

RESOLUTION 07-11-2018

DIGEST

Family Support: Gender-Neutral Calculation Software

Amends Family Code section 3830 to require that any software used in determining child or spousal support obligations must be formatted to avoid gender-specific pronouns.

STATEMENT OF REASONS

The Problem: While the Department of Child Support Services (DCSS) child support calculator uses gender-neutral pronouns (“Parent 1” and “Parent 2”), the widely used computer software program called Dissomaster Program uses gendered pronouns (“Father” and “Mother”). This is problematic because many family law litigants do not adhere to a gender binary, or are same-sex families without a mother-father binary.

Many family law practitioners have to explain to same-sex parents how/why their support obligation/right is categorizing them by gender delineations that are not only inaccurate, but also irrelevant to statutory support duties. Many litigants take offense to being labeled “father” when there are two mothers involved, or vice versa. Many litigants take offense to being labeled “Wife” when they are in fact a male receiving spousal support in a same-sex matter.

This is further problematic when it concerns families who have had to combat abuse based on gender expression and identity. The Dissomaster Program is perceived as an extension of the court/law. It is the program used by judges and is available on court computers in family courts throughout California. For many litigants, this mislabeling is a perpetuation of discrimination and abuse.

This problem is not isolated to a small minority. According to a 2008 report by the Williamson Institute (UCLA School of Law), there are 109,000 same-sex couples living in California; nearly 25% of these couples are raising more than 52,000 children. At various times, same-sex marriage has been legal in California since 2008. Many of these people are likely to confront the legal issues of child and/or spousal support. The current Dissomaster Program fails their needs by using gendered pronouns.

While the Dissomaster Program allows attorneys (or those using the program) to re-name “Mother” and “Father” by actual names or other titles (such as “Parent 1” or “Parent 2,” the parties’ actual names are typically not used in support orders (Findings and Order After Hearing, or Judgments); instead orders commonly use “Petitioner” or “Respondent.” Additionally, support orders often require the parties attach Dissomaster Calculation Reports. As such, the Dissomaster identity label should correctly correspond. In running Dissomaster calculations, the program opens up with “Mother”/“Father” defaults which still need to be manually altered, often times in the presence of clients who witness the systematic gendered mislabeling.

Litigants should not have to manually un-gender the default. The default should be inclusive of gender non-binary parties, and same-sex litigants.

The proposed amended would also be in line with 2017’s Senate Bill 179, which allows

Californians the option of gender non-binary identification on state identification documents. The current support calculation software defaults to gender binaries.

The Solution: This resolution simply amends California’s Family Code Section 3830(a) so as to make it a non-discriminatory and inclusive, allowing greater applicability to same-sex and gender non-conforming litigants resolving the issues of child and/or spousal support. For clarity, this resolution does not call for any algorithmic changes, or any re-evaluation of how/when support is ordered.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3830 to read as follows:

- 1 § 3830
- 2 (a) On and after January 1, 1994, no court shall use any computer software to assist in
- 3 determining the appropriate amount of child support or spousal support obligations, unless the
- 4 software conforms to rules of court adopted by the Judicial Council prescribing standards for the
- 5 software, which shall ensure that it performs in a manner consistent with the applicable statutes
- 6 and rules of court for determination of child support or spousal support, and is formatted to avoid
- 7 gender-specific pronouns.

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

PROPONENT: Bay Area Lawyers for Individual Freedom

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT AND PRIOR LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

FAMILY LAW SECTION - DISAPPROVE

FLEXCOM understands the general concerns and respects the desire for gender neutral language. However, we do not believe an amendment to Family Code section 3830 is necessary. The DCSS calculator, as noted, is already gender neutral. The Disso Master program targeted

here can also be made gender neutral very easily by anyone who uses the program. The gender aspect of the program is too easily adjusted in our opinion to warrant such a legislative remedy. We therefore disapprove.