

Determining Child Support Arrears

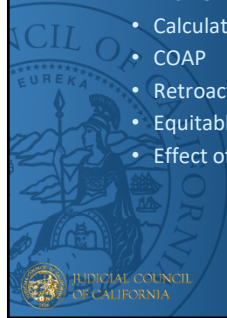
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Special Thanks to the Riverside County DCSS Staff
for their assistance.

Overview of Topics

- Waiver of Arrears by Stipulation
- Calculation of Arrears
- COAP
- Retroactive Modification
- Equitable Principles
- Effect of Incarceration



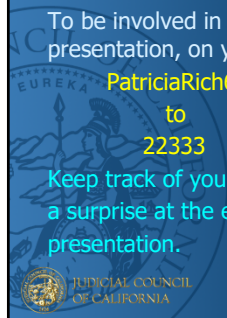
We Are Going to Be Asking You a Few Questions

To be involved in the polling part of this presentation, on your cellular phone, please text

PatriciaRich689

to
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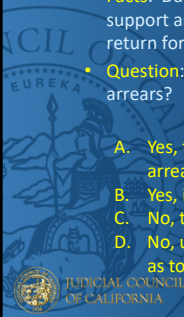
Keep track of your answers for a surprise at the end of the presentation.



Hypothetical 1

- **Facts:** Dad owes mom approximately \$300,000 in child support arrears. He offered to pay her \$100,000 in return for a waiver of the remaining arrears.
- **Question:** Can parties agree to waive unassigned arrears?

- A. Yes, they can always agree to waiver of unassigned arrears
- B. Yes, if there is some money paid in the agreement
- C. No, they can never waive unassigned arrears
- D. No, unless they can show there is a legitimate dispute as to the amount owed




Can parties agree to waive unassigned arrears?

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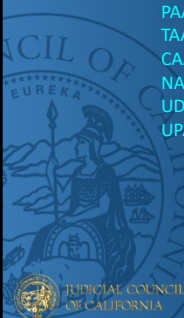


Assigned vs. Unassigned Arrears

- PAA Permanently Assigned Arrears*
- TAA Temporarily Assigned Arrears
- CAA Conditionally Assigned Arrears
- NAA Never Assigned Arrears*
- UDA Unassigned during assistance*
- UPA Unassigned Pre-Assistance

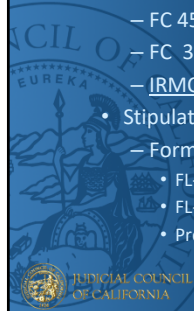


* These are the three types we see the most these days.



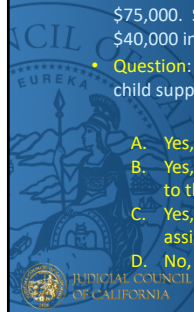
Waiver of Un-Assigned Arrears by Stipulation

- Controlling Law
 - FC 4503
 - FC 3651(c)(1)
 - IRMO Sabine and Toshio
- Stipulation
 - Forms
 - FL-626
 - FL-300
 - Procedure



Hypothetical 2

- **Facts:** Mom owes child support arrears in the amount of \$75,000. She owes \$35,000 as unassigned arrears and \$40,000 in assigned arrears.
- **Question:** Can Mom make an agreement lowering the child support arrears owed to the state?
 - Yes, but it requires a sign off by custodial parent
 - Yes, but she must first pay off the amount owed to the custodial parent
 - Yes, as long as the agreement involves both assigned and unassigned arrears
 - No, they can never waive assigned arrears



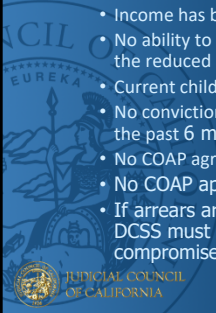
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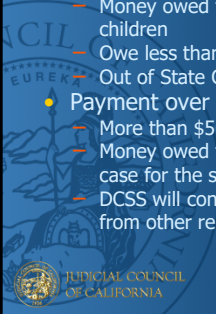
Standard COAP

- More than \$501 is owed on Assigned Arrears
- Child support was not stopped in anticipation of the program
- Income has been accurately represented
- No ability to pay full arrears amount, but an ability to pay the reduced arrears amount
- Current child support orders are paid
- No conviction or contempt for failure to pay support in the past 6 months
- No COAP agreements rescinded in the past 2 years
- No COAP application denied in the past year
- If arrears are owed to CP (excluding UDA arrears) DCSS must contact CP to determine if CP wants to compromise or not

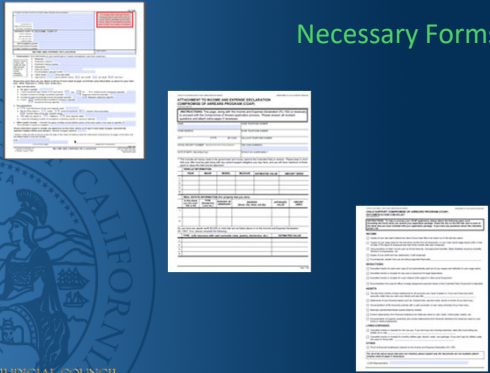
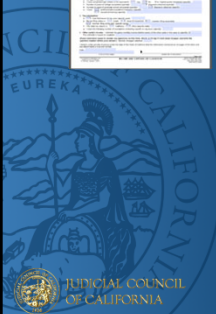


Lump Sum or Payments?

- Lump Sum
 - Money owed to more than one CP for different children
 - Owe less than \$5000
 - Out of State Cases
- Payment over time
 - More than \$5000
 - Money owed to more than one CP but in the same case for the same children
 - DCSS will consider if there are other minor children from other relationships in the home



Necessary Forms

DCSS explains it this way



DCSS Process for

Analyzing COAP Eligibility



It is Not for everyone!!!!

- DCSS will do
 - an extensive background check
 - check applications & I&E against documentation submitted
- DCSS will look at
 - Income/Assets/Ability to Pay and supporting documentation
 - Last years tax return
 - Best Interest of the State!!!!

DCSS SETS AN ARREARS AMOUNT

The old way...

- Payee comes in with an order from the court
- Payee signs a completed payment history declaration and submits it to DCSS
- DCSS accepts it as gospel and information is entered into the DCSS system
- Enforcement begins
 - License revocation
 - Passport hold
 - Credit reporting
- Disputed by Payor bringing RFO to determine arrears



THE NEW WAY Due Process, What a Concept

- When a payee seeks arrears
 - Statement of Arrearages submitted (FC 17524)
 - The obligor is contacted with the information provided to see if they agree (FC 17526)
 - If they do, a Stipulation is prepared
 - If they do NOT
 - an administrative review must be done within 30 days by DCSS and/or
 - The parties may seek a judicial determination





Arrears Determination

The easiest way to get a complete record of arrears is to obtain a DCSS print-out

If the non-custodial party does not agree with that record they could

- Submit an [Inquiry/Dispute Statement](#)
- Submit a [Complaint to DCSS](#) and request an audit
- File a Request for Order under Payor can seek judicial review under [FC 17526\(c\)](#)
 - Excel spreadsheet calculation
 - Declaration of Payment History



JUDICIAL DETERMINATION OF ARREARS

Declaration of Payment History

Application to Determine Arrears



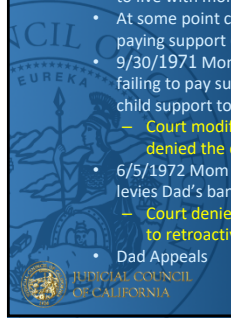
Retroactive Child Support



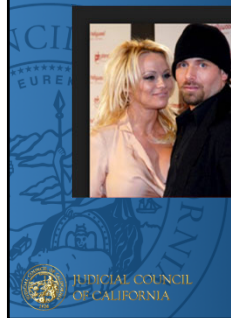
The Case of the Angry Mom

IRMO Jackson (1975) 51 CA3rd 363

- 1969 parents entered into an agreement wherein child was to live with mom and dad was to pay \$750 in support
- At some point child went to live with dad and dad stopped paying support (22 months)
- 9/30/1971 Mom filed a contempt action against Dad for failing to pay support and Dad brought an action to modify child support to zero
 - Court modified support to zero as of 9/30/1971 and denied the contempt because the child lived with dad
- 6/5/1972 Mom gets a writ of execution for \$16500 and levies Dad's bank account. Dad brought a motion to Quash
 - Court denied Motion to Quash as a improper attempt to retroactively modify child support
- Dad Appeals

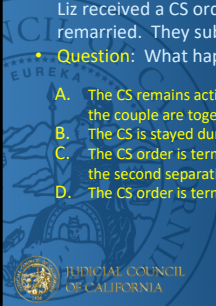


What do These People All Have in Common?



Hypothetical 4

- **Facts:** Liz and Dick had 2 children. When they divorced, Liz received a CS order for \$750 per month. Liz and Dick remarried. They subsequently got divorced again 3 years later
- **Question:** What happens to CS when a couple remarries?
 - A. The CS remains active, but Jackson credits apply for the period that the couple are together
 - B. The CS is stayed during the time the couple are remarried
 - C. The CS order is terminated and a new order must be obtained after the second separation
 - D. The CS order is terminated and any existing arrears are eliminated



Hypothetical 4


What happens to CS when a couple remarries?

The CS remains active, but Jackson credits apply for the period that the couple are together

The CS is stayed during the time the couple are remarried



The CS order is terminated and a new order must be obtained after the second separation

The CS order is terminated and any existing arrears are eliminated.



So..... How does that Affect Child Support?

Wilson v. Bodine (2012) 207 Cal4th 768
IRMO Davis (1968) 68 C2nd 290

What if They Only Get Back Together?

Helgestad v. Vargas (2014) 231 CA4th 719



Do Equitable Principles Apply to Child Support?

IRMO Copeman (2001) 90 CA4th 324

- Harold and Lesley divorce. Lesley gets the kids and Harold pays \$400 in CS.
- In 1988 the parties stipulated to increase the CS to \$450. There were incremental increases for the next few years.
- Harold paid the \$450 from 1988-1998. Lesley said nothing.
- 1999 Alameda DCSS filed a declaration on Lesley's behalf seeking \$30,688.93 in unassigned arrears.
- Lesley said she did not seek the additional support because she did not want the conflict.
- Harold admitted he did not pay the additional support but he paid many other expenses that he did not have to including extracurricular expenses, driver's education, auto insurance, car maintenance, and any request for reimbursement that Lesley asked for. He believed that it had been agreed he would pay all the extra costs in lieu of the increased CS.

Hypothetical 5

- **Facts:** Use the facts in the Copeman case
- **Question:** Does Harold have to pay the arrears?
 - A. Yes, you cannot retroactively modify child support
 - B. Yes, there was no meeting of the minds on the agreement to pay extra expenses in lieu of CS
 - C. Yes, there is no equitable remedy available for unassigned arrears
 - D. No, Lesley had accepted the money and waited too long for it to be collected

Hypothetical 5

Does Harold have to pay the arrears?

- Yes, you cannot retroactively modify child support
- Yes, there was no meeting of the minds on the agreement to pay extra expenses in lieu of CS
- Yes, there is no equitable remedy available for unassigned arrears.
- No, Lesley had accepted the money and waited to long for it to be collected.



LACHES

- Laches is an equitable theory which has a long history of support in the courts
- It is only applicable to child support that is owed to the state!!!!
- The court can look to see if there are equitable reasons for refusing to enforce a support obligation
- When past due support is at issue, the welfare of the child is not relevant and laches may still be asserted



Equitable Estoppel

Elements of estoppel:

1. the Obligee/CP knew the facts;
2. the NCP was ignorant of the true facts;
3. the CP intended the conduct be acted on, or acted in a manner that the NCP had a right to believe it so intended; and
4. the NCP relied on the conduct to his/her injury.
5. Estoppel does not apply if
 - a. DCSS erroneously determines interest on arrears when CP is on Aid (IRMO Thompson (1996) 41 CA4th 1049).
 - b. there is a mere failure/refusal by the CP to allow visitation (Cooper v. O'Rourke (1995) 32 CA 4th 243).
6. Determination of application of Estoppel principles usually requires an evidentiary hearing.
7. Court has discretion as court of equity on whether to apply estoppel to some or all arrears.



CONCEALMENT AND CHILD SUPPORT



Hypothetical 6

- **Facts:** Jimmy has a child support order against him for \$350. Nataly has absconded with the child who is aged 3 and Jimmy has no idea where they are located despite efforts to find them.
- **Question:** Does Jimmy have to pay the arrears?
 - A. Yes, you cannot retroactively modify child support
 - B. Yes, if Jimmy was able to locate the child before Nataly began collection efforts on the child support
 - C. No, as long as Jimmy had taken reasonable steps to locate the child and has notified DCSS of the abduction
 - D. No if Nataly has actively hidden the minor, Jimmy has actively looked for the minor & Nataly waited until the age of majority to collect the support

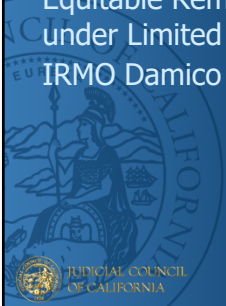
Hypothetical 6

Does Jimmy have to pay the Child Support Arrears?	
Yes, you cannot retroactively modify child support	
Yes, if Jimmy was able to locate the child before Nataly began collection efforts on the child support	
No, as long as Jimmy had taken reasonable steps to locate the child and has notified DCSS of the abduction	
No if Nataly has actively hidden the minor, Jimmy has actively looked for the minor & Nataly waited until the age of majority to collect the support	

CHILD ABDUCTION AND CHILD SUPPORT

Equitable Remedy is Available under Limited Circumstances.

IRMO Damico (1994) 7 C 4th 673



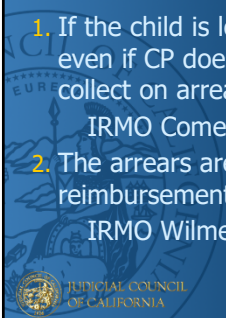
When Estoppel does NOT apply

1. If the child is located while still a minor, even if CP does not make any effort to collect on arrears until after majority

IRMO Comer (1996) 14 C4th 504

2. The arrears are owed to the County for aid reimbursement

IRMO Wilmer (2006) 144 CA4th 951

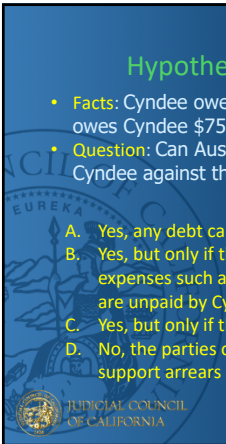


Hypothetical 7

• **Facts:** Cyndee owes Austin \$5000 from the divorce. Austin owes Cyndee \$7500 in child support arrears.

• **Question:** Can Austin forgive \$5000 of the amount owed by Cyndee against the child support he owes her?

- A. Yes, any debt can be used to offset child support arrears
- B. Yes, but only if the debt owed is for child support related expenses such as medical support or child care arrears that are unpaid by Cyndee and approved by the court
- C. Yes, but only if the debt is set forth in a court order
- D. No, the parties can never offset any debt against child support arrears owed



Hypothetical 7

Can Austin Offset the \$5000 owed to him by Cyndee against his Child Support Arrears?

Yes, any debt can be used to offset child support arrears

Yes, but only if the debt owed is for medical support that is unpaid by Cyndee and approved by the court

Yes, but only if the debt is set forth in a court order.

No, the parties can never offset a debt against child support arrears owed.



INCARCERATION



Hypothetical 8

- **Facts:** Mary has a 2011 child support order against her. She was incarcerated from 1/2013-8/2015 and 6/2016-6/2017.
- **Question:** Can she eliminate her arrears for these periods of time?

- A. Yes, her arrears can be eliminated for any support incurred while incarcerated for more than 90 days
- B. Yes, but only if she gave written notice to DCSS regarding her incarceration
- C. Yes, but only as to the 2016-17 incarceration
- D. Yes the entire amount is reduced to zero unless the incarceration is related to DV, Failure to pay support or violation of a protective order



Hypothetical 8

Can Mary eliminate her child support arrears during her periods of incarceration

- Yes, her arrears can be eliminated for any support incurred while incarcerated for more than 90 days
- Yes, but only if she gave written notice to DCSS regarding her incarceration
- Yes, but only as to the 2016-17 incarceration
- Yes the entire amount is reduced to zero unless the incarceration is related to DV, Fx to pay support or violation of a protective order





TIME MAKES THE DIFFERENCE

- Every child support order made AFTER 10/8/2015 is suspended by operation of law when the NCP is in incarcerated or involuntarily institutionalized for more than 90 days
 - Unless
 - NCP is incarcerated for DV, contempt for failure to pay child support or violation of a Protective Order
 - NCP has other means to pay the support



How Well Did You Do?

Tally up your Correct Answers

0-1 Correct -- One Candy 2-3 Correct -- Two Candies

4-5 Correct -- Three Candies 6-8 Correct -- A Handful of