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Common mistakes in family law matters: Pitfalls practitioners and courts should avoid (Part 2)

Strict compliance with procedural rules is critical – common mistakes in child and spousal support cases can render orders invalid, unenforceable or void.

By Patti C. Ratekin

Family law mistakes come in many forms, but they are invariably costly unless promptly recognized and rectified. As noted in the first installment of our review of common errors in divorce, child custody and property division matters, these cases can be both complex and emotionally charged.

Courts, attorneys and self-represented litigants must adhere to strict procedural and statutory requirements or risk compromising the integrity of their proceedings. Simple mistakes can result in invalid, unenforceable or void orders. In this installment, we'll look at common mistakes involving child and spousal support.

In California family law cases, accurate financial disclosures and calculations are critical in determining fair and lawful amounts for child support and spousal support. The calculators used in California, including the California statewide guideline support calculator and X-Spouse, require the proper input of income, taxes, deductions and filing status. Unfortunately, parties often make avoidable mistakes that lead to incorrect support orders.

Below is a list of common errors encountered in California support cases – especially those involving tax, income classification and deductions.

Incorrect number of children in child support calculations

As surprising as it might seem, there are times when the wrong number



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of children is included in the pleadings filed by parties. Accurate child support orders rely on correct input into support calculation software. Errors in the number of children used in calculating child support can significantly distort support obligations and may lead to improper financial hardship or overpayment.

The number selected for this field determines the number of children to be considered by the calculator for the child support order. It should only include children in common to the two parents and those legally required to be supported by both parents. Usually, parents are required

to support a child until the age of 18, but they must continue to support an 18-year-old unmarried child while the child is attending high school full time or until age 19. Parents are no longer required to support children under the age of 18 who are “emancipated” because of marriage, active military duty or a court order granting emancipation.

Incorrect tax filing status in the calculator

The tax filing status chosen for input into the chosen calculator must reflect reality. Selecting “Head of Household” when a parent doesn’t

meet the IRS or California standards (e.g., not having a qualifying dependent for more than half the year) will artificially lower that parent’s net income and skew the support calculation.

If there is only one child between the parents and they have no other qualifying children, only one parent may claim “Head of Household,” and it must be supported by the IRS rules.

Misuse of dependency exemptions

California allows parents to negotiate or assign tax dependency exemptions in judgments or stipulated

agreements by utilizing IRS Form 8332. However, misuse of the exemptions can result in complications. Failure to properly allocate exemptions between the parents, for example, can lead to conflicts at the IRS. The support calculator could wrongly credit a party with a tax benefit to which they are not legally entitled.

Exemption orders must match the IRS eligibility rules, and any alternating-year agreements should be clarified in writing. An agreement to alternate the dependency of a child is almost always a non-guideline child support order that will necessitate findings pursuant to Family Code Section 4056.

Self-employment income entered as wages

Another common mistake is when a partner enters self-employment income in the W-2 wage field. This will cause the calculator to assume the income is taxed at the standard employee rate, ignoring the fact that self-employed individuals pay self-employment taxes, take business deductions, and have fluctuating cash flow.

Self-employed individuals must use the appropriate field for “Self-Employment Income” and enter their net earnings after accounting for reasonable business expenses.

Distinguishing income types

Parties often fail to properly classify the types of income they receive. These might include royalty income, investment income, rental income, unemployment or disability payments, or non-taxable income such as SSI or certain VA benefits.

Each type of income is subject to different tax treatment, which will impact net disposable income. Entering these various categories of income into the wrong fields will skew the calculation. The best practice is to open the drop-down options in the calculator programs and carefully enter each type of income on the appropriate line.

401(k) contribution entries

California support guidelines require that pre-tax 401(k) contributions be put into the calculator to calculate the tax effect of the contribution. But unless these contributions are correctly documented, support will not be correctly calculated. Parties often forget to enter contributions

at all, which will then cause an incorrect child support amount. Others may overstate their contributions, especially if they front-load those contributions early in the year. Both of these will result in a child support order that isn't accurate.

For the year 2025, the IRS limit for 401(k) contributions is \$23,500; the catch-up contribution limit is an additional \$7,500 for employees over the age of 50. The correct input for support purposes is the annualized amount actually contributed.

Adjustments for HSA and dependent care accounts

Health Savings Accounts (HSA) and Dependent Care Flexible Spending Accounts (DC-FSA) are pre-tax deductions that reduce net income. Common errors include forgetting to include HSA contributions or ignoring the impact of dependent care accounts used for daycare or preschool costs. Both types of deductions must be entered under “Adjustments to Income” in the child support calculator, and parties will need pay stubs or employer benefit documents to ensure the accuracy of their entries.

Health insurance premiums

Many parents mistakenly treat health insurance premiums as post-tax when most employer plans deduct them pre-tax. This results in double-counting the deduction, making net income appear lower than it actually is. Because most employer-sponsored plans use Section 125 pre-tax deductions, parties should always review their pay stubs to determine if the premiums are pre- or post-tax.

Errors can also arise when a party is paid bi-weekly but the health insurance deduction is taken out only twice per month. This error decreases the income available for support. Such evidence should be presented to the court.

Mortgage interest and property tax deductions

Mortgage interest and property tax deductions must be put into the appropriate line of the calculator. California support calculators will give the appropriate tax treatment to those deductions for parties who are eligible to itemize their deductions.

New spouse income

Although new spouse income is not considered a source of income for

calculating support, it should still be entered into the support calculator to account for its tax impact, assuming the parties file a joint tax return. Including this income will increase the total household income and overall tax liability, which may reduce the paying spouse's child support obligation. If the new spouse income of the payee is included in the calculation, it could potentially increase the amount of child support owed to the receiving parent.

Child or spousal support owed for previous marriage/relationship

A deduction is allowed for child or spousal support payable based on a previous relationship. Sometimes, however, individuals are subject to a court order requiring payment of arrears in addition to the ongoing support order, and they will try to have the court deduct the entire amount as a guideline deduction. The best practice in such cases is to obtain a copy of the court order and proof that it is being paid.

If there is no court order but a party is legally responsible to support a child and is paying support for that child, he or she will be entitled to a deduction up to the amount of the guideline support. Counsel's job is to provide evidence to the court that will enable it to calculate the guideline support deduction.

Making child support orders when DCSS is involved

When the Department of Child Support Services (DCSS) is involved in a case, courts should defer to the department's authority to establish and enforce support orders. Issuing duplicate or conflicting orders may create jurisdictional confusion and enforcement complications.

Using a calculator program for permanent spousal support

Software programs are designed for calculating temporary spousal support. For permanent spousal support, courts are required to apply the statutory factors in Family Code Section 4320, not formulaic tools. If the court fails to consider and apply the Section 4320 factors, it is reversible error.

Section 4320 findings are not used in temporary spousal support orders, except that the court must always consider domestic violence findings. Permanent spousal support orders

must always include the statutory findings, and courts err when they fail to make these findings.

Conclusion

Errors in California child or spousal support calculations can result in unfair or non-guideline orders, causing future litigation, back-payments or financial hardship. These mistakes are often preventable with proper preparation and accurate calculator use.

When families break apart, their ability to receive ongoing financial support can be a true lifeline. It can mean putting food on the table and a roof over their heads. For custodial parents, such support can keep their children healthy and whole; for spouses, it can provide a critical bridge to their own financial independence.

But when mistakes are made, the structure can come crashing down. A simple misstep can turn a family's world sideways. For this reason, both judges and counsel should double- and triple-check every part of the process to make sure the child and spousal support orders comply with the statutory scheme.

Commissioner Patti C. Ratekin (Ret.)

is a neutral at Signature Resolution who served more than 14 years on the family law bench. She was a member of the California Guideline Child Support task force and created the curriculum for the Primary Assignment Training for AB1058 Child Support Commissioners. She is a Certified Family Law Specialist and winner of the 2021 Judicial Officer of the Decade, Lifetime Achievement, San Diego Family Law Bar Association.

