



**Welcome to the 27<sup>th</sup> Annual  
AB 1058 Child Support  
Training Conference**

# Case Law Update



**Robert Sech**

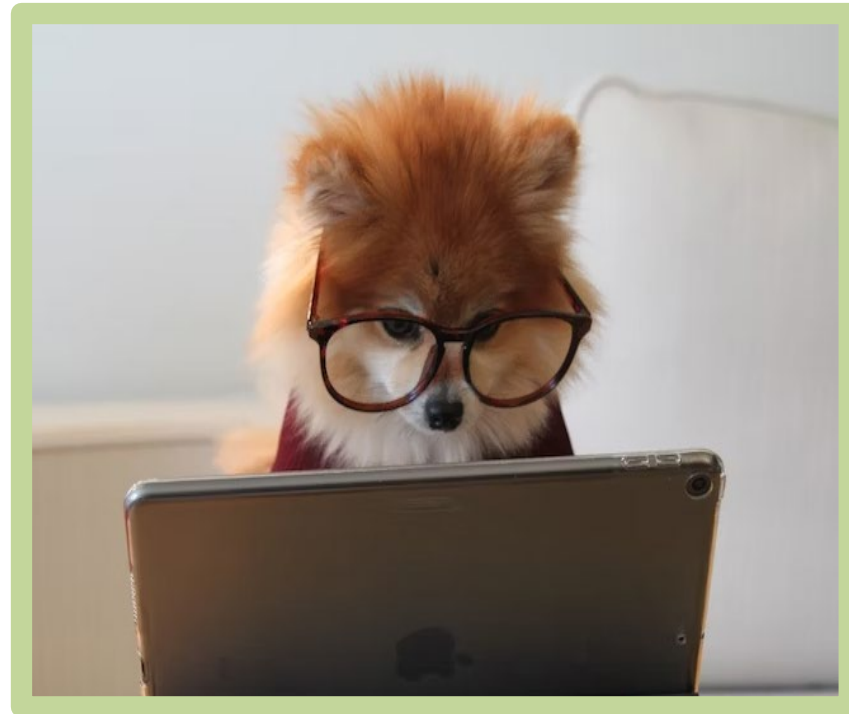
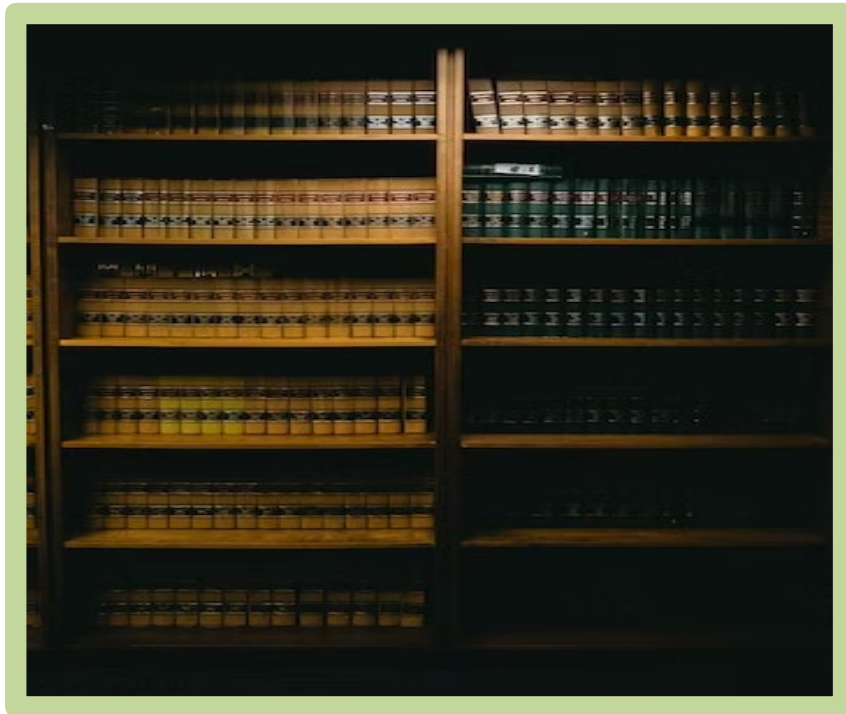
**Attorney IV, State of California DCSS**

**August 30, 2023**



# What will we cover today?

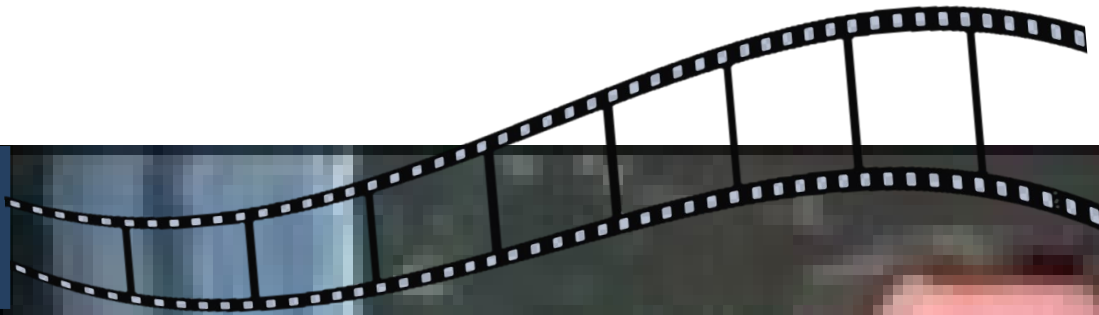
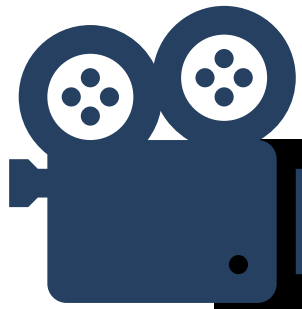
- Cases from January 2023 – present
- All published, citable
- Citations for full case opinions



# Ready? So let's go!!







# IRMO Cohen (2023) 89 Cal.App.5th 574

“You’re so entitled (to your modification)....  
actually, you’re not.”



# IRMO Cohen

- Mom (Lauralin), Dad (Richard); 4 children
- Stipulated judgment in 2011.
- 2018: stipulated judgment on a number of issues. Private judge will hear Dad's request to modify spousal support.



# IRMO Cohen

- Dad files modification of support (child & spousal) based on 2018 stipulation.
- Mom files motion to dismiss.
- April 2019: Final decision from private judge.
- 2021: Mom again moves to dismiss – disentitlement doctrine



# IRMO Cohen

- Dad says: This is not “willful nonpayment” by me.



# IRMO Cohen

- Trial Court rulings
  - May 14, 2021 – tentative ruling, then arguments.
  - Ultimate ruling – Mom’s motion to dismiss is granted.





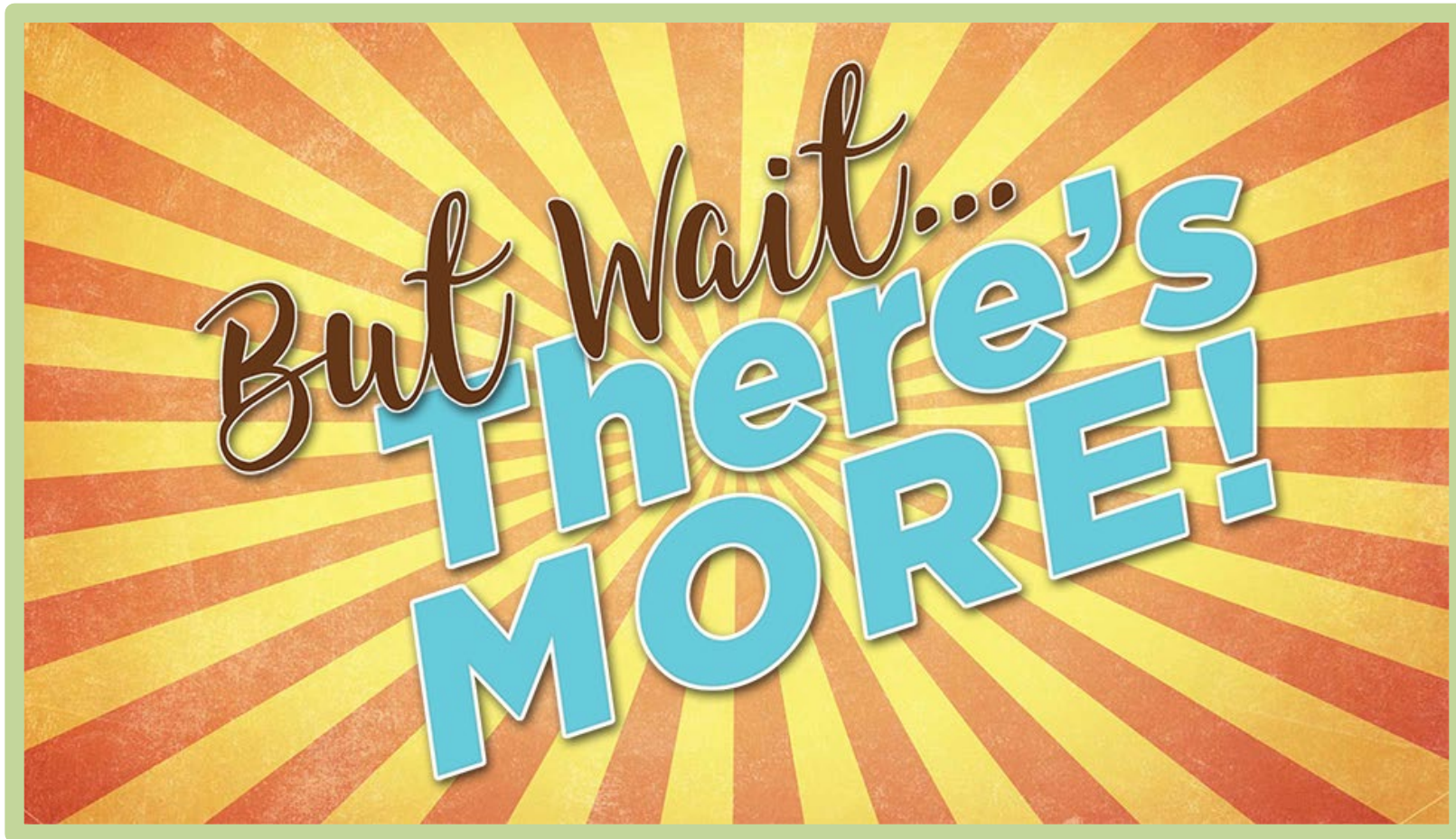
# IRMO Cohen

- Appeal is taken by Dad on several grounds
- **Issue: #1:** Mom argues for dismissal of the appeal on disentitlement doctrine grounds. Says he has not complied with his court-ordered child support obligations.



# IRMO Cohen

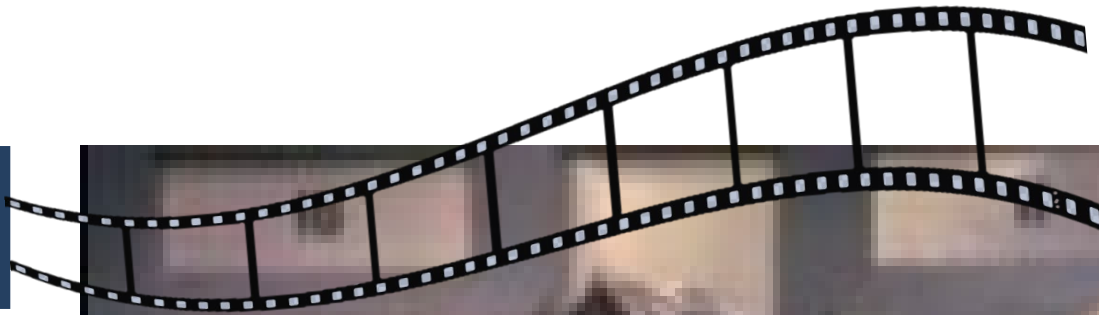
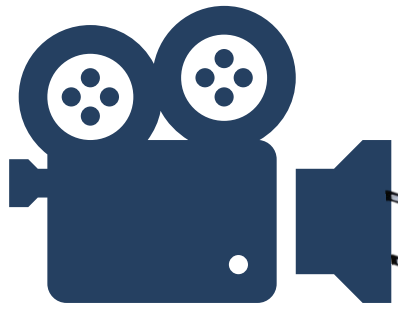
- But it's not just THIS APPEAL Mom's addressing....



# IRMO Cohen

- She says that **any future RFO** from Dad should be conditioned on him being current.
- As to the appeal: MacPherson v. MacPherson (1939) 13 Cal.2d 271
- Appellate court refuses to dismiss this appeal.  
("Fundamental equity, not to be frustrated by 'mere technicalities'")





# IRMO Cohen

- **Issue #2:** Mom's motion to dismiss Dad's 3/4/2019 RFO
  - Dad says trial court erred in hearing it.
  - Appellate Court: "without prejudice."



# IRMO Cohen

- **Issue #3:** Dad denied full evidentiary hearing at trial level.
  - Was sufficient finding of good cause at trial level to refute live testimony.
  - Enough in record to rule on motion to dismiss
  - Dad's lack of compliance unless enforcement proceedings filed.





# IRMO Cohen

- **Issue #4:** No future filings by Dad unless he's current.
  - Must be applied on a “motion by motion basis.”
  - Individual equities to be considered.
  - No blanket application allowed.



# Our journey continues.....



# IRMO D.H. & B.G. (2023) 87 Cal.App.5th 586

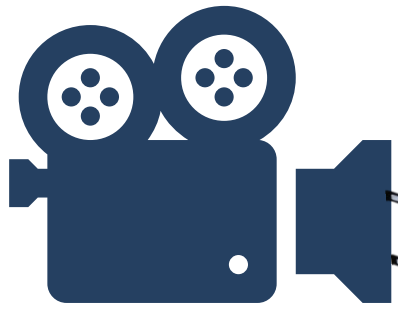
- “What’s ‘full time’ for ~~work~~ school?”



# IRMO D.H. & B.G.

- D.H. (Dad) and B.G. (Mom embroiled in a 20 year marital dissolution.
- Mom had primary custody of parties' youngest child (A.G.)
- Dad was paying support; A.G. turned 18 (March 2020)
- 20 years.....!!!





# IRMO D.H. & B.G.

- Dad filed several RFOs in July & Sept. 2021
- Mom files a responsive declaration with her allegations.
- Dad submits a reply. Makes claims about A.G.'s transcript and her current school schedule.
- Dad: "I called the school. Here's what they told me."





# IRMO D.H. & B.G.

- “Full-time” is 15 credits per quarterly term. Dad said A.G. was taking far less her senior year.



# IRMO D.H. & B.G.

- RFO hearing – Oct. 2021
  - Parties agree court will decide “on the papers” (but with arguments. No evidentiary hearing.)
  - Court’s tentative: A.G. was not a “full-time” student based on Dad’s phone call.
  - Mom’s attorney: “hearsay!”
  - “I’m finished as far as we are concerned.”



# IRMO D.H. & B.G.

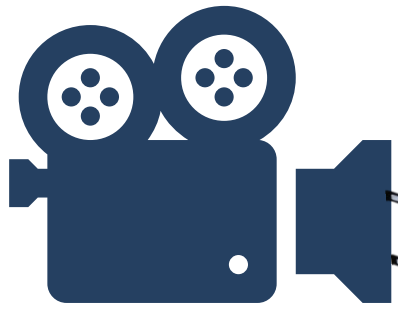
- At 2<sup>nd</sup> hearing, trial court delivers its decision
  - What conclusion does “plain meaning” of F.C. 3901 support?
  - No evidence A.G. was excused from the full-time requirement due to physician’s orders.
  - No contrary evidence offered by Mom (e.g.: possible activities/classes outside of Grossmont High)



# IRMO D.H. & B.G.

- Appellate Court gets case after Mom appeals.
- Court sees this as a very important issue as there is little in California on this subject other than IRMO Hubner (2001) 94 Cal.App.4<sup>th</sup> 175.
- Such a case calls for big judicial words, no?





# IRMO D.H. & B.G.

- Appellate Court
  - Clarifies what is actually the issue on appeal.
  - Was A.G. full-time high school student after June 2020
  - Examines Mom and Dad's respective contentions as to what is "full-time" under F.C. 3901
  - But 3901 does not define "full-time."

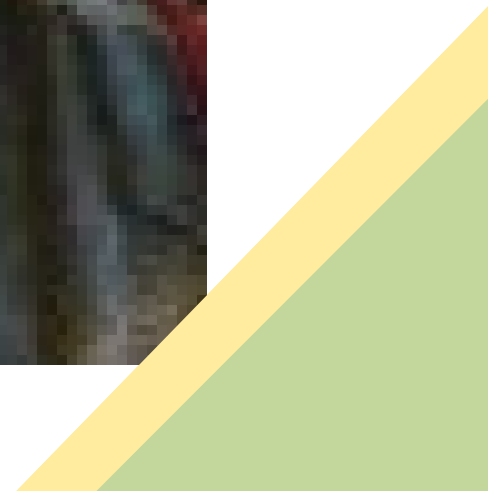
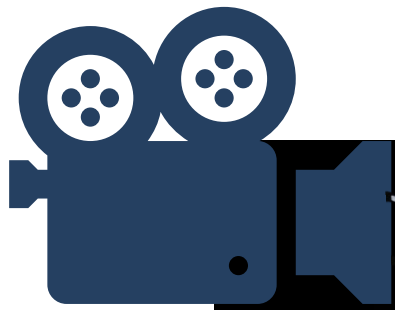




# IRMO D.H. & B.G.

- Appellate Court rejects both definitions from Mom and Dad.
- Consults a number of sources (including Mr. Webster).
- Ultimately, a bit of “time travel” has to be utilized.





# IRMO D.H. & B.G.

- Court looks to Educ. Code 48200.
  - Key – F.C. 3901's predecessor was Civil Code 196.5 (which was enacted in 1985).
  - When it (196.5) was enacted, it already had the meaning attributed to it in Education Code 48200, which had been in effect for nearly 10 years.
  - So, what does 48200 say?



# IRMO D.H. & B.G.

- “We presume the Legislature is aware of existing laws when enacting new legislation.”
- 48200’s definition of “full-time” furthers 3901’s legislative purpose.
- “Full-time” --- look to length of school day designated by district’s governing board.



# IRMO D.H. & B.G.

- But.....Court said there must be some flexibility.....



# IRMO D.H. & B.G.

- Other issues resolved on appeal:
  - Evidence properly before trial court despite lack of a full evidentiary hearing.
  - Mom's claim of improper shifting of burden of proof. (Recall that Dad was not seeking a modification).
  - Who has burden to show statutory exception?

