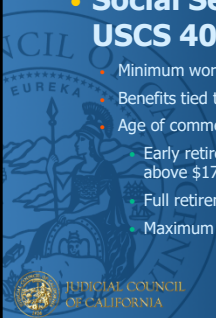




SOCIAL SECURITY

22nd Annual AB 1058 Child Support
Training Conference
November 13-16, 2018
Comm. Scott P. Harman
Paul Spraggins



Social Security Benefits

- **Social Security Retirement—42
USCS 402**
 - Minimum work history 40 quarters (10 years)
 - Benefits tied to income
 - Age of commencement effects amount
 - Early retirement—age 62—benefits reduced by income above \$17,040 (2018)
 - Full retirement age—no reduction for income
 - Maximum retirement age—age 70



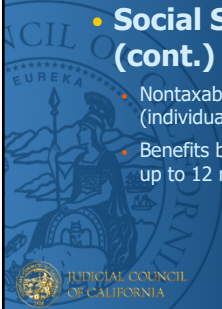
Social Security Benefits (cont.)

- **Social Security Disability—42
USCS 421**
 - Same credit requirements as retirement
 - Inability to engage in any substantial gainful employment for a period of one year
 - Applications typically denied at the outset, requiring Request for Reconsideration and usually appeal

Social Security Benefits (cont.)

• Social Security Disability (cont.)

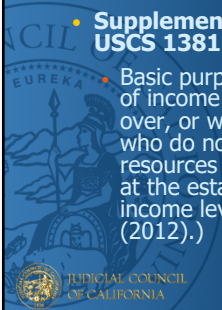
- Nontaxable unless additional income over \$24K (individual) or \$32K (couple)
- Benefits back to date of application and possibly up to 12 months prior to application



Social Security Benefits (cont.)

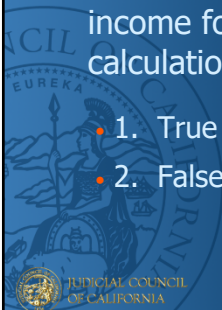
• Supplemental Security Income (SSI) 42 USCS 1381

- Basic purpose to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level. (20 C.F.R. § 416.110 (2012).)



- SSI should be included as income for the recipient in the calculation of child support.

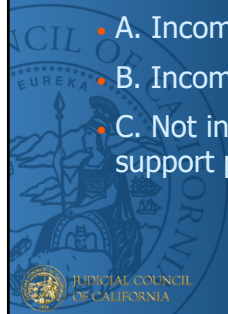
- 1. True
- 2. False



Social Security Benefits(cont.)

- SSI
 - Need Based
 - Not income for support purposes
 - Elsenheimer v. Elsenheimer, 124 Cal. App. 4th 1532

- Derivative benefits are:
 - A. Income to the recipient
 - B. Income to the disabled parent
 - C. Not income to either for support purposes

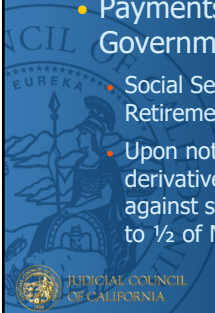


Social Security Benefits(cont.)

- Social Security derivative (auxiliary) benefits
 - Available with retirement and disability benefits for dependents. Maximum benefits on account may limit availability.
 - Benefits are not income for support purposes. IRMO Daugherty (2014) 232 CA4th 463.

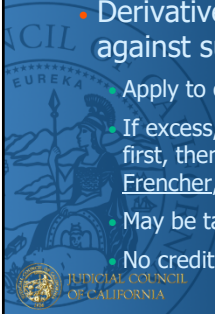
Family Code Section 4504

- Payments from Federal Government
 - Social Security, Veterans Affairs, Railroad Retirement Act
 - Upon notice, obligation to apply for derivative benefits—failure to apply, credit against support for available benefits (up to 1/2 of NCP benefits)

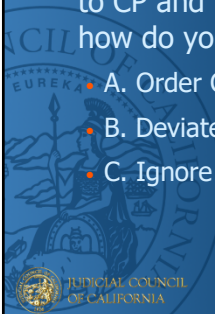


Family Code Section 4504 (cont.)

- Derivative benefits to CP credit against support obligation of NCP
 - Apply to ongoing support first
 - If excess, balance to arrears (principal first, then interest) IRMO Hall & Frencher, (2016) 247 CA4th 23
 - May be taxable, by CP or child
 - No credit if considered in setting support

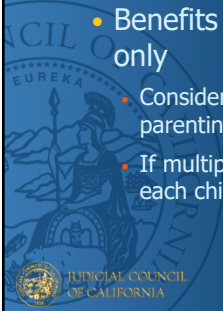


- When derivative benefits are paid to CP and NCP has equal custody, how do you treat the DBs:
 - A. Order CP to pay 1/2 to NCP
 - B. Deviate from Guideline
 - C. Ignore them

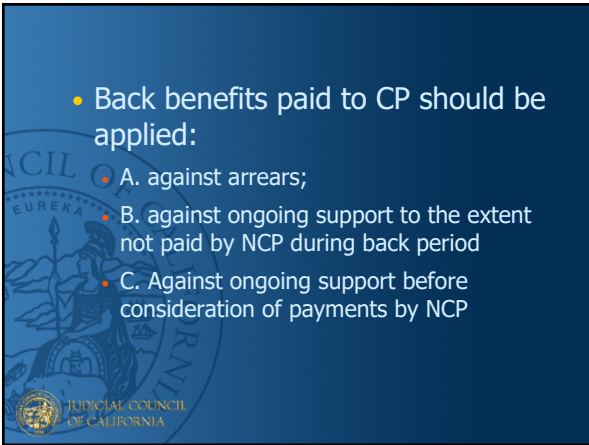


Family Code Section 4504 (cont.)

- Benefits payable to one parent only
 - Consider deviation where significant parenting time
 - If multiple children, apply deviation for each child in allocation of support

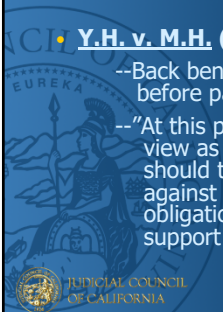


- Back benefits paid to CP should be applied:
 - A. against arrears;
 - B. against ongoing support to the extent not paid by NCP during back period
 - C. Against ongoing support before consideration of payments by NCP



Family Code Section 4504 (cont.)

- Y.H. v. M.H. (2018) 25 CA5th 300
 - Back benefits apply to ongoing support before payments
 - "At this point in time we express no view as to whether this attribution should take the form of an *offset* against future child support obligations or a *refund* of excess child support paid." footnote 2



Family Code Section 4504 (cont.)

- Y.H. v. M.H. (cont.)

- Back benefits payable to child if emancipated before award—how to treat?
- Note 4504(b) "...and received by the custodial parent..."

