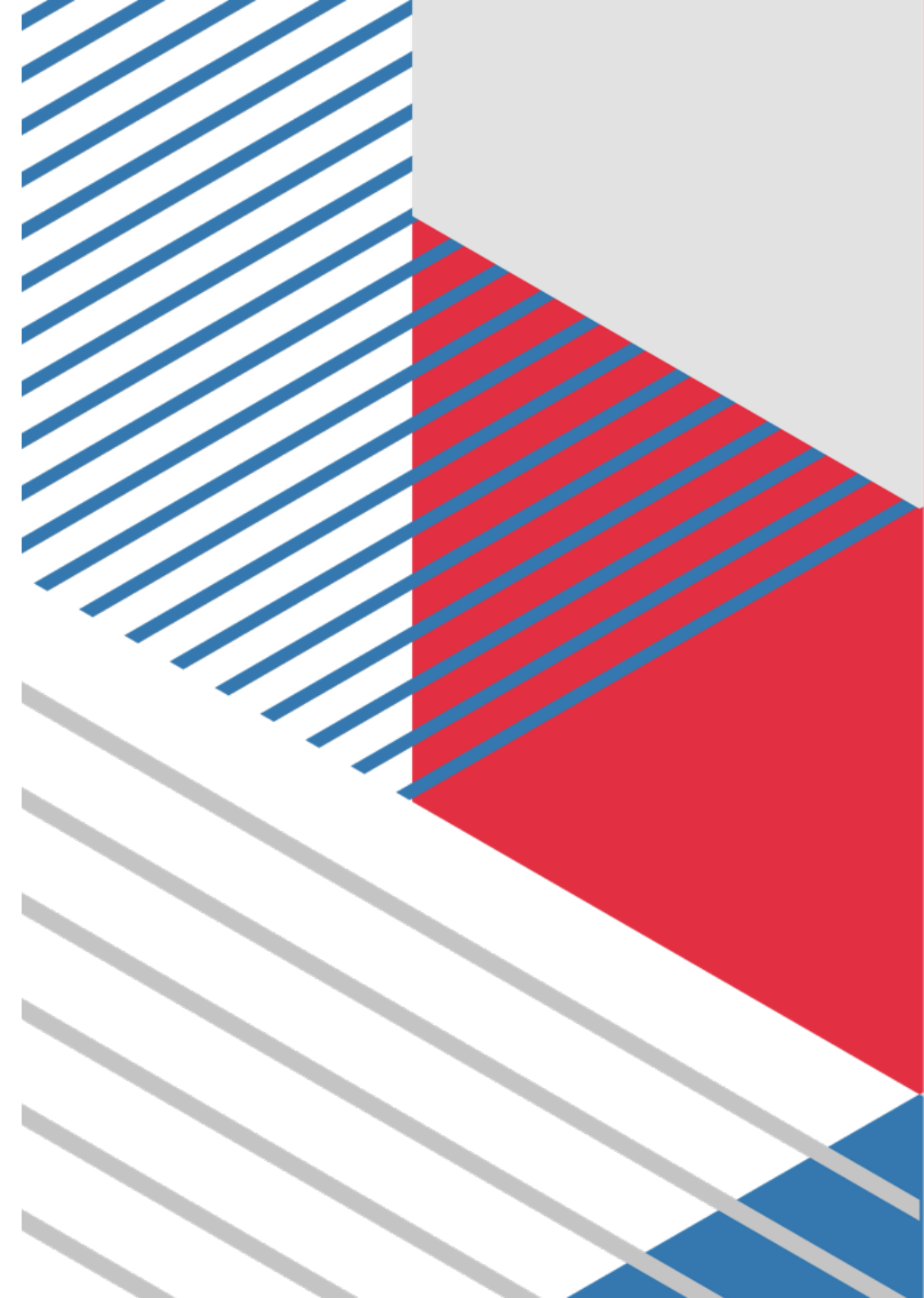


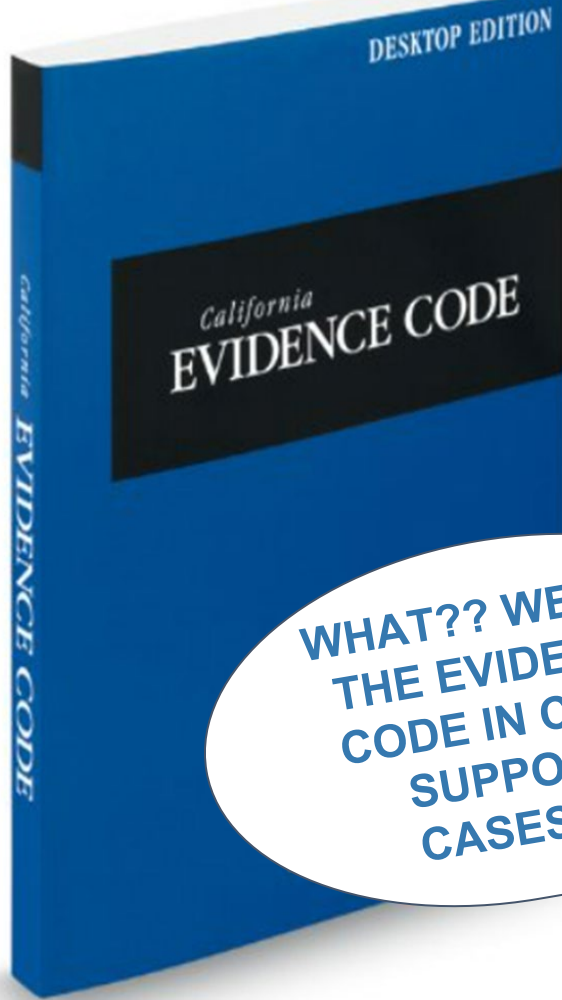


**Beyond Numbers:**  
Evidentiary Issues in  
Child Support Cases

# OBJECTIVES

- Foundation
- Relevance
- Judicial Notice
- Credibility
- Hearsay
- Experts





WHAT?? WE USE THE EVIDENCE CODE IN CHILD SUPPORT CASES?!!



# EVIDENCE CODE §300

**Applies in EVERY action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer!**



# OUR DUTIES AS TRIER OF FACT

- ❑ **[A] trial court is presumed to ignore material it knows is incompetent, irrelevant, or inadmissible.**” (E.g., Harris v. Rivera (1981) 454 U.S. 339, 346; Gonzales v. Nork (1978) 20 Cal.3d 500, 510; People v. Charles (1967) 66 Cal.2d 330, 338, fn. 12; So. Cal. Jockey Club v. Cal. etc. Racing Bd. (1950) 36 Cal.2d 167, 176.)
- ❑ **In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions ... it is presumed that the judge will understand the limited reason for the disclosure of the underlying inadmissible information and will not rely on that information for any improper purpose.** (Williams v. Illinois (2012) 567 U.S. 50, 69 citing Harris v. Rivera (1981) 454 U.S. 339, 346; In re Marriage of Davenport (2011) 194 Cal.App.4th 1507, 1526.)
- ❑ **[A] judge cannot rely on SRL’s to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights.** (Ross v. Figueroa (2006) 139 Cal. App. 4th 856, 861)

# EVIDENCE CODE HELPS YOU CONTROL THE COURTROOM

## ❑ Evid. Code §765(a)

The court shall exercise reasonable control over the mode of interrogation of a witness to make interrogation rapid, distinct, and effective ... to protect the witness from undue harassment or embarrassment.

## ❑ Evid. Code §775

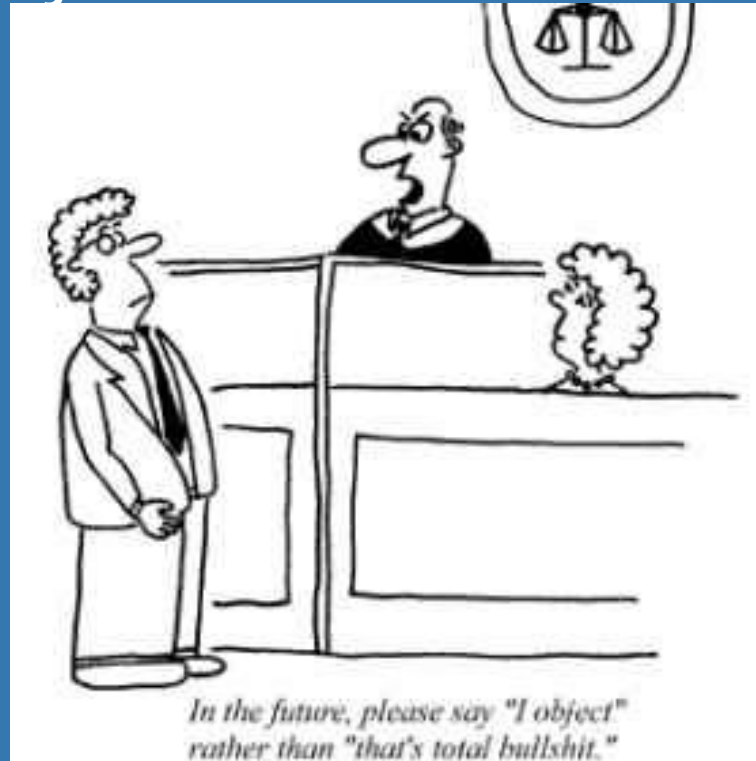
The court, on its own motion or on the motion of any party, may call witnesses and interrogate them the same as if they had been produced by a party to the action, and the parties may object to the questions asked and the evidence adduced the same as if such witnesses were called and examined by an adverse party.



# REQUIRE NON SPEAKING OBJECTIONS

Evid Code § 353(a)

To preserve error a party must make **SPECIFIC and TIMELY objections.**



# COMMON OBJECTIONS

1. **Vague, Ambiguous, or Unintelligible; (EC 702)**
2. **Argumentative; (EC 765)**
3. **Asked and Answered; (EC 765)**
4. **Foundation / Assumes Facts Not in Evidence; (EC 800)**
5. **Calls for Speculation; (EC 400-405)**
6. **Leading; (EC 767)**
7. **Calls For a Narrative; (EC 765)**
8. **Misstates the Evidence/Testimony; (EC 765)**
9. **Beyond the Scope (EC 776)**
10. **Non-Responsive (EC 766)**

# INVALID OBJECTIONS

Objection. [no grounds stated]

Objection, he's lying

I object to her objection

Objection: I don't like it!

Objection because when we were in family court, I was allowed to get the children and then the

Judge said that she could not but then he said that she said and he is always lying, ever since we divorced she always.....



# FOUNDATION

Evid. Code §70 2



# FOUNDATION

Evid. Code §702

Does the witness have personal knowledge of the subject matter of the testimony?

Testimony:

1. Do you know..?
2. How do you know..?



# Foundation for Exhibits

Evid. Code §702

1. Do you recognize X?
2. What is it?
3. How do you know?
4. Is it true and accurate?



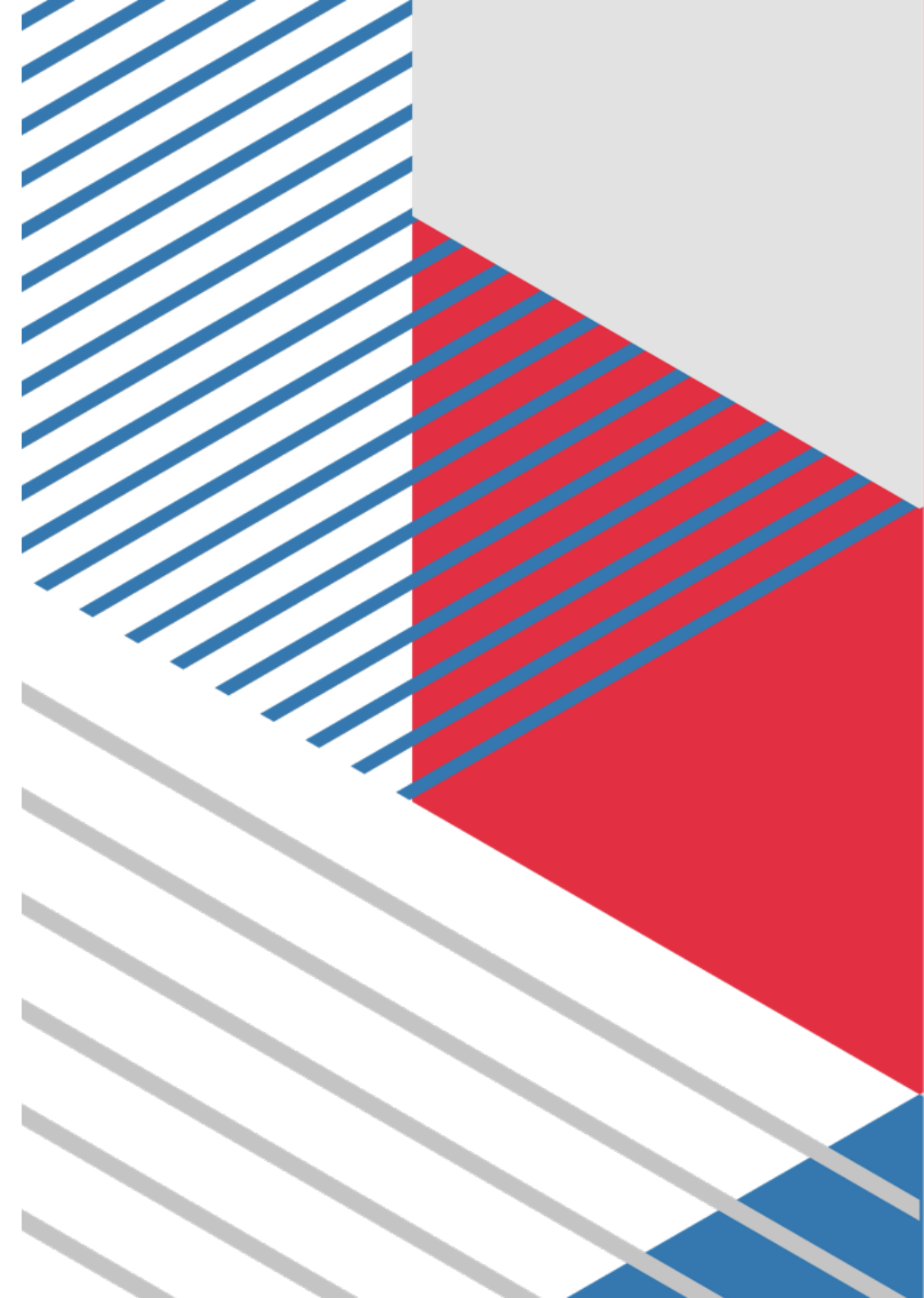


# RELEVANCE



## Evid. Code §210 (a)

“Relevant evidence” means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to **prove or disprove** any disputed fact ***that is of consequence*** to the determination of the action.





# New girlfriend's new car: is it relevant?



375 likes

shaelynnc0 Hey everyone ❤️ I know I've taken a long break from posting here but I thought I'd make a comeback with this exciting life update! Isn't she a dream? 🥰 I'm excited to be back, and there are more exciting things to come... 🥰



# JUDICIAL NOTICE

Evid. Code §450

Judicial Notice may **not** be taken of ANY matter unless **AUTHORIZED** or **REQUIRED** by law.

# JUDICIAL NOTICE

## Evid. Code §450

### Judicial Notice **SHALL** be taken of:

- Constitutional and Public Statutory Law of US and California Constitution.
- Rules, orders, and standards of general application adopted by California state agencies or printed in the CA Code of Regulations or California Regulatory Code Supplement.
- Rules of the State Personnel Board, Department of Social Services' regulations adopted pursuant to Welfare & Institution Code

# JUDICIAL NOTICE

## Evid. Code §451

### Judicial Notice **SHALL** be taken of:

- Rules of professional conduct for members of the bar pursuant to BP§ 6076
- California rules of practice and procedure
- Federal rules of Civil and Criminal Procedure
- Words and Phrases
- Universally known facts



# JUDICIAL NOTICE

## Evid. Code §453

### PERMISSIVE JUDICIAL NOTICE:

- Laws of sister states, resolutions, and private acts
- Regulations and legislative enactments
- Federal and state official acts
- **Court records**
- Rules of court
- Foreign law
- Common knowledge
- Verifiable facts

# CREDIBILITY

## EVID. CODE §210



"THIS IS A RELUCTANT WITNESS, YOUR HONOR."



**"Perhaps you'd like to reconsider  
that last answer."**

# CREDIBILITY


## Evid. Code §780

Court may consider in determining the credibility of a witness any matter which has tendency to **prove or disprove the truthfulness** of his testimony at the hearing including:

- (a) His demeanor while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.



# Evid. Code §780 con't...

- (e) His character for honesty or veracity or their opposites.
  - (f) The existence or nonexistence of a bias, interest, or other motive.
  - (g) A statement previously made by him that is consistent with his testimony at the hearing.
  - (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
  - (i) The existence or nonexistence of any fact testified to by him.
  - (j) His attitude toward the action in which he testifies or toward the giving of testimony.
  - (k) His admission of untruthfulness.
- 

# Table Topics

1. What do you consider when assessing credibility?
2. How do you present your credibility findings?
3. What's your favorite line when you don't believe someone is being truthful?





# HEARSAY





## Evid. Code §1200 (a)

(a) “Hearsay evidence” is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

- **“Statement” means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression. Evid Code § 225**

# STEP 1- IS IT A STATEMENT?

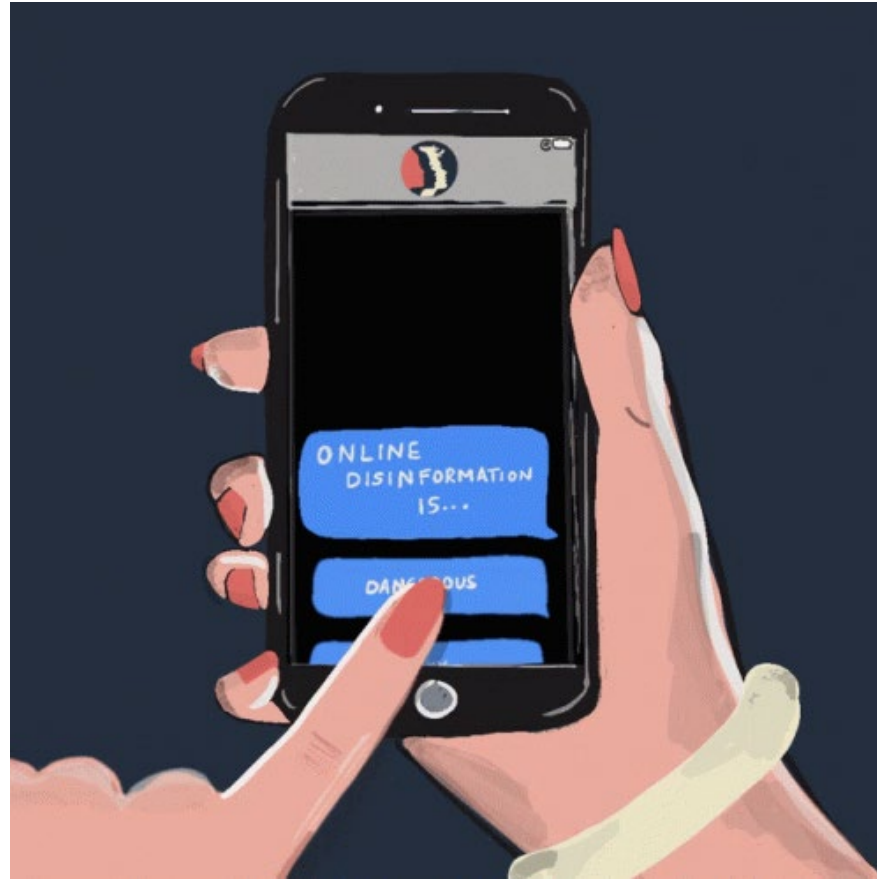


# Is a photo a statement?





# Is a text message a statement?





# STEP 2 - IS IT BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED?

If no, then what's the relevance?



# Is this heresy?



330 posts   4,135 followers   273 following

Sweet Celebrations 🍰

✗ No longer taking orders ✗

Follow

Message



cupcakes



cakes



# STEP 3 - IS THERE AN EXCEPTION?

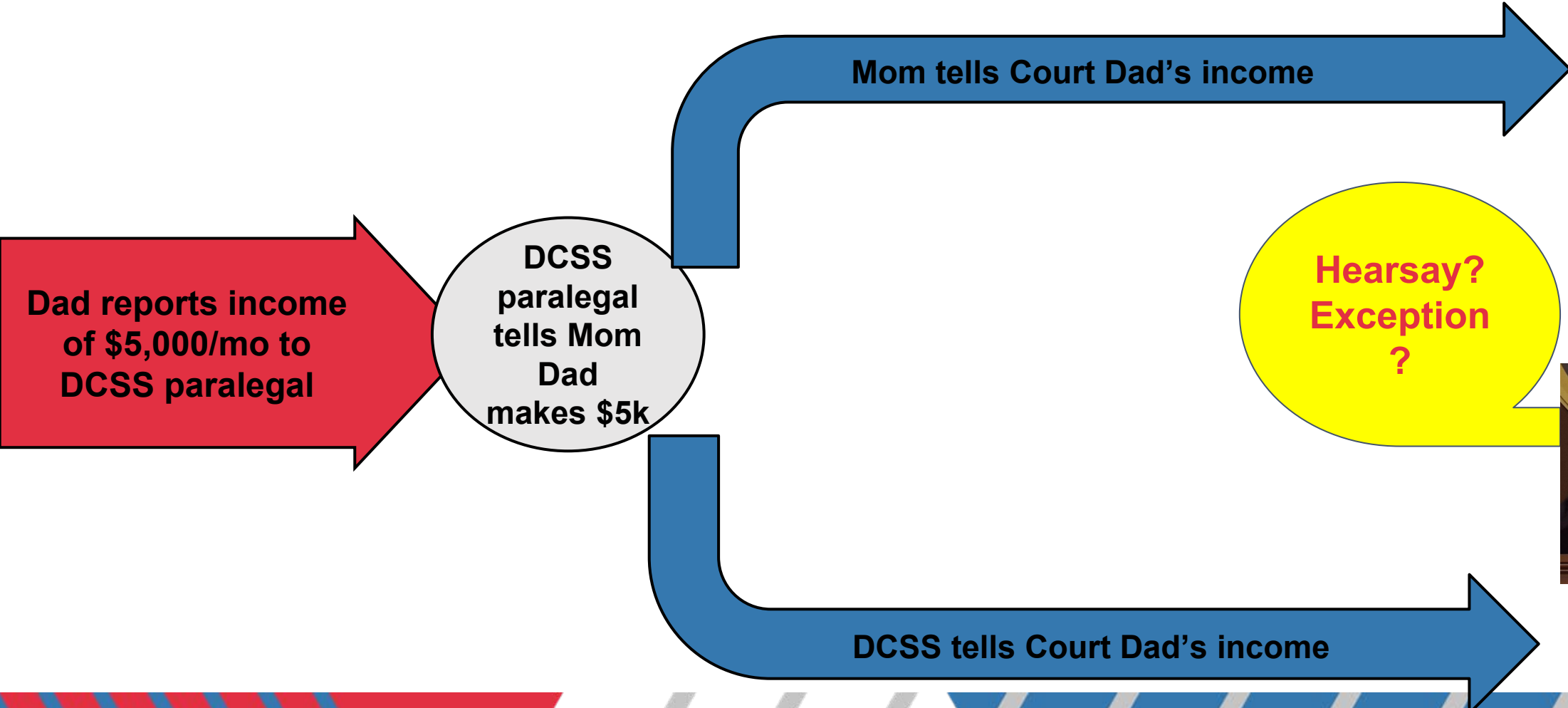
## HEARSAY EXCEPTIONS



# COMMON HEARSAY EXCEPTIONS

|                                   |  |
|-----------------------------------|--|
| §1220 ADMISSION BY PARTY          | Talking Parent app, text messages, social media post |
| §1270 BUSINESS RECORD             | Bank statement, medical bills and ledgers            |
| §1280 OFFICIAL RECORD             | Birth certificate, business license                  |
| §769 PRIOR INCONSISTENT STATEMENT | Talking Parent app, text messages, social media post |
|                                   |  |

# Are statements made at meet and confer admissible?





# PARTY ADMISSION

A statement is not inadmissible hearsay if offered against the declarant in an action in which he or she is a party. (Evidence Code §1200).

Statements in pleadings, depositions, and interrogatories may be introduced as an admission. (Mayhood v. La Rosa (1962) 58 Cal. 2d 498, 500-501 (deposition); Muth v. Urricelqui (1967) 251 Cal. App. 2d 901, 910.)





# Evid. Code § 1280

## “Official” Records Exception

Evidence of a writing made as a record of an act, condition, or event not inadmissible if:

1. Made by and within scope of duty of a public employee
2. Made at or near the time of the act, condition, event
3. Sources of information/method/time of preparation indicate its trustworthiness

“Public employee’ means an officer, agent, or employee of a public entity.” (Evid. Code, § 195)

## Evid. Code § 664 Presumption

An official duty/act has been regularly/properly performed.

# Evid. Code § 1280

## EXAMPLES

- Statements by the public employee who prepared the report.
- Public employee's communication to other public employees falls under the exception.
- Firefighter to law enforcement to law enforcement falls under the official records hearsay exception. (*Hildebrand v. Department of Motor Vehicles* (2007) 152 Cal.App.4th 1562)
- School Records
- CLETS and other local criminal agency reports
- All other statements are subject to the hearsay rule and any other exceptions that might apply.

# CONTRAST WITH BUSINESS RECORDS!

## Evid. Code § 1270-1271

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness

# EXPERTS

CS481744



"WE MAY BE IN TROUBLE ... THE PROSECUTION'S EXPERT WITNESS CAN USUALLY TELL IF A DEFENDANT'S BEEN GOOD OR BAD!"

CS407098  
© Mike Baldwin/Cornered

BALDWIN



"No, you weren't there. But in your expert opinion as a certified brainiac, do you *think* he did it?"

# PEOPLE V. SANCHEZ

*(People v. Sanchez (2016) 63 Cal.4th 665.)*

## FACTS:

Criminal case involving gang enhancements,  
Expert opined and testified D was a gang member by  
relying on information regarding D's prior gang  
involvement obtained from police reports.

**Reversed on hearsay and 6th Amendment grounds!**

And yes, Sanchez applies to Family Law cases!

*People v. Acuna (2017) 9 Cal.App.5th 1; Conservatorship of K.W. (2017) 13 Cal.App.5th 1274.*

# SANCHEZ KEY POINTS & EXPERTS

- ❑ May rely on, and tell the trier of fact, about relevant background information. generally accepted in their field...even if hearsay.
- ❑ May rely on hearsay in formulating their opinions.
- ❑ May testify about facts within their personal knowledge.
- ❑ May assume properly proven case specific facts in giving an opinion on a hypothetical question.



# WHAT EXPERTS **CANNOT** DO UNDER SANCHEZ

- ❑ Relate case-specific facts as part of their testimony UNLESS:
  - ❑ Expert has personal knowledge of those facts
  - ❑ The hearsay on which facts are based fall within a hearsay exception OR
  - ❑ The facts are independently proven.





HYPOTHETICALS

# HYPOTHESIS # 1

You are presiding over an evidentiary hearing. At issue is whether or not Father evaded service. During the hearing DCSS asks to admit into evidence work status reports by the process service.

Are the work status reports admissible?

|   |  |               |       |  |                             |
|---|--|---------------|-------|--|-----------------------------|
| Team Legal, Inc. fax (661) 255-7484   |  |               |       | FOR COURT USE ONLY                       |                             |
| Attorney or Party without Attorney:<br>ERIK WELTON<br>SAN DIEGO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES<br>3666 KEARNY VILLA RD<br>SAN DIEGO, CA 92123<br>TELEPHONE No.: (866) 901-3212<br>Attorney for: Under Family Code §§ 17400 & 17406 |  |               |       | E-MAIL ADDRESS (Optional):               |                             |
| FAX No. (Optional):   |  |               |       | Filer No. or File No.:<br>20000002525447 |                             |
| Insert name of Court, and Judicial District and Branch Court:<br>SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO - CENTRAL   |  |               |       |  |                             |
| Plaintiff: COUNTY OF SAN DIEGO<br>Defendant: ERNEST JUSTIN RAMOS  |  |               |       |  |                             |
| NON SERVICE REPORT  |  | HEARING DATE: | TIME: | DEPT.:                                   | CASE NUMBER:<br>22DF002878C |

After due search, careful inquiry and diligent attempts at the following address(es), I have not been able to effect service of said process on: ERNEST JUSTIN RAMOS

Documents: Summons; Complaint; Notice of Case Assignment; Judgment Regarding Parental Obligations; Notice of Rights and Responsibilities; Answer to Complaint or Supplemental Complaint Regarding Parental Obligations; Information Sheet for Service of Process; Income and Expense Declaration; Visitation Verification; Health Insurance Information;

FILED BY FAX

| Date      | Time     | Results   |
|-----------|----------|---|
| 3/9/2023  | 9:06 AM  | Attempted service at the business. The subject was not in the office during this attempt.<br>1355 N. HARBOR DRIVE, SAN DIEGO, CA 92101  |
| 3/23/2023 | 12:16 PM | Attempted service at the business. Made contact with the subject and he did not want to accept service. He stated that the server should contact his attorney. Documents were served via drop-service. Subject proceed to followed server after and aggressively told the server to take the papers back. The subject called security and caused a scene. Server took the papers back to attempt to de-escalate the situation, but the subject continued to follow the server and was screaming at him to get off of the Wyndham San Diego Bayside property. The subject followed the server all the way to his car, which was parked off of the property and took pictures of the server and his vehicles. The server is not comfortable going back to the hotel due to how aggressive and combative the subject was.<br>1355 N. HARBOR DRIVE, SAN DIEGO, CA 92101 |

Fee for Service: \$ 38.08

County: San Diego  
Registration No.: 3338  
Team Legal, Inc.  
25876 The Old Road  
Mission Viejo, CA 92690

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 24, 2023.

To: [Jennifer Sheehan](#)  
Subject: FW: TLV340896  
Date: Friday, June 14, 2024 1:24:14 PM

Jen,

This is Zack's notes from the service. He actually typed them, so that's good.

*Jeanne Bretall*

Team Legal, Inc.  
Legal Support Services

Tel: [REDACTED]  
Fax: [REDACTED]  
[www.teamlegalinc.com](http://www.teamlegalinc.com)  
Office Hours: **Monday – Friday 8:00 am to 5:00 pm**



Additional Offices:  
Valencia | Palmdale | Sacramento | San Diego

**PRIVILEGED COMMUNICATION:**

This message is intended only for the use of the individual to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone at (661)964-0154. Do not disclose the contents, use it for any purpose, or store or copy the information in any medium.

From: Zack Dillon [REDACTED] >  
Sent: Tuesday, March 28, 2023 12:59 PM  
To: Jeanne Bretall [REDACTED] >; Jennifer Sheehan [REDACTED] >  
Subject: TLV340896

Hello,

See status for work order **TLV340896 - Ernest Justin Ramos** below:

**3/9/23: 9:06am:** Subject not at work today.

**03/23/23 @ 12:16 pm:** Drop served subject at his workplace - subject refused to take papers and told me to contact his attorney (951) 460-2003. After drop serving, the subject chased me down and aggressively told me to go get the papers back. I refused and kept walking, he had someone call security and caused a scene. So I went back and retrieved the papers to de-escalate the situation. I was still on the location's property (Wyndham San Diego Bayside) at this point. After retrieving the papers he then kept following me telling me not to come back on the property blah blah blah. I told

# HYPOTHESIS #2

Same hearing as previous hypo. Now, DCSS is asking to admit into evidence an email from the process server to their supervisor. The email details Father actively evading service by yelling at the process server and refusing to accept the papers. Neither the process server nor supervisor is present for the hearing.

Is the email hearsay? If so, is there an exception?

## HYPOTHESIS #3

You are in the middle of an evidentiary hearing regarding income. Father's CPA, called by Mother's Counsel has just left the witness stand. The next witness is a certified bookkeeper. She testifies that she spoke to the CPA in the hallway. He told her that he didn't check any invoices or receipts and that all the information he got from father was verbal only.

**Objection: Hearsay**

How do you rule? why?





## Hypo #4

- A. DCSS states Respondent's quarterly earnings from the last 4 quarters average \$5,000 per month. Can you use this to calculate income available for support? Why or why not?
- B. Next, DCSS states Respondent's reported earnings from the Work Number are approximately \$5,100 per month. Is this admissible evidence? Why or why not?
- C. Other than A and B, you have no other evidence of Respondent's income. What do you use to determine Respondent's income?



September 10, 2023

To:

Mr. Max Samuels  
30300 Antelope Road, #216  
Menifee, CA 92584  
Dear Mr. Samuels,

RE: County of San Diego vs. Samuel  
Court file No. DF226606

You contacted our office and requested us to determine if Melinda Frederickson, your children's mother was receiving an income or had acquired any assets within the last several years. According to the information you provided Ms. Frederickson had claimed to the court she is destitute and receiving no income.

**INVESTIGATION SUMMARY**

After extensive public records search, our investigation found the following information for a Melinda Frederickson, DOB: 9/23/1980 AGE: 42, last reported address 18682 LANCASHIRE WAY; SAN DIEGO, CA 92128-1034 as of April 2023. Previous address last reported March 2023, 16700 SAINTSBURY GLN, APT 20; SAN DIEGO, CA 92127-2843.

A probate court file in the Superior Court of California San Diego County (Central), 37-2022-00021974-PR-TR-CTL was located; Probate Matter of the Roy W. Vermilyea, Trust dated July 11, 2018. According to court documents Melinda Frederickson is the petitioner to the probate court and claimed to be the Successor Trustee of the estate of Roy W. Vermilyea Family Trust, dated July 11, 2018. Ms.

CA PI License No. 22210  
9625 Mission Gorge Road, Suite B2-363, Santee, CA 92071

# HYPOTHESIS #5

You are presiding over an RFO child support modification. Father filed the RFO and attached to it is a lengthy and detailed report from a Private Investigator. The report contains public records from the Probate court and the Recorder's office.

How do you proceed? Do you admit this evidence?



Gilmont Cirugía Plástica

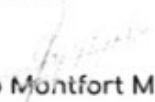
To whom it may concern:

This letter is to certify that patient [REDACTED] has been recommended to have Breast reduction on May 2nd 2023, due to following findings and conditions.

- Chronic back, neck and shoulder pain.
- Shoulder grooves from bra straps
- Increased tension on the lower back in everyday activities
- increasing breast pain during exercise and other activity

She will remain under my care and supervision for a period of 6 months with weekly consultations.

If you have any questions please address them at your earliest convenience.

  
Gilberto Montfort M.D

Plastic, reconstructive and aesthetic surgeon

# HYPO #6

Is an unsigned note from doctor hearsay?



THANK  
YOU!