

Memorandum 2004-51

**Enforcement of Money Judgment Under Family Code
(Discussion of Issues)**

At its September meeting, the Commission decided to study an apparent gap in the law governing the enforcement of judgments under the Family Code. This memorandum introduces the topic, describes the issues involved, and offers staff recommendations on how they might be resolved. The Commission needs to make decisions regarding the various issues raised. The staff will then prepare a draft tentative recommendation implementing those decisions, for consideration at a future meeting.

EXISTING LAW

The Enforcement of Judgments Law provides a 10-year period for enforcement of a money judgment or a judgment for possession or sale of property. Code Civ. Proc. § 683.020. There is also a procedure for renewing a judgment before it expires. Renewal extends the period for enforcement to 10 years from the date of the application for renewal. See generally Code Civ. Proc. §§ 683.110-683.220.

The enforcement period does not apply to a judgment under the Family Code, except to the extent that the Family Code provides otherwise. Code Civ. Proc. § 683.310. The enforcement period has been expressly applied to a judgment for possession or sale of property under the Family Code. See Fam. Code § 291. However, there is no provision of the Family Code applying the enforcement period to a money judgment.

A support judgment “is enforceable until paid in full and is exempt from any requirement that judgments be renewed.” Fam. Code § 4502(a). A support judgment may be renewed, in order to update the amount owed on the judgment, including any installments that have come due and interest that has accrued. Renewal of a support judgment is *optional* and has no effect on enforceability of the judgment. Fam. Code § 4502(b).

This memorandum considers what enforcement rules should govern a Family Code money judgment *that is not a judgment for support*. Note that the Family Code

does not define the term “money judgment.” The Enforcement of Judgments Law defines it as “that part of a judgment that requires the payment of money.” Code Civ. Proc. § 680.270.

RECENT COMMISSION ACTION

In 1999, the Commission recommended a technical cleanup of the provisions governing the relationship of the Enforcement of Judgments Law and the Family Code. See *Enforcement of Judgments Under the Family Code: Technical Revisions*, 29 Cal. L. Revision Comm’n Reports 695 (1999). Legislation implementing the recommendation was enacted in 2000. See 2000 Cal. Stat. ch. 808.

In addition to recommending technical cleanup revisions, the Commission also recommended a substantive change — that the enforcement period and judgment renewal procedure be applied to a judgment for possession or sale of property under the Family Code. That change was intended as a quick fix to a specifically identified problem (confusion as to what law governs enforcement of a judgment for possession or sale of property under the Family Code) and was not intended as a comprehensive overhaul of the law governing enforceability of a judgment under the Family Code.

In explaining its recommendation, the Commission contrasted a support judgment, which has been repeatedly singled out for special policy treatment, with a judgment for possession or sale of property, which is not subject to the same policy concerns and should presumptively be treated like any other similar judgment:

In recent years, the revisions of the law concerning enforcement and renewal of judgments under the Family Law Act, and now the Family Code, have focused on support enforcement, particularly child support. The policies supporting that legislation do not apply to enforcement of judgments for possession or sale of property. Thus, it is appropriate to clarify the law by applying the orderly general renewal procedure to these judgments.

Enforcement of Judgments Under the Family Code: Technical Revisions, 29 Cal. L. Revision Comm’n Reports 695, 707 (1999) (footnotes omitted).

That line of analysis is sound, as far as it goes. However, it does not account for the fact that there are Family Code money judgments that are not judgments for support. Nor does it account for the full range of enforcement alternatives available. This memorandum discusses (1) the various enforcement alternatives, (2) the special policy considerations that surround support judgments, and (3)

what enforcement rules should govern the various types of non-support money judgments.

ENFORCEMENT ALTERNATIVES

Existing law provides three different rules for the enforceability of a money judgment or a judgment for the possession or sale of property under the Family Code:

- (1) A judgment for possession or sale of property is subject to the general enforcement period and judgment renewal procedure provided in the Enforcement of Judgments Law. See Fam. Code § 291.
- (2) A judgment for support is enforceable until paid. The judgment renewal procedure is available as an option, but does not affect enforceability. A judgment for support is not subject to the equitable defense of laches (except as to any portion that is owed to the state as reimbursement for public assistance). See Code Civ. Proc. § 683.310; Fam. Code § 4502.
- (3) Other miscellaneous money judgments are enforceable at the discretion of the court. See Code Civ. Proc. § 683.310; Fam. Code § 290. There is no fixed time period for enforcement, nor is there any express guarantee that a judgment is enforceable until paid. Renewal of the judgment is not available as an option. Laches is available as a defense. This allows a court to deny enforcement of a judgment where delay in enforcing the judgment is unreasonable and is prejudicial to the other party.

There are two questions that must be answered to determine which rule is best for each type of non-support money judgment. (1) Is the judgment subject to special family-related policy concerns that warrant special enforcement rules? If not, then the judgment should be subject to the general law governing enforcement of judgments (i.e., the 10-year enforcement period). (2) If special treatment is warranted, should the judgment be enforceable until paid, like a judgment for support, or should it be enforceable at the discretion of the court, like all other Family Code money judgments? As the remainder of this memorandum demonstrates, the first question is easier to answer than the second.

Another possibility would be to make changes to the default rule that a Family Code judgment is enforceable at the discretion of the court. For example, it might be appropriate to add specific factors for the court to consider in exercising its discretion. However, the resources we can currently allocate to this project are limited. A simpler approach would be to make minor adjustments within the

existing system of rules, rather than open the door to more fundamental change in the law. This memorandum takes the simpler approach. If the Commission wishes to explore other options, the staff will prepare additional analysis of the possibilities in a subsequent memorandum.

SUPPORT ENFORCEMENT

The Legislature sees support enforcement as a special case. In addition to the exemption from the 10-year enforcement period discussed above, there have been numerous legislative reforms aimed at facilitating the enforcement of a support judgment. See, e.g., Fam. Code §§ 4002 (county may proceed on behalf of child support obligee), 4003 (case involving child support has scheduling priority over all cases that are not also given statutory scheduling priority), 4011 (child support obligation has priority over other debts), 5100 (support obligation enforceable by writ of execution or notice of levy without prior court approval), 4720-4733 (civil penalty for child support delinquency), 17520 (suspension of driver's license or business license for child support delinquency).

Support enforcement is understood to be important to the welfare of children and the economic independence of families. In a November 7, 1995, letter to the Assembly Judiciary Committee (regarding Assembly Bill 274), Assembly Member Kuehl wrote:

In every case, when one household breaks into two, there are losses of economies of scale and a concomitant loss of well-being for all household members. However, this loss is often not equally distributed between the parties. An examination of child poverty statistics shows that children and their custodial parents experience a greater financial loss than noncustodial parents. Child poverty is far more prevalent in single-parent homes. Nearly one in every two children living in single-parent homes lives in poverty compared to nearly one in twelve in two-parent homes.

According to data developed by the Center for Law and Social Policy (CLASP), in California in 1993, 38% of mother-only families and 20% of father-only families were poor. Fully 85% of mother-only families and 39% of father-only families have income less than twice the poverty line.... As these figures indicate, economic hardships more often occur in mother-only families. Such gender differences in economic hardship agree with other researchers (Hoffman, Duncan, Weitzman) who found that women's incomes drop substantially while their former spouses' increase after divorce or separation despite the fact that 70% of divorced women work.

Support not only helps to lift children and former spouses out of poverty, it can help to redress the economic imbalance between spouses that often results from dissolution of marriage. Spousal support also eases the burden on social welfare agencies, by helping children and former spouses avoid the need for government assistance.

JUDGMENT FOR POSSESSION OR SALE OF PROPERTY

The Legislature has already determined that a judgment for possession or sale of property should be subject to the general 10-year enforcement period. The principal context in which a judgment for possession or sale of property will be entered under the Family Code is in the course of marital property division. For example, a decision that a home or vehicle be awarded to one of the parties will result in a judgment for possession of that asset.

Marital property division is not intended to provide for the ongoing support of a former spouse or child. It simply allocates existing assets according to each spouse's share in their ownership.

However, marital property division does have some connection to the policies served by support. A fair division of marital property can provide a sound financial start for a former spouse and can help to provide resources for the support of dependent children. On the other hand, if the marital estate is small or nonexistent then property division will have little effect on child welfare or the economic independence of former spouses. By contrast, support may be ordered irrespective of the size of the marital estate and provides an ongoing and steady supply of funds.

In addition, the practical problems posed by enforcement of support are probably much greater than those involved in enforcing a marital property division. Marital property division is essentially a one time event, supervised by the court, affecting existing assets. Support is an ongoing obligation that may require repeated enforcement efforts in the face of obligor resistance.

While property division has a connection to the policies served by support, that connection is incidental to the primary purpose of property division and is somewhat remote. Both the Legislature and the Commission saw enough of a difference in the policies behind property division and support to justify different treatment with respect to the enforcement period.

MONEY JUDGMENT IN PROPERTY DIVISION

Property division can also give rise to a money judgment. See, e.g., Cal. Civ. Prac. Family Law Litigation § 6:8 (2004) (award of an asset with an equalizing payment). For example, suppose that H and W dissolve their marriage. H is awarded the family home (which is community property), but is ordered to pay W half of the value of the home as an equalizing payment. Under a strict reading of existing law, the award of the home to H is subject to the 10-year enforcement period, but the order to pay W half of its value (a money judgment) is not. The staff sees no reason to treat the two judgments differently with respect to the enforcement period. The substantive goal and effect of each judgment is the same — fair division of marital assets. Inconsistent application of the enforcement period is unfair. The parties should be subject to the same rule.

Given that the Legislature has already decided that a judgment for possession or sale of property should be subject to the 10-year enforcement period, a money judgment in a property division should also be subject to the enforcement period.

OTHER MISCELLANEOUS MONEY JUDGMENTS

Most money judgments under the Family Code will be part of a support judgment or part of a division of marital property. However, there are a number of Family Code money judgments that are neither. Under existing law, those judgments are not subject to the enforcement period. Code Civ. Proc. § 683.310. They are instead subject to the enforcement discretion of the court. Fam. Code § 290.

This section of the memorandum describes the various “non-support” money judgments and considers what enforcement rules should apply to each type of judgment. Are they so similar to a support judgment that they should be enforceable until paid in full? Should enforcement be left to the court’s discretion, as with other types of Family Code money judgments? Or are these judgments like any other non-Family Code judgment, and should therefore be governed by the enforcement period provisions of the Enforcement of Judgments Law?

Many of these judgments do involve the welfare of family members in ways that distinguish them from non-Family Code judgments. These judgments should continue to be subject to special enforcement rules, rather than the general enforcement of judgment rules that govern non-Family Code judgments. However, it is less clear whether a particular type of money judgment should be treated like

a support judgment (enforceable until paid) or like all other Family Code money judgments (enforceable at the discretion of the court).

There is no simple guiding principle that can be used to differentiate between these two cases. Instead we must make subjective determinations as to how important perpetual enforceability would be in each context. These determinations may be difficult to make and harder to explain and defend. For that reason, the staff recommends a conservative approach — absent a compelling need for change, existing law should be preserved.

Types of Non-Support Money Judgments

One difficulty in analyzing non-support money judgments is that it is hard to be sure that we have identified them all. The Family Code covers a range of topics and includes many rights and procedures that might give rise to a money judgment. Any tentative recommendation put forward by the Commission on this topic should include a request that family law experts help to identify any other miscellaneous money judgments that should be included in our analysis.

The money judgments that have been found can be divided into two categories:

- (1) A judgment that involves special family-related policies.
- (2) A “routine” judgment that presents no obvious policy justification for exemption from the enforcement period.

The proper treatment of these types of judgments is discussed below.

Judgments of Special Policy Concern

Some Family Code money judgments involve policy issues that may justify special enforcement rules, even though they do not involve the support of a child or former spouse.

Support of Parents

As a general rule, an adult child is obliged to support a parent who cannot maintain himself or herself by work. Fam. Code § 4400. The welfare and support of elderly parents who cannot provide for themselves is arguably as important to society as the welfare of children and former spouses. Support of parents can help the elderly to avoid poverty, contributing to the quality of their lives and reducing the burden on social welfare agencies. The staff believes that there is an argument for treating a judgment for parental support the same as a judgment for child or spousal support (i.e., judgment enforceable until paid in full).

Support of Putative Spouse

A marriage may be voided or annulled for a number of reasons, including incapacity to consent, consent obtained by fraud or duress, bigamy, and incest. Fam. Code §§ 2200-2210. After annulment of marriage, a person who believed in good faith that the marriage was valid may be treated as a “putative spouse.” In many ways, the law treats a putative spouse as if he or she were an actual spouse. See, e.g., Fam. Code §§ 2251 (division of “quasi-marital” property according to rules governing division of community property), 2253 (child custody). In fact, a court may order support of a putative spouse “in the same manner as if the marriage had not been void or voidable.” Fam. Code § 2254. That seems reasonable. A person who enters in good faith into a relationship believed to be marriage should not be denied the benefits of marriage merely because that person was mistaken or deceived.

Given that the Legislature has already determined that a putative spouse should be eligible for support, the policies applicable to support of an actual spouse would seem to apply with equal force to support of a putative spouse. That is probably the result under existing law. Section 2254 provides for support “in the same manner” as in an actual marriage. That could be read as incorporating all of the provisions that govern spousal support, including the rule that a judgment is enforceable until paid. There is no case law interpreting the meaning of “in the same manner” as it is used in Section 2254 (or its predecessor, Civil Code Section 4455). It might be useful to clarify that such support is subject to the same enforcement rules as a judgment for support of a spouse.

Maternity Support

Under the Uniform Parentage Act, the court may order the father of an unborn child to pay “the reasonable expenses of the mother’s pregnancy and confinement.” Fam. Code § 7637. A support obligation under this section is analogous to a child support obligation. General concerns for the welfare of the child apply to both types of support. In addition, the obligation to provide maternity support may help redress the unequal allocation of hardships that would result if the mother were required to bear the entire financial burden of pregnancy-related costs. Such a judgment should perhaps be given the same treatment as a judgment for support (i.e., judgment enforceable until paid in full).

Child Custody

Under Family Code Section 3028, a court may order financial compensation for periods “when a parent fails to assume the caretaker responsibility or when a parent has been thwarted by the other parent when attempting to exercise custody or visitation rights[.]” Child custody arrangements are designed to advance the best interests of a child. Noncompliance with a custody arrangement can undermine the welfare of the child and impose economic burdens on the other parent (e.g., extra child care costs). Compensation for those burdens would seem to serve policies similar to those governing support — protecting the welfare of children and the economic independence of custodial parents. To the extent that most custodial parents are women, Section 3028 may also be seen as helping to redress gender inequality in the allocation of hardship relating to child custody. A judgment under Section 3028 should perhaps be enforceable until paid.

Domestic Violence

Family Code Section 6342 provides for restitution of certain costs incurred as a direct result of domestic violence. A victim of domestic violence may be in desperate straits, forced by the circumstances to live in a shelter or some other location away from home. Work may be interrupted and wages lost. Medical care may be required. Those circumstances may justify preferential judgment enforcement rules. The gender imbalance in domestic violence may also give rise to special policy concern — women are the victims in around 85% of violent crimes committed by intimates. Bureau of Justice Statistics, U.S. Dep’t of Justice, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends* 1 (1998).

Section 6342 is similar to Penal Code Section 1202.4, which requires a person convicted of a crime to pay restitution to the victim for any costs incurred by the victim as a result of the crime. The principal difference between the two is that the Penal Code requires that the obligor be convicted of the crime and the Family Code does not. Nonetheless, the two types of restitution serve the same policy, making the victim whole for costs resulting from unlawful abuse.

Restitution under Penal Code Section 1202.4 is specifically exempt from the 10-year enforcement period. Penal Code § 1214(d). Presumably, this means that the restitution judgment is enforceable until paid (subject to the equitable defense of laches). If restitution for domestic violence awarded in a criminal case is

enforceable until paid, an order for restitution entered under Family Code Section 6342 should perhaps also be enforceable until paid.

As an added complication, note that Civil Code Section 1708.6 establishes the tort of domestic violence. A judgment for tort damages is subject to the general law governing enforcement of a money judgment. If a domestic violence restitution order is enforceable until paid, it is not clear why a domestic violence damage award should be subject to the 10-year enforcement period. On the other hand, the staff is reluctant to start tinkering with the law governing the enforceability of non-Family Code judgments. That would be beyond the scope of the narrow problem that the Commission decided to address.

Routine Money Judgments

Some types of Family Code money judgments do not raise policy issues that distinguish them from similar money judgments arising under other sources of law.

Fees and Costs

The most common type of “routine” Family Code money judgment is a judgment for reimbursement of attorneys fees or other litigation costs (including transcript fees, expert witness fees, investigation fees, etc.). See, e.g., Fam. Code §§ 2032 (dissolution of marriage), 2255 (annulment of marriage), 3028 (violation of custody order), 3112 (custody investigator), 3134 (district attorney expenses in child custody case), 3153 (counsel appointed for minor child in custody proceeding), 3427 (child custody), 3430 (child custody), 3557 (support), 4002-4003 (county support enforcement costs), 4604 (support security holder fee), 6344 (domestic violence protective order), 6386 (domestic violence protective order), 7553 (paternity determination), 7558 (paternity determination), 7863 (child protection order), 7895 (child protection order), 8800 (adoption).

Although a judgment for fees and costs under the Family Code seems to have no special policy significance, several of the fee provisions relate to matters that are of heightened policy concern, such as support, child custody, and domestic violence. It may be that any connection to those subjects would be enough to raise related policy concerns.

A blanket rule that all attorney fee and cost awards under the Family Code are subject to the 10-year enforcement period might be inappropriate because of special concerns about support, child custody, and domestic violence. An attempt to parse out which attorney fee awards should or should not be subject to the

enforcement period could introduce inconsistency into the law governing enforcement of very similar judgments. In the interest of uniformity, the staff recommends that existing law be preserved. All attorney fee and cost awards entered under the Family Code would continue to be subject to the enforcement discretion of the court.

Civil Action Against Adoption Facilitator

A person who provides certain adoption-related services, but is not an adoption agency, is an “adoption facilitator.” Adoption facilitators are subject to specific consumer protection laws. See Fam. Code §§ 8624 (advertising), 8625 (misrepresentations), 8626 (disclosure of status as adoption facilitator), 8627 (representation of multiple clients), 8628 (disclosure of information provided by birth parents), 8629 (contract rescission period), 8630 (fee disclosure), 8631 (contract requirements), 8632 (verbal explanation of contract terms). A person who is aggrieved by a violation of those laws may bring a civil action “for damages, for rescission, or for any other civil or equitable remedy.” Fam. Code § 8638. Such an action may result in a money judgment.

The staff sees no reason to provide special enforcement rules for a judgment against an adoption facilitator. An action against an adoption facilitator seems indistinguishable from any other action brought against a business that harms a customer by violating consumer protection law.

OPTIONAL RENEWAL

Under existing Family Code Section 4502(b), a support judgment may be renewed in order to update the amount owed on the judgment. That is a useful ministerial device that presents no obvious problem for the judgment creditor or debtor. Availability of the renewal option has no effect on the enforceability of a judgment. The Commission should consider broadening the availability of the renewal option so that it applies to any Family Code money judgment. A judgment for possession or sale of property is already subject to the renewal procedure, in connection with the 10-year enforcement period. Fam. Code § 291.

ALTERNATIVE APPROACHES

There are a number of ways that the Commission might wish to proceed with this study:

Wait for Decision in Pending Appeal

The Commission may wish to table the study until a decision is made in Mr. Wilcox's appeal. It may be that the appeal court's decision will have a significant effect on our analysis and recommendation. Given the current demands on the Commission's resources, it might be sensible to put this project on hold until the court has had a chance to sort things out.

On the other hand, the case may be decided on technical grounds, or may not be certified for publication. Even if the substantive issue is resolved in a published decision, it still might be useful to make clarifying changes to the law. For those reasons, it may make sense to circulate a tentative recommendation right away, in order to gather input from family law practitioners and other interested persons. We would then be positioned to prepare an appropriate recommendation regardless of what the court decides.

Narrow Approach

The specific problem we sought to address in this study was the inconsistent enforcement rules governing different types of judgments entered as part of a marital property division. There should be only one rule for enforcement of a judgment in a marital property division, regardless of whether the judgment to be enforced is for possession or sale of property or for the payment of cash.

We could limit ourselves to solving that specific problem, by providing that the enforcement period applies to a judgment for possession or sale of property or a money judgment, *that is entered as part of a marital property division*. The enforcement period should probably also apply to the division of quasi-marital property in an annulment, which is generally subject to the rules that govern division of community property. In other words, the enforcement period would *only* apply to a judgment that implements property division.

This approach has the advantage of simplicity. It avoids the need to determine, for each type of money judgment under the Family Code, whether the law governing its enforceability should be adjusted.

Note that the "narrow" approach is only narrow in the sense that it focuses on a subset of Family Code judgments. However, that approach would account for all judgments for support or for division of marital or quasi-marital property, which represent most of the judgments entered under the Family Code. The miscellaneous non-support money judgments described above (support of a

putative spouse, maternity support of unwed mother of one's child, etc.) are far less common.

Comprehensive Approach

Since we've already begun the process of reviewing which enforcement rules should apply to the different types of Family Code money judgments, it might make sense to see the process through to the end. This is especially true in light of the fact that it was the narrow focus of our previous reform that led to the existing inconsistent treatment of similar judgments in division of marital property.

In addition to the changes proposed in the narrow approach, the Commission would need to decide, for each of the non-support money judgments described, whether it should be (1) subject to general law on the period for enforcement of a judgment, (2) enforceable until paid in full, or (3) enforceable at the discretion of the court. Consistent with the conservative approach suggested earlier in this memorandum, the staff recommends preserving existing law (judicial discretion) unless a change is clearly called for.

The following nonsupport money judgments should perhaps be made enforceable until paid in full, for the reasons discussed above:

- A judgment for support of a parent.
- A judgment for support of a putative spouse.
- A judgment for maternity support.
- A judgment for breach of a child custody agreement.
- A judgment for restitution of costs resulting from domestic violence.

Existing law would be preserved with respect to the following types of money judgments:

- The various judgments for fees or costs.

The following type of judgment should perhaps be made subject to the general 10-year enforcement period, because it raises no special family-related policy concerns:

- A judgment for damages resulting from violation of the law governing adoption facilitators.

In addition, it may be appropriate to allow optional renewal of any money judgment under the Family Code, regardless of whether the judgment is subject to the 10-year enforcement period.

Transitional Provision

The Commission should also consider the extent to which any changes in the application of the enforcement period would apply to a judgment entered before the operative date of the proposed law.

The doctrine of retrospectivity of limitation statutes is one of constitutional dimension. In California, statutes of limitations, being procedural, are normally retroactively applied to accrued causes of action; but the court must inquire whether, in a given case, that retrospective application may violate due process by in effect eliminating the plaintiff's right. If the time left to file is reasonable, no such constitutional violation occurs, and the statute is applied as enacted. If no time is left, or only an unreasonably short time remains, then the statute cannot be applied at all.

Aronson v. Superior Court, 191 Cal. App. 3d 294, 236, 236 Cal. Rptr. 347 (1987). The 10-year enforcement period is akin to a statute of limitations and is probably subject to the same due process considerations.

When the Enforcement of Judgments Law was first enacted, the 10-year enforcement period was expressly applied to judgments entered before the operative date of the new law. Code Civ. Proc. § 694.030(a). However, a judgment that was rendered unenforceable by imposition of the new law could, in some circumstances, be renewed within two years after the operative date of the new law. Code Civ. Proc. § 694.030(b). In other words, the new law applied retrospectively, but provided a two-year grace period during which some expired judgments could be renewed.

When Family Code Section 291 was amended to apply the enforcement period to a judgment for possession or sale of property under the Family Code, no transitional provision was included. If we now recommend a change in the application of the enforcement period, we should include some sort of a transitional provision (perhaps a provision similar to that in the Enforcement of Judgments Law, providing for retrospective application but with a grace period).

CONCLUSION

The Commission needs to decide whether to take the narrow approach (fixing only the inconsistency in the enforceability of judgments arising in a property division) or the more comprehensive approach (reviewing and possibly adjusting the law governing the enforceability of other types of non-support money judgments). If the Commission decides on the more comprehensive approach, it

needs to decide (1) what rule should govern each type of money judgment described above, and (2) whether to extend the judgment renewal option to all types of money judgments. Under either approach, the proposed law should include a transitional provision with some sort of reasonable grace period. Once these decisions have been made, the staff will prepare a draft tentative recommendation for the Commission's review.

Respectfully submitted,

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