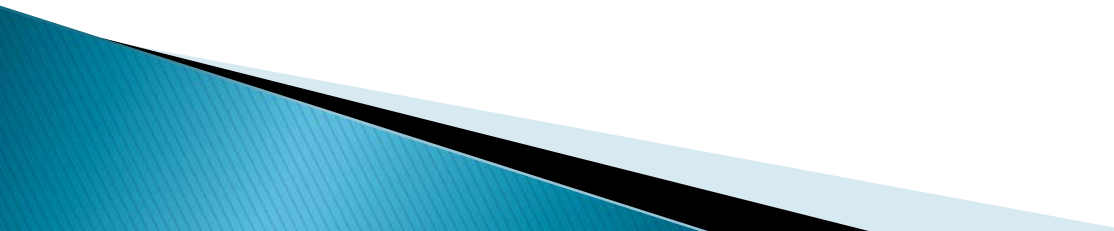


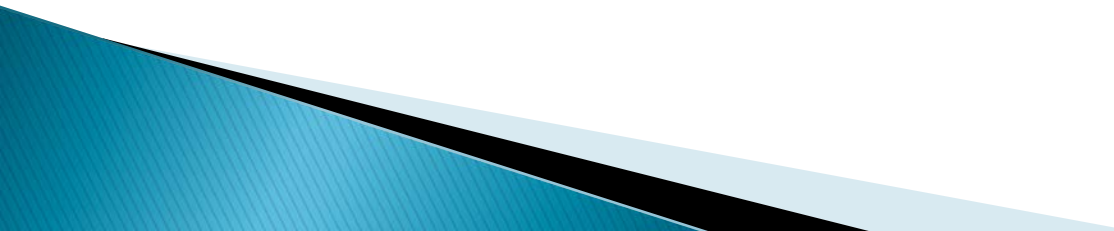
Child Custody, Support and Visitation in Family Court

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Public Legal Services Fair
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Children & Family Court

- ▶ Enter the court system by filing or responding to a family law case.
 - ▶ Divorce
 - ▶ Paternity (Unmarried Parents)
 - ▶ Domestic Violence Restraining Order
 - ▶ Petition for Custody & Support
 - ▶ Child Support Case (County of Los Angeles)
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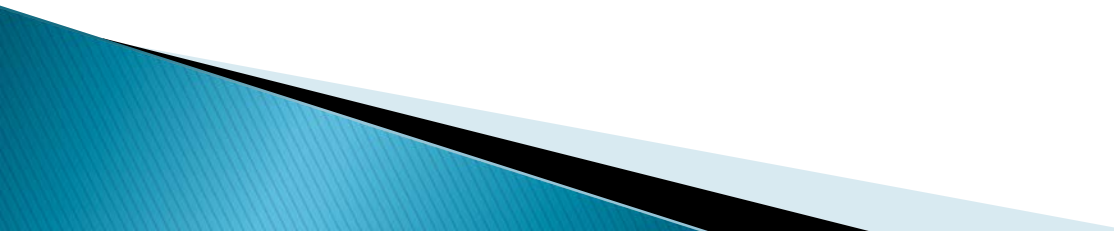
Procedural Overview of Family Law Case

- ▶ To start a case: Summons & Petition filed with the Court then served on other party (Respondent)
 - ▶ No Response Filed: Request to Enter Default and Default Judgment (Final Order)
 - ▶ Response filed: Settlement or Trial and entry of Judgment (Final Order)
 - ▶ Court orders may be requested *before or after* final judgment is entered
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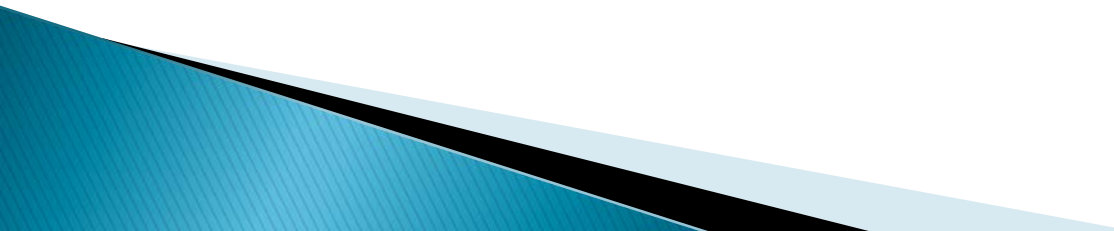
Two Types of Custody Rights

- ▶ “Legal custody” is the right to make major decisions concerning the child's health, safety, education, and welfare.
- ▶ “Physical custody” refers to where a child lives after a divorce or separation.

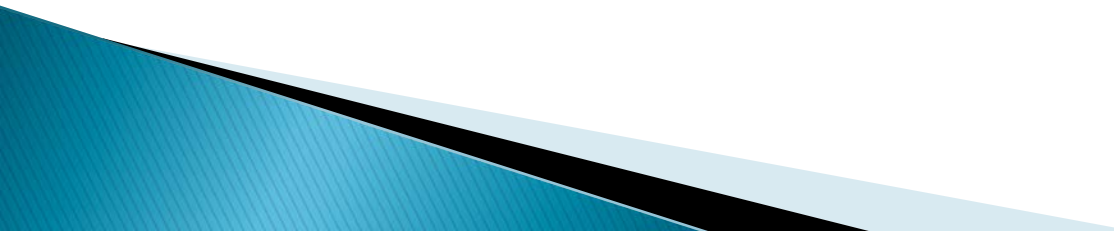
Options for Visitation

- ▶ Visitation options for non-custodial parent:
 - ▶ Reasonable visitation
 - ▶ Specific court ordered visitation schedule
 - ▶ Supervised (“monitored”) visitation
 - ▶ No visitation (no contact with the child)
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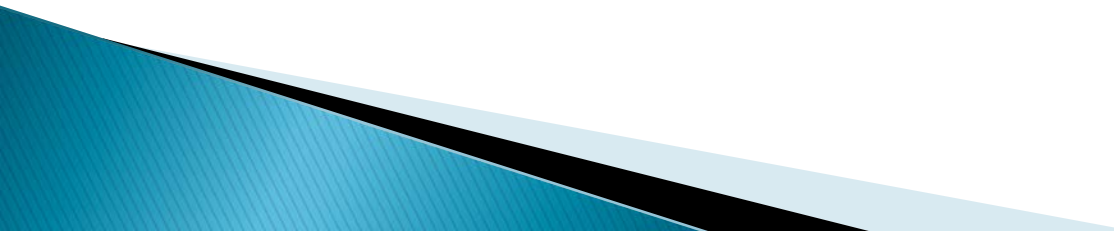
Step Up Visitation Plan

- ▶ An incremental visitation plan for parents who have had minimal contact with the kids.
 - ▶ Sometimes starts with “reunification therapy” with a professional counselor.
 - ▶ May involve multiple stages of slowly increased visitation over time with the goal of restoring the parent/child relationship.
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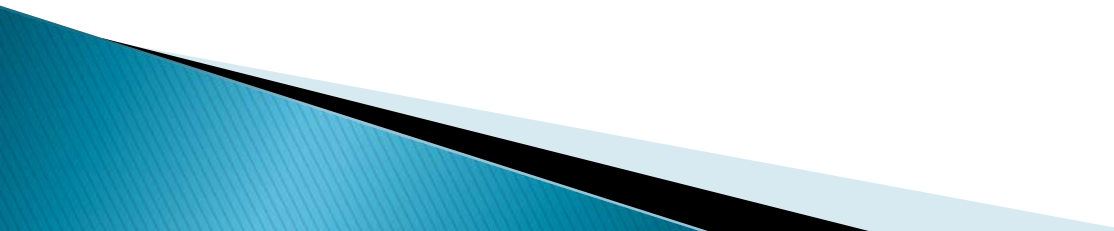
How Does the Judge Decide Custody?

- ▶ “Best Interests of the Child”
 - ▶ “Health, safety & welfare” of the child
 - ▶ Reports of child abuse/neglect
 - ▶ Existing relationship between parent & child
 - ▶ History of domestic violence
 - ▶ History of drug or alcohol abuse
 - ▶ Frequent & Continuing Contact with parents
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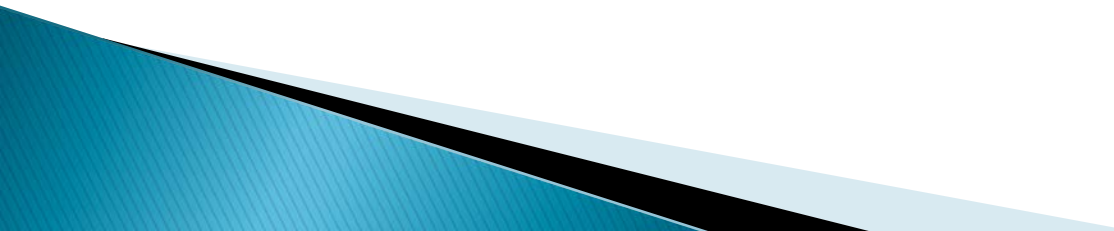
Domestic Violence & Custody

- ▶ Family Code 3044 Rebuttable Presumption
 - ▶ Awarding sole or joint custody to parent who committed acts of domestic violence is against the best interests of the child.
 - ▶ Court must make finding that acts of domestic violence committed within the previous 5 years.
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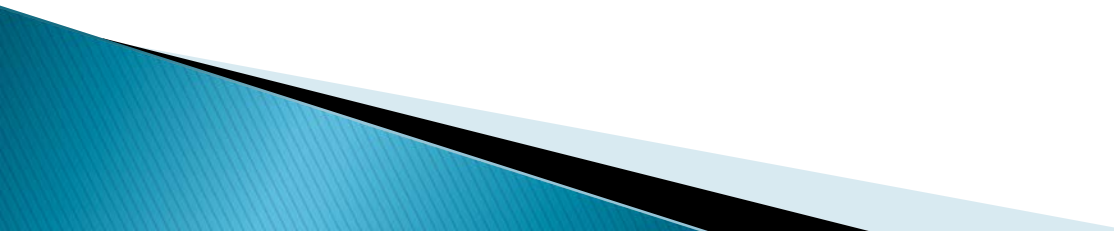
Child's Preference (Family Code 3042)

- ▶ If child is 14 years or older and wishes to address the Court, the Court **must allow** it unless it is not in the child's best interest.
 - ▶ Children under age 14 **may be permitted** to address the Court.
 - ▶ Not necessarily testimony in open court.
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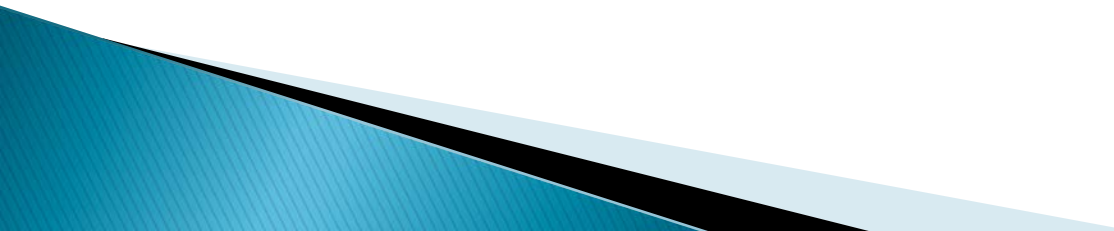
Minor's Counsel

- ▶ The Court may appoint private counsel to represent the interests of the child in a custody proceeding. (Family Code 3150)
 - ▶ Court considers level of conflict, stress on child, allegations of physical, emotional or sexual abuse.
 - ▶ Other factors see Cal Rules of Ct. 5.240(a)
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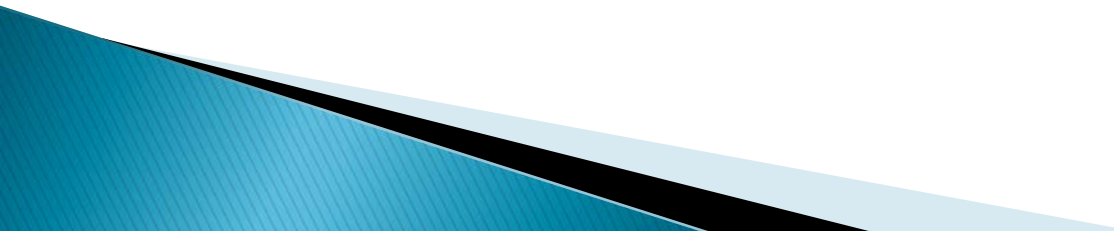
Custody Evaluation & Report

- ▶ The Court may appoint a child custody evaluator to conduct an evaluation and prepare a written report. (Family Code 3111)
 - ▶ “Child Custody Evaluation” is an expert investigation and analysis of the health, safety, welfare, and best interest of the child.
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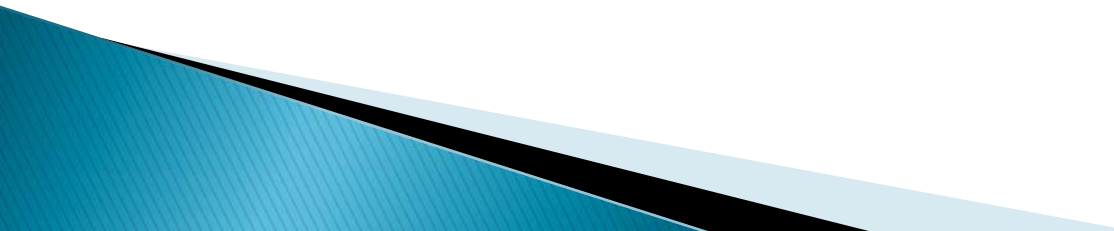
Court-Ordered Counseling

- ▶ The Court may require the parents and the minor child to participate in outpatient counseling with a licensed mental health professional. (Family Code Section 3190)
 - ▶ Mandatory findings before ordering counseling (See FC Section 3190(a) & (d))
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Court-Ordered Drug Testing

- ▶ The Court may order a parent to undergo testing for illegal use of controlled substances and alcohol use. (Family Code 3041.5(a))
 - ▶ Court must first determine that there is evidence of a habitual, frequent, or continual use of controlled substances or the habitual and continual abuse of alcohol by the parent.
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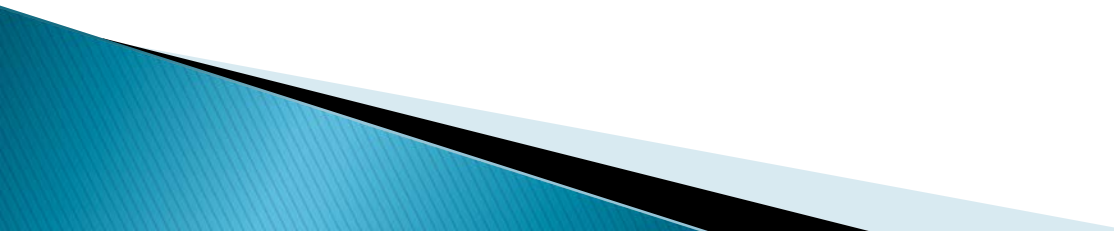
Change of Child's Residence

- ▶ A parent who has physical custody of a child has a presumptive right to change the residence of the child subject to the Court's power to restrain a removal. (FC 7501)
 - ▶ Noncustodial parent must show that the custodial parent has a bad faith reason for the move or the proposed move would cause detriment to the child.
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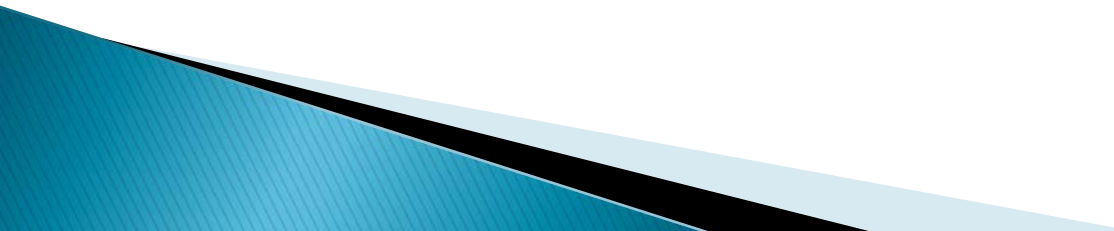
Visitation Rights of Nonparents

- ▶ The Court may grant reasonable visitation rights to nonparents having an interest in the welfare of the child. (Family Code Sect. 3100)
 - ▶ Infringement on a parent's fundamental right to make decisions for a child.
 - ▶ Court must assess the parent's determination of what is in the best interest of the child.
 - ▶ Presumption that a fit custodial parent's decision is in the best interest of the child.
 - ▶ See Family Code Sections 3100–3104
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Obtaining Child Custody Orders

- ▶ Emergency Court Orders (“Ex Parte”)
 - ▶ Temporary Court Orders (Before Judgment)
 - ▶ Orders in Final Judgment
 - ▶ Post-Judgment Modification of Orders
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Emergency “Ex Parte” Orders

- ▶ Must prove “**immediate harm** to the child or **immediate risk** that the child will be removed from the State of California” (Family Code 3064)
 - ▶ “**Immediate harm**” includes recent acts of domestic violence, failure to provide supervision (neglect), and sexual abuse.
 - ▶ Hearing must be set within 20 days of issuing an ex parte order.
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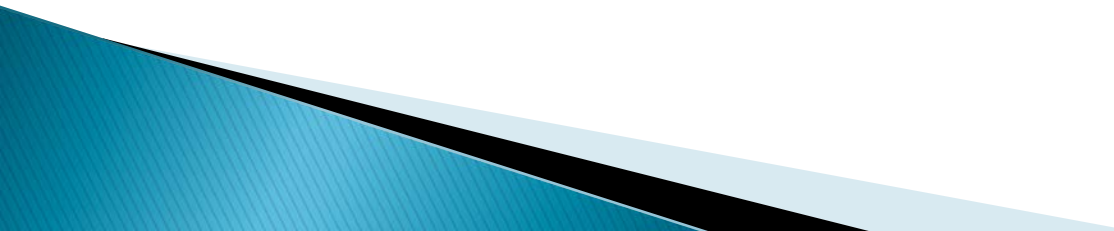
Changing a Custody Order

- ▶ File Form FL-300 Request for Order to get a hearing date.
 - ▶ Must prove custody request is in *child's best interest*
 - ▶ Mandatory child custody mediation will be provided by the Court
- ▶ File Form FL-300 Request for Order to get a hearing date.
 - ▶ Must prove that there has been a “*significant change in circumstances*” and
 - ▶ The custody request is in the *child's best interest*.

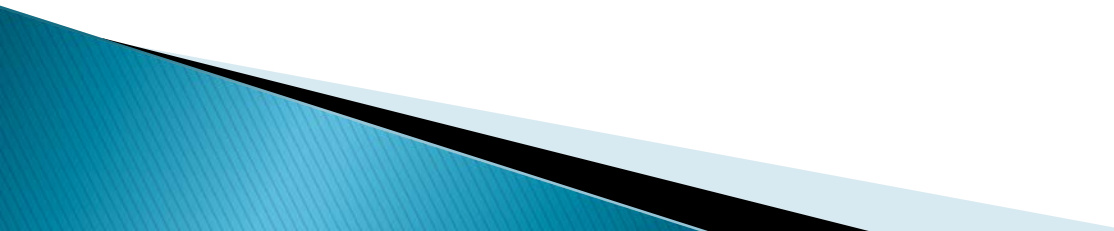
Pre-Judgment

Post-Judgment

Child Support

- ▶ A child is entitled to receive support from birth until age 18, or age 19 if the child is still in high school and living with a parent.
 - ▶ Child support may include monthly cash payments, payment of health insurance, health care costs not covered by insurance, and child care costs.
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Establishing Paternity

- ▶ There must be a legal determination that a man is the *legal father* of a child.
 - ▶ Child of the Marriage: Conclusive Presumption of Paternity
 - ▶ Unmarried Parents: Voluntary Declaration of Paternity
 - ▶ Non-Biological Father as Legal Father
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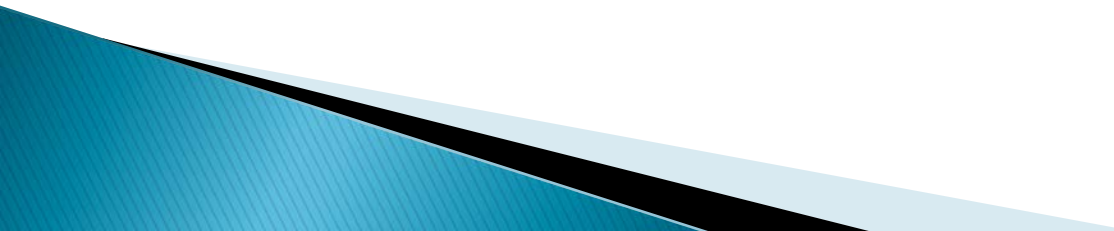
The Amount of Child Support

- ▶ The amount of child support is determined by a complex mathematical formula.
- ▶ Courts use a software program to calculate.
- ▶ Parents required to file Form FL-150 Income and Expense Declaration and proof of income
- ▶ Free guideline child support calculator on the California Department of Child Support Services website.

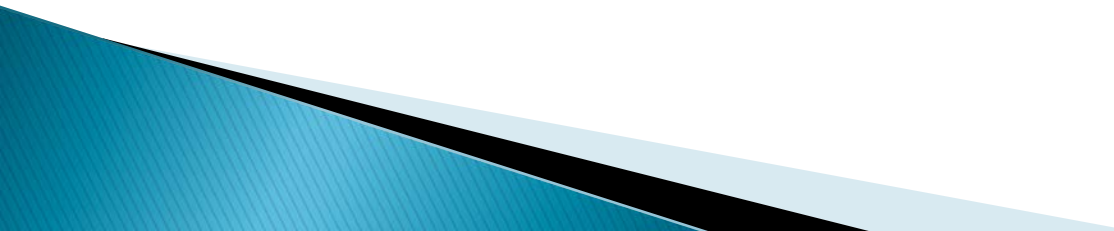
www.childsup.ca.gov/resources/calculatechildsupport.aspx



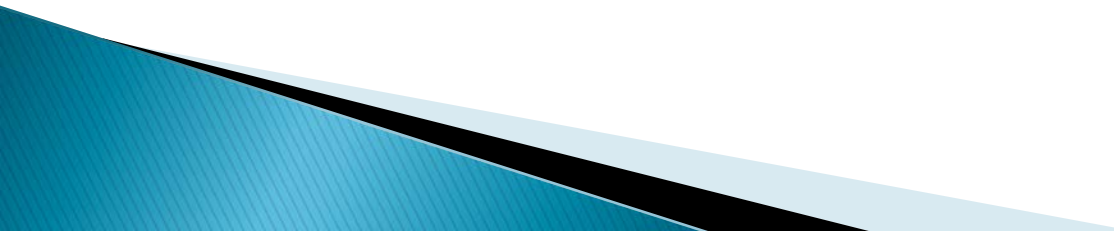
Basic Variables

- ▶ (1) Gross Monthly Income of Parents
 - ▶ (2) Amount of Time the Child Spends with Each Parent
 - ▶ (3) Add-Ons (child care costs)
 - ▶ (4) Deductions (health care costs, mandatory retirement)
 - ▶ (5) Tax Filing Status of Both Parents
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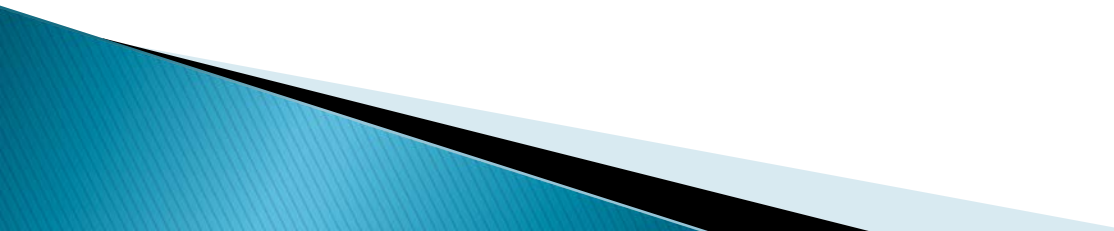
Obtaining Child Support Orders

- ▶ (1) File an underline case then file Form **FL-300** Request for Order Re Child Support
 - ▶ (2) Request an order in a default judgment
 - ▶ (3) Agree to an order in a stipulated judgment
 - ▶ (4) Request an order at Trial
 - ▶ (5) After final judgment entered: file Form **FL-300** Request for Order Re Modification of Child Support
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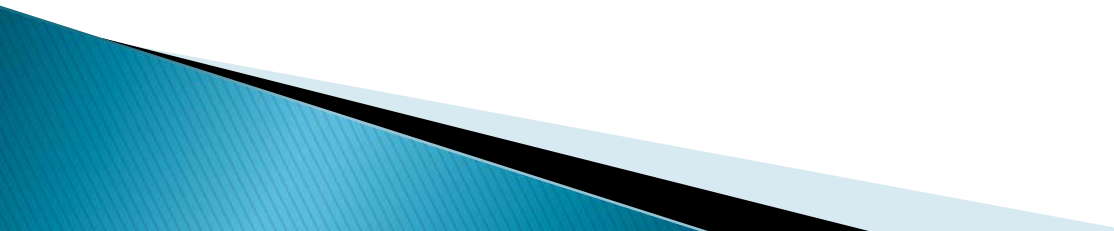
Changing the Child Support Amount

- ▶ Either parent may request a review of the child support order if there is a **substantial change in circumstances**.
 - ▶ Requires a showing of a substantial increase or decrease in the earnings by either parent, a change in the custodial arrangements, or a change in the amount of time the child spends with each parent.
 - ▶ File Form **FL-300** Request for Order and **FL-150** Income & Expense Declaration.
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Enforcing Child Support Orders

- ▶ Wage Earnings Assignment: Form FL-195
Income Withholding Order/Notice of Support
 - ▶ Litigant must prepare for court to sign
 - ▶ Then serve on the employer
 - ▶ State Disbursement Unit (SDU)–employers
send money to satisfy wage assignments.
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LA Child Support Services Dept.

- ▶ Responsible for establishing, collecting and enforcing child support.
 - ▶ Powers for collection purposes:
 - ▶ (1) Suspend driver's licenses, professional and business licenses, passports
 - ▶ (2) Intercept federal and state tax refunds
 - ▶ (3) Lien on property and freeze bank accounts
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Resources for Child Support

- ▶ Los Angeles Superior Court Family Law Facilitators/Self Help Centers
- ▶ FLF offices in multiple locations
- ▶ Check LA Superior Court website for info
- ▶ Child Support Services Dept. Website:
www.cssd.lacounty.gov/wps/portal/cssd/home