



TRAVERSING THE CHANGING TIDES OF CHILD SUPPORT

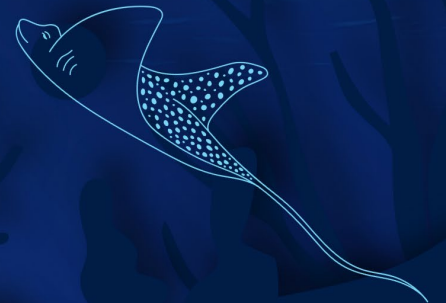


CHILD SUPPORT DIRECTORS ASSOCIATION



Breaking the Surface: The Long Migration from FEM to the Family Code

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CHILD SUPPORT DIRECTORS ASSOCIATION



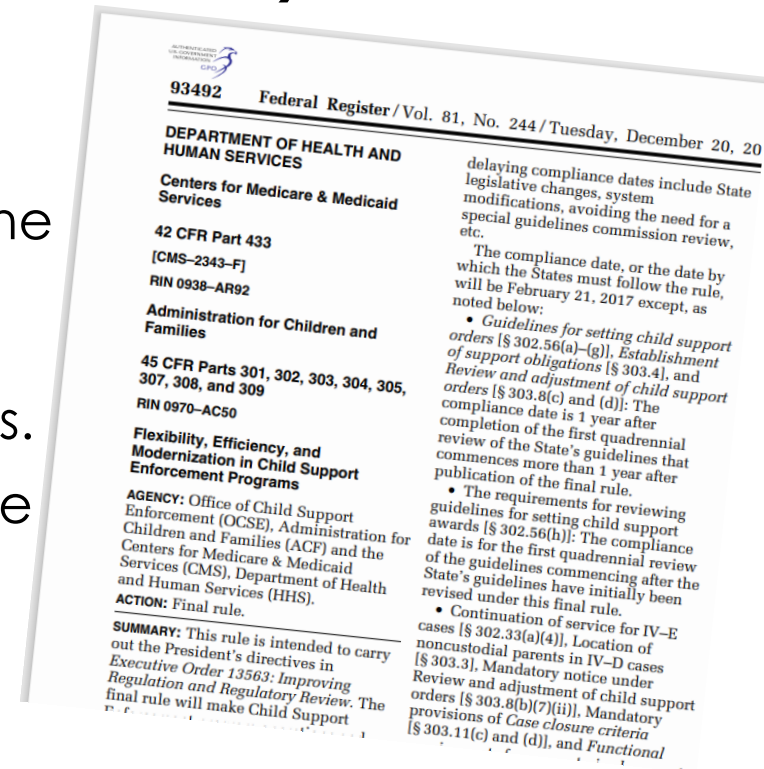
FEM Final Rule



Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93492 (December 20, 2016)

- ⚓ Effective on January 19, 2017.
- ⚓ States may comply any time after the effective date, but before the final compliance date.
- ⚓ The compliance dates, or the dates that States must comply with the final rule, vary for the various sections of the Federal regulations.
- ⚓ The reasons for delaying compliance dates include State legislative changes, system modifications, avoiding the need for a special guidelines commission review, etc.



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Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93492 (December 20, 2016)

⚓ The compliance date, or the date by which the States must follow the rule, will be February 21, 2017, except, as noted below:

- ◆ Guidelines for setting child support orders [§ 302.56(a)–(g)], Establishment of support obligations [§ 303.4], and Review and adjustment of child support [§ 303.8(c) and (d)]:
- ◆ The compliance date is 1 year after completion of the first quadrennial review of the State's guidelines that commences more than 1 year after publication of the final rule.

2017 Quadrennial Review (October 25, 2017)

2021 Quadrennial Review (May 16, 2022) + 1 Year

OCSS Extension: September 1, 2024





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93519 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Comment No. 1:

"Many commenters agreed that child support guidelines should reflect the basic statutory principle that child support orders are based on the noncustodial parent's ability to pay. However, many commenters opposed this aspect of the NPRM because they believed we were eliminating the practice of imputing income to the noncustodial parent to establish orders. Although our NPRM preamble indicated otherwise, several commenters thought that imputed income would only be allowed when a noncustodial parent's standard of living was inconsistent with reported income. (...)"

Response No. 1:

*"There was considerable misunderstanding about the scope and intent on this aspect of the NPRM. Our intent was to require a stronger focus on fact-gathering and setting orders based on evidence of the noncustodial parent's actual income and ability to pay, rather than based on standard imputed (**presumed**) amounts applied across the board. (...)"*





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93519 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Response No. 1:

“Presently, some State guidelines allow income to be imputed without evidence that the noncustodial parent has or can earn a standard amount of income. Although the original use of imputation was to fill specific evidentiary gaps in a particular case, over time we have observed a trend among some States of reducing their case investigation efforts and imposing high standard minimum child support orders across-the-board in low-income IV-D cases, setting orders without any evidence of ability to pay. (...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93519 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Response No. 1:

“Considering commenters’ concerns and suggested revisions, we made significant revisions in paragraph (c) to clearly articulate the longstanding requirement that State guidelines must provide that child support orders are based on the noncustodial parent’s earnings, income, and other evidence of ability to pay. We have also added in paragraph (c)(1)(iii) providing that when imputation of income is authorized, the guidelines must take into consideration the specific circumstances of the noncustodial parent (and at the State’s discretion, the custodial parent) to the extent known.(...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93520 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Comment No. 2:

“Most commenters were concerned that the proposed revisions in § 302.56(c)(4), which has been redesignated and revised as paragraph (c)(1), related to exceptions to the “actual” income provisions were too vague, restrictive, and did not sufficiently provide for a broad range of circumstances where it may be appropriate to impute income, such as when the noncustodial parent is working in the underground economy or failing to provide sufficient evidence to the court. Many commenters were concerned that the NPRM curtailed the ability of States to impute income to ensure support for children. One commenter supported reducing the use of default orders; however, the commenter stated that default orders continue to be necessary when the noncustodial parent refuses to appear and participate, despite multiple opportunities provided by the court and the IV-D agency. (...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93520 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Comment No. 2:

“Many commenters further indicated that while the NPRM did not expressly prohibit default orders, there appeared to be no ability within the framework of the rule to impute income based on other types of evidence—such as the noncustodial parent’s past income, employment history, and/or employment available in the local community. They also read the NPRM to mean that if the IV–D agency could not obtain current income information or evidence of current lifestyle, then the NPRM would prohibit an entry of a support order altogether. These commenters stated that such a result could give parents with reported income an incentive to intentionally end employment after being notified of the support proceedings and refuse to appear in court in order to force a zero dollar order. They considered this a perverse incentive to avoid support that was not in the best interest of the child and the family. While many commenters were in favor of right-sized orders, they believed the proposed language was too limiting to allow setting a fair order in many circumstances.(...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93520 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Response No. 2:

“As we have previously discussed in response to comments, it was not OCSE’s intention in the NPRM to limit imputation of income only to situations where there is evidence that the noncustodial parent’s standard of living is inconsistent with reported income.

The State has the discretion to determine when it is appropriate to impute income consistent with guidelines requirements.

Therefore, we revised the proposed language in § 302.56(c)(1) to clearly indicate that a child support order must be based on the noncustodial parent’s ability to pay using evidence of the parent’s earnings, income, and other evidence of ability to pay whenever available. (...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93520 (December 20, 2016)

⚓ **Imputing Income [§ 302.56(c)(1)(iii)]:**

Response No. 2:

“We have also added § 302.56(c)(1)(iii) to indicate that if imputation is authorized in the State’s guidelines, the State’s guidelines must require the State to consider evidence of the noncustodial parent’s specific circumstances in determining the amount of income that may be imputed, including such factors as the noncustodial parent’s assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. (...)”





Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

Federal Register, Vol. 81, No. 244, 93520 (December 20, 2016)

⚓ Imputing Income [§ 302.56(c)(1)(iii)]:

Response No. 2:

*"If the State IV-D agency has no evidence of earnings and income or insufficient evidence to use as the measure of the noncustodial parent's ability to pay, then we have added in § 303.4(b)(3) that the State's IV-D agency's recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in § 302.56(c)(1)(iii). It is the IV-D agency's responsibility to conduct an investigation, including contact with the custodial parent to seek information. **At a minimum, child support agencies generally will know the noncustodial parent's address.** (...)"*





FEM Final Rule, 45 CFR 303.4(b)



(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with [§ 302.56 of this chapter](#), which must include, at a minimum:

(1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources;

(2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under [§ 302.56\(c\)\(1\)\(iii\) of this chapter](#);

(3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in [§ 302.56\(c\)\(1\)\(iii\) of this chapter](#).

(4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.





FEM Final Rule, 45 CFR 302.56



§ 302.56 Guidelines for setting child support orders.

- (a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with [§ 302.56\(e\)](#), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.
- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under [paragraph \(a\)](#) of this section must at a minimum:
 - (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:





FEM Final Rule, 45 CFR 302.56



§ 302.56 Guidelines for setting child support orders.

- (i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);
- (ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and
- (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.





Senate Bill (SB) 343



- ⚓ California State Legislature enacted **Senate Bill (SB) 343** on September 22, 2023, bringing California laws into compliance with the FEM Final Rule.
- ⚓ SB 343 two different effective dates for its provisions:
 - ◆ **September 1, 2024**, for child support guidelines (**PHASE I** – implementation complete)
 - ◆ **January 1, 2026**, for child support order establishment process (**PHASE II** – implementation in progress)





Senate Bill (SB) 343



⚓ SB 343 amended six (6) Family Code sections related to child support guidelines, effective **September 1, 2024**:

- ◆ **FC 4055:** Updates the K factor and the low-income adjustment in the statewide uniform guideline formula.
- ◆ **FC 4057:** Adds a specific deviation reason that caps guideline support at 50% of the obligor's net disposable income in LIA cases; addresses the courts' discretion in handling multiple cases.
- ◆ **FC 4058:** Adds severance pay, veterans benefits that are not based on need, and military allowances for housing and food to the definition of annual gross income.





Senate Bill (SB) 343



⚓ SB 343 amended six (6) Family Code sections related to child support guidelines, effective **September 1, 2024**:

- ◆ **FC 4061:** Changes default apportionment of expenses to in proportion to the parents' net incomes unless a party requests or the court finds that expenses should be divided differently.
- ◆ **FC 4062:** Requires the court to order actually incurred childcare costs related to employment or to reasonably necessary education or training for employment skills, unless they are specifically included in the guideline calculation.
- ◆ **FC 4063:** Costs actually incurred for childcare that is for employment or education are presumed reasonable.





Senate Bill (SB) 343



⚓ Effective **January 1, 2026**, the following changes are made to the IV-D order establishment process:

- ◆ Remove presumed income from initial pleadings and replace it with a requirement to determine earning capacity
- ◆ Revise procedures to always require a hearing when actual income is unknown/earning capacity needs to be determined
- ◆ Revise set aside provisions for default judgments not based on actual income
- ◆ Introduce new annual review requirements





SB 343 – FC 17400(d)(2)(A)



⚓ Three (3) categories of income under SB 343 - FC 17400(d)(2)(A):

- **Clause (i):** Actual income: gold standard – no changes 
- **Clause (ii):** Earning capacity higher than actual income: to be used at LCSA discretion
- **Clause (iii):** Earning capacity when actual income is unknown: replacement for presumed income





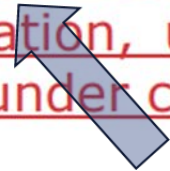
SB 343 – FC 17400(d)(2)(A)



Family Code Sec. 17400(d)(2)(A)(i) “Clause (i) – Actual Income”

(2) (A) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the one of the following methods used to determine ~~income or income history of the support obligor as known to:~~

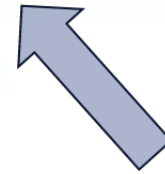
(i) If sufficient information is available to determine actual income, pursuant to subdivision (a) of Section 4058 and Section 4060, the local child support agency. If the support obligor's shall use actual income or income history as the basis of the proposed support obligation, unless the local child support agency has sufficient information to proceed under clause (ii).





Family Code Sec. 17400(d)(2)(A)(ii) “Clause (ii) – Earning Capacity Higher Than Actual Income”

(ii) If the local child support agency has sufficient information that the earning capacity is greater than the actual income, and sufficient evidence is available to establish earning capacity pursuant to subdivision (b) of Section 4058, the local child support agency **may** use earning capacity as the basis of the proposed support obligation.

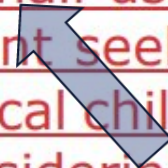




Family Code Sec. 17400(d)(2)(A)(iii)

“Clause (iii) – Earning Capacity When Actual Income is Unknown”

(iii) If the actual income of the support obligor is unknown to the local child support agency, ~~the~~ and sufficient evidence is available to establish earning capacity pursuant to subdivision (b) of Section 4058, the local child support agency shall use earning capacity as the basis of the proposed support obligation. A complaint seeking child support under this clause shall set forth the steps first taken by the local child support agency to establish the support obligor’s actual income prior to considering earning capacity, which must include, but are not limited to:





Requirements for Complaint



⚓ When actual income is unknown, complaint must set forth steps taken to determine it, including:

- ◆ Attempting to contact support obligor at least three times. (I)
- ◆ Seeking information about obligor's expenses and work history from party seeking support. (II)
- ◆ Searching available databases for info relating to obligor's employment, income, or both. (III)





SB 343 – FC 17400(d)(2)(A)



Family Code Sec. 17400(d)(2)(A)(iii)

A complaint seeking child support under this clause shall set forth the steps taken by the local child support agency to establish the support obligor's actual income prior to considering earning capacity, which must include, but are not limited to:

(I) Attempting to contact the support obligor through telephonic, electronic, and postal means, to the extent contact information is known or can be discovered through reasonably available means. At least three attempts to contact the support obligor shall be made.

(II) Seeking information about the support obligor's expenses and work history from the party seeking support.

(III) Searching in available databases for information relating to the support obligor's employment, income, or both.





(B) The complaint shall inform the support obligor of the basis for the proposed support amount. If the basis of the proposed support amount is the support obligor's earning capacity rather than actual income, the complaint shall inform the obligor of the factors considered by the local child support agency and used to determine the obligor's earning capacity.

FL – 600 Summons and Complaint

8. ☐ Based on the California support guideline, the court order the obligor to pay:

a. ☐ \$ _____ current monthly child support based on the obligor's known actual income of \$ _____ per month, and, if applicable, the obligee's known actual income of \$ _____ per month.

b. ☐ \$ _____ current monthly child support based on the obligor's earning capacity of \$ _____ per month because (check one)

(1) ☐ the obligor's earning capacity is greater than the obligor's known actual income.

(2) ☐ the obligor's actual income is unknown.

(3) The obligor's earning capacity was determined based on a consideration of all the factors listed below. The local child support agency has known information about the following factors (check all that apply):

(a) ☐ Assets

(b) ☐ Residence

(c) ☐ Work and earnings history

(d) ☐ Job skills

(e) ☐ Education

(f) ☐ Ability to read and write

(g) ☐ Age

(h) ☐ Health

(i) ☐ Criminal record

(j) ☐ Employment barriers

(k) ☐ Record of seeking work

(l) ☐ Local job market

(m) ☐ Availability of employers willing to hire

(n) ☐ Average earnings in local community

(o) ☐ Other (specify): _____

FL-630 Judgment Regarding Parental Obligations

3. ☐ **Earning Capacity.** This order is based on

a. ☐ the parent ordered to pay support's earning capacity of \$ _____ per month because (choose one):

(1) ☐ the earning capacity of the parent ordered to pay support is greater than their known income.

(2) ☐ the actual income of the parent ordered to pay support is unknown.

b. ☐ the other parent/party's earning capacity of \$ _____ per month.

c. The factors used to determine earning capacity under Family Code section 4058(b) are stated

(1) ☐ in *Earning Capacity Factors Attachment* (form [FL-302](#)).

(2) ☐ as follows (specify): _____



SB 343 – FC 17400(d)(2)(B) – Discussion/local practice



BRANCH NAME:					
PETITIONER:					
RESPONDENT:					
OTHER PARENT/PARTY:					
NOTICE OF MOTION			☐ JUDGMENT	☐ MODIFICATION	CASE NUMBER:
☐ Child Support	☐ Health Care	☐ Injunctive Order			
☐ Other:					

1. TO (name):

2. **READ THE ATTACHED REQUEST FORM.** A hearing on the motion for the relief requested will be held as follows:

a. Date:	Time:	☐ Dept.:	☐ Div.:	☐ Room:
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b. Address of court is ☐ same as noted above ☐ other (specify):

3. Supporting attachments:

a. Completed <i>Request for Order and Supporting Declaration</i> (form FL-684) and blank <i>Response to Governmental Notice of Motion or Order to Show Cause</i> (form FL-685)	d. ☐ Points and authorities
b. ☐ Financial information and blank <i>Income and Expense Declaration</i> (form FL-150)	e. ☐ <i>Order for Genetic (Parentage) Testing</i> (form FL-627) (If the respondent or other parent/party ignores this order, the issue of parentage may be decided against them.)
c. ☐ <i>Earning Capacity Factors Attachment</i> (form FL-302)	f. ☐ Other (specify):

4. ☐ **NOTICE: IF YOU WISH TO HAVE A TRIAL, YOU MUST APPEAR AT THE HEARING ON THIS REQUEST.**

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

ORDER



(C) The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment ~~will~~may become effective if the obligor fails to file an answer with the court within 30 days of the service. ~~Except as provided in paragraph (2) of subdivision (a) of Section 17402, if~~If the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.



SUMMONS AND ☐ COMPLAINT ☐ ☐ SUPPLEMENTAL COMPLAINT	CASE NUMBER:
☐ ☐ AMENDED COMPLAINT REGARDING PARENTAL OBLIGATIONS	

TO (name):

The local child support agency has filed this lawsuit against you. This lawsuit says you and the other parent are the parents of each child named in this Complaint and that the obligor may be required to pay child support. The attached proposed *Judgment Regarding Parental Obligations* (form [FL-630](#)) names you and the other parent as parents of each child listed below and, if there is an amount stated in item 6 of the proposed Judgment, orders the obligor to pay support for these children. **If you disagree with the proposed Judgment, you must file the attached Answer (form [FL-610](#)) with the court clerk within 30 days of the date that you were served with this Complaint. If the amount of child support in the proposed Judgment is based on actual income and you do not file the Answer, the proposed Judgment will become a final determination that you are the parent and responsible for support. If the amount of child support in the proposed Judgment is based on earning capacity, the court will hold a hearing before entering a judgment. If you do not file the Answer or appear at the hearing, the court will enter a judgment without your input. If you are required to pay child support, the payments may be taken from your pay or other property without further notice. See the Statement of Rights and Responsibilities section of this form for more information.**

If the proposed judgment is based on earning capacity, the LCSA must file a motion for judgment (MFJ) under FC 17404(b). The MFJ can be served by mail.

(D) If the proposed judgment is based on the support obligor’s earning capacity pursuant to clause (ii) or (iii) of subparagraph (A), the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404. The motion for judgment filed pursuant to this subparagraph shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. If the hearing on the motion for judgment under this subdivision is continued, the court may make a temporary order as authorized by Section 17404.

Local practice discussion: When to file/serve the MFJ.



There is no change to the procedures followed in cases where the S&C is based on actual income.

(a) (1) Notwithstanding any other law, in an action filed by the local child support agency pursuant to Section 17400, 17402, ~~or 17404~~17404, or 17404.1, in which the proposed child support amount is based on actual income, a judgment shall be entered without hearing, without the presentation of any other evidence or further notice to the defendant, upon the filing of proof of service by the local child support agency evidencing that more than 30 days have passed since the simplified summons and complaint, proposed judgment, blank answer, blank income and expense declaration, and all notices required by this division were served on the defendant.

~~(b)2)~~ If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (d) of Section 17400 in an action in which the proposed child support amount is based on actual income, or at any time before the default judgment is entered, the proposed judgment filed with the original summons and complaint shall be conformed by the court as the final judgment and a copy provided to the local child support agency, unless the local child support agency has filed a declaration and amended proposed judgment pursuant to subdivision (c).





The procedure for the MFJ in cases where the S&C is based on earning capacity:

- If the S&C is based on clause (ii) or clause (iii), an MFJ must be filed.
- The MFJ can be served by mail.

(b) (1) If the proposed judgment is based on the support obligor's earning capacity pursuant to clause (ii) or (iii) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 17400, the local child support agency shall file a motion for judgment, as provided in subdivision (b) of Section 17404. The motion for judgment filed pursuant to this paragraph shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law.

- Regardless of whether an answer has been filed, both PPS and PRS can participate in the MFJ hearing.

(2) At the motion for judgment hearing, the court shall permit the appearance and participation of the defendant and the other parent in the hearing, including, but not limited to, sworn testimony and the introduction of evidence, regardless of whether the defendant has filed an answer to the complaint.





The procedure for the MFJ in cases where the S&C is based on earning capacity:

(3) If the defendant fails to file an answer with the court and does not appear at the motion for judgment hearing, the judgment shall be entered by way of default after the court considers the factors set forth in subdivision (b) of Section 4058 and states its findings on the record. When considering those factors or any other relevant matter, the court may inquire of the local child support agency regarding the factors set forth in subdivision (b) of Section 4058 or any other relevant matter. If after consideration of the factors set forth in subdivision (b) of Section 4058 and the evidence presented by the local child support agency or the other parent the court determines that child support pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 would be lower than the proposed support obligation listed in the proposed judgment, the court shall enter an order for guideline child support. This paragraph does not limit the court's discretion to order an amount higher than, lower than, or equal to the proposed support obligation listed in the proposed judgment based on the evidence presented if the defendant files an answer or appears at the motion for judgment hearing.





Thank You!

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Please be sure to fill out the session feedback on the mobile app Whova!



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