

First Supplement to Memorandum 80-30

Subject: Study D-300 - Enforcement of Judgments (Enforcement of Support Orders Pendente Lite)

The staff recommends in Memorandum 80-30 (sent March 31, 1980) that support creditors be entitled to resort to execution without the necessity of obtaining prior court approval so long as the obligations to be enforced are not more than 10 years overdue. Further investigation inclines us to the view that this principle must be limited to enforcement of support after entry of final judgment. When any support judgment, order, or decree is to be enforced, the court is required by Civil Code Section 4805 to resort first:

- (a) To the earnings, income, or accumulations of either spouse, while living separate and apart from the other spouse, which would have been community property if the spouse had not been living separate and apart from the other spouse; then,
- (b) To the community property; then,
- (c) To the quasi-community property; then,
- (d) To the other separate property of the party required to make such payments.

And Civil Code Section 4807 provides:

The community property, the quasi-community property and the separate property may be subjected to the support, maintenance, and education of the children in such proportions as the court deems just.

Although these provisions are not limited to enforcement of support only during the pendency of the proceeding, they appear to have no effect after final judgment since there is then no community or quasi-community property and the former spouses having been restored to the status of unmarried persons are no longer capable of living "separate and apart".

Judicial discretion in enforcement is desirable prior to final judgment because the situation between the spouses is still uncertain. If property is to be divided pursuant to a property settlement, permitting one spouse to employ a writ of execution independent of judicial approval to satisfy a support obligation pendente lite might easily disrupt the pending division of property.

Respectfully submitted,

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