

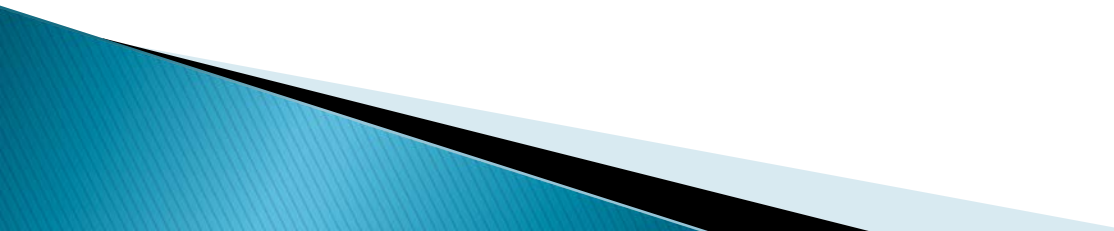
Child Custody, Support and Visitation in Family Court

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Public Legal Services Fair
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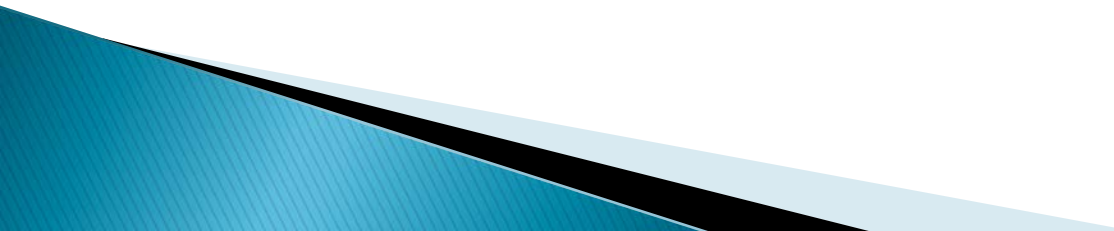
Two Types of Custody Rights

- ▶ “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.

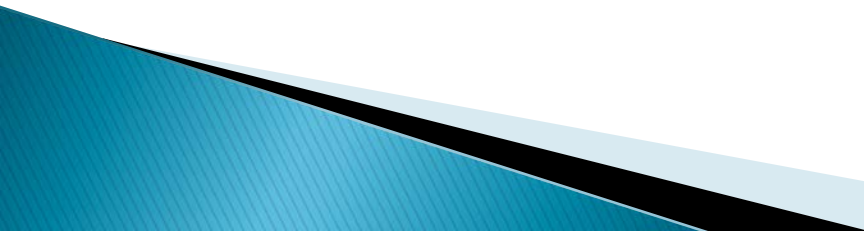
Options for Visitation

- ▶ Visitation options for non-custodial parent:
 - ▶ (1) Reasonable visitation
 - ▶ (2) Specific court ordered visitation schedule
 - ▶ (3) Supervised (“monitored”) visitation (sometimes in therapy sessions)
 - ▶ (4) No visitation (no contact with the child)
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“Step Up” Visitation Plan

- ▶ A visitation plan for parents who have had minimal contact with the kids.
 - ▶ May involve multiple stages of slowly increased visitation over time with the goal of restoring the parent/child relationship.
 - ▶ “Reunification therapy” may be needed.
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Court-Ordered Counseling

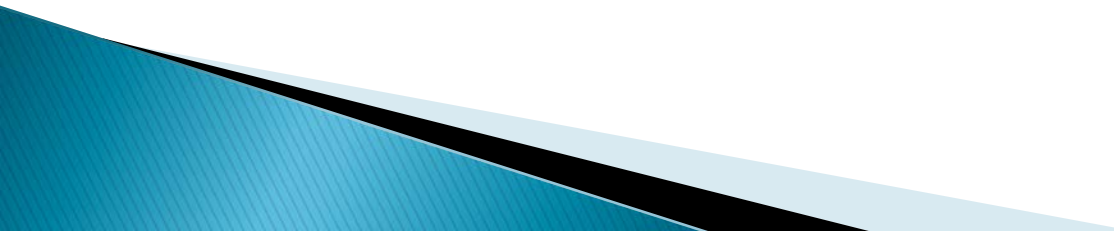
- ▶ The judge may require the parents and the minor child to participate in outpatient counseling with a licensed mental health professional. (Family Code Section 3190)
 - ▶ Mandatory findings by the judge before ordering counseling (See FC Section 3190(a) & (d))
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Court-Ordered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

- ▶ The judge may order a parent to undergo testing for illegal use of controlled substances and alcohol use. (See Family Code 3041.5)
- ▶ Judge 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.

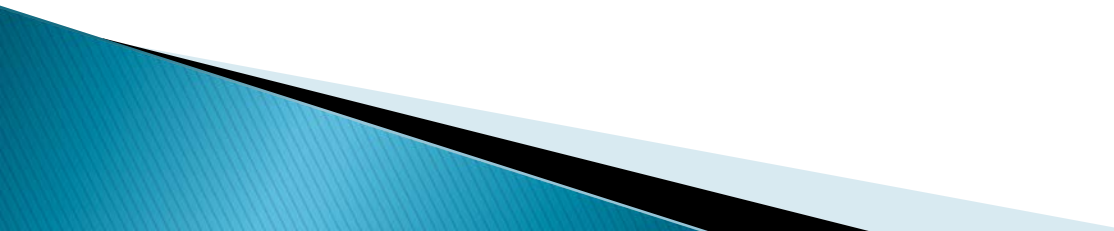
How Does the Judge Decide Custody?

Family Code Section 3020

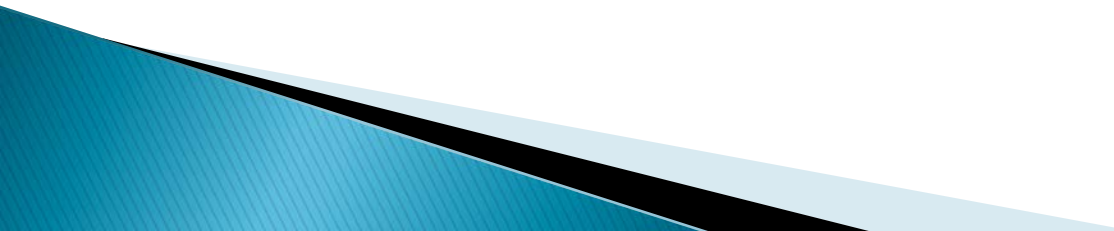
- ▶ California Public Policy Re: Child Custody
 - ▶ Family Code Section 3020:
 - ▶ 1) Assure the *health, safety & welfare* of the children
 - ▶ 2) Assure “*frequent & continuing contact*” with both parents
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How Does the Judge Decide Custody?

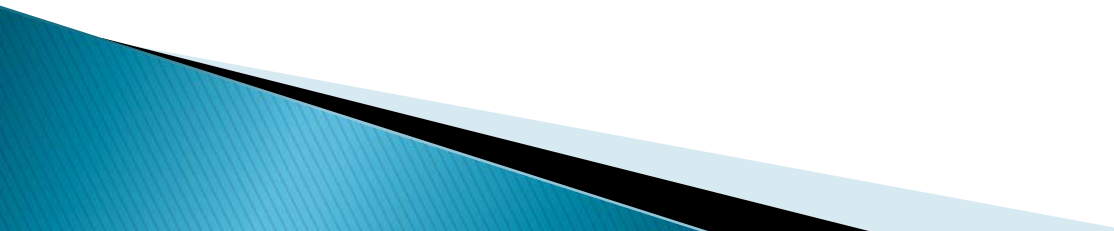
Family Code Section 3011

- ▶ “*Best Interests of the Child*” (FC Section 3011)
 - ▶ “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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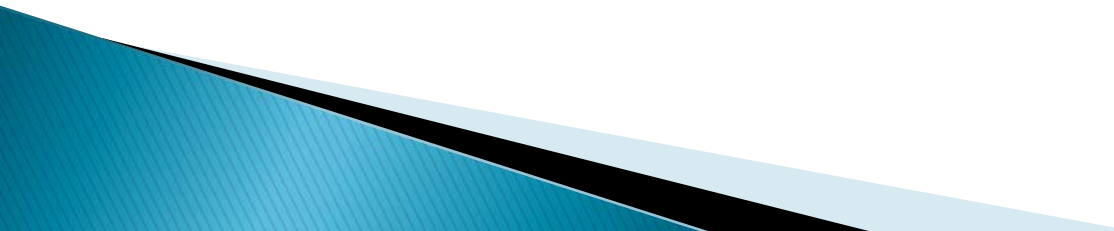
How Does the Judge Decide Custody? (Family Code Sect. 3040)

- ▶ The judge has *wide discretion* to choose the parenting plan that is in the best interest of the child.
 - ▶ Not based on the sex of the parent.
 - ▶ Immigration status shall not disqualify a parent.
 - ▶ Which parent is *more likely to allow* the child frequent & continuing contact with the noncustodial parent?
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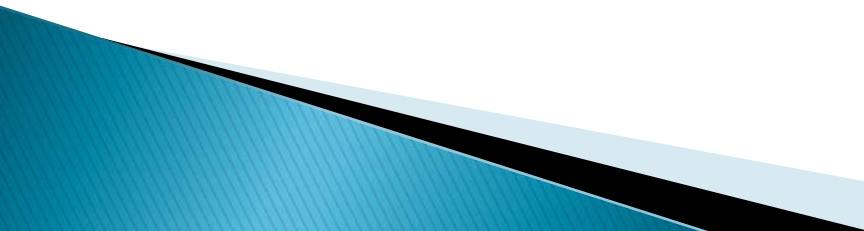
Domestic Violence & Custody

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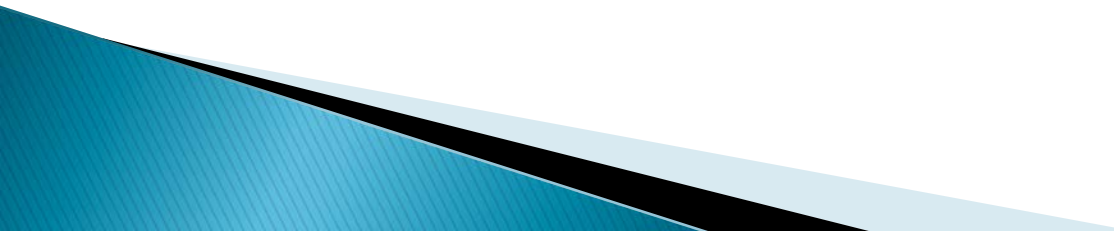
Child's Preference (Family Code 3042)

- ▶ If child is *14 years or older* and wishes to address the Court, the judge 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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Court Appointed Attorney for the Child: “Minor’s Counsel”

- ▶ The judge may appoint a lawyer to represent the child in a custody case. (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

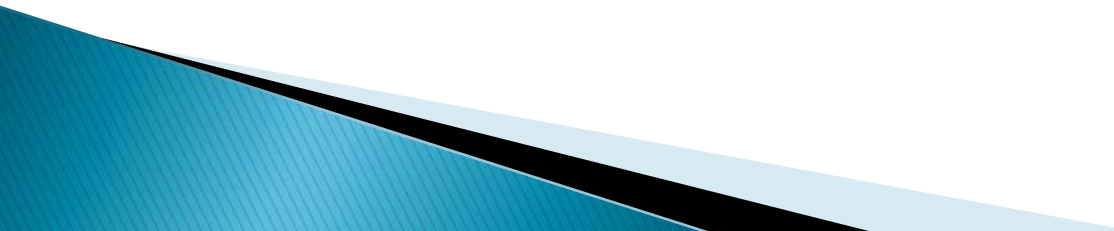
- ▶ The judge may appoint a child custody evaluator to conduct an evaluation and prepare a written report. (Family Code 3111)
 - ▶ “Child Custody Evaluation” is an expert investigation and analysis of the health, safety, welfare, and best interest of the child.
 - ▶ In Los Angeles County: Parenting Plan Assessments (PPA I or PPA II)
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Change of Child's Residence “Move Away Case”

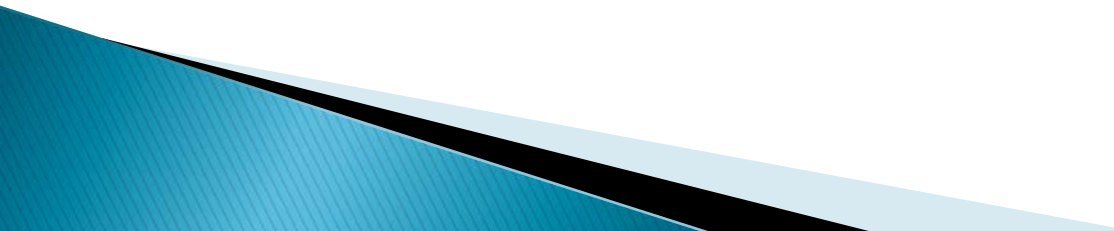
- ▶ A parent who has physical custody of a child has a *presumptive right* to move with the child subject to the Court's power to stop the move. (Family Code Section 7501)
- ▶ Noncustodial parent must show that the custodial parent has a *bad faith reason* for the move or the proposed move would cause *detriment to the child*.

Visitation Rights of Nonparents

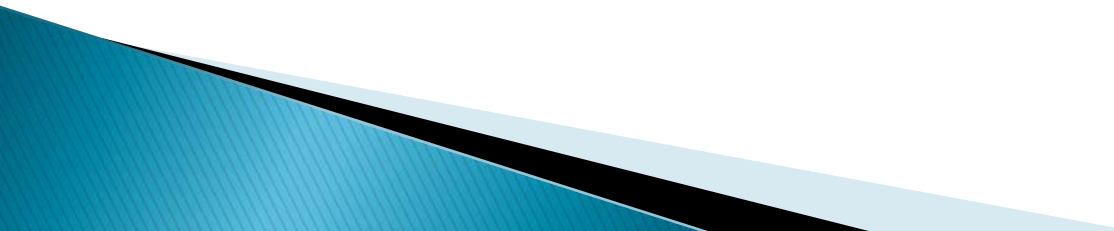
Grandparent Rights

- ▶ The judge 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.
 - ▶ 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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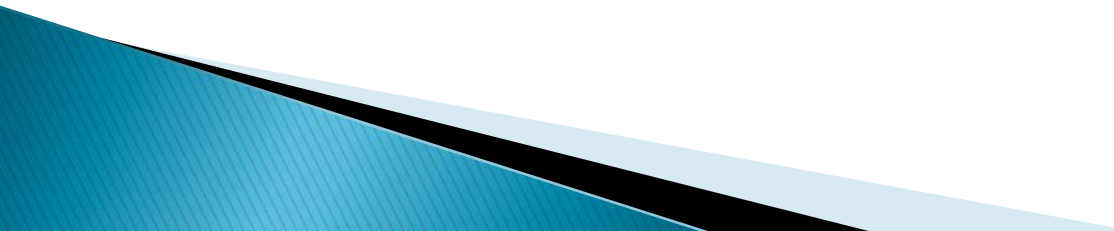
How to get child custody orders

- ▶ First Step: File or Response to a case involving child custody (Divorce, Paternity & Domestic Violence Restraining Order)
 - ▶ Initial Child Custody Order?
 - ▶ Modification of Current Order?
 - ▶ **File FL-300 Request for Order**
 - ▶ Statement explaining your requests (“Declaration”)
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FL-300 Request for Order

- ▶ **File FL 300** to request an initial child custody order or a change in the current order
 - ▶ Hearing date is set upon filing.
 - ▶ **MC 025 Declaration:** your statement under penalty of perjury explaining your requests to the judge and the other parent.
 - ▶ Witness List?
 - ▶ Mandatory court mediation prior to hearing.
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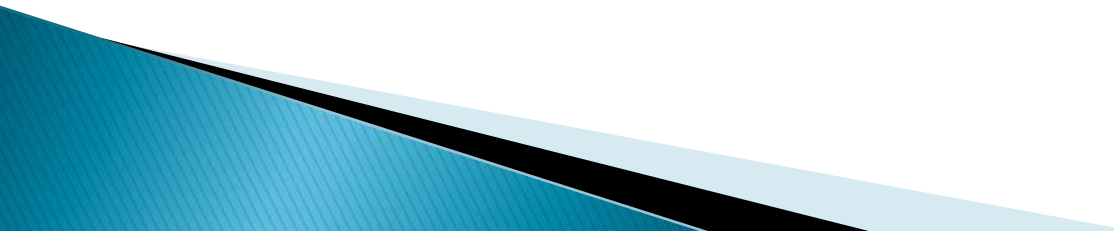
Emergency “Ex Parte” Custody Orders

- ▶ 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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California Online Self Help Center

- ▶ Family Law Forms & Instructions/Info
- ▶ www.courts.ca.gov
- ▶ Go to “Browse Forms”
- ▶ Select Form (based on number or name)
- ▶ Download fillable PDF to computer
- ▶ Complete & Save form to computer
- ▶ ***Warning: Domestic Violence Victims***

Los Angeles County Self Help Centers

- ▶ Located in many LA County Courthouses
 - ▶ LASC Website for locations:
<https://www.lacourt.org>
 - ▶ Referrals to Legal Aid Organizations
 - ▶ Referrals to Attorney Referral Services
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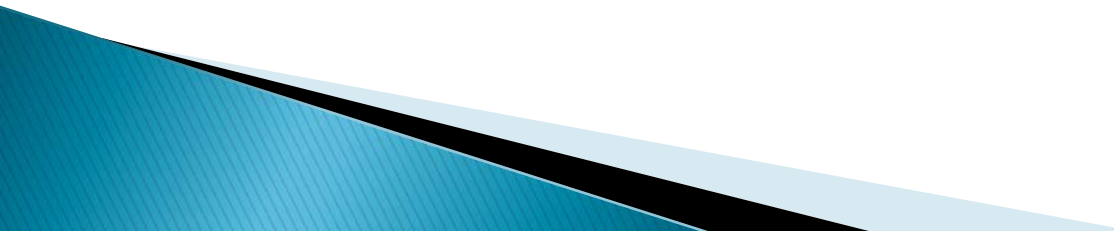
How to Change a Custody Order (Request for Modification)

- ▶ 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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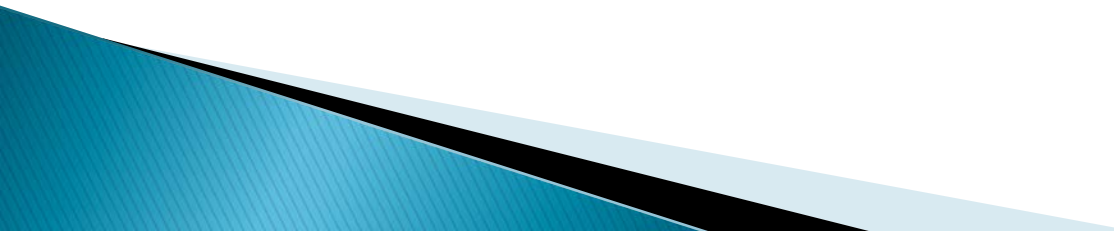
“Guideline” Child Support

- ▶ The amount of child support is determined by a complex mathematical formula.
- ▶ Courts use a software program to calculate the “guideline” child support amount.
- ▶ Child support calculator on the California Department of Child Support Services website.

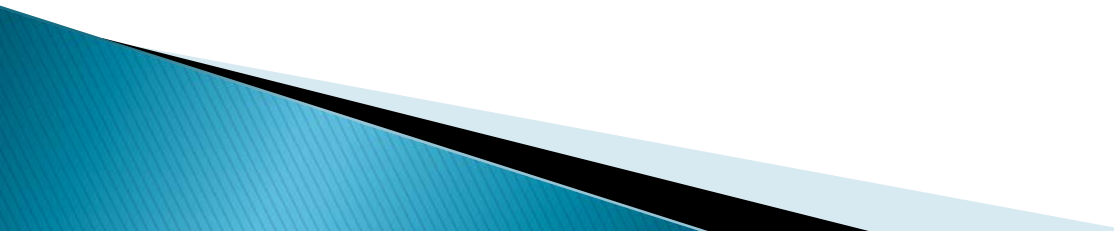
www.childsup.ca.gov/resources/calculatechildsupport.aspx



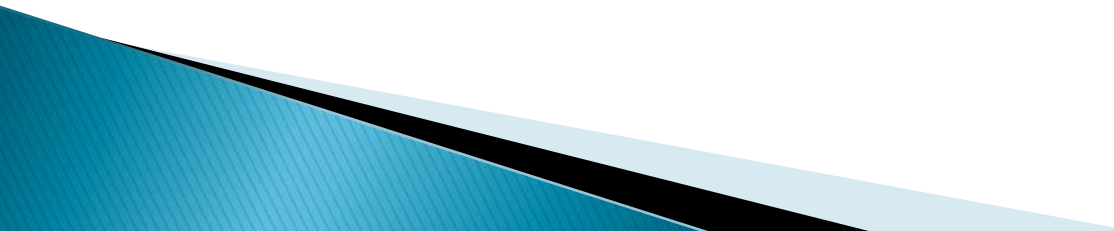
Basic Child Support Factors

- ▶ (1) Gross Monthly Income of Parents
 - ▶ (2) Amount of Time the Child Spends with Parent (percentage of time)
 - ▶ (3) Deductions (health care costs, mandatory retirement, union dues, mortgage interest)
 - ▶ (4) Tax Filing Status of Parents
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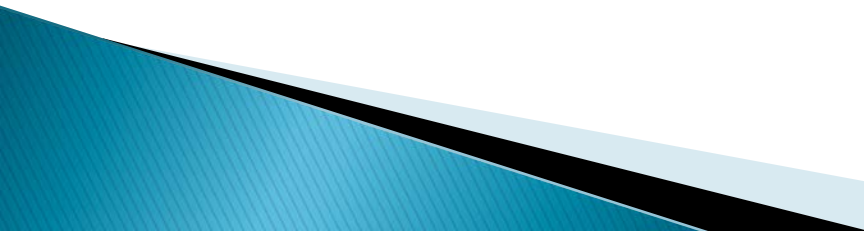
Child Care and Medical Expenses

- ▶ Child care costs usually split 50/50
 - ▶ Unreimbursed medical expenses 50/50
 - ▶ Special rules for requesting reimbursement for unreimbursed medical expenses.
 - ▶ See FL-192 for rules and procedures.
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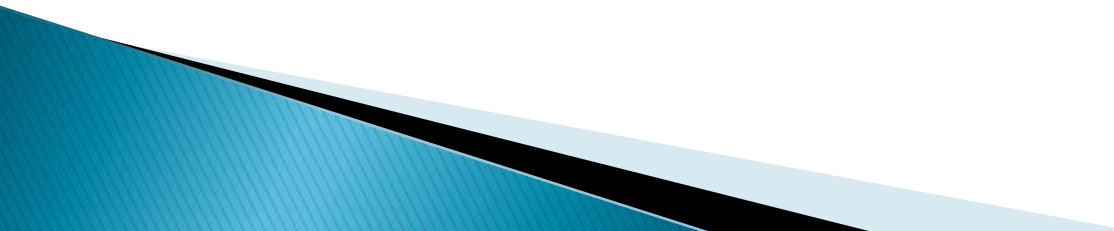
How to get a child support order

- ▶ First Step: File or Respond to a case involving child support (Divorce, Paternity, DVRO, LA County Child Support Services case)
 - ▶ If Child Support Services Department Case: County of LA v. Noncustodial Parent
 - ▶ **FL-300 Request for Order** to get the first child support order.
 - ▶ **Also, FL-150 Income & Expense Declaration**
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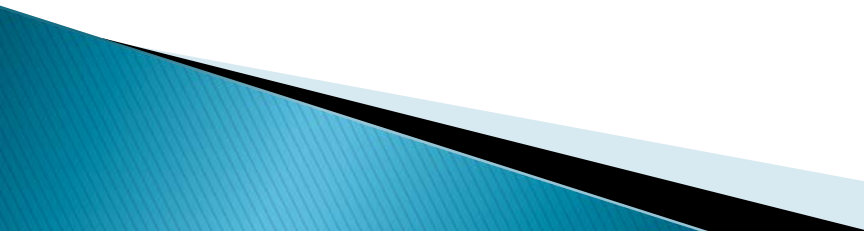
How to change the child support amount (Request for Modification)

- ▶ Either parent may request change in amount of child support if there is a *substantial change in circumstances*.
 - ▶ Must be a substantial increase or decrease in the earnings by either parent 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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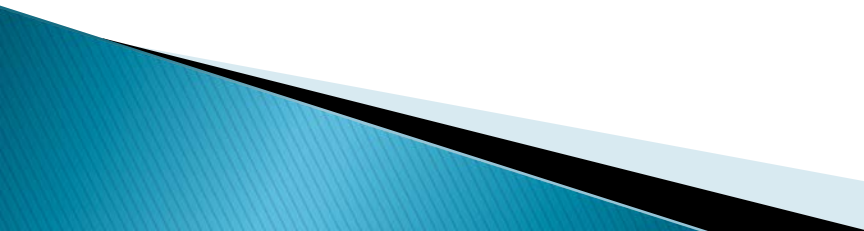
Enforcing Child Support Orders

- ▶ 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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Legal Resources

- ▶ Los Angeles Superior Court Family Law Facilitators/Self Help Centers
 - ▶ www.lacourt.org (LA Superior Court website)
 - ▶ Referrals: www.LawHelpCA.org
 - ▶ Los Angeles County Bar Association Lawyer Referral Service (Modest Means Panel)
 - ▶ LA Law Library: Lawyers in the Library
 - ▶ (3rd Friday of each month from 1-4pm)
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Questions?

