

**Resolution 05-01-2009**

Child Support: Examination by Vocational Training Consultant

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code section 4001 to read as follows:

1 § 4001

2 (a) In any proceeding where there is at issue the support of a minor child or a child for  
3 whom support is authorized under Section 3901 or 3910, the court may order either or both  
4 parents to pay an amount necessary for the support of the child.

5 (b) (1) In any proceeding where there is at issue the support of a minor child or a  
6 child for whom support is authorized under Section 3901 or 3910, the court may order a  
7 party to submit to an examination by a vocational training counselor. The examination shall  
8 include an assessment of the party's ability to obtain employment based upon the party's age,  
9 health, education, marketable skills, employment history, and the current availability of  
10 employment opportunities. The focus of the examination shall be on an assessment of the  
11 party's ability to obtain employment that would allow the party to meet their statutory duty  
12 for the support of any minor children pursuant to Family Code Section 3900.

13 (2) The order may be made only on motion, for good cause, and on notice to the party  
14 to be examined and to all parties. The order shall specify the time, place, manner, conditions,  
15 scope of the examination, and the person or person by whom it is to be made.

16 (3) A party who does not comply with an order under this section is subject to the  
17 same consequences provided for failure to comply with an examination ordered pursuant to  
18 Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil  
19 Procedure.

20 (4) A Vocational Training Counselor - for the purpose of this section means an  
21 individual with sufficient knowledge, skill, experience, training, or education in interviewing,  
22 administering, and interpreting tests for analysis of marketable skills, formulating career  
23 goals, planning courses of training and study, and assessing the job market, to qualify as an  
24 expert in vocational training under Section 720 of the Evidence Code.

25 (5) A vocational training counselor shall have at least the following qualifications:

26 (A) A master's degree in the behavior sciences.

27 (B) Be qualified to administer and interpret inventories for assessing career potential.

28 (C) Demonstrated ability in interviewing clients and assessing marketable skills with  
29 understanding of age constraints, physical and mental health, previous education and  
30 experience, and time and geographic mobility constraints.

31 (D) Knowledge of current employment conditions, job market, and wages in the  
32 indicated geographic area.

33 (E) Knowledge of education and training programs in the area with costs and time  
34 plans for these programs.

35 (6) The court may order either party to pay the necessary expenses and costs of said  
36 assessment.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Sacramento County Bar Association and Women Lawyers of Sacramento

## **STATEMENT OF REASONS**

Existing Law: Permits courts to impute temporary earning capacity for purposes of ordering appropriate levels of child and spousal support orders. (Fam. Code, §§ 4058, 4320; *In re Marriage of Regnery* (1989) 214 Cal.App.3d 1367, 1372; *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923.) One method courts use to establish imputed earning capacity is vocational evaluation. (Fam. Code, § 4331.) However, Section 4331 refers to the use of vocational evaluations only in "dissolution" or "separation" proceedings. Because it makes no reference to child or spousal support proceedings, and no published opinion has held it applies to such proceedings, a court might interpret Section 4331 to apply only in dissolution or separation proceedings, but no others.

Child support proceedings raise the same important questions about earning capacity as in dissolution and separation proceedings. In either case, both spouses/parties have a right to full knowledge about not only the present, but also the potential earning capacity of the other in order to achieve an equitable support order. By specifying that vocational evaluations are available in any proceeding involving support, regardless of when the issue is raised, this resolution to amend section 4001 will achieve this goal.

This Resolution: Would enable a litigant to seek imputation of income to an unemployed or under-employed parent once an appropriate vocational assessment had been completed.

The Problem: Child support proceedings raise the same important questions about earning capacity as in dissolution and separation proceedings.

## **IMPACT STATEMENT**

This resolution would expand the scope of Family Code Section 4331 which arguably currently limits such assessments to dissolution or legal separation cases only.

**AUTHOR AND/OR PERMANENT CONTACT:** Michelle Stowell, Downey Brand, 621 Capitol Mall, 18th Floor, Sacramento, CA 95814, voice (916) 444-1000, fax (916) 444-2100, email [mstowell@DowneyBrand.com](mailto:mstowell@DowneyBrand.com). OR Paul L. Brimberry, 2100 Northrop Avenue, Suite 100, Sacramento, CA 95825, voice (916) 568-8272, fax (916) 568-0118, email [Paul@FamilyLawSacramento.com](mailto:Paul@FamilyLawSacramento.com).

**RESPONSIBLE FLOOR DELEGATE:** Michelle Stowell