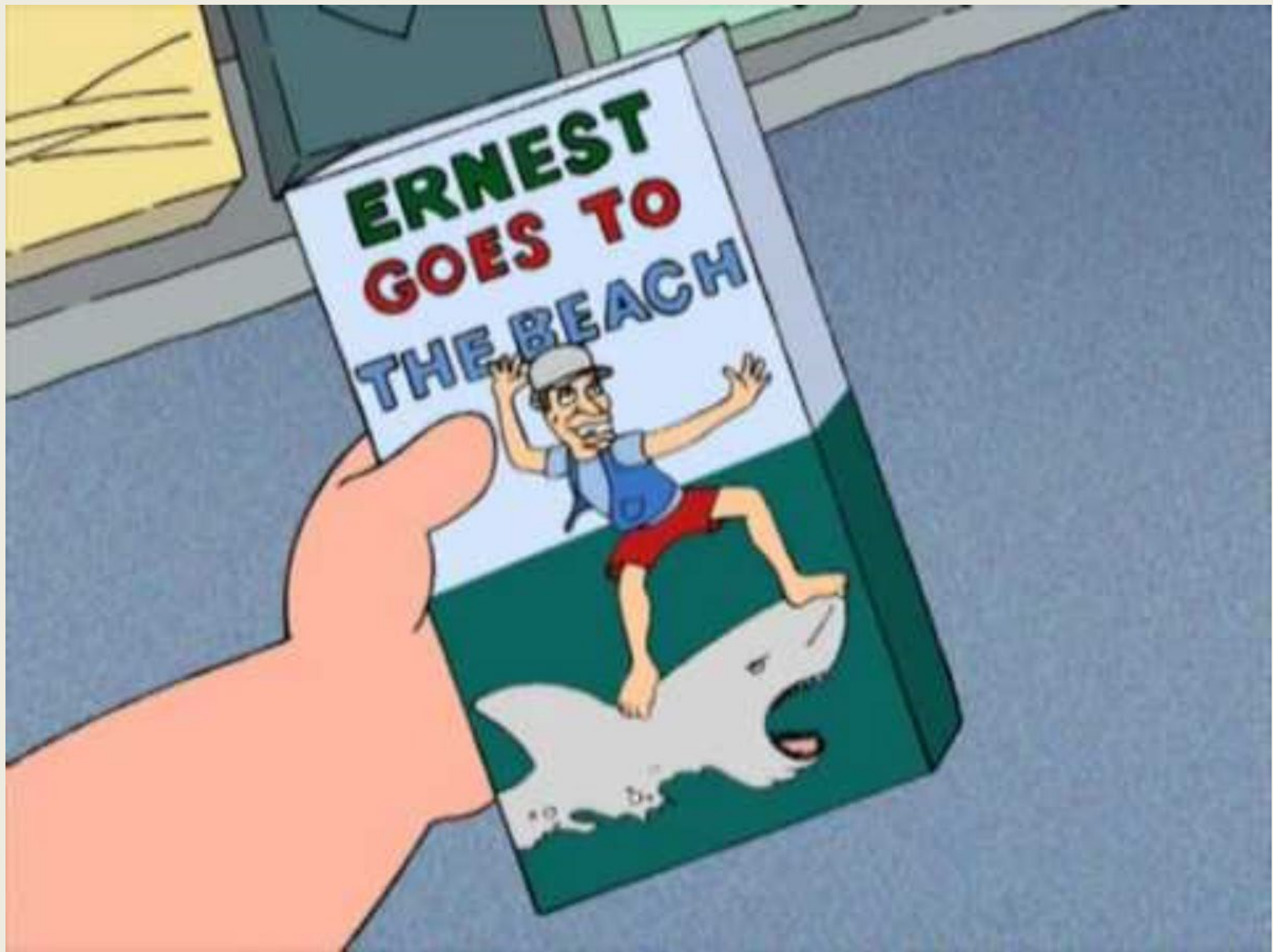


Discretion required!

- The court **MUST** make the required findings.
- Findings → guideline calculator → guideline (formula) child support amount.
- The court **MUST** calculate guideline child support using the findings.
- Once the court has determined the amounts to input into the formula, the resulting child support amount is the guideline amount.
- The court may not disregard the guideline child support amount.

The required findings are **NOT** the focus of this course.





TWO: Deviating from Guideline

Polling question:

- What if the formula amount seems unfair, or unjust?
- Can we just set child support at an equitable amount?



But we are a court of equity.

- Can we substitute our own discretion and judgment and set child support at an equitable amount, instead?

- No.



But we are a court of equity!

- Yes, we do have discretion.
- How do we exercise that discretion?
 - Hardship deductions
 - Deviations from Guideline



Hardships (deduction from income)

- Extreme financial hardship
 - Determine net disposable income after deductions (FC § 4059)
 - Consider deduction for HARDSHIP (FC §§ 4059(g)), (4070-73)



Circumstances evidencing hardship (FC § 4071)

- Extraordinary health expenses
- Uninsured catastrophic loss
- Support for children from other relationships

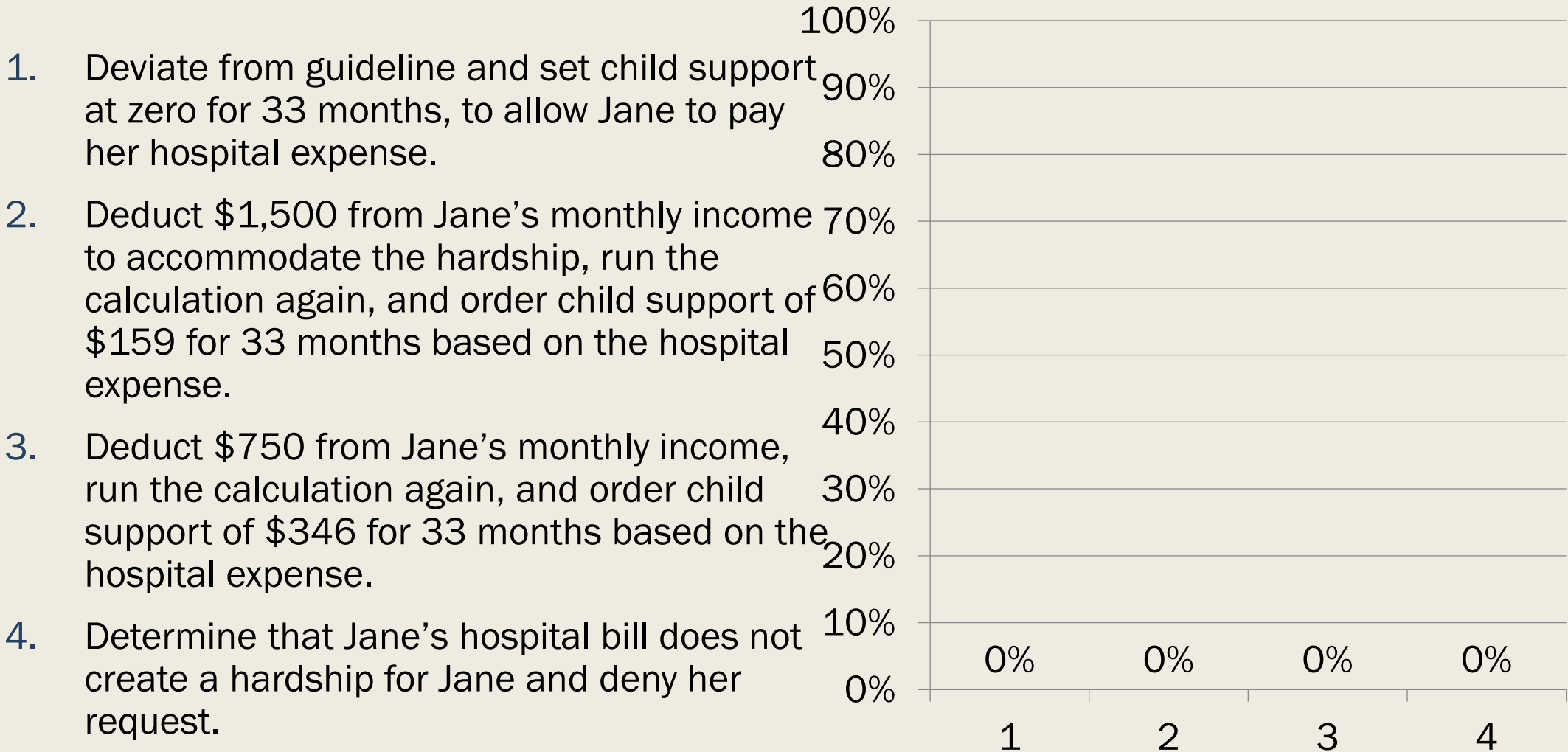


HEALTH EXPENSES HYPO

- Jane and John appear before you on a child support motion.
- Jane has 35% timeshare of two children. John has them the rest of the time. Jane works 35 hours per week and earns \$30/hour (\$4,550/month). John earns \$4,000 per month. Guideline child support is \$509 per month.
- Jane explains that last month she had emergency surgery, and the uninsured portion of her bill is \$50,000. Jane shows you her written agreement with the hospital for her to pay \$1,500 per month on her hospital bill.
- Jane seeks a hardship deduction. How do you rule?



How do you rule?



Extraordinary health expenses

FC § 4071(a)(1)

- Can be deducted from the income of the party
 - Is NOT deducted from the amount of child support established by the formula



Uninsured catastrophic loss deduction

- The analysis is the same as for extraordinary health expenses.



Other minor children, from another relationship - FC § 4071(a)(2)

- Deduction for hardship is from the income of the party, not from the child support amount
- Deduction for each hardship child cannot exceed the amount of support allocated to each child subject to the order



Findings required for other hardship children

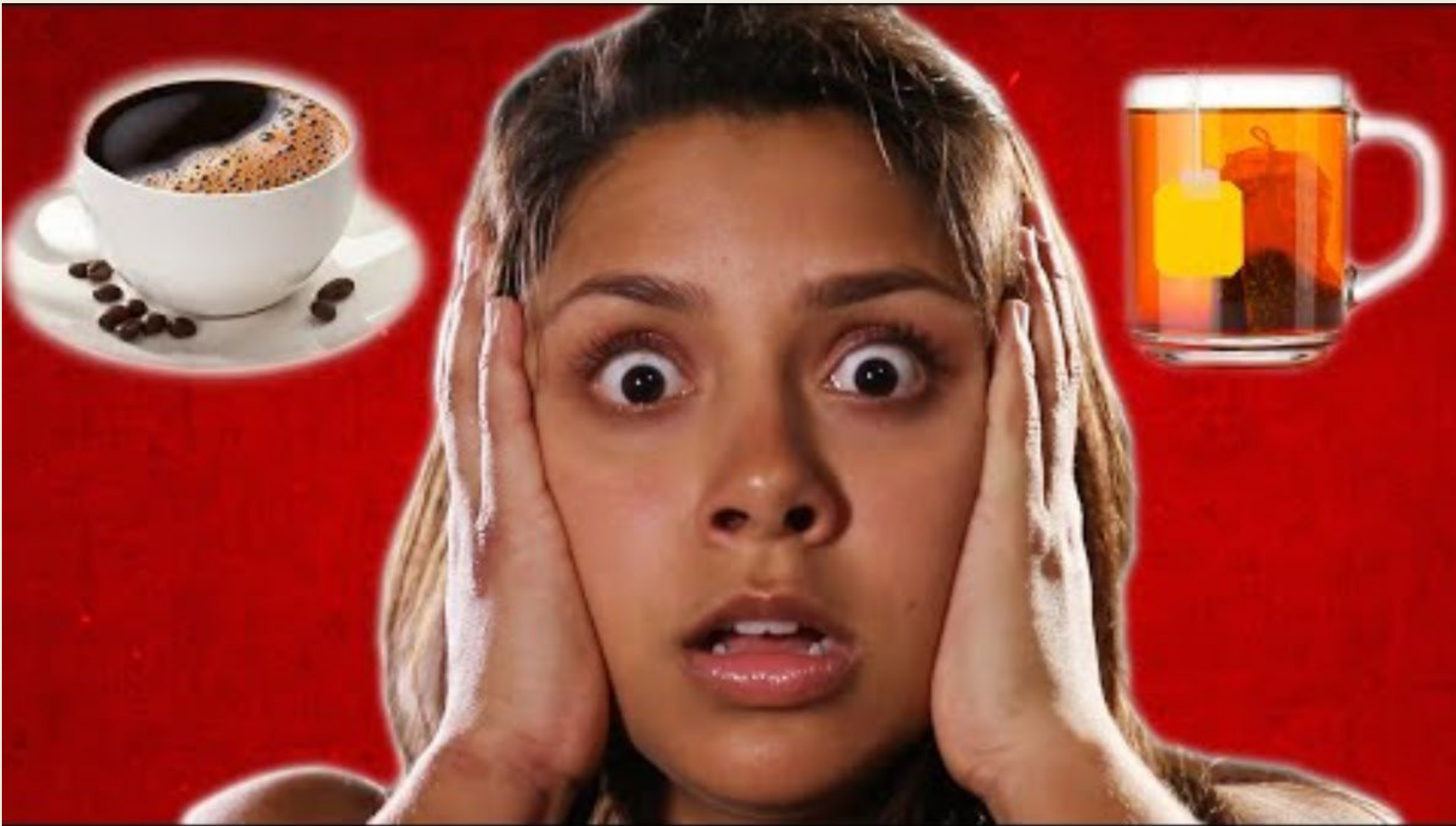
- FC § 4072, IRMO Carlsen (1996) 50 Cal.App.4th 212, 217
- If allow the deduction, must state:
 - The reason for the deduction
 - The amount of the deduction
 - The facts and circumstances supporting the deduction
 - Duration of deduction (if possible)



Basis for the court's discretion to consider hardship (FC 4073)

- The basis of the court's discretion to consider hardships:
- “The court shall be guided by the goals in this article when considering whether or not to allow a financial hardship deduction and, if allowed, when determining the amount of the deduction.” Fam. Code § 4073.
 - “This article” refers to California Family Code, Division 9, Part 2, Article 2. In other words, FC §§ 4050 – 4077.





Deviation from guideline

- Deviation from the Formula Amount
- The guideline amount is still presumed to be correct (FC § 4057)
- BUT --- the presumption is rebutted.



Presumption can be rebutted

- Consider principles of FC § 4053
 - A parent's first responsibility is to support children (according to their circumstances and station in life) FC § 4053(a)
 - Parents are mutually responsible to support children FC § 4053(b)
 - Guideline support takes income and timeshare into account FC § 4053(c)
 - Each parent pays support according to their ability FC § 4053(d)
 - Interests of child is the state's top priority FC § 4053(e)



TOP priority of the state

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



Guideline amount is presumptively correct.

FC § 4053(k)

- Children should share in both parents' standard of living. FC § 4053(f)
- Child support should minimize significant disparities in living standards in the two homes. FC § 4053(g)
- Private resources should meet children's needs, if possible. FC § 4053(h)
- Presumption that custodial parent expends resources to support children in their home. FC § 4053(i)
- Guideline seeks to minimize litigation and encourage settlement. FC § 4053(j)
- Guideline is presumptively correct. FC § 4053(k)
- Support orders should reflect the high standard of living in California as compared to other states. FC § 4053(l)



Burden: Preponderance of the evidence

- FC § 4053(k):
- The guideline amount is presumptively correct.
- Only under special circumstances should child support orders fall below the mandated guideline formula amount.



HYP0 – Exercise of Discretion

- Mother and Father have two children, guideline child support is \$825 payable by Father to Mother. Father drafts and they both sign a stipulation that Father will pay \$500 per month.
- How do you rule? Do you approve their stipulated agreement?
- What do you need to know?

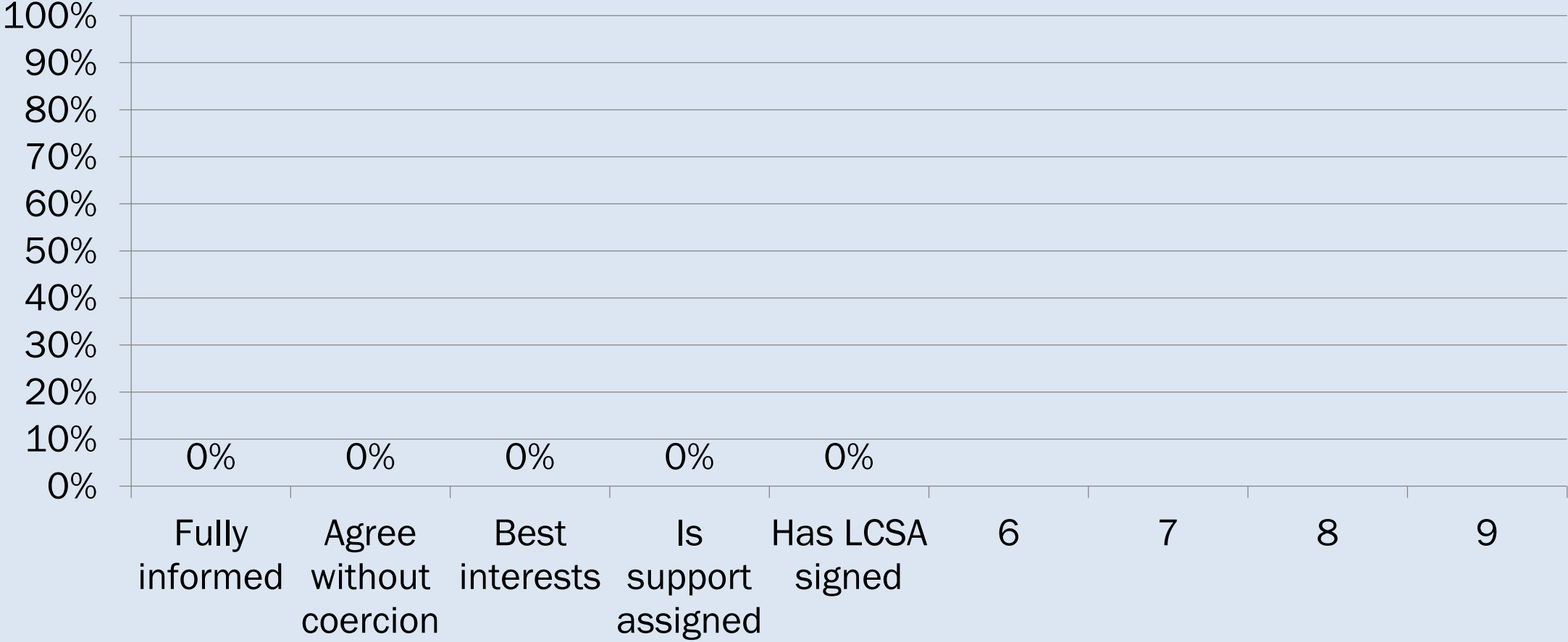


Hypo: What do you need to know?

1. That they are fully informed of their rights concerning child support.
2. That they agree to the order without coercion or duress.
3. That their agreement is in their children's best interests, and their children's needs will be adequately met by the stipulated amount.
4. Whether the right to support has been assigned to the county.
5. That the LCSA has also signed the agreement when the agency is providing enforcement services.
6. None of the above.
7. 1, 2, and 3.
8. 4 and 5.
9. 1, 2, 3, 4 and 5.



What do you need to know?



Permissible Reasons for deviation -- Stipulation

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
- FC § 4057(b)(1) Stipulation to a non-guideline amount
 - Parties can agree to an above- or below-guideline amount.
 - The LCSA must sign off on the agreement when they are providing child support enforcement services.





TIRED OF MAKING DECISIONS?



FC § 4065(a) requirements

- The court MAY NOT APPROVE a below-guideline amount unless the parties declare:
 - They are fully informed of their rights concerning child support;
 - They agree to the order without coercion or duress;
 - The agreement is in their children's best interests;
 - The children's needs will be adequately met by the stipulated amount; and
 - The right to support has not been assigned to the county, and no application for public assistance is pending.



Deviation for deferred sale of house

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
- 4057(b)(2): Deferred sale of Family Residence (FR)
 - Rental value of FR is greater than total of mortgage, insurance and taxes. Guideline can be adjusted, but no more than by the excess amount.
 - See also IRMO Braud (1996) 45 Cal.App.4th 797, 818-19



Deviation for high income earner

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
 - 4057(b)(3): PPS has an extraordinarily high income
 - The guideline amount would exceed the children's needs



Deviation where support is out of proportion with custodial time

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
- 4057(b)(4): Party is not contributing commensurate with their custodial time.



Deviation for low-income adjustment

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
- 4057(b)(5): PPS qualifies for low-income adjustment
 - In this case, if the guideline amount exceeds 50% of party's NDI, after application of LOI, deviation can occur.
 - The deviation cannot be greater than the amount exceeding 50% of the PPS's NDI

* LOI = low income adjustment

* NDI = net disposable income

* PPS = person paying support / person receiving support



Deviation for Special Circumstances

- 4057(a): guideline is presumed correct.
- 4057(b): guideline can be rebutted by:
- 4057(b)(6): Applying the formula is unjust due to “special circumstances”
 - Timeshare
 - Percentage of income spent on housing
 - Special needs children
 - More than two parents



Different timeshares for different children (FC § 4057(b)(6)(A))

- For example, if Father has the eldest of four children 100% of the time, and the next three 50% of the time.



Disparity in % of income spent on housing (FC § 4057(b)(6)(B))

- Applies where parents have substantially equal timeshare
- Example:
 - 50/50 timeshare of 3 children.
 - Mother lives in a home she inherited.
 - Father pays \$8,000 month in rent.



Special needs of child (FC § 4057(b)(6)(C))

- Special needs of child exceeds guideline amount
- Example:
 - Child needs special diet due to medical needs



Child has more than two parents (FC § 4057(b)(6)(D))

- The support calculator only calculates for 2 parents.
- Example:
 - Child has two biological parents and one non-bio parent based on the court's finding that all three are necessary to avoid detriment to the child.
 - Biomom has 50% timeshare
 - Biodad and non-biological mother have the other 50% timeshare.



Other Special Circumstances (FC § 4057(b)(6))

- FC § 4057(b)(6) says the guideline amount can be rebutted if it is “unjust or inappropriate due to special circumstances in the particular case.” The special circumstances include, but are not limited to, those delineated in FC § 4057(b)(6)(A) through (D).
- Let’s explore special circumstances
- Can you think of something not listed in FC § 4057(b)(6)?



Other Special Circumstances (FC § 4057(b)(6))

- If guideline support is ordered:
 - PPS will not be able to meet their own basic necessary living expenses
 - PPS will not be able to provide for the basic necessary living expenses the children during their custodial time
 - PPS will not be able to provide the basic necessary living expenses of children from other relationships

(City & County of SF v. Miller (1996) 49 Cal.4th 866)



Other Special Circumstances (FC § 4057(b)(6))

- If guideline support is ordered:
 - PPS has high consumer debt, incurred for living expenses of other children, rendering guideline inappropriate

(County of Lake v Antoni (1993) 18 Cal.App.4th 1102)



Other Special Circumstances (FC § 4057(b)(6))

- If guideline support is ordered:
 - Where neither parent retains “primary physical responsibility” for their adult child, application of guideline is inappropriate.
 - In *Edwards*, the parties’ stipulated that support would continue until age of 25. Oscar Jr was supporting himself and attending college, living with neither parent.

(*Edwards v. Edwards* (2008) 162 Cal.App.4th 136)



How to write your discretionary order:

- Must state the guideline amount.
- Must state the court is deviating from the guideline amount.
- Must state why the court is deviating.
- Must state that the amount ordered is in the best interests of the children.
- Must state WHY it is in their best interests.
 - Can just state “for the reasons set forth above.”
 - Or, can just state them again.





It begins with your Discretion

- You begin with discretion
 - Determine factors to input into calculator
 - Obtain guideline formula amount
 - Allocate add-ons



It ends with your Discretion

- Determine whether a hardship exists
 - This is a deduction from income
- Determine whether special circumstances exist which make the formula amount unjust or inappropriate
 - Based on this you may deviate from the guideline amount.
 - State your reasons, including why your order is in the best interest of the child.



QUESTIONS?

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