

**Memorandum 94-25****Miscellaneous Debtor-Creditor Issues**

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The Commission has received some other suggestions for revision of creditors' remedies statutes. If the Commission approves a bill on this subject for 1995, the following matters should be considered for inclusion:

**DUTIES OF GARNISHEE UNDER WAGE GARNISHMENT LAW**

Carl N. Marschall, an attorney in Los Angeles, suggests that the duties of an employer served with an earnings withholding order be made more consistent with the general duties of garnishees served with a writ of execution and notice of levy under the Enforcement of Judgments Law. Mr. Marschall presents a clear outline of the two statutes in his letter, which need not be repeated here. (See Exhibit.)

Mr. Marschall suggests that the Wage Garnishment Law be amended to impose liability on employers for costs and reasonable attorney's fees incurred in obtaining the information required in the return, should the employer fail to mail the employer's return to the levying officer within 15 days. (See his draft language in the Exhibit.) He does not give any particular reason for making this change, although we can assume that he has encountered difficulty in getting compliance from employers in some wage garnishments.

The proposal is logically consistent and therefore hard to resist on theoretical grounds. However, the types of levies involved are generally different. A wage garnishment is usually a continuing levy, picking up future earnings as they become payable and extending indefinitely from time of levy until the judgment is satisfied. A levy under a writ of execution may be a continuing levy, but generally it is anticipated that the third person will pay or deliver the property in one operation. If the third person fully complies with the levy, by paying or delivering all property sought to be levied upon, there is no duty to give a garnishee's memorandum. (See Code Civ. Proc. § 701.030(f).) The usual wage garnishment situation does not offer an opportunity to fully comply by paying

enough to satisfy the judgment, so the safety hatch allowed garnishees under the general rule does not make much sense in wage garnishment.

The proposal could be implemented by the following amendment:

**Code Civ. Proc. § 706.104. Duties of employer on service of order**

Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

*(c) If the employer does not mail an employer's return to the levying officer within 15 days after the date of service or does not provide complete information on the employer's return, the employer may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceeding to obtain the information required in the employer's return.*

**Comment (new).** Subdivision (c) is added to Section 706.104 to provide sanctions for an employer's failure to provide a complete employer's return in a timely fashion. This rule is the same as the general rule applicable to a third person served with a writ of execution and notice of levy under Section 701.040(d).

**PERIOD OF ENFORCEABILITY AND RENEWALS OF FAMILY CODE JUDGMENTS**

**Background**

Frieda Gordon, a Los Angeles attorney who assisted the Commission during the Family Code project, has called the staff concerning an issue that is bothering the family law bar. The sections involved were enacted on Commission recommendation, so Commission attention to the matter is appropriate, although the problem derives from other amendments made in recent years by other interests.

When the Enforcement of Judgments Law was enacted in 1982, it established a 10-year period of enforcement for money judgments and judgments for possession or sale of property. (See generally, Code Civ. Proc. §§ 683.010-683.620, as enacted by 1982 Cal. Stat. ch. 1634, § 2.) This 10-year period was not tolled for any reason and when it expired the judgment became unenforceable. However, the judgment was renewable by a simple procedure for filing an application for renewal with the court and giving notice and an opportunity to the debtor to petition to vacate or modify the renewal. In addition, the statute preserved the ancient right to bring an action on the judgment subject to the 10-year rule of Section 337.5 and its exceptions and tolling features.

In the case of money judgments payable in installments, the 10-year period of enforceability and the renewal scheme treated each installment as if it were a judgment entered on the date the installment fell due.

This structure was intended to provide certainty as a foundation for the various enforcement procedures. It was intended to eliminate the doubt about when something was enforceable and to regularize the process of determining how much was still owing on a judgment.

But this wonderful scheme was not applied to judgments enforceable under the Family Law Act. (See Code Civ. Proc. § 683.310, as enacted by 1982 Cal. Stat. ch. 1634, § 2.) The Enforcement of Judgments Law did not affect the rule in family law that the court has discretion as to the manner of enforcement of judgments. (See former Civ. Code. § 4380). But some of the benefits of the new scheme in the Enforcement of Judgments Law were extended to the Family Law Act by providing that judgments for child or spousal support were enforceable by a writ of execution without the need for a court order if the payments were not more than 10 years overdue. After 10 years, overdue support payments were enforceable only in the court's discretion, and lack of diligence was to be considered in determining whether to permit enforcement. (See former Civ. Code §§ 4383-4384, as enacted by 1982 Cal. Stat. ch. 497, §§ 15, 16.)

### **Revisions of the Original Scheme**

In 1986, Section 4384.5 was added to the Civil Code providing that a judgment for child or spousal support could be renewed by application under the general procedures in the Enforcement of Judgments Law. This section, not sponsored by the Commission, created the situation whereby the Enforcement of Judgments Law provided that the general rules did not apply to the Family Law

Act and the Family Law Act provided that they did apply to enforcement of child or spousal support.

In 1987, Civil Code Section 4383 was amended to permit enforcement of child or family support through execution without prior court approval until five years after the child reaches the age of majority and thereafter for amounts not over 10 years overdue. The 10-year rule was retained for enforcement of spousal support by a writ of execution.

The Family Law Act had a hybrid system. The 10-year rule was no longer related to enforceability and renewal requirements, but only served as a limitation on the discretion of the court, making enforcement by writ of execution a procedural right for amounts not more than 10-years overdue (or more in the case of a child and family support involving a child age 23 or less). Amounts more than 10-years overdue continued to be enforceable in the court's discretion without any renewal requirement.

It should also be noted that the renewal scheme in the Enforcement of Judgments Law as applied to judgments for possession or sale also did not apply to such judgments made under the Family Law Act.

Things changes dramatically in 1992 when Civil Code Section 4384.5 was replaced by a new rule that judgments for child or spousal support or for arrearages are completely exempt from any renewal requirement and are enforceable until paid in full.

### **Current Law**

The Commission took this law as it existed and reorganized it in the process of creating the Family Code. As the Commission will recall, the Family Code project was not directed toward substantive revision. The operating principal was to take the existing rule into the new code structure, making only technical changes or necessary substantive changes required to resolve inconsistencies.

Code of Civil Procedure Section 683.310 was revised by the Commission to provide as follows:

683.310. Except as otherwise provided in Section 4502 of the Family Code, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

Family Code Section 4502, as enacted in 1992, carried forward the then existing version of Civil Code Section 4384.5:

4502. A party may renew a judgment for child, family, or spousal support as provided in Article 2 (commencing with Section 683.110) of Chapter 3 of Title 9 of Part 2 of the Code of Civil Procedure.

The writ of execution rules from former Civil Code Section 4383 were continued in Family Code Sections 5100-5104 without substantive change.

To confuse an already complicated situation, legislation sponsored by the Department of Social Services (DSS) amended many of these rules to eliminate the last vestige of the 10-year rule. (See 1992 Cal. Stat. ch. 718; 1993 Cal. Stat. ch. 876.) Thus, Family Code Section 4502, as amended in 1993 to pick up the 1992 amendments to Civil Code Section 4384.5, now provides:

4502. Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement or other arrearages, is exempt from any requirement that judgments be renewed. A judgment for child, family, or spousal support, including all lawful interest and penalties computed thereon, is enforceable until paid in full.

The writ of execution rules from former Civil Code Sections 4383 and 4384, as revised by the 1993 DSS bill, read as follows in their Family Code setting:

**Fam. Code § 5100. Enforcement of child or family support without prior court approval**

5100. Notwithstanding Section 290, a child or family support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

**Staff Note.** Section 290 continues the general rule from former Civil Code Section 4380 that enforcement is subject to court discretion.

**Fam. Code § 5101. Enforcement of spousal support without prior court approval**

5101. Notwithstanding Section 290, a spousal support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

**Fam. Code § 5102. Period for enforcement of installment payments**

5102. If a support order provides for the payment of support in installments, the period specified pursuant to this chapter runs as to each installment from the date the installment became due.

**Staff Note.** This section is surplus since there is no longer any limitation on the period of enforceability of support.

**Fam. Code § 5103. Enforcement of support against employee pension benefit plan**

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee pension benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee pension benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

**Fam. Code § 5104. Application for writ**

5104. (a) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced pursuant to Sections 5100 to 5103, inclusive, on the date of the application.

(b) If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due.

(c) The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

**Staff Recommendations**

As a result of all of these amendments, Code of Civil Procedure Section 683.310 is misleading and adds to the confusion. The cross-reference to Family Code Section 4502 should have been removed in connection with the changes made to that section and its predecessor at the behest of DSS.

To help clear up some of the confusion, the staff recommends that Section 683.310 be amended as follows:

**Code Civ. Proc. § 683.310. Time for filing renewal application**

683.310. Except as otherwise provided in ~~Section 4502 of the Family Code~~, this chapter does not apply to a judgment or order made or entered pursuant to the Family Code.

**Comment.** Section 683.310 is amended for consistency with Family Code Section 4502, as revised in 1993. See 1993 Cal. Stat. ch. 219, §§ 142-143; 1992 Cal. Stat. ch. 162, § 10. This is a technical, nonsubstantive change. For a specific provision in this chapter applicable to enforcement under the Family Code, see Section 683.130.

Also, as indicated above, it appears that Family Code Section 5102 should be repealed since there is no longer a limited period of enforceability.

A question has been raised about an apparent gap in existing law. Remember that the renewal scheme in the Enforcement of Judgments Law applies to judgments for possession or sale of property, as well as money judgments. The various provisions tinkering with the relationship of this law to the enforcement of judgments under the Family Law Act or now the Family Code, have focused on support and other monetary judgments. Apparently a case has arisen where the judge ruled that a judgment for sale under the Family Law Act could not be enforced after 10 years. But this seems contrary to Family Code Section 290, which continues former Civil Code Section 4380:

**§ 290. Methods of enforcement**

290. A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by such other order as the court in its discretion determines from time to time to be necessary.

This section is not limited by any 10-year rule of Section 682.020 in the Enforcement of Judgments Law. Section 683.310 makes the general renewal scheme inapplicable to Family Code judgments of all types, except as otherwise provided. Instead, the family law court has discretion as to when and how to enforce its orders, subject to some special rules for monetary judgments. Even if the 10-year rule of the Enforcement of Judgments Law applied somehow, the common law and Code of Civil Procedure Section 337.5 might give relief through an action on the judgment if the statute of limitations has been tolled.

Since the general renewal procedure has been made optional for support judgments, it might make sense to provide for optional renewal of judgments for possession and sale of property under the Family Code. Thus far, the blanket excuse from renewal has been applied only to money judgments for support and

arrearages. But perhaps a better approach might be to apply the general Enforcement of Judgments Law renewal procedure to non-money judgments under the Family Code. Clarity on this issue would be better than an overdeferential approach that attempts to preserve the court's discretion under Family Code Section 290. This is particularly evident if the courts are refusing to accept that discretion.

If the Commission approves the proposed revision, it might be possible to get it into a technical bill this session. In addition, some additional comments in the Family Code may need to be revised. The staff will prepare a report on revised comments for consideration along with the 1994 Annual Report.

Respectfully submitted,

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California Law Revision Commission  
4000 Middlefield Rd., #D  
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RE: Amendment to the Enforcement of Judgments Law, C.C.P., Sec.  
680.010, et seq.

Sir:

#### BACKGROUND

(References are to the Code of Civil Procedure)

#### Duties and Responsibilities of Third Persons After Levy:

When execution is made upon a third person, the garnishee is delivered a blank "garnishee's memorandum" which the garnishee is required to mail or deliver to the levying officer within 10 days after service of the writ and notice of levy. [Sec. 701.030] The purpose of the memorandum is to provide the judgment debtor with certain information about the property sought to be levied upon and other property owed the judgment debtor in the hands of the garnishee. [See Sec., 701.030(b)] The memorandum also "serve[s] as an inexpensive alternative to an examination proceeding [of the garnishee]." [Law Rev. Comm. Comment to Sec. 701.030]

With certain exceptions, "if a third person does not give the levying officer a garnishee's memorandum within [ten days after service of the writ and notice of levy] or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceeding to obtain the information required in the garnishee's memorandum." [Sec. 701.030(d)]

#### Duties and Responsibilities of Third Persons Under Wage Garnishment Law

When an employer is served with an earnings withholding order, the employer is delivered a blank "employer's return" which the employer is required to mail to the levying officer within 15 days after service of the order. [Secs. 706.103 and 706.104]

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The "employer's return" is comparable to and serves the same purposes as the "garnishee's memorandum".

The Wage Garnishment Law [Sec. 706.010, et seq.] makes no provision for sanctions against the employer if the employer does not give the levying officer an employer's return or does not provide complete information on the return.

#### RECOMMENDATION

The Wage Garnishment Law (Sec. 706.105) should be amended to provide:

"If an employer does not mail the employer's return to the levying officer within 15 days from the date of service of the earnings withholding order or does not provide complete information on the employer's return, the employer may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceeding to obtain the information required in the employer's return."

Very truly yours,



Carl N. Marschall

CNM/ng