

CHAPTER 12 CHILD AND SPOUSAL SUPPORT

Rule 5.12.1

Child Support

A. Amount of Support. In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount will be determined pursuant to Family Code sections 4050 et seq.

B. Presumptions Used to Calculate Support. Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions will be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the court and does not have any additional dependents. The court will presume there is one exemption for tax withholding purposes.

2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.

3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes will be that to which the party is entitled for income tax purposes.

4. The court will apply the “standard deductions” unless sufficient evidence is presented to allow the court to determine appropriate itemized deductions.

5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it will be assumed that the hours credited to a parent who is not the primary caretaker begin at the time the child is transferred to his or her care and do not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child’s school or day care provider. “Primary caretaker” refers to the parent who has custody of the child the majority of the time.

C. Income and Expense Declarations. In any proceeding in which a party is seeking child support, both parties must comply with Local Rule 5.6.2 regarding the filing of current Income and Expense Declarations.

D. Stipulations

1. Mandatory Language. In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: “The parties declare all of the following:

a. They are fully informed of their rights concerning child support;

b. The order is being agreed to without coercion or duress;

c. The agreement is in the best interests of the children involved;

d. The needs of the children will be adequately met by the stipulated amount; and

e. The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending.”

2. Issuance of Wage Assignment Order. Absent a written waiver, a written stipulation for the payment of child support must include the following or similar language: “A wage assignment order will be issued for the payment of support ordered pursuant to this agreement.”

3. Stay of Service of Wage Assignment Order. The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: Pursuant to Family Code section 5260 et seq., the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261.”

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 5.12.2

Spousal Support Guideline

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)