

**2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO**



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**MAY 1-4, 2017 • GARDEN GROVE, CALIFORNIA**

**CHILD SUPPORT DIRECTORS ASSOCIATION OF CALIFORNIA**

**It's a Bird, It's a plane, no, it's the Self  
Employed Income Analysis in Child  
Support Calculations!**

**The Honorable Denise Motter, IV-D Commissioner (Retired), Superior  
Court of Santa Barbara County**

**and Stacie Rappleye, Attorney, Santa Barbara DCSS**



# Indirect Methods for Self Employment

The Honorable Denise Motter  
IV-D Commissioner (Retired), Superior Court of Santa  
Barbara County

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- IRS and the Family Code
- Similar definition of income
- All sources of income and cash flow may be used, unless specifically exempted

# Overview of Indirect Methods

- Simple Bank Deposit Analysis
- Bank Deposit Analysis, including Cash Expenses
- Source – Application of Funds
- Changes in Financial Position

Primary impediment to  
Utilization of Indirect Methods:  
Arithmophobia  
(Fear of Numbers)

- Court needs legally defensible position when including unacknowledged income
- Based on legal, intelligent, and logical analysis
- *Not* arbitrary and capricious
- Common sense *can* be a factor

# EXCHANGE OF ADDITIONAL FINANCIAL DOCUMENTS

e.g. Santa Barbara Local  
Court Rule 1419



# Local Rule 1419 Required Documents

- (a)(2) If the moving party is self-employed:
- a. Copies of individual federal income tax returns including all schedules for two years;
  - b. Copies of all W-2 and 1099 forms reflecting income received during the last 12 months but not attached to individual tax returns;

- c. Copies of all periodic profit and loss statements and balance sheets prepared in the ordinary course of business for the last twelve months;
- d. Copies of all business and personal bank account statements and corresponding check registers for the last twelve months;

- e. Copies of all loan applications submitted within the past 12 months to financial institutions or third persons on behalf of the moving party;
- f. A written offer to either supply copies of the business books and records requested by the opposing party upon five days notice or an offer to permit the opposing party or his attorney to inspect such books and records upon five days notice;
- g. A declaration explaining the party's failure to comply with any of the foregoing requirements

# Process to bring Indirect Method before the Court

- DCSS files Motion to Modify Support and comply with Local Court Rule.

- Parties appear, perhaps with some documents.
- Discuss nature of business
- Discuss method of tracking income and expenses.



- Set dates for submission and returning to Court.
- At return date, confirm that documents were submitted, and address any additional documents or information being requested.
- Set date for evidentiary hearing, if necessary.

# Questions to Determine Each Business's Unique System of Tracking Income and Expenses

# Simple Bank Deposit Analysis

- Requires 12+ months of bank statements.
- The statements should cover the same twelve-month period as a financial statement or tax return.

# The Process:

- Total all deposits from the twelve-month period and compare to the gross income reported for that same period.
- Account for any differences.

# Example:

- Tax return reflects gross income of \$120,000.
- But the bank statements for January – December of the same year total \$200,000.
- Why is there a difference?



# Bank Statement Analysis, Including Cash Expenses

- Initial process similar to Simple Bank Statement Analysis.
- Also accounts for cash flow that isn't run through the bank.
- Goal is to identify payments made with funds outside the bank account.

Requires the DCSS to look at

- Deposits *and* expenses on the bank statements
- Compare to expenses on financial statement and/or tax return
- And with the *Income and Expense Declaration* (I&E)
- To identify payments made with cash.

# Example:

- Tax return reflects gross income of \$120,000
- Bank statements for January – December of the same year total, \$120,000.

- However, in reviewing the bank statements,
- There are no payments for groceries or gasoline,
- Although the party's I&E reflects \$500 for each of these expenses each month.
- This process applies to both personal and business expenses.

# Source and Application of Funds

At the simplest level, this can be addressed solely with the parent's *Income and Expense Declaration*.



# Process:

- All expenses are totaled.
- Parent must account for all funds used to pay the expenses.
- Any amount not adequately verified as being paid from reported income or a “non-child-support-source” is included as net income for the computation of child support.

# Example:

Parent reflects \$4,360 as total expenses on page 3 of *Income and Expense*, with \$600 paid by someone else, \$1000 child support order, and only \$2000 in self employment income.

Expenses on I&E	\$4,360
Child support	\$1000
Total	\$5,360
Less: acknowledged income	(\$2000)
Contribution from partner	(\$600)
Additional cash flow	\$2760

# Changes in Financial Position/Net Worth

- This analysis is more challenging
- Arises when the parent demonstrates a lifestyle that cannot be accounted for with reported income and cash flow.

# Example:

- Absent parent drives a hot car,
- lives in a home free and clear,
- travels to Tahiti several times each year to dive the coral reefs.
- Evidence is usually provided by the other parent,
- with reports from the children,
- screen prints from Facebook.

# Process

- Quantify each expense,
- In addition to the other income and expenses acknowledged on the I&E
- compare the sources of cash flow.



# Summary:

- Each Indirect Method adds an additional layer of financial analysis.
- Arithmophobes should probably start with the most basic analysis and, with practice, experience, and a receptive Bench, move on to the more complex methods.

- The Bench can only rule on information and evidence provided to the Court,
- Take judicial notice of *Generally Accepted Accounting Principles*, case law, tax law etc.
- So, the burden is on the Child Support Attorney to gather and bring relevant evidence to the Court.

# Preparation of the Evidence and Argument

Stacie Rappleye  
Child Support Attorney  
Santa Barbara County

# Approach

- Add business bank statement deposits for the most recent calendar year and compare with gross receipts from tax return or P&L for that same year.
- Look at expenses on I&E and compare with claimed income.
- Prepare to question parent on each expense, line by line, under oath.

- Review loan applications for stated income. IRMO Calcaterra and Badakhsh (2005) 132 Cal.App.4<sup>th</sup> 28; IRMO Chakko (2004) Cal.App.4<sup>th</sup> 104.
- Review bank statements to see if all claimed business expenses are coming out of the account and to see if personal expenses can be identified.

- See if there are patterns in withdrawals or checks written to cash in even numbers.
- Prepare to question the parent under oath about cash handling in the business.
- Question large deposits or withdrawals.



- Review bank statements to see if there are transfers to or deposits from other accounts that have not been disclosed.

- Ask for a finding of income based on all the evidence and testimony presented.
- Try to present rational options, if available, to account for additional cash flow.

# Questions

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# Speaker Contact Information

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*Please be sure to complete the session evaluation.*



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