

First Supplement to Memorandum 2004-51

**Enforcement of Money Judgment Under Family Code:
Comments of Prof. Bruch**

We received a letter from Professor Carol Bruch, commenting on the main memorandum. See Exhibit. She argues that family law cases present a unique set of policy concerns, which weigh in favor of relaxed judgment enforcement rules.

She makes the following observations about the nature of family law cases:

- (1) Seventy-five percent of petitioners in family law cases are unrepresented. Any technical bar to enforcement of a judgment poses a trap for those without counsel. See Exhibit p. 1.
- (2) For a range of reasons, a family law judgment creditor is more likely than a creditor in other types of cases to leave a judgment unenforced for long periods. A family law creditor may be “properly afraid that taking action will further anger their former spouse or partner, and that anger will either fuel more litigation or even punitive behavior that may harm them or their children.” *Id.*
- (3) A family law judgment creditor is likely to be economically disadvantaged relative to the judgment debtor, and is more likely to bear the custodial burden for any children. *Id.*
- (4) Because most family law petitioners are either unrepresented or represented by attorneys who specialize in family law, “uniformity within family law cases is much more important than uniformity between family law cases and other civil cases.” *Id.* at 2.
- (5) Judicial discretion as to enforcement is undesirable because some judges will make decisions based on their own idiosyncrasies. This could impose undue financial hardship on the judgment creditor, who “will probably have lived at a lower socio-economic level over the years and may have incurred continuing debts for basic household expenses, including the costs of educating any children.” *Id.*

Professor Bruch concludes that “family law creditors are particularly deserving of solicitude. The policies that have imposed permanent obligations in support cases apply equally to other domestic relations money judgments....” *Id.* at 1. This suggests that *all* Family Code money judgments and judgments for possession or sale of property should be enforceable until fully satisfied.

That approach would have the benefit of simplicity and Family Code-wide uniformity. It would also be consistent with the point raised in the main memorandum, that family property division does have *some* connection to the policy concerns underlying the rule favoring enforcement of a support judgment (i.e., property division can play a role in the economic independence of former spouses and their children).

However, a rule treating any Family Code money judgment or judgment for possession or sale of property as enforceable until fully satisfied would require reversal of the 2000 amendment to Family Code Section 291. That amendment, which was enacted on the Commission's recommendation, applied the 10-year enforcement period and judgment renewal procedure to a judgment for possession or sale of property under the Family Code. The recommendation was based on the Commission's conclusion that the special policies favoring enforcement of a support judgment do not apply to a judgment for possession or sale of property.

In general, it is Commission policy not to recommend a change to a law that was enacted on Commission recommendation, unless there is a clear need to do so. That policy should be kept in mind when considering whether to make any changes to Family Code Section 291.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Exhibit

EMAIL FROM PROFESSOR CAROL BRUCH (11/7/04)

Dear Mr. Hebert,

Thank you for your interesting memorandum. I am happy to comment, although I will limit myself to general policy matters.

Those who are entitled to money judgments in family law cases (whether based on property, support, domestic violence, or the costs of litigation) are generally in a much poorer financial position than those who are directed to pay those amounts. Indeed, I understand that up to 75% or so of the petitioners in family law cases are unrepresented (although the number of respondents is not so high -- a matter that is directly relevant to the matters you are now considering). Further, petitioners are more likely than respondents to have primary custody of their children. These family obligations, which are accompanied by the caregiver's paid employment in perhaps 70% or more of the cases, consume not only the financial resources of the custodian, but also their time and energy. Beyond that, many of these creditors delay seeking enforcement because they are properly afraid that taking action will further anger their former spouse or partner, and that anger will either fuel more litigation or even punitive behavior that may harm them or their children. Any family lawyer can describe numerous experiences along these lines.

Putting burdens in the way of these petitioners as they seek to obtain money that should have been paid to them voluntarily (the money is owed, a court has said so, and that is the honorable thing to do) is simply unfair and counterproductive, as it encourages debtors to ignore their obligations. These creditors are really not comparable to the general class of creditors who seek enforcement of money judgments -- most of those will be either the victims of tortious behavior or parties to commercial transactions. You may have statistical information that I do not; but I would be surprised if any but a small handful of these tort and contract plaintiffs are without the assistance of counsel and in the financial straits that typify family law creditors.

1. In sum, family law creditors are particularly deserving of solicitude. The policies that have imposed permanent obligations in support cases apply equally to other domestic relations money judgments -- delay in pursuing enforcement in a formal manner may be prompted by concerns about the family's safety or the quality of the children's relationship with the debtor, exhaustion caused by the

responsibilities of a single-parent household, or an absence of funds with which to employ counsel.

2. To the extent that rules differ for different kinds of money judgments arising from family law cases, this is an unnecessary trap for the unwary -- whether a lay person or a lawyer. If one must choose, uniformity within family law cases is much more important than uniformity between family law cases and other civil cases. I believe that it is extremely likely that enforcement of family law judgments of all types, if it is undertaken at all, will be handled either in propria persona or by family lawyers -- not by attorneys who deal in civil litigation outside the family court. Perhaps you are in a position to confirm this impression.

3. In no circumstances do I support leaving enforcement to a court's discretion. In recent years I have become increasingly concerned by evidence that trial judges often base their exercises of discretion in family law cases on their own personal idiosyncrasies, ill temper, or emotional reactions to the litigants. Because appeal is beyond the means of all but the wealthiest clients, and the California Supreme Court has made clear that it will not supervise the exercise of trial court discretion with any rigor, even the current law permitting discretion in the enforcement of some family law judgments is unwise. It permits a debtor, who has ignored a court order and thereby imposed undue financial hardship on other family members, to receive judicial vindication or indulgence for his unlawful behavior. This occurs at the price of the creditor's household, which will probably have lived at a lower socio-economic level over the years and may have incurred continuing debts for basic household expenses, including the costs of educating any children.

A family law creditor needs to know how much money she will have as she goes forward. It is dramatically unfair to her (and to those who may have helped her financially over the years) to undo later the financial framework on which the courts have told her to rely. For these very reasons, the federal child support laws now insist on wage withholding where that is possible and provide an arsenal of enforcement tools.

I applaud the Commission's concern with this topic and encourage you to move forward along the lines your memorandum outlines when it emphasizes the virtues of consistency and of preserving the financial integrity of the petitioner's (creditor's) household.

Sincerely yours,

Carol S. Bruch
Visiting Scholar, UCLA Center for the Study of Women
Professor Emerita & Research Professor of Law, UC Davis
(530) 219-5467 (cell)

(310) 454-9953 (land)
csbruch@ucdavis.edu
17368 W. Sunset Blvd. #305
Pacific Palisades, CA 90272