

## Child Support and Income Determination

2015 AB 1058 Conference  
SAN DIEGO, CA

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## Goal

- Ensure compliance with Federal regulations
- To provide consistency throughout the state *where parties can not 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.
- To encourage settlements of conflicts and minimize litigation

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*A parents 1<sup>st</sup> & principal obligation above and beyond payment of their current debts and other monthly expenses is to support children according to their circumstances & station in life?*

1. True
2. False



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## Principal Objectives

- Parents 1<sup>st</sup> & principal obligation to support child according to circumstances & station in life
- Both parents mutually responsible for support
- Considers each parents income and level of responsibility for children
- Children share the standard of living of both parents. Support may improve the standard of living of custodial household.
  - See Family Code Section 4053

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## Calculating Guideline Child Support

*Is the calculation of guideline child support mandatory in all cases where child support is requested?*

1. Yes
2. No



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*Bench Officer's can exercise discretion when calculating guideline child support?*

1. True
2. False



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## Calculating Guideline Child Support

- It is not a guideline
  - Adherence is mandatory by the court!
- Presumptively correct
  - Rebuttable presumption
  - Exceptions will be discussed and agreements by parents are encouraged
    - Even if only on some points.

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## Rebuttable Presumption

- Guideline unjust or inappropriate because:
  - **Stipulate to different amount (FC 4065)**
  - Deferred sale of residence
  - Payor has extraordinary high income & GL amount exceeds needs of child
  - Party not contributing to needs of child consistent with custodial time
  - Application unjust or inappropriate due to special circumstances

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## Special Circumstances

- Include but not limited to:
  - Different custodial plans for different children
  - Substantially equal custodial time & one parent has higher or lower % of income used for housing
  - Children have special medical needs
- List is not exclusive !!

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## How is Child Support Calculated

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



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## Real World- How calculated

- Certified computer programs:
  - CalSupport and CalSupport PRO, <http://www.nolotech.com>
  - DissoMaster, <http://www.cflr.com/products/dissomaster.php>
  - Xspouse, <http://www.xspouse.com/>
  - SupporTax, <http://www.cflr.com/products/supportax.php>; and
  - California Guideline Child Support Calculator (DCSS), <https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator>
  - Family Law Software, <http://www.FamilyLawSoftware.com/ca>
  - FamilySoft SupportCalc by Legal+Plus, <http://www.legalplus.com>



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## Real World (cont.)

- If calculating child support in a case involving the Dept of Child Support Services, the court must use:
  - Child Support Guideline Calculator-

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## Necessary Information

- Court order is only as accurate as the evidence received by the court !!
- While court is neutral, often requires bench officer to make inquiry of parties.
  - Frequently more hands on by bench officer in proper cases. Must balance with Canons.
- If you make inquiry of parties for inputs have clerk administer oath
  - # of children,
  - Parenting arrangement
  - Tax filing status- current as of year end.

Gross Income

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## Necessary Information (Con't)

- Deductions from Income
  - Taxes
  - Health Insurance (Pre or Post taxes)
  - Retirement Plans
  - Necessary job related expenses, union dues
- Mortgage Interest, Property Taxes, Charitable contributions
- Child Care expenses
- Statutory Hardships

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## Deductions which have tax effect

- Adjustments to income
  - IRA/ Pre-Tax 401K contributions
  - Pre-tax health insurance premiums or meet AGI threshold (uninsured costs)
  - Home Mortgage Interest
  - Property Taxes
  - Student Loan Interest
  - Charitable Contributions

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## Child Support Add-Ons

- Mandatory- FC4062
  - Child Care for employment or education
  - Uninsured health care costs.
    - Generally split equally, may also be proportional to net disposable income.
- Discretionary-
  - Education/Special Needs
    - Extra curricular activities
  - Visitation travel expenses

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## Responsibility for care

- Timeshare does not have to be exact-
  - Close approximation
  - Approved child support software programs have 'guideline' parenting time scenarios
  - Look to responsibility for care-
    - May be responsible for care even when child not with a particular parent (school).
  - Based upon what is actual arrangement, not necessarily what order says.

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## VOID CS Agreements

- Those agreements which deprive the court of jurisdiction, i.e. binding arbitration
  - IRMO Berezna (2003) 110 CA4th 1062
- Waiver of arrears on a take it or leave it basis without good faith dispute as to amounts owed
  - IRMO Sabine & Toshio M. (2007) 153 Cal.App.4th 1203, 1213-1215

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## CS orders

- Always modifiable
  - Even Stipulated non-modifiable “floor”, subject to modification.
    - IRMO Alter (2009) 171 Cal.App.4th 718
  - Different than spousal support!

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## Income is.....



- “..income from whatever source derived” IRC language--Mandatory: FC 4058(a)(1)
  - Commissions, salary, wages, bonuses
  - Royalties, rents, dividends, interest, gifts maybe if recurring **IRMO Alter** (2009) 171 CA4 718
  - Pensions, annuities, social security benefits
    - --not children's benefits
  - Workers' comp., unemployment, disability
  - Spousal support from another relationship
  - Tribal payments paid directly to member
    - **M.S.v.O.S.**(2009) 176 CA4th 548

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## What is Income (con't)

- Gross income to 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”?

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How do you generally treat depreciation when calculating income available for child support?

1. Non taxable income
2. Add back to self employment income as taxable
3. Neither of above but consider as factor for deviation
4. Any of the above depending on circumstances




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**HYP0**

*F owns apt. complex. \$200K/yr gross rental income and claims business expenses of \$150K, \$50K of which is depreciation. What is F's income for CS?*

1. \$50K taxable
2. \$100K taxable
3. \$50K taxable plus \$50K non-tax
4. Something else




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**HYP0**

*F self employed & owns medical transcription business. \$200K gross income, \$150K business expenses, \$50K of which is depreciation. What is F's S/E income*

1. \$50K taxable
2. \$100K taxable
3. \$50K taxable plus \$50K non tax
4. Whatever the tax return says
5. Possibly something else




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### What is Income (con't)

- 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)

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### What is Income (con't)

- 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.

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### What is Income (con't)

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

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### What is Income (con't)

- SEVERANCE PAY
  - Smith Ostler order in effect
  - "35% of all income in excess of \$25,000/mo
  - Payor receives severance pay of \$309K
  - 5 Components

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### What is Income (con't)

- Yrs of Service \$100,000
- Lump sum in lieu of commissions \$152,000
- Qualitative Compensation \$ 35,000
- Healthcare payout \$ 1,500
- Retirement benefits \$ 3,422
  - TC ruling: % applies to all

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### What is Income (con't)

- Yrs of Service (limit 12 mo) \$100,000
- Lump \$ in lieu 6mo commissions \$152,000
- Qualitative Compensation \$ 35,000
- Healthcare payout \$ 1,500
- Retirement benefits \$ 3,422
  - TC ruling: % applies to all
  - CA: reverses---Allocate rationally

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## What is Income (con't)

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

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## What is NOT Income?

- Child support
- Public assistance (AFDC, SSI, TANF, Adoptive Assistance)
- Gifts (maybe)... But see *IRMO Alter* (2009) 171 CA4th 718
- Inheritances, life insurance
- Appreciation in value of primary residence  
*IRMO Henry* (2004) 126 CA4 111
- New mate income—exception in extraordinary circumstances (FC 4057.5)
  - *IRMO Knowles* (2009) 178 CA4th 35

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## What is NOT Income? (Con't)

- Loans
- Undifferentiated lump sum PI awards
- Annuity purchased from undifferentiated lump sum PI award.
- However, just because not income, some of these facts may be basis to deviate from G/L CS.

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### What is NOT Income? (cont)

- IRMO Daugherty (2014) 232 Cal App 4<sup>th</sup> 463
  - 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

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### Calculating Gross and Net Income

- Calculation of "Net Disposable Income" FC 4058 (gross) and 4059 (deductions).
  - 12-month average. IRMO Riddle (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.

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### Calculating Income (cont.)

- Percentage of fluctuating income as child support?
  - Better practice to set base CS and percentage of income (bonuses, incentive pay) over base level.
    - IRMO Mosley (2008) 165 Cal.App.4th 1375
  - Contra authority if bonuses/commissions are consistent.
    - See Co of Placer v. Andrade, supra.

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## But Don't Forget.....

### - Must consider appropriate deductions per 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
- Hardship

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## Hardships

*Must the court grant a hardship deduction to a parent who has a biological or adopted child from a different relationship in the home?*

1. Yes
2. No

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## 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.

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**HYP0**

W works for State, tier 1 (e'ee contributes to mandatory retirement also subsidized by e'er). H works for HP and voluntarily contributes to 401K & matched by e'er. H has no other retirement.

**Is H's 401K contribution an allowable deduction in calculating G/L Child Support?**

1. Yes
2. No
3. Maybe
4. I don't know

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**HYP0**

Due to poor economy, F is laid off. Secures new wage employment but now commutes 100 miles each way to his office. F proves *increased* costs for commute \$500/mo.

**How do you treat the increased commute costs in the calculation of CS?**

1. Ignore
2. Necessary job related expense
3. Deviate per FC 4057
4. Let me think about it

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**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, at 119, 23 CR3rd 707, at 712.
- IRMO Destein (2001) 91 CA4th 1385, 111 CR2nd 487, appreciation of real estate okay if investment asset, not residence.

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## 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

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### HYP0

F \$48K W-2 from S-Corp. S-Corp also gives F a K-1 with \$150K ordinary business income. M stay at home w/ twins- 6 months old.

*For calculating G/L CS is F's income:*

- \$48K wages
- \$198K wages
- \$48K wages plus \$150K other taxable
- Something entirely different




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### HYP0

Dad: General partner. Draw \$60,000/yr. K-1 shows distribution of \$70,000/yr. *For calculating G/L CS is Dad's income:*

- 70K wages/yr
- 60K/yr S/E income
- 70K/yr S/E
- 60K/yr S/E plus 10K other taxable
- Perhaps something entirely different.
- Whatever the LCSA recommends




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## 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.
- 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.



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## HYPOTHESIS

W granted 20K options. Vest ratably 1/5 annually over 5 yrs. Price on grant date \$10/share. 18 mo.'s later H files CS mod & req's. impute income on vested options. Price now \$20/share.

### What is income from stock options?

1. \$40K
2. \$80K
3. \$20K
4. I went to law school because I was no good at math



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## 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?



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## Inheritance



- County of Kern v. Castle (1999) 75 CA4th 1442, at 1453, 89 CR2 874, at 882.
- 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 County of Orange v. Smith (2005) 132 CA4th 1434, at 1447-1448, 34 CR3rd 383, at 392-393.

## Life Insurance

- Lump sum payment of life insurance benefits not income—may apply reasonable rate of return. IRMO Scheppers (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.

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## 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.

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## Annuity from Undifferentiated lump sum PI 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.

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## Imputing Income

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




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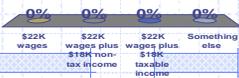
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F receives gift of \$18K every year from parents to pay his rent. F (NCP) wages \$22K/yr. M (CP) wages \$48K/yr. TS 0%.  
**What is F's income for calculating G/L CS?**

1. \$22K wages
2. \$22K wages plus \$18K non-tax income
3. \$22K wages plus \$18K taxable income
4. Something else




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Would your answer to the previous question be different if the parents provided H free housing with an annual value of \$18K instead of gifting him \$18K?

1. Yes
2. No




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## 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.

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## Gifts (cont.)

- Recurring gifts may be treated as income for child support. IRMO Alter (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].

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## Earning Capacity



- FC4058(b) Discretion to consider in lieu of income if consistent with best interests
  - May consider EC along with parents receipt of disability benefits. Stewart v. Gomez (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.

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

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Where a parent retires early & before normal retirement age when there are still minor children, the trial court must impute income as a matter of law to the pre-retirement level when calculating an initial guideline child support order?

1. True
2. False



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## Earning Capacity (cont)

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

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### 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 (incarcerated parent) 70 CA4th 1123. Want ads enough. LaBass and Munsee (1997) 56 CA4th 1331.

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### 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.

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### 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.

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## Earning Capacity(cont.)

- Remarriage and quit job/reduced hours
  - IRMO Paulin (1996) 46 Cal.App.4th 1378
  - Lim & Carrasco (2013)—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.

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## Imputing Income

**INTEREST**

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.

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

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## 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 child needs for above guideline award.



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## Imputing Income (con't)

- Expenses Theory
  - Calculate guideline
  - Make credibility finding if I&E or other evidence of unbelievable income vis a vis expenses
    - Rule out other sources for payments as show by evidence
  - Re-calculate with expenses as non tax income- no tax consid. as expenses are paid after tax.
  - See IRMO Loh (supra); IRMO Calcattera (2005) 132 CA4th 28

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## Imputing Income(cont.)

- Exceptions to imputing income:
  - CalWorks participant Mendoza v Ramos (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

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As a result of investments after new marriage H and new spouse have passive investment income of \$5,000/mo. H recently laid off and collecting UI benefits of \$1,950/mo. What is H's income for CS?

1. \$1,950
2. \$6,950
3. \$4,450



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## 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 NMI would result in extreme or severe hardship to child
  - IRMO Knowles (2009) 178 CA4th 35

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## Summary— Determining Income

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

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In 2008 F receives \$319K from Tribe and reports same as taxable income on his tax return. \$35K of this figure is for legal fees paid directly to his attorneys and \$80K represents bi-annual bonuses. The balance is regular monthly disbursements. What is F's income for calculating G/L CS?

1. \$319K
2. \$284K
3. \$204K



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## 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!

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## Deviating from Guideline (cont.)

- 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.

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## Deviating from Guideline (cont.)

- FC 4057(b)

The presumption of 4057(a) rebuttable-- 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.

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## Deviating from Guideline (cont.)

- Family Code Section 4052.5
  - Invites deviation—no need to modify Guideline Calculator

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## Deviating from Guideline (cont.)

- Calculation of guideline 
  - No statutory exception to requirement that court determine guideline before addressing deviation. IRMO Hubner supra, at 184 and 652.

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## Deviating from Guideline (cont.)

**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

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### Deviating from Guideline (cont.)

- 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. IRMO Wittgrove (2004)\_120 CA4th 1317, at 1326 and 1328, 16 CR3rd 489, at 495 and 497.

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### Deviating from Guideline (cont.)

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

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### Deviating from Guideline (cont.)

- 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.

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### Deviating from Guideline (cont.)

- 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).

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### Deviating from Guideline (cont.)

- 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.

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### Deviating from Guideline (cont.)

**Contribution not commensurate with parenting time. FC4057(b)(4)**  
Clothing, extra curricular, etc.

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## Deviating from Guideline (cont.)

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 is not words of limitation

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## Deviating from Guideline (cont.)

- 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.

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## Deviating from Guideline (cont.)

- Edwards v Edwards (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.

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### Deviating from Guideline (cont.)

- Assets. IRMO Dacumos supra 154-155 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

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### Deviating from Guideline (cont.)

-**Extraordinarily low income.** City and County of San Francisco v. Miller (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.

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### Summary—Deviating from Guideline

- Stipulation—findings required
- Deferred Sale of Residence
- Not Contributing commensurate with TS
- Extraordinarily High Income
- Guideline support unjust or inappropriate “catchall” clause

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## Putting it all together

- Now you have the framework to calculate Child Support
- Conceptually it's like graduating from law school and passing the bar.
- It's applying it in the real world that counts, and that's what has not been taught.

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W files and 75 days later serves a Petition for DOM. Six (6) mo's later W files OSC for CS. To what date may the Court make the initial order retroactive to?

1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



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W's OSC also seeks spousal support, to what date may the court make the SS order retroactive to?

1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



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M & D 50/50 Custody Order. D deploys overseas. M seeks CS mod with 0% timeshare. Child spends significant time with D's family including weekends and some overnights and various meals (approx. 30% timeshare).

**How do you calculate child support?**

1. Use 0% Timeshare but deviate
2. Use 50% Timeshare & order G/L CS
3. Use 30% Timeshare & order guideline



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A voluntary declaration of paternity may be rescinded by either parent....

1. Within 60 days
2. Within 2 years
3. Within 6 months
4. Never, unless set aside by court as it is equivalent to a judgment



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A motion to set aside a voluntary declaration of paternity must be filed within what period of time in relation to the child's birth?

1. 2 months
2. 6 months
3. 1 year
4. 2 years



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A person is entitled to a hardship deduction for the minimum basic living expenses of a natural or adopted child living in the home when calculating guideline CS?

1. True
2. False




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When calculating guideline child support the Court shall deduct from gross income of the parents the health plan premiums paid

1. Only for the child subject to the CS order
2. For all children whom their exists an obligation to support
3. The total premium including adults and children
4. Premium for parent and all children for whom their exists a legal obligation to support




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When calculating a party's net disposable income which of the following are considered health insurance deductions?

1. Vision Premium
2. Dental Premium
3. Health Premium
4. All of above
5. Only 2 and 3




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M has free child care to enable her to work. M chooses to put child, age 4, in early learning development program (ELDP) instead of free child care. Is the cost of the ELDP a mandatory child support add-on?

1. Yes
2. No
3. Maybe




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Assume the Court granted the ELDP costs in the previous question, how must the court allocate the costs between the parents?

1. Split 50/50
2. Split in any manner it chooses
3. Upon request, split in proportion to net disposable income if appropriate
4. All of the above
5. 1 or 3 above




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Dad receives Social Security Disability Insurance benefits in the sum of \$1,000 per month. What is Dad's income for calculating guideline child support?

1. \$1,000 wages
2. \$1,000 non-tax as disability
3. \$1,000 taxable disability
4. \$0




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How do you calculate guideline CS owed by parents who reside together for a caretaker on aid?

1. Add incomes together as NCP's and include caretaker income then proportionally allocate
2. Compute guideline separately for each parent
3. Add incomes together as NCP's, do not include caretaker income, proportionally allocate
4. Add incomes together as NCP's, do not include caretaker income, equally allocate.

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**DISCOVERY**



- Limited discovery available without pending motion FC 3662 - 3663
- Discovery permitted to provide sufficient information to allow court to determine "net disposable income"-- extent of discovery is discretionary with the court. Johnson v. Superior Court (Tate) (1998) 66 CA4th 68, at 75-76.

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