

September 17, 2025

Income Determination



2025 AB 1058 Conference

Goal of Guideline Support

To provide consistency throughout the state where parties cannot agree!;

 To ensure children receive support consistent with the State's high standard of living and high cost of raising children compared to other states;

 Ensure compliance with Federal regulations—AB 1058 issue

Principal Objectives

 Parents' 1st & principal obligation--support children based on standard of living of parents

Both parents mutually responsible for support

Consider income and time share for children

- OK if support improves the standard of living of custodial parent.
 - See Family Code Section 4053

How is Child Support Calculated

- Family Code Section 4055
- CS=K[HN-(H%)(TN)]
- Components of Formula
 - K=percentage of each parent's net income allocated for CS
 - HN=High wage earners net monthly disposable income
 - H%=Approximate % high earner has child in their care
 - TN=Total net monthly disposable income of both parents



Income is.....

"..income from whatever source derived" IRC language--Mandatory: **FC 4058(a)(1)**



- Commissions, salary, wages, bonuses
- Royalties, rents, dividends, interest
- Pensions, annuities, social security benefits
 - --not children's benefits—see deviation
- Workers' comp., unemployment, disability
- Spousal support from another relationship
- Tribal payments paid directly to member
 - M.S v O.S (2009) 176 CA4th 548

Evidence of Income

- Paycheck
- Profit and Loss Statement/Schedule C consider add-backs
- Tax Returns
- Award letter—Social Security, SDI, Workers Comp.
- Account Statements

Profit and Loss (Schedule C)

SCHEDULE C (Form 1040) Department of the Treasury Internal Revenue Service (99)		Profit or Loss From Business (Sole Proprietorship) ► Go to www.irs.gov/ScheduleC for instructions and the latest information. ► Attach to Form 1040, 1040NR, or 1041: partnerships generally must file Form 1065.									OMB No. 1545-0074 2018 Attachment Sequence No. 09			
							Social security number (SSN)					_		
RICK GRIME							000-00-0000							
								B Enter code from instructions						\neg
LANDSCAPING										•	5	7 1	6 3	0
С	Business name.	f no separate	busin	ess name, leave blank				D E	mp	loyer	ID num	ber (EIN)	(see ins	str.)
GREE	N ACRES LANDS	CAPING						0	0	0	0 0	0 0	0 0	0
E	Business addres	s (including su	uite or	room no.) ► BUCKSI	NORT	STRE	ET							
	City, town or pos	st office, state	, and 2	ZIP code SAN AN	TONIC	O, TX 7	78208							
F	Accounting meth	od: (1) 🔽	Casl	1 (2) Accrual	(3) 🗆	Other (specify)							
G	Did you "materia	lly participate	" in the	e operation of this bus	ness	during	2018? If "No," see instructions for lin	nit o	n lo	osse	s.	√ Yes		No
Н	If you started or	acquired this I	busine	ss during 2018, check	here						. ▶	✓		
ı	Did you make an	y payments ir	2018	that would require you	u to fil	e Form	(s) 1099? (see instructions)					Yes	√	No
J		or will you file	requi	red Forms 1099? .			<u></u>					☐ Yes] No
Part	Income													
1	Gross receipts o	r sales. See in	struct	ions for line 1 and che	ck the	box if	this income was reported to you on							
	Form W-2 and th	e "Statutory e	employ	ee" box on that form	was c	hecked		L	1			99	,200	
2	Returns and allo	wances						L	2					
3	Subtract line 2 fr	om line 1 .							3			99	,200	
4	Cost of goods so	old (from line 4	2) .					L	4					
5	Gross profit. St	ubtract line 4 f	rom li	те 3					5			99	,200	
6	Other income, in	cluding federa	al and	state gasoline or fuel t	ах сге	dit or r	efund (see instructions)		6					
7							<u> </u>		7			99	,200	
Part	Expenses	Enter expe	nses	for business use o	f you	r hom	e only on line 30.							
8	Advertising		8	1,160		18	Office expense (see instructions)	_1	8			1	,500	
9	Car and truck ex	penses (see				19	Pension and profit-sharing plans .	_1	9					
	instructions)		9	5,641		20	Rent or lease (see instructions):							
10	Commissions an	d fees .	10			a	Vehicles, machinery, and equipment	2	0a			7	,400	
11	Contract labor (see	instructions)	11	1,000		b	Other business property	2	0b					
12	Depletion		12			21	Repairs and maintenance	2	21			1.	,975	
13	Depreciation and expense dedu					22	Supplies (not included in Part III) .	2	22			12	,800	
	included in Pa					23	Taxes and licenses	2	23				400	
	instructions)		13	4,000		24	Travel and meals:							
							T	-		1		-		

13	Depreciation and section 179			22	Supplies (not included in Part III) .	22	12,800
	expense deduction (not included in Part III) (see			23	Taxes and licenses	23	400
	instructions)	13	4,000	24	Travel and meals:		
14	Employee benefit programs			a	Travel	24a	1,435
	(other than on line 19)	14		b	Deductible meals (see		
15	Insurance (other than health)	15	1,200		instructions)	24b	270
16	Interest (see instructions):			25	Utilities	25	2,200
a	Mortgage (paid to banks, etc.)	16a	300	26	Wages (less employment credits) .	26	53,850
b	Other	16b		27a	Other expenses (from line 48)	27a	850
17	Legal and professional services	17	1,040	b	Reserved for future use	27b	
28	Total expenses before expen	28	97,021				
29	Tentative profit or (loss). Subtr	29	2,179				
30	Expenses for business use of	f your	home. Do not report the	е ехре	enses elsewhere. Attach Form 8829		
	unless using the simplified me						
	Simplified method filers only						
	and (b) the part of your home						
	Method Worksheet in the instr	uctions	to figure the amount to e	nter on	line 30	30	
31	Net profit or (loss). Subtract	line 30	from line 29.				
	. If a profit, enter on both Sched						
	line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.						2,179
	If a loss, you must go to lin						
32	If you have a loss, check the box that describes your investment in this activity (see instructions).						
	If you checked 32a, enter to						
	line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions).						All investment is at ris
	Estates and trusts, enter on Fe	32b					
	If you checked 32b, you mu	at risk.					
			the separate instructions		Cat. No. 11334P		Schedule C (Form 1040) 20

SCHEDULE C (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

► Go to www.irs.gov/ScheduleC for instructions and the latest information.

▶ Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0074

Sequence No. 09

Name o	f proprietor						Sc	cial s	security numb	er (SSN)	
RICK	GRIME								000-00-0	000	
Α	Principal business or profession	n, incl	uding product or service	ce (se	e instru	uctions)	В	Ente	r code from ins	tructions	
LAND	SCAPING						L		▶ 5 7	1 6 3	3 0
С	Business name. If no separate	busin	ess name, leave blank.				D	Empl	oyer ID number	(EIN) (see in	istr.)
GREE	N ACRES LANDSCAPING						0	0	0 0 0	0 0 0	0 0
E	Business address (including s	uite or	room no.) ► BUCKSN	ORT	STRE	ET					
	City, town or post office, state	, and a	ZIP code SAN AN	TONIC	O, TX 7	78208					
F	Accounting method: (1)	/ Casi	1 (2) Accrual	(3)) 🗆	Other (specify)					
G	Did you "materially participate	" in the	e operation of this busi	ness o	during	2018? If "No," see instructions for I				Yes [No
н	If you started or acquired this	busine	ss during 2018, check	here					▶ 🗸	-	
ı	Did you make any payments in	2018	that would require you	ı to fik	e Form	(s) 1099? (see instructions)			🗆] Yes [√	/ No
J	If "Yes," did you or will you file	requi	red Forms 1099? .						🗆] Yes	No
Par	Income										
1	Gross receipts or sales. See in	struct	ions for line 1 and ched	ck the	box if	this income was reported to you or					
	Form W-2 and the "Statutory of	employ	ee" box on that form v	was ch	necked		L	1		99,200	
2	Returns and allowances						. [2			
3	Subtract line 2 from line 1 .							3		99,200	
4	Cost of goods sold (from line	12) .					. [4			
5	Gross profit. Subtract line 4 f	rom li	ne3				. [5		99,200	
6	Other income, including federa	al and	state gasoline or fuel ta	ax cre	dit or r	efund (see instructions)	. [6			
7	Gross income. Add lines 5 ar	nd 6 .				<u> </u>		7		99,200	
Part	Expenses. Enter expenses.	enses	for business use of	f you	r hom	e only on line 30.					
8	Advertising	8	1,160		18	Office expense (see instructions)		18		1,500	
9	Car and truck expenses (see				19	Pension and profit-sharing plans	. [19			
	instructions)	9	5,641		20	Rent or lease (see instructions):					
10	Commissions and fees .	10			a	Vehicles, machinery, and equipment	: [20a		7,400	
11	Contract labor (see instructions)	11	1,000		b	Other business property	. [20b			
12	Depletion	12			21	Repairs and maintenance	. [21		1,975	
13	Depreciation and section 179				22	Supplies (not included in Part III)	. [22		12,800	
	expense deduction (not included in Part III) (see				23	Taxes and licenses	. [23		400	
	instructions)	13	4,000		24	Travel and meals:					

					p		-,
13	Depreciation and section 179			22	Supplies (not included in Part III) .	22	12,800
	expense deduction (not included in Part III) (see			23	Taxes and licenses	23	400
	instructions)	13	4,000	24	Travel and meals:		
14	Employee benefit programs			a	Travel	24a	1,435
	(other than on line 19)	14		b	Deductible meals (see		
15	Insurance (other than health)	15	1,200		instructions)	24b	270
16	Interest (see instructions):			25	Utilities	25	2,200
а	Mortgage (paid to banks, etc.)	16a	300	26	Wages (less employment credits) .	26	53,850
b	Other	16b		27a	Other expenses (from line 48)	27a	850
17	Legal and professional services	17	1,040	b	Reserved for future use	27b	
28	Total expenses before expen	ses fo	r business use of home. Ac	d lines	8 through 27a ▶	28	97,021
29	Tentative profit or (loss). Subtr	act lin	e 28 from line 7			29	2,179
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829						
	unless using the simplified me	thod (s	see instructions).	-			
	Simplified method filers only: enter the total square footage of: (a) your home:						
	and (b) the part of your home	used fo	or business:		. Use the Simplified		
	Method Worksheet in the instr	uction	s to figure the amount to e	nter on	line 30	30	
31	Net profit or (loss). Subtract	line 30) from line 29.				
	. If a profit, enter on both Sched	lule 1 (Form 1040), line 12 (or Form	1040NR	, line 13) and on Schedule SE,		
	line 2. (If you checked the box on	-				31	2,179
	. If a loss, you must go to lin	e 32.)		
32	If you have a loss, check the b	ox tha	at describes your investmer	t in this	activity (see instructions).		
	If you checked 32a, enter to						
	line 13) and on Schedule SE,	32a 🗹 All investment is at risk					
	Estates and trusts, enter on Fo				,,	32b	
	If you checked 32b, you mu	st atta	ach Form 6198. Your loss i	nay be	limited.		at risk.
or Pa	perwork Reduction Act Notic	e, see	the separate instructions	i.	Cat. No. 11334P		Schedule C (Form 1040) 201

Evidence of Income

- IRMO LOH (2001) 93 CA4th 325, 332
- Individual tax returns are presumptively correct
- But...

Self-Employment Income

 Gross income to self-employment business less operating expenses. FC 4058(a)(2)

Asfaw v. Woldberhan (2007) 147 CA4th 1407
 Depreciation of rental property is not deductible in calculating child support under 4058 and 4059.

Add-Backs—"Was the expenditure necessary for the operation of the business?"

Self-Employment Income

IRMO Hein (2020) 52 Cal.App.5th 519 – Loh presumption not for self-employment-extends Asfaw add-back of depreciation to equipment and vehicles

 Burden of proof is on the party who has possession of the information

Income is.....

Discretionary: FC 4058(a)(3) & (b)

 Employment/self-employment benefits consider benefit to employee, reduction in living expenses, other relevant factors

 Earning capacity (less than 40-hour week not necessarily underemployed)

Tribal Income

- Pateras v. Armenta
 - Wages at Tribal businesses are taxable
 - Income from Tribal general welfare programs are taxable

Income is.....

- Overtime: Predictable overtime must be included unless:
 - Evidence that not likely to continue; or
 - Overtime subjects party to an "excessively onerous work schedule". Parent only required to work "objectively reasonable work regimen". See Co. of Placer v Andrade (1997)55 CA4th 1396; IRMO Simpson (1992) 4 Cal.4th 225.

Income is.....

- Military Allowances
 - BAH—Basic Allowance for Housing
 - BAS—Basic Allowance for Subsistence
 - Federal pre-emption does not apply
 - BAH and BAS are non-taxable income for support
 - IRMO Stanton (2011) 190 CA4th 547

MILITARY PAY

- Pay vs. Allowances
- Use BAH or Value of Provided Housing?
- Home State
- Special Pays and Tax Rules
- Military Pay Tables:
- BAH, COLAs and OHA rates:
 - https://www.travel.dod.mil/allowances/basic-allowancefor-housing/bah-rate-lookup/

Income is.....

- SEVERANCE PAY
 - Purpose—reward for service; allow for time to become reemployed

Income is.....

- Allocation of Severance Pay
 - TC discretion
 - May follow allocation stated in plan or other reasonable allocation
 - Should not allocate all to one month
 - IRMO Tong & Sampson (2011) 197 CA4th 23

What is NOT Income?

- Child support received for other children
- Public assistance (AFDC, SSI, TANF, Adoptive Assistance), but see Deviation
- Gifts (maybe)... But see *IRMO Alter* (2009) 171 CA4th 718
- Inheritances, life insurance
- Appreciation in value of primary residence <u>IRMO Henry</u> (2004) 126 Cal.App.4th 111
- New spouse/nonmarital partner income exception in extraordinary circumstances (FC 4057.5)
- New Mate income <u>IRMO Knowles</u> (2009) 178 Cal.App.4th 35

What is NOT Income? (Con't)

- Loans
- Undifferentiated lump sum PI awards
- Annuity purchased from undifferentiated lump sum PI award, but see Deviation

What is NOT Income? (cont.)

- IRMO Daugherty (2014) 232 Cal App 4th 463
 - Social Security Derivative Benefits received for children is not income to either parent
 - Child's income, not parent
 - If payee is recipient of benefits from payor's disability, credit against support order and possibly arrears. FC 4054
 - May be basis for deviation

Calculating Gross and Net Income

- Calculation of "Net Disposable Income" FC
 4058 (gross) and 4059 (deductions).
 - 12-month average. <u>IRMO Riddle</u> (2005) 125 **CA4th 1075, at 1083**, facts may dictate longer or shorter period.
 - Court can adjust support to account for seasonal or fluctuating income. FC 4060-4064.

Calculating Income (cont.)

- Fluctuating income
 - Set base support and percentage of income (bonuses, incentive pay) over base level. Ostler/Smith (1990)
 223 CA3d 272
 - IRMO Mosley (2008) 165 Cal.App.4th 1375
 - Annualize if bonuses/commissions are consistent.
 - Co of Placer v. Andrade, supra.

But Don't Forget.....

- Must consider appropriate deductions FC 4059
 - Taxes
 - Health Insurance (Pre or Post tax)
 - Mandatory Retirement Plans (Pre or Post tax)
 - Vol. to extent ATI
 - Necessary job-related expenses
 - Union dues
 - CS or SS
 - Hardships

Allowable Deductions (con't)

Hardships

- Extraordinary health expenses and uninsured catastrophic losses
- Minimum basic living expenses for children residing with a parent for whom the parent has an obligation to support
 - Does not apply to step-children as there is no 'legal' duty of support owed.

Beyond the Paycheck

- Section 4058 language is expansive but must limit application to money actually received or available; not appreciation of residence. IRMO Henry (2005) 126 CA4th 111, 23 CR3rd 707.
- IRMO Destein (2001) 91 CA4th 1385, 111 CR2nd 487, appreciation of real estate okay if investment asset, not residence.

Beyond the Paycheck con't

- Partnerships & S-Corps
 - K-1 vital
 - Need to understand various boxes.
 - Look not only to income but also to distributions- positive or negative

Stock Options

- Income when option exercised or sale of stock at a gain. IRMO Cheriton (2001) 92 CA4th 269, at 286, 111 CR2 755, at 767. But see In re Marriage of MacIlwaine
- Can option be income prior to being exercised?
 Murray v. Murray (1999) 128 Ohio App.3d 662, at 668-670, 716 NE2d 288, 293-295.

Stock

- IRMO Pearlstein (2006) 137 CA4th 1361, 40 CR3rd 910 distinguishes stock and cash traded in sale of business—not income until stock sold or cash spent as opposed to reinvested OK to impute reasonable rate of return
 - Stock options=compensation
 - Stock/cash sale of business=capital
 - Same result in IRC1031 exchange?

Inheritance

- County of Kern v. Castle (1999) 75 CA4th 1442, at 1453, 89
 CR2 874
- Corpus not income.
- Imputation of interest income to the corpus of the inheritance;
- Actual rental income, plus reduction in living expenses, per FC 4058(a)(3)
 - Compare <u>County of Orange v. Smith</u> (2005) 132 CA4th 1434, at 1447-1448, 34 CR3rd 383, at 392-393, but see **Anna M. v. Jeffrey E.**, 7 Cal. App. 5th 439.

Life Insurance

 Lump sum payment of life insurance benefits not income—may apply reasonable rate of return. <u>IRMO</u>
 <u>Scheppers</u> (2001) 86 CA4th 646,



Gambling Winnings

Return on capital investment, include as income. IRMO Scheppers, supra, at 651 and 533.

Lottery Winnings

- County of Contra Costa v. Lemon (1988) 205 CA3rd 683, at 688, 252 CR2nd 455, at 459 - AFDC case. Court held lottery winnings to be income and available for both AFDC reimbursement and ongoing child support.
 - See IRMO Scheppers, supra, at 651 and 533.

Benefits from Employment

- Discretionary Add-ons
 - Automobile. IRMO Schulze (1997) 60 CA4th 519, at 528, 70 CR2nd 488, at 494.

Housing. IRMO Schulze, supra, at 529 and 495.

 Meals. Stewart v. Gomez (1996) 47 CA4th 1748, at 1756, 55CR2nd 531, at 536.

Annuity from Undifferentiated lump sum Pl award

- IRMO Rothrock (2008) 159 Cal.App.4th 223, held annuity purchased from undifferentiated lump sum PI award not income.
 - BOP on person challenging
- IRMO Heiner (2006) 136 Cal.App.4th 1514 held undifferentiated lump sum PI award not income.

Imputing Income

- Gifts
- Earning Capacity
 - Unemployed/underemployed
- Assets
- Expense Theory
- New Mate Income
 - FC 4057.5

Gifts

 One-time gifts are not includable as income unless failure to do so would provide inequitable result. IRMO Schulze, supra at 530 and 495.

 Court has broad discretion to deviate up or down if in the best interests of the children. IRMO deGuigne (2002) 97 CA4th 1353, at 1361, 119 CR2nd 430, at 436.



Gifts (cont.)

- Recurring gifts may be treated as income. <u>IRMO Alter</u> (2009) 171 CA4th 718
- IRMO Shaughnessy (2006) 139 CA4th 1225, held discretion to consider third party gifts in spousal support
 - [FC4057(b)(5) mentioned in dicta].

Earning Capacity

- FC4058(b) Discretion to consider in lieu of income if consistent with best interests
 - May consider EC along with parent's receipt of disability benefits. <u>Stewart v. Gomez</u> (1996) 47 CA4th 1748
 - Burden on party seeking to impute to show ability (age, experience, health), and opportunity to work (job availability). IRMO Regnery (1989) 214 CA3rd 1367, 263 CR 243.

Earning Capacity (cont)

 Burden on responding party if employment terminated voluntarily.
 IRMO Ilas (1993) 12 CA3rd 1630;
 IRMO Padilla (1995) 38 CA4th 1212;
 IRMO McHugh (2014) 231 CA4th 1238.

Earning Capacity (cont)

 Cannot 'automatically' impute to former level if termination involuntary, even if misconduct! IRMO Eggers (2005) 131 CA4th 695, 32 CR3rd 292.

Earning Capacity (cont)

- Retirement scenario
 - IRMO Bardzik (2008) 165 CA4th 292
 - Reiterates BOP on parent who seeks to modify order to show parent has ability and opportunity.
 - Retirement distinguished from voluntary termination (IRMO Ilas & Padilla, supra;)
 - However, perhaps consider viability on <u>Stewart v.</u>
 <u>Gomez</u>, *infra*, if in best interests to impute and evidence to do so

Earning Capacity (cont.)

- Court may impute to one who is unable to find employer willing to hire them so long as there is a substantial likelihood income can be produced utilizing marketable skills. IRMO Cohn (1998) 65 CA4th 923, at 930, 76 CR2nd 866 at 871.
 - Tangible evidence needed; cannot be "drawn from thin air." IRMO Cohn (lawyer case); Oregon v. Vargas 70 CA4th 1123. Want ads enough. LaBass and Munsee (1997) 56 CA4th 1331.

Earning Capacity(cont.)

- What if earning capacity greater than actual earnings, i.e. underemployed?
 - Ability to pay standard—if earning capacity greater than actual earnings court may base order on ability so long as in the children's best interests—sound discretion of the court. Moss v. Superior Court (Ortiz) (1998) 17 C4th 396, at 4245; IRMO Simpson (1992) 4 C4th 225, at 233; IRMO Smith (2001) 90 CA4th 74, at 81.

Earning Capacity(cont.)

- IRMO Sorge (2012) 202 CA4th 626
 - 4058(b) allows imputing income on the basis of business assets without consideration of losses - start-ups by dad after \$800K income from prior employment.

Earning Capacity(cont.)

- Remarriage and quit job/reduced hours
 - IRMO Paulin (1996) 46 Cal.App.4th 1378
 - <u>Lim & Carrasco (2013)</u> Parent reducing work to 80% FT Ok if in best interests of the children.
 - IRMO Ficke (2013) must find imputation of income to be in children's best interests.

Imputing Income

- Can impute reasonable rate of return on non- income-producing assets.
 - IRMO Dacumos (1999) 76 CA4th 150, at 154-155, 90 CR2nd 159, at 161;
 - IRMO Destein (2001) 91 CA4th 1385, at 1393-1396, 111CR2nd 487, at 492-496;
 - IRMO deGuigne, supra, at 1363 and 437-438.

Imputing Income

- Rate of return? Substantial evidence test on review;
 - Risk free (6%) <u>Destein</u>,
 - legal rate (10%)—<u>Scheppers</u>,
 - 4.3 or 4.5 government bond rate—<u>IRMO Ackerman</u> (2006) 146 CA4th
 191 all acceptable.
 - Common sense "Theoretical rate" 4.5% <u>IRMO Berger</u> (2009) 170 CA4th 1070

Imputing Income (cont.)

- Brothers v. Kern (2007) 154 CA4th 126 confirms trial court imputing reasonable rate of return on liquidated proceeds already paid to third party.
 - Court also deviated from guidelines—payor incarcerated- considered children's needs for above guideline award.

Imputing Income (con't)

- Expenses Theory
 - Calculate guideline
 - Make credibility finding if I&E or other evidence of unbelievable income versus expenses
 - Rule out other sources for payments as shown by evidence
 - Re-calculate with expenses as non-tax income no tax consideration as expenses are paid after tax.
 - See <u>IRMO Loh</u>; <u>IRMO Calcattera</u> (2005) 132 CA4th 28

Imputing Income(cont.)

- Exceptions to imputing income:
 - CalWorks participant <u>Mendoza v Ramos</u> (2010) 182 CA4th 680
 - IRMO Williams (2007) 150 CA4th 1221 confirms that court cannot impute reasonable rate of return on home equity in primary residence.
 - IRMO Schlafly (2007) 149 Cal.App.4th 747, confirms cannot impute income on mortgage free housing (FRV?) of primary residence
 - But consider **Kern v Castle, supra**. Also discussed "add-ons" FC 4062
 - Principal portion of biz mtg pmt may be deductible if crt determines that pmts reasonably and legitimately reduce net income. **IRMO Deluca (2019) 45 Cal.App.5**th **184.**

Imputing Income (cont.)

- Remarriage May impute income to custodial parent who terminates employment to care for new children of remarriage (IRMO Hinman (1997) 55 CA4th 988, 64CR2nd 383) or remarriage to wealthy spouse (IRMO Wood (1995) 37 CA4th 1059, 44 CR2nd 236)
 - CAUTION re FC 4057.5
 - Need finding of that exclusion of new mate income would result in extreme or severe hardship to child
 - IRMO Knowles (2009) 178 CA4th 35

Summary— Determining Income

- Income = gross income from all sources, including commissions, bonuses, overtime
- May include benefits
- Does not include aid, child support, etc.
- Average when fluctuating or seasonal
- Imputing income may be available

BONUS SECTION

Harman's Guide to Deviating from Guidelines

Deviating from Guideline

- "The court is not supposed to punch numbers into a computer and award the parties the computer's result without considering the circumstances in a particular case which would make that order unjust or inequitable"
 - Marriage of Fini (1994) 26 CA4th 1033

It's true, we are not mere robots or potted plants!

• FC 4056

• If deviating, must state findings and guideline CS and state reasons for deviation on record.

FC 4057(a)

The amount of child support established by the formula presumed to be the correct amount of child support.

• FC 4057(b)

The presumption of 4057(a) may be rebutted by showing that formula unjust or inappropriate, consistent with FC 4053, based on one or more identified factors, list is not exclusive.

- Family Code Section 4052.5
 - Invites deviation in 3-parent cases—no need to modify Guideline Calculator

Calculation of guideline



 No statutory exception to requirement that court determine guideline before addressing deviation. <u>IRMO Hubner</u> supra, at 184 and 652

Stipulation of the parties. FC4057(b)(1)

Guideline calculation &

FC 4065 inquiry/advisement required.

Deferred Sale of Residence FC4057(b)(2)

Discretionary. IRMO Braud (1996) 45CA4th 797, at 819, 53 CR 2d 179, at 192

High Income & G/L exceeds C's needs. Burden on high earner to establish that formula is "unjust or inappropriate" and would exceed needs. FC 4053(b)(3).
 IRMO Cheriton, supra,, at 297 and 776.

 Substantial evidence test—opposite result may be supportable. <u>IRMO Wittgrove</u> (2004)_120 CA4th 1317, at 1326 and 1328, 16 CR3rd 489, at 495 and 497.

May avoid need to calculate guideline if parties stipulate that paying parent is extraordinarily high earner and on what is an appropriate amount of child support. <u>Estevez v. Superior Court (Salley)</u> (1994) 22 CA4th 423, at 431, 27 CR2nd 470, at 475-476. Court makes "assumptions least favorable to the obligor."

- Establishing needs of children
 - Varies with standard of living of parent, per FC 4053(f).
 - IRMO Hubner (2001) 94 CA4th 175, at 187, 114 CR2nd 646, at 655;
 - IRMO Wittgrove, supra, at 1329 and 498;
 - IRMO Chandler (1997) 60 CA4th 124, at 129, 70 CR2nd 109, at 113.

- Future financial security may be considered. IRMO Kerr (1999) 77 CA4th 87, at 97, 91 CR2nd 374, at 381.
- Consideration of alternative resources may not be appropriate. IRMO Cheriton, supra at 293-294 and 773 (trust not to be considered unless actually satisfying needs of children).

- Court needs information based in fact concerning obligor's actual gross income.
 - Johnson v. Superior Court (Tate) (1998) 66
 CA4th 68, at 75, 77 CR2nd 624, at 628;
 - IRMO Hubner supra at 186-187 and 654-655.

Contribution not commensurate with parenting time. FC4057(b)(4)

Clothing, extra curricular, etc.

Guideline child support would be "unjust or inappropriate." FC4057(b)(5)

Including but not limited to....

- (A) Different time-share with different children,
- (B) Substantially equal time but housing expense greater for one parent, and
 - (C) Special medical or other needs for the children.

Above language are not words of limitation

- Other Examples:
 - Broad discretion given court, as list of circumstances are inclusive, not exclusive.
 - County of Lake v. Antoni (1993) 18 CA4th 1102, at 1106, 22 CR2nd 804, at 806;
 - IRMO Wood (1995) 37 CA4th 1059, at 1069, 44 CR2nd 236, at 242;
 - IRMO deGuigne supra, at 1361 and 436.

• <u>Edwards v Edwards</u> (2008) 162 Cal.App.4th 136. Where jurisdiction exists to award post age of majority CS, application of GL formula is unjust or inappropriate where neither parent retains primary physical responsibility for adult child for any period of time.

- ASSETS. IRMO Dacumos supra154-155 and 161; IRMO Destein supra at 1393-1396 and 492-496; IRMO deGuigne supra at 1363 and 437-438.
- Lavish lifestyle. IRMO deGuigne supra at 1360-1366 and 435-440.
- Nontaxable benefits. IRMO Loh supra at 335-336 and 900.
- Salary Deferral combined with lavish lifestyle.
 IRMO Berger (2009) 170 Cal.App.4th 1070

Extraordinarily low income. <u>City and County of San</u> <u>Francisco v. Miller</u> (1996) 49 CA4th 866, at 869, 56 CR2nd 887, at 888.

Federal Poverty Guideline

Concept used to reduce arrears in public assistance case. City and County of San Francisco v. Funches (1999) 75 CA4th 243, at 247, 89 R2nd 49, at 52.

Summary—Deviating from Guideline

- Stipulation
- Deferred Sale of Residence
- Not Contributing commensurate with TS
- Extraordinarily High Income
- Guideline support unjust or inappropriate "catchall" clause
 - Findings on the record required for all

The End. Thank you for joining us

For questions, feel free to email me at: HarmanS@saccourt.ca.gov or Adam.Wertheimer@sdcourt.ca.gov