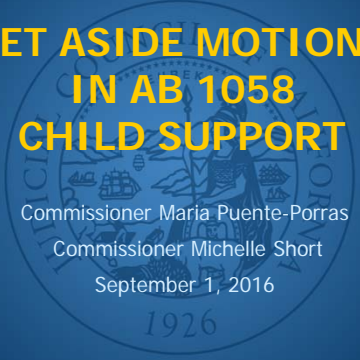


**SET ASIDE MOTIONS
IN AB 1058
CHILD SUPPORT**

Commissioner Maria Puente-Porrás
Commissioner Michelle Short
September 1, 2016



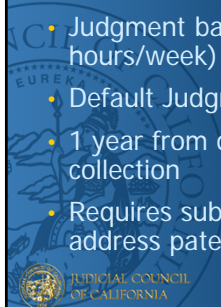
Relief Requested – All or part?

- Entire Judgment or a single finding
- Default, Uncontested Order, Motion for Modification
- Default Judgment or related to Uncontested hearing



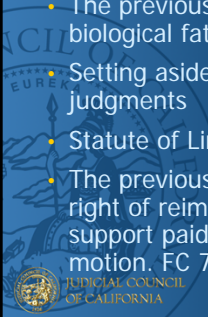
**Single Issue – FC 17432
Presumed Income**

- Judgment based on presumed income (40 hours/week)
- Default Judgment or Post Judgment Order
- 1 year from date DCSS receives first collection
- Requires substantial difference. Does not address paternity



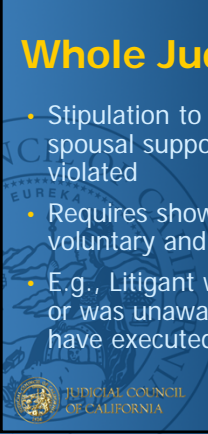
Single Issue – Genetic Testing FC 7645/7646

- The previously established father is not the biological father
- Setting aside or vacating paternity judgments
- Statute of Limitations
- The previously established father has no right of reimbursement for any amount of support paid prior to the granting of the motion. FC 7648.4



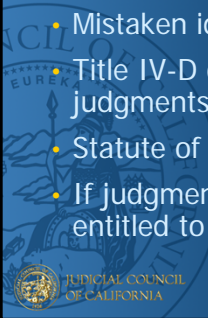
Whole Judgment FC 17416

- Stipulation to paternity, child support, or spousal support is voidable if rights were violated
- Requires showing that stipulation was not voluntary and intelligent
- E.g., Litigant was not advised of right to trial or was unaware of rights, and would not have executed the agreement if fully aware



Whole Judgment FC 17433

- Mistaken identity of Respondent
- Title IV-D default child support judgments only
- Statute of Limitations: None stated
- If judgment set aside, Respondent is entitled to FC 17530 remedies



Servicemembers' Civil Relief Act

50 U.S.C.A. § 3901 et seq.

- Violation of act is grounds to vacate
- Relief from all judgments
- 90 days after termination of military service. 50 U.S.C.A. § 3932
- If default taken during active military duty, and no appointment of counsel, mandatory set aside



Set Aside Under CCP 473(b)

- Mistake, inadvertence, surprise, or excusable neglect
- 6 months from entry of default
- Must file proposed responsive pleading/answer with moving papers
- Where attorney admits fault, the court shall set aside
- If attorney admits fault, court must impose reasonable compensatory legal fees and costs



Set Aside under 473(d)

- Void Judgment
- Usually relief from default but may also be relief on uncontested hearing – either Judgment or Motion/RFO
- Can be raised at any time
- Rebuttable presumption of effective service. First, overcome presumption, then burden shifts. EC 467



Set Aside under 473(d) (cont'd)

- Judgment void if summons served in a manner other than specified by statute. *Wilson v. Eddy* (1969) 2 CA3d 613, 616, 82 CR 826.
- If service is false or fraudulent, the Judgment is void. *County of San Diego v. Gorham* (2010) 186 CA4th 1215.
- Dismissal required where service is not within 3 years. CCP 583.210 and CCP 583.250
- General appearance cures a service defect



CCP 473.5

- Lack of actual notice
- Only applies to default judgments
- No later than 2 years after entry of default judgment or 180 days after service, whichever is earlier
- Requirements: (1) no actual notice (2) affidavit and proposed answer



FC 3690/3691

- Actual fraud, perjury, or lack of notice
- Statute of Limitations
- No relief allowed if Respondent was properly served and lack of notice is the basis for set aside



Equity

- Fraud, mistake, or accident *City and County of San Francisco v. Cartagena* (1995) 35 CA 4th 1061, 1066-1067
- All judgments Title IV-D, non-IV-D [before January 1, 1991 or judgments that do not adjudicate support or property]
- Promptly, on discovery or judgment or order
- Moving party must show that the fraud could not reasonably have been discovered before entry of judgment

