

Second Supplement to Memorandum 2005-37

Enforcement of Money Judgment Under Family Code (Material Received at Meeting)

The following material was received by the Commission at the meeting on September 30, 2005, in connection with Study F-1301 on Enforcement of Money Judgment Under Family Code, and is attached as an Exhibit:

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| | <i>Exhibit p.</i> |
| 1. John Jones, Aliso Viejo | 1 |

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

RE: Proposal to simplify & change the law regarding enforcement of family law judgments.

Comment on repealing CCP 580(b)(4)

On page 5 you indicate that a 1998 amendment to CCP 580 (saying that a Family Code Order can not be enforced as part of a limited civil case) is unnecessary. Some of your other memos indicate some situations where filing in a limited case is appropriate, such as lien procedures and third party suits. It appears that based on this, you are considering deleting CCP 580(b)(4).

One effect of the change you are considering could be to create the impression that family law orders can be enforced in the limited courts as a matter of course. I'm not sure that this is what you intend to convey. There are family law litigants who may find it more convenient to go to their local courthouse than the courthouse designated to handle family matters.

I've heard family law litigants say they were advised to prosecute their claims in either civil or small claims. For example, a support order is issued in family court for \$500 a month and the judgment debtor has not paid for 10 months. The judgment creditor would file a small claims action for \$5,000. This is much different from the circumstances that you mention such as liens or third party suits where the relationship to family law is more tangential.

Your notes seem to indicate that FLEXCOM's position on this is ambiguous. I think the issue deserves further consideration. Maybe leaving CCP 580(b)(4) on the books, but stating an exception to the rule with examples might work. Or maybe a re-working of CCP 86

Comment on the Duration of Judgments

It seems that you are leaning toward the position that all family law judgments should be non-expiring. If so, I agree with that. One question is whether money judgments are subject to the same policy concerns as most family law judgments. Since there doesn't seem to be a clear cut answer to that, I would rather that all money judgments rendered in family court have the benefit of the doubt, subject to judicial discretion.

Comment on Judicial Discretion as to Enforcement & Duration of Judgments

I realize that some commentators (especially Professor Bruch) are opposed to leaving this up to judicial discretion. Although I share her concerns, I also feel that you have to have some trust in the judiciary. Besides, a rule that strips judges of their discretion is just as frightening as the prospect of a biased judge.

Perhaps one way of addressing the problem of abuse of discretion is by creating a presumption in favor of non-expiration and providing statutory guidelines for circumstances that warrant termination of enforcement.

Comment on Optional Renewal: pg 9, line 7, proposed FC 291(b)

You are considering extending the renewal option to family law money judgments. Based on your report, it looks like people are using renewals for support judgments as a way of updating the balance and that is working out okay for that type of judgment.

However, I have some misgivings about extending that process on an optional basis to money judgments. The thrust of the commission's proposal is to aim for simplicity and consistency, but providing for an optional renewal for money judgments may defeat that purpose. It has the potential of resulting in unfairness to both sides. For example, it may impose additional procedural burdens on the would-be enforcer and would subject some judgment debtors (but not others) to a form of compounded interest.

Procedural Burden on Would-be Enforcer:

Without a renewal, the judgment creditor in a normal civil case can update their judgment by filing form MC-012 which will add in costs and interest. They arrange to have it mailed to the other side, and when the taxing time has expired, it becomes part of the judgment. This is a pretty simple process.

If on the other hand, they renew the judgment, the service procedure is more involved and the contest time is longer. Furthermore, the judgment as renewed is not enforceable until the proof is filed, so the judgment creditor may actually find themselves in a situation where they can not enforce their renewed judgment. (Other complications may arise if the court gives it a new case number.)

Judgment Debtor subject to Compound Interest

Generally speaking, judgments are subject to simple interest. However, when a judgment is renewed, it has a compounding effect on the pre-renewal interest. For example, a \$25,000 judgment would be subject to 10% simple interest up until the time of renewal. If it's unsatisfied and renewed just before the 10 year point, the interest will be about \$25,000, so the judgment as renewed will be \$50,000, exclusive of costs. From the point of renewal on, the judgment creditor will be entitled to 10% of \$50,000.

This means that a judgment debtor with a renewed judgment will face greater financial liability than one whose judgment is not renewed. Since there is no public policy argument to justify this inconsistency, we should not enact a statute that promotes it.

Other Problems:

- *New Case Number.* Courts often create new case numbers for renewals. This could create confusion for the parties, especially if they are pro per. Papers might come in with the old case number and be rejected.
- *Tiered Enforcement.* A judgment as renewed is stayed until the proof is filed, but if it were otherwise enforceable, that non-renewed part may still be enforced. For example, if

a \$25,000 judgment was renewed but not served yet, the judgment creditor could enforce the \$25,000 judgment but not the \$50,000 renewed judgment. Some court clerks are unaware of this provision and may inadvertently reject otherwise valid enforcement papers. Furthermore, even assuming that the clerk will issue enforcement papers under this scenario, you'll have an unnecessarily complicated transaction on your hands. For example, the clerk will issue a writ subsequent to renewal (but prior to proof being filed) and will have to indicate that this is as to the non-renewed judgment.

- *Recordation.* Will a judgment creditor who has recorded a lien at the county recorder will be required to file the application of renewal with the county recorder? It seems that they should not, but it could be argued that by filing the renewal they are subject to the requirements of CCP 683.180. (A similar concern exists as to other liens as described in CCP 683.190 and other enforcement proceedings as described in CCP 689.200)

You've expressed concern that judgment creditors be able to update their balances in a simple way. It seems that the AOC form MC-012 should meet that need. I don't know if the family courts accept that form. If not, maybe a form more appropriate to family law could be developed.