

CSC Best Practices

Presented by
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Topics covered include:

1. Standards and Findings required for specific kinds of orders required for deviating from Guideline support
2. Hardship Consideration
3. Specialty Calendars
4. Calendar Management

Deviation/Departure from Guideline

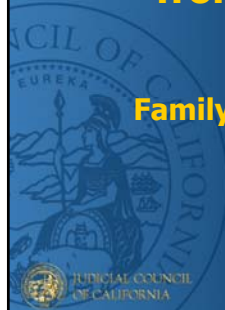


Deviation/Departure from Guideline



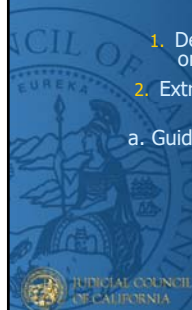
Deviation/Departure from Guideline

Family Code § 4057(b)



Examples

1. Deferred sale of a home (Duke orders). FC § 4057(b)(2)-rare
2. Extraordinarily high income payor. FC § 4057(b)(3).
 - a. Guideline amount would exceed the needs of the children.



Hypothetical Scenario

Parents share a 50/50 timeshare with the minor child.

Father earns \$20,000.00 per month.

Mother does not work but has \$14,000.00 per month in expenses being paid somehow.

She seeks a child support order and is willing to allow the court to impute minimum wage, her past earnings were \$15,000.00 per month and recently quit her job.

Imputing minimum wage would result in a Guideline order of \$1385.00 per month.

Using her past income of \$15,000.00 per month, Guideline would be \$250.00 per month.

What would you do?



High Payor Scenario

Parents have two children, ages 14 and 2.

Father has a 50% timeshare with the 14 year old and pays voluntarily for the private school tuition of \$1500.00 per month.

He has a 14% timeshare with the two year old and pays entirely for the nanny of \$1600.00 per month.

Father earns \$20,000.00 per month and mother earns \$5,000.00 per month.

Guideline results in a basic child support order for the 14 year old in the amount of \$567.00 per month and \$1968.00 per month for the 2 year old.

Would you depart?



Hypothetical scenario of a high income payor warranting an above Guideline order *IRMO Cryer (2011) 198 Cal.App.4th 1039.*

Father has a 22% timeshare with the two minor children. He earns \$22,000.00 per month. Mother has filed for bankruptcy protection and is meeting her basic living expenses based on the current child support order of \$3,000.00 per month. Current Guideline would be \$3382.00. Should the court consider an upward departure? Why?



Support and Custodial Time as a basis for departing from Guideline

FC § 4057(b)(4) - Example: A parent does not pay for clothes, school lunches, etc., during their time share.

FC § 4057(b)(5)- Look at whether the formula would be unjust or inappropriate due to special circumstances:

- (a) Different time-sharing arrangements for different children
- (b) Substantially equal time-share but disparity in housing costs
- (c) Special needs of a child
- (d) More than two parents

Other possible special circumstances: Step children, High consumer debt of Payor



Most Common Basis for Departure

Low Income of Payor

City and County of San Francisco v. Miller
(1996)

49 Cal.App.4th 866.



Cash Aid: Does it matter?

- Father earns \$2000 per month in gross wages; he lives alone so has no one to help him with living expenses.
- He is Single-1 tax filing status and has 0% time share with three children.
- Mother is on cash aid and is Head of Household-4 tax filing status.
- Guideline child support would be \$837 per month.



Cash Aid: Does it matter?

- Would you deviate? And if so, what factors would you consider?
- Would it make any difference if he had 25% time share and Mother was on cash aid?
- Would you deviate if Mother was not on cash aid, but was earning \$1200 per month in wages and not living with someone who could help her with expenses?
- Would you deviate if Mother was not on cash aid, was earning \$1200 per month in wages, and living with her parents/boyfriend/new spouse who was helping pay household expenses?



Stipulated non-Guideline Judgments

Five required findings of § 4065(a)(1-5):

1. Parties are fully informed of their rights concerning child support
2. Order is being agreed to without coercion or duress
3. Agreement is in the best interests of the children
4. Needs of the children will be adequately met by the stipulated amount
5. Right to support has not been assigned to the county
DCSS must approve; parties cannot stipulate if CP is on cash aid



Required Findings

1. FC § 4056(a)(1-3)
 - a. Amount of support that would have been ordered
 - b. Reason the amount of support ordered differs
 - c. Reasons the amount of support ordered is consistent with the best interests of the children
2. *IRMO Hall* (2000) 81 Cal.App.4th 313.



Best Practice

Attach the Guideline calculation to the OAH and in the body of the OAH make the deviation findings.

If recited on the record, deviation is almost always upheld on appeal as being within the discretion of the court.



Additional Child Support

Family Code § 4062

(a) The court shall order the following as additional child support:



Reasonable Unreimbursed Health Care Expenses

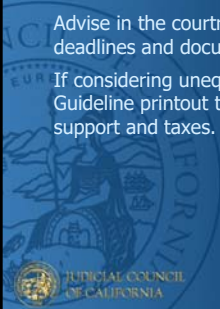
Must attach Judicial Council form FL-192 to the OAH so the parents know of the their time requirements to seek reimbursement.



Reasonable Unreimbursed Health Care Expenses Best Practices

Advise in the courtroom, with examples of FC 4063 deadlines and documents required.

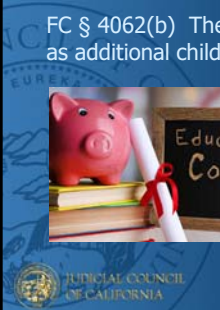
If considering unequal apportionment, compare on the Guideline printout the net incomes of the parties after support and taxes.



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Discretionary Add-Ons

FC § 4062(b) The court may order the following as additional child support:



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Financial Hardship- Family Code § 4071

Circumstances evidencing hardship consideration



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Hypothetical

Don and Mary were married and have two children ages 10 and 12. Mary earns minimum wage as she was previously a stay at home mother and only recently entered the workforce.

The children have a 35 percent timeshare with Don.

Don earns \$3000.00 per month.

Don has remarried and has one additional biological child age 2.

His new spouse Jane, has two children from her prior marriage that reside with her and Don full time.

She receives no child support for them.

Jane works earning \$4000.00 per month.

Jane and Don have child care for their two year old of \$800.00 per month.



Case Management

Best practices on managing a busy calendar

Best practices on license releases and Claims of Exemption

Specialty calendars: Contempt; Minor parent cases



Mandatory Advisement

Family Code § 4252(b)

- Written v. oral notification
- A party proceeding with the case after advisement is deemed to have consented.
- *County of Orange v. Smith* (2002) 96 Cal.App.4th 955