

*Mendoza v. Ramos* (2010) 182 Cal.App.4th 680

Here is another imputed income case. Given the financial, credit and employment meltdown of the recent past, requests for downward modification of support obligations are hardly surprising. Accompanying such requests is often a claim that, employed or not, income should be imputed to the supported spouse. Not in this case.

This is a paternity case. Four children. Father sought reduction of child support. Mom, receiving AFDC, lost her job, unable to find work, enrolled in counseling and education CalWORKS program to become a licensed vocational nurse. The trial court refused to impute income to Mom because she was participating in the CalWORKS program. The trial court also denied father's claim that *Elkins* was violated because he was not allowed to cross-examine Mom at the hearing.

The appellate court affirmed the refusal to impute income. Father failed to meet his burden of proof to demonstrate that Mom had the ability to earn the income he sought to impute to her. Imputation of income to a parent enrolled in the CalWORKS program would be contrary to public policy. On the *Elkins* due process claim, the appellate court held that neither party requested live testimony at the trial court hearing, nor did father request the right to cross-examine Mom. There are procedural and technical requirements for seeking and preserving *Elkins* rights. For example, Los Angeles Superior Court Rule 3.1306(b) sets forth requisite notice requirements for the right to present live testimony.

In an economically challenged environment, these issues are presented with increased frequency. Preparing properly for trial means being prepared to meet the three-prong *Regnery* test and to shoulder the burden of proof explained in important detail in *In re Marriage of Bardzik* [2008 Cal Fam Law Monthly 301-308 (September 2008)].

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