

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



May 23, 2017

CSSP LETTER: 17-02

ALL IV-D DIRECTORS  
 ALL COUNTY ADMINISTRATIVE OFFICERS  
 ALL BOARDS OF SUPERVISORS

Reason for this Transmittal

- State Law, Regulation and/or Change
- Federal Law, Regulation and/or Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

SUBJECT: UNIFORM INITIAL PLEADING PRACTICES

The ability to serve the families in the Child Support Program using one single statewide system affords us the opportunity to deploy uniform and consistent service standards in establishing initial child support orders. In an effort to support statewide uniformity in pleading initial child support complaints, the Department of Child Support Services' (DCSS) Order Setting Advisory Committee made recommendations regarding the treatment of Timeshare/Visitation, Income History, Presumed Income, Imputation of Income, Threshold Orders, Minimum Orders, and Zero Orders when generating an initial complaint for child support.

The Committee acknowledges the role of the local child support agency (LCSA) and the court in drafting initial pleadings. The LCSA is a separate entity from the court and as such should not look to the court for direction on drafting pleadings/complaints. Courts do not have a role in determining the initial pleading practices of the LCSA but do have the authority to rule on motions regarding those pleadings. The LCSA should work to preserve a distinct separation between the Department and the Court.

The Committee also acknowledges the December 20, 2016 release of the Federal Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, and the prospective impact it will have on the Child Support Program in California. The intent of the Rule and the Committee is to plead child support based on available earnings income information of the parties, and other evidence of ability to pay rather than establish support at a pre-determined ability to pay when there is other information available. The Committee recognizes that the implementation of the Rule may require statutory, regulatory, and/or other changes in the direction provided in this letter in the future. Until such legislative or regulatory change, all LCSAs should follow the recommendations below to ensure statewide uniformity in drafting initial pleadings.

## TIMESHARE/VISITATION

Timeshare is a percentage used in the guideline calculator which represents a parent's respective period of primary physical responsibility for the child(ren) on the case. California Family Code § 4055(b)(6) states in pertinent part that, "timeshare shall be set at *zero* where there is *no evidence* presented demonstrating the percentage of time that the noncustodial parent has *primary physical responsibility* for the child(ren)." Emphasis added.

- If the amount of timeshare is unknown at the time the complaint is being generated, the LCSA should use zero in the guideline calculation.
- The aid status of either party is irrelevant in determining timeshare.
- Telephone contact with the child(ren) does not establish or increase a party's timeshare percentage.
- In instances where there is a dispute between the parties as to timeshare, the LCSA should attempt to resolve the dispute (i.e. running multiple calculations, educating the parents on support factors) and use the agreed upon information to calculate child support for the initial pleading.
- If the LCSA is unable to resolve the timeshare dispute between the parties, the LCSA should draft the complaint using the information provided by the Custodial Party (CP)<sup>1</sup>, encourage the other parent to file an answer, and allow the court to resolve the issue. This does not require the CP to perform the mathematical calculation, but requires that periods of primary physical custody be disclosed.
- A court order that awards custodial periods of time, or visitation, does not control the calculation of timeshare; rather, timeshare is based on what actually occurs. A court order that awards timeshare may be relevant in timeshare calculation if the order is recent and the terms of the order have not yet been exercised.
  - Example: Custody/visitation order filed January 2016 states Noncustodial Parent (NCP) to have timeshare for three months in the summer, and case worker is generating pleadings in April 2016. Case worker would generate calculation using timeshare established by order because NCP has not had an opportunity to exercise their timeshare. In the alternative, if

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<sup>1</sup> FC § 17404(e)(1). After a support order, including a temporary support order and an order for medical support only, has been entered in an action brought pursuant to this section, the parent who has requested or is receiving support enforcement services of the local child support agency *shall become a party to the action*.[.] Under current law, the CP is not a party to the action at initial pleadings and cannot file an answer to the complaint.

the case worker was generating the pleadings in November 2016 and NCP had not exercised the court ordered visitation, the court order would be irrelevant in the guideline calculation and subsequent pleading in the complaint.

### INCOME HISTORY

California law limits how the LCSAs plead for child support in an initial pleading.

- A complaint shall provide notice of the amount of support that is sought based on: (a) Income, or (b) Income History.
- Generally, income history is represented as earnings reported by Employment Development Department (EDD) for the most reasonably recent annual period (i.e. the last 12 consecutive months of earnings reported by EDD with the acknowledgement that their reports can be a quarter behind).
- A case worker may consider income history less than 12 months if facts indicate that the historical income does not represent the actual or prospective earnings of the party.
- Facts that would indicate the need to use a shorter period of time include, but are not limited to: (a) new employment or change in employment, (b) termination of employment, or (c) report of a significant change in income that can be verified by the LCSA.
- If case facts seem to indicate that income history does not accurately reflect future prospective income, the case should be reviewed with a supervisor or attorney.

### PRESUMED INCOME

Presumed income is a legal term based in statute. California Family Code § 17400(d)(2) states that, "If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week."

- Presumed income is currently determined by law and is the amount established by the Industrial Welfare Commission pursuant to the California Labor Code.
- Presumed income is currently based on minimum wage at 40 hours per week.

- The amount of presumed income does not change by county.
  - A local minimum wage determination does not impact the amount of a statutory presumed income order.
  - Presumed income orders are not higher or lower based upon a particular county's economy, nor are they affected by circumstances which may have an economic impact in a county.
- If the NCP's income or income history is unknown at the time the initial pleading is being generated (i.e. no contact with the NCP, no contact with the CP, no reported income information from CSE locate sources), the LCSA should generate the complaint based on presumed income.
- If the NCP's income or income history is unknown at the time the initial pleading is being generated (i.e. no contact with the NCP, no contact with the CP, no reported income information from CSE locate sources), the LCSA should not establish a zero order. See CSS Letter 05-35 for authority to establish zero orders.
- If the LCSA has made contact with the NCP and/or CP and has been given testimony regarding NCP's income or income history, a presumed income order may not be appropriate.
- Presumed income should never be used for the CP.
- LCSAs must load presumed income orders accurately in order for Child Support Enforcement (CSE) system, to track those orders to determine collectability, efficacy, and accuracy.
- Presumed income orders, as defined by statute, may be set aside per California Family Code § 17432, but only if they are handled in accordance with the statute.
- LCSAs should regularly review presumed income orders and file a motion to set aside, as appropriate, no later than one year after receipt of the first payment on the case.
- LCSAs may review for a set aside of a presumed income order even when no payment has been received.

### IMPUTATION OF INCOME

There is currently no legal authority for an LCSA to impute income in an initial pleading for child support. Imputation of income occurs when the LCSA assesses or attributes a sum certain monthly income ability to a case participant at the initial pleading stage. The monthly income imputation may be based on local economy, local court practices, or prior career/employment of the participant, and occurs in the absence of known or actual, reported earnings.

- If the LCSA currently imputes income to either party when generating the initial summons and complaint, the practice must terminate.
- Only the court, in its discretion, has the ability to impute income to case participants in a child support action. California Family Code §§ 4057(b), 4058(b), 4060, 4064, 17400(d)(2), *IRMO Ficke* (2013) 217 Cal.App.4th 10 [157 Cal.Rptr.3d 870].

### THRESHOLD ORDERS, MINIMUM ORDERS, AND ZERO ORDERS

Threshold orders are defined as those orders that result in a zero dollar judgment because a certain arbitrary threshold was not reached via the guideline calculation. (Example: The LCSA will plead support at zero if the guideline calculation does not result in an amount that is equal to or greater than \$50. (\$50 figure is provided only as an example, some LCSAs' threshold was \$20, \$40, or \$50)).

Minimum orders are defined as those orders that result in a minimum amount, determined by the LCSA, rather than pleading a zero, or *de minimus* order. (i.e. If the guideline calculation establishes an amount less than \$50, the LCSA will plead the complaint at \$50 because that is the minimum amount they will plead.)

- Current law does not support the practice of pleading either threshold or minimum orders.
- The LCSA should always plead the amount stated in the guideline calculation and should not deviate above or below the guideline calculation figure.
- Zero or minimum orders should not be obtained based on a NCP's undocumented status.

CSSP Letter: 17-02  
May 23, 2017  
Page 6

If you have any questions or concerns regarding this matter, please contact Lara Racine at (916) 464-0523.

Sincerely,

o/s

Alisha A. Griffin  
Director