

First Supplement to Memorandum 2000-35

2000 Legislative Program: AB 1358 — Family Code Enforcement Comments

Attached to this memorandum is a set of revised Comments relating to the Commission's recommendation on *Enforcement of Judgments Under the Family Code: Technical Revisions*, 29 Cal. L. Revision Comm'n Reports 695 (1999), which is included in the omnibus bill, AB 1358 (passed out of the Senate Judiciary Committee on June 13, 2000). The bill is a follow-up relating to the major policy revision moving support enforcement responsibilities from the district attorneys to the new local child support agencies under the authority of the new state Department of Child Support Services. The Commission's material was included in AB 1358 as a favor by the Assembly Judiciary Committee.

The revised Comments reflect technical changes requested by the committee consultants who are shepherding the bill through the legislative process. There are no substantive revisions involved. The most significant technical revision involved the beneficial combination of Family Code Sections 5100 (enforcement of child or family support) and 5101 (enforcement of spousal support), which, following their technical amendment, would be substantively identical. Other revisions corrected some obsolete references and made some editorial revisions.

The revised Comments will be printed in the next Annual Report.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

APPENDIX 4

DRAFT REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON ASSEMBLY BILL 1358

Enforcement of Judgments Under the Family Code: Technical Revision

Assembly Bill 1358 was introduced by Assembly Members Kevin Shelley and Sheila James Kuehl. It includes provisions implementing the California Law Revision Commission recommendation on *Enforcement of Judgments Under the Family Code: Technical Revisions*, 29 Cal. L. Revision Comm'n Reports 695 (1999). The revised Comments set out below supersede the comparable Comments in the recommendation.

Code Civ. Proc. § 683.130 (amended). Time for filing application for renewal of judgment

Comment. Subdivision (c) of Section 683.130 is deleted as unnecessary because it duplicates rules in the Family Code. See Fam. Code § 4502. This is not a substantive change. The exemption from renewal requirements for support orders in subdivision (c)(1) is unnecessary because Section 683.310 makes clear that this chapter does not apply to judgments or orders made or entered under the Family Code. Reimbursement for child support under Family Code Section 17402 is treated in the same fashion, as provided in Family Code Section 4502(a). The second sentence of subdivision (c)(1) is misplaced in this section pertaining to the time for filing an application for renewal. The period of enforceability of support orders is governed by Family Code Section 4502(a). The optional renewal procedure in Family Code Section 4502(b) continues the substance of subdivision (c)(2) of this section. See also Fam. Code § 290 (methods of enforcement).

Code Civ. Proc. § 683.310 (amended). Judgments under Family Code

Comment. Section 683.310 is amended to accommodate other exceptions in the Family Code concerning enforcement of judgments and

the likelihood of future revisions in the Family Code. This is a technical, nonsubstantive change. Family Code Section 4502 provides an important exception, making the ministerial renewal scheme under the Enforcement of Judgments Law available as an option for support judgments. Moreover, Family Code Section 291 makes this chapter applicable to enforceability and renewal of judgments for possession or sale entered under the Family Code.

Code Civ. Proc. § 699.510 (amended). Issuance of writ of execution

Comment. The references to specific Family Code sections in subdivision (b) of Section 699.510 are deleted as unnecessary. If the court has made an order under Family Code Section 290 that affects the right to enforce support obligations by writ of execution, the order would have to be complied with. The reference to former Section 291 is obsolete; the new Section 291 does not apply to money judgments, and so is outside the scope of this section. References to Family Code Sections 2026 (reconciliation as amelioration of contempt) and 3556 (duty of support unaffected by failure or refusal of custody or visitation) are not relevant to issuance of a writ of execution under this section. The reference to Family Code Section 5100 *et seq.* is no longer relevant because the time limits on enforceability by writ have been removed from those sections. See former Fam. Code §§ 5100-5101, as amended by 1993 Cal. Stat. ch. 876, §§ 21-22. The general reference to compliance with any additional rules in the Family Code is retained to draw attention to the possibility that special rules may exist or may be enacted in the future.

The references to Family Code Sections 2026 (reconciliation of parties to be considered as ameliorating factor in considering contempt of existing order) and 3556 (duty of support not affected by failure or refusal of custodial parent to implement custody or visitation rights of noncustodial parent) are unrelated to the purpose of this section. Issuance of a writ of execution to enforce a money judgment does not have anything to do with enforcement by contempt. Use of the contempt power to enforce payment of support is distinct from enforcement by a writ of execution. Reference to Section 3556 seems irrelevant since that section provides that there is no excuse. The original intent of subdivision (b) was to recognize the court's authority to control enforcement by writ for amounts that were more than 10 years overdue, including the diligence rule in what became Family Code Section 291.

While the general authority of the court under Family Code Section 290 still exists, there are no limitations on writ issuance stated in the listed sections. Family Code Section 5100 provides that a writ may be used without prior court approval.

Fam. Code § 290 (amended). Methods and time of enforcement

Comment. Section 290 provides the general rule on enforcement of judgments under the Family Code. The introductory clause is added to recognize the exception in Section 291, which makes the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law applicable to judgments for the possession or sale of property under the Family Code. Thus, for example, a judgment for sale would be unenforceable if it is not renewed within the 10-year period of Code of Civil Procedure Section 683.020. However, an action on the judgment may still be possible subject to the statute of limitations in Code of Civil Procedure Section 337.5. See Code Civ. Proc. § 683.020 & Comment. This amendment does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502, 5100 *et seq.*

Fam. Code § 291 (added). Time of enforcement of judgment for possession or sale

Comment. Section 291 applies the general rules concerning the period of enforceability and renewal of judgments in the Enforcement of Judgments Law to judgments for the possession or sale of property under the Family Code. This provision does not affect the rules concerning enforcement of child, family, or spousal support. See, e.g., Sections 4502 (period of support enforceability not limited; optional renewal of support judgments), 5100 (enforcement of support by execution without prior court approval).

See also Section 113 (“property” includes real and personal property).

Fam. Code § 5100 (amended). Enforcement of child, family, or spousal support without prior court approval

Comment. Section 5100 is amended to change the introductory “notwithstanding” clause to refer to Section 290 instead of Section 291. Section 290 provides the general rule concerning judicial discretion in enforcing judgments under the Family Code to which this section is an exception. Additionally, former Section 291 has been repealed and replaced by a new Section 291 that is not relevant to this section.

The scope of this section has been expanded to cover enforcement of spousal support, formerly governed by Section 5101. This is not a substantive change. Separate treatment of spousal support became unnecessary when the rules governing support enforcement were unified. See Sections 290, 290, 4502.

The erroneous reference to former Welfare and Institutions Code Section 11350.7 (repealed by 1999 Cal. Stat. ch. 478, § 15) has been corrected.

Fam. Code § 5101 (repealed). Enforcement of spousal support without prior court approval

Comment. The substance of former Section 5101 is continued in Section 5100 (enforcement of child, family, or spousal support without prior court approval). Separate treatment of spousal support became unnecessary when the rules governing support enforcement were unified. See Sections 290, 4502, 5100.
