

Memorandum 2005-37

**Enforcement of Money Judgment Under Family Code
(Comments on Tentative Recommendation)**

The Commission circulated a tentative recommendation on *Enforcement of Judgments Under the Family Code* (May 2005). In response, we received a letter from the Executive Committee of the Family Law Section of the State Bar of California ("FLEXCOM") (see attached Exhibit).

This memorandum discusses various issues raised by FLEXCOM.

BACKGROUND

As a general rule, there is a ten-year period for the enforcement of a money judgment or a judgment for possession or sale of property. Code Civ. Proc. § 683.020. That period can be renewed in additional ten-year increments. See Code Civ. Proc. §§ 683.110-683.220.

However, the enforcement period and renewal provisions do not apply to a judgment arising under the Family Code, except to the extent that the Family Code specifically incorporates them. Code Civ. Proc. § 683.310.

The Family Code applies those rules to only one type of judgment, *a judgment for possession or sale of property*. See Fam. Code § 291.

The rules governing a *money judgment* under the Family Code depend on whether the judgment is for support.

A judgment for *support* is enforceable until paid in full. See Fam. Code § 4502. Furthermore, such a judgment is exempt from the equitable defense of laches, except with respect to any part of the judgment that is owed to the state. A support judgment can be renewed, at the creditor's option, in order to update the amount owing on the judgment (to reflect accrued interest and installments that have come due). Renewal has no effect on the enforceability of the judgment. *Id.*

A *non-support* money judgment has no stated time period for enforcement and is not subject to the judgment renewal procedure. See Code Civ. Proc. § 683.020.

The differing rules for enforcement of a judgment under the Family Code are potentially confusing and can produce unfair results. For example, in a marital dissolution the court might (1) award the family home to the wife and (2) order a cash payment to the husband, to offset his community property share in the value of the home. The award of the home (a judgment for possession or sale of property) would be enforceable for up to ten years, subject to renewal of the judgment. The equalizing cash payment (a non-support money judgment) would not be subject to any fixed enforcement period. See, e.g., *Wilcox v. Wilcox*, 21 Cal. Rptr. 3d 315 (2004). It isn't clear why two related judgments, arising from the same proceeding, should be subject to such different rules on the period of enforcement.

PROPOSED LAW

Initially, the purpose of the proposed law was simply to address the issue presented in *Wilcox*. Presumably, all judgments arising from a marital property division should be subject to the same enforcement rules. However, once the broader policy issues were considered, the Commission decided to take a more comprehensive approach.

The proposed law would establish a single rule for enforcement of any judgment arising under the Family Code. It would do so by generalizing the current rules for enforcement of a support judgment. That is, a Family Code judgment of any type would be enforceable until fully paid or otherwise satisfied. It would not be subject to laches (except as to any amount of the judgment that is owed to the state). It could be renewed at the creditor's option (but renewal or non-renewal would have no effect on the enforceability of the judgment). See proposed Fam. Code § 291.

This simplified approach would help to guarantee uniform results and avoid confusion. This is especially important in an area of law where many litigants are self-represented. It would also recognize the special nature of family law proceedings, in which personal and practical complications can lead to significant delays in enforcing a judgment.

The proposed law would also add a provision making clear that the open-ended enforcement period would not affect existing Probate Code procedures for enforcement of a judgment after the death of a debtor or creditor. See proposed Fam. Code § 291(e).

On a related point, the proposed law asks for comment on a provision that arose in the course of the Commission's study of trial court unification. That issue is discussed in detail below (see "Code of Civil Procedure Section 580").

GENERAL COMMENTS

FLEXCOM supports the general policy direction of the proposed law:

[We] wholeheartedly agree with the Commission that legislation should be introduced unifying the treatment of Family Law Awards as related to Renewal of Judgment law and enforceability periods.

See Exhibit p. 2.

In its Tentative Recommendation, the Commission has aptly noted both the economic dynamics and familial concerns that distinguish Family Law Judgments from other civil money or property judgments. The Commission's Policy analysis also discusses practical and logistical reasons that Family Law Judgments can suffer from delayed enforcement, including the often tangled emotional web that exists long after judgment is entered, affecting relationships, children, and, of course, the nuts and bolts of judgment enforcement.

For all the reasons stated herein, and under the Policy Analysis section of the Tentative Recommendation, we too, concur, that simplicity and uniformity should be brought to all Family Law awards with regard to renewal requirements and rights.

See Exhibit p. 10.

Although FLEXCOM agrees with the general policy result of the proposed law, it differs on a few minor substantive points and suggests an alternative drafting approach. Those differences and suggestions are discussed below.

DRAFTING APPROACH

Under the proposed law, the existing Family Code sections on the period for enforcement of a judgment would be repealed (i.e., Sections 291 and 4502). A new Section 291 would be added to set out a general rule.

FLEXCOM is concerned that the repeal of Section 4502 would disrupt "these historically complex statutes and related case analyses." See Exhibit p. 6. FLEXCOM instead suggests that Section 4502 be amended to convert it into a general rule.

FLEXCOM's preference that Section 4502 be preserved in place is a reasonable one. However, the suggested drafting approach would raise a different problem. Section 4502 is currently located within "Part 5. Enforcement of Support Orders" of "Division 9. Support." That is a proper location for existing Section 4502, but would not make sense if the section were converted into a general rule. A typical reader would not think to look to the support division to find rules governing a non-support judgment.

By contrast, Section 291 is in a logical location for a general rule on enforcement of a judgment: "Part 6. Enforcement of Judgments and Orders" of "Division 2. General Provisions."

FLEXCOM's concern could be addressed by making one minor change to the proposed law. Rather than repealing Section 4502, the proposed law could instead be converted into a cross-reference:

4502. The period for enforcement and procedure for renewal of a judgment for child, family, or spousal support is governed by Section 291.

Comment. Section 4502 is amended to provide a cross-reference to the general rule on enforcement of a judgment under the Family Code. This is a nonsubstantive change. Section 291 continues the former substance of this section.

This would provide the continuity that FLEXCOM seeks, while allowing the new general rule to be placed in a logical location within the code. **The staff recommends this approach.**

LACHES

In 2002, the Legislature added a rule barring laches as a defense to enforcement of a support judgment, except as to any part of a judgment that is owed to the state. See Fam. Code § 4502(c); 2002 Cal. Stat. ch. 304, § 1 (SB 1658 (Soto)).

That bill was introduced in response to a case in which enforcement of a support judgment was barred on laches grounds, notwithstanding the rule in Section 4502 that a support judgment is enforceable until paid in full. See Senate Judiciary Committee Analysis of SB 1658 (Soto) at 1 (May 1, 2002). For cases holding laches available as a defense to support judgment enforcement, see *In re Marriage of Fogarty and Rasbeary*, 78 Cal. App. 4th 1353 (2000); *In re Marriage of Plescia*, 59 Cal. App. 4th 252 (1997).

The proposed law takes the Legislature's recent policy decision on laches as a starting point. That is, it continues the existing limitation on laches and generalizes it so that it applies to any Family Code judgment.

FLEXCOM recommends against extending the bar on laches to other types of Family Code judgments. See Exhibit p. 6, n.3:

We believe that by allowing a laches defense to non-support orders (both monetary and property), courts will properly evaluate the equities of allowing enforcement on a case by case basis. In this way, a court may consider the creditor's knowledge of the law and ability to enforce, say, for example, when the creditor is an attorney to whom a direct fee award was rendered, versus a similar order payable to the family law litigant herself. And, distinct from money awards which are not generally payable from a specific 'pot,' property awards often relate to a specific piece of personal or real property, making enforcement and defenses thereto more appropriate for a court's equitable remedies.

Note that FLEXCOM also opposed the addition of the rule barring laches in support cases:

The Family Law Executive Committee of the State Bar and the California Judges' Association have opposed the bill as introduced, expressing the concern that it would eliminate longstanding equitable defenses that ensure laws are fairly applied. There are times when such defenses may be entirely appropriate, the opponents assert, and that decision should be left to judicial discretion instead of completely eliminating any consideration of fairness under the circumstances.

Senate Floor Analysis of SB 1658 (Soto) at 2 (July 3, 2002).

The staff agrees that laches provides an important defense that can be used, in appropriate cases, to avoid an unjust result. If we were writing on a blank slate, it would probably be good policy to allow laches as a defense to the enforcement of any Family Code judgment, including a support judgment. The policies that weigh in favor of an unlimited enforcement period for a Family Code judgment do not eliminate the possibility that there may be cases in which unreasonable delay would make enforcement unjust.

However, we are not writing on a blank slate. It is very unlikely that the Legislature would revisit and reverse a rule enacted, over the objections of FLEXCOM and the California Judges Association, only three years ago.

That leaves the Commission with two alternatives:

- (1) *Expressly provide that a non-support Family Code judgment is subject to laches.* This would be a continuation of existing law. The advantage is that it would allow for consideration of laches in as broad a class of cases as possible, consistent with the existing carve-out for a support judgment. The disadvantage is that it would preserve two different rules for enforcement, where we are trying to provide a single unified rule.
- (2) *Expressly provide that a non-support Family Code judgment is not subject to laches.* This is the approach taken in the proposed law. It would provide a single rule for enforcement of both support and non-support judgments. However, it would preclude consideration of equitable factors that may justify barring the enforcement of a judgment in an unusual case.

The staff prefers the first approach. Laches should be broadly available, even if it adds some complexity to the law.

DEATH OF JUDGMENT DEBTOR OR CREDITOR

The proposed law would make a Family Code judgment enforceable until satisfied. However, this would not affect general law governing the enforcement of a judgment after the death of a judgment debtor or creditor. A Family Code judgment would be treated like any other judgment in that regard.

To that end, proposed Section 291(e) provides:

(e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor.

That is consistent with a recent appellate decision that stated, in dicta, that Family Code Section 4502 “does not address the procedural requirements for reaching the assets of a judgment debtor after that debtor’s death.” *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

After a judgment debtor’s death, the creditor must follow the Probate Code procedure for filing a claim against the debtor’s estate. The claim will then be paid from the estate, along with all other debts, according to a statutory priority scheme. See generally Prob. Code §§ 9050-9054 (notice of administration); 9100-9154 (filing of claim); 11400-11467 (payment of debts).

FLEXCOM did not comment on Section 291(e). However, its suggested redraft of the proposed law omits the provision. See Exhibit p. 8. It isn’t clear from the letter whether that omission was inadvertent or reflects a conscious preference that the language not be included in the proposed law.

The staff made further inquiries. A FLEXCOM liaison indicated that there was some reluctance to add the proposed language. This was based on a generalized concern that the proposed language might be overbroad or might have some unanticipated effect when applied. The preference was to allow *Embree* to stand on its own merits.

There are two problems with that suggestion: (1) There is a conflict between a rule providing for enforcement of a judgment until paid and the Probate Code procedure for claims against a decedent's estate. The Probate Code bars a claim that is not filed within the period it prescribes. It would be helpful if the proposed law were to address that conflict, rather than leave it for the parties and the courts to puzzle out.

(2) *Embree* does not resolve the conflict satisfactorily. In *Embree*, a former spouse sought to enforce an agreement to establish a trust in her favor. The agreement was part of a marital settlement agreement. The trial court held that the action was time barred. The petitioner argued, on appeal, that the agreement to establish the trust was part of spousal support judgment and was therefore enforceable until satisfied, pursuant to Section 4502. The court held that the agreement *was not a support judgment* and Section 4502 was therefore inapplicable. That settled the case at bar, but didn't answer the question of whether the Probate Code claim filing rules would have trumped Section 4502 if the agreement *had* been a support judgment.

The court went on to discuss that question, stating that a support judgment is subject to the Probate Code's claim filing procedures. As a matter of policy, that would seem to be the correct result. The Probate Code procedure balances the interests of existing creditors and innocent heirs and provides certainty and closure. Unfortunately, the court's statement was dictum and does not establish a binding precedent.

It would probably be helpful to solicit further input on this issue. FLEXCOM should be asked to articulate any specific concerns about the language. It would also be helpful to request comment on the issue from the Estate Planning Section of the State Bar.

CHARACTERIZATION OF FAMILY CODE SECTION 290

In describing existing law, the tentative recommendation states that a non-support money judgment under the Family Code is "enforceable at any time,

subject to the discretion of the court.” It cites Family Code Section 290 as authority for that proposition.

Section 290 provides:

290. Subject to Section 291, 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 any other order as the court in its discretion determines from time to time to be necessary.

FLEXCOM agrees with our general characterization of existing law, but disagrees that the period for enforcement of a non-support money judgment is governed by Section 290. See Exhibit p. 4. FLEXCOM feels that Section 290 is properly understood as governing only the *method* by which such a judgment may be enforced, and does not provide “a basis for determination as to the underlying order’s enforceability period.” *Id.*

Instead, the open-ended period of enforcement results from the exemption of a Family Code judgment from the general 10-year time period for enforcement. See Code Civ. Proc. § 683.020.

FLEXCOM may be correct. Section 290 does seem to be more focused on the court’s discretion as to enforcement methods than on timing issues. The case cited by FLEXCOM is consistent with that interpretation (although that specific issue was not essential to its holding). See *In re Marriage of Cordero*, 95 Cal. App. 4th 653, 667 (2002) (Section 290 does not provide discretion to waive interest accrued on support arrearage).

In any event, the issue is a minor one that does not affect the general policy of the proposed law. It is easily addressed. The staff will revise the narrative part of the proposed law to avoid reference to Section 290 in describing the period for enforcement of a non-support judgment.

CODE OF CIVIL PROCEDURE SECTION 580

Background

In connection with the unification of the trial courts, Code of Civil Procedure Section 580(b) was amended to prohibit the granting of certain types of relief in a limited civil case. Relief that could not have been granted in the former municipal courts would not be allowed in a limited civil case in the unified superior court. Existing Section 580(b)(4) provides:

580. ...
(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

...
(4) Enforcement of an order under the Family Code.

Prior to unification, family law cases were within the exclusive jurisdiction of the superior court. See Fam. Code § 200 (“The superior court has jurisdiction in proceedings under this code.”); *In re Marriage of Lackey*, 143 Cal. App. 3d 698, 702-03 (1983) (“The Legislature ... has given to the superior court ‘jurisdiction to inquire into and render such judgments and make such orders as are appropriate concerning the status of the marriage, the custody and support of minor children of the marriage, the support of either party, the settlement of the property rights of the parties and the award of attorney’s fees and costs.’”) (quoting former Civ. Code § 4351).

Because Family Code cases were within the exclusive jurisdiction of the superior court, the Commission tentatively concluded that a Family Code judgment would never be enforced in the municipal court. Code of Civil Procedure Section 580(b)(4) was added to preserve that limitation after trial court unification.

Proposed Law

The proposed law asks whether the limitation stated in Section 580(b)(4) is, in fact, necessary.

A family law proceeding is not a limited civil case. It is a special proceeding that is governed by Court Rules. See Fam. Code § 211 (“Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this code.”). For that reason, it is not clear that enforcement of a Family Code order would ever arise in the context of a limited civil case. If not, then there is no need for a rule prohibiting such enforcement.

Lien Procedure

FLEXCOM provides an example of a procedure under which a Family Code judgment *could* be enforced in a limited civil case. The Code of Civil Procedure permits a judgment creditor to file a lien on a debtor’s cause of action in a pending civil case, including a limited civil case. The judgment creditor can then

intervene in the case and the court may order satisfaction of the judgment from assets at issue in the case. See Exhibit p. 7; Code Civ. Proc. § 708.410 *et seq.*

That example would seem to settle the specific question raised in the proposed law. Section 580(b)(4) does have a practical effect and therefore should not be deleted *on the grounds that it is unnecessary.*

However, a FLEXCOM liaison has since informally suggested that Section 580(b)(4) should be deleted; not because it is unnecessary but because it arguably interferes with the existing lien procedure. (Note that the position taken informally by the FLEXCOM liaison contradicts the conclusion reached by FLEXCOM in its letter. In the letter, FLEXCOM argued that Section 580(b)(4) should *not* be deleted. However that conclusion seems to have been based on a misreading of Section 580(b)(4).)

So the Commission is now faced with a new policy question. Should Section 580(b)(4) be deleted because it inappropriately interferes with a useful judgment enforcement procedure?

Other Special Enforcement Procedures

Staff research has identified one other procedure that could be used to enforce a Family Code judgment in a limited civil case (were it not for Section 580(b)(4)).

Code of Civil Procedure Section 708.210 authorizes a creditor suit against a third person in possession or control of property in which a judgment debtor has an interest, or against a third person who is indebted to the judgment debtor, in order to satisfy the judgment. Code Civ. Proc. § 86(a)(9) specifically provides that such an action is a limited civil case (so long as the amount in controversy is \$25,000 or less).

There may well be other procedures that could be used to enforce a Family Code judgment in a limited civil case.

Discussion

It now appears that there are at least two special judgment enforcement procedures that are available for use in a limited civil case.

The staff could not find any discussion, in case law or in relevant secondary sources, of whether those enforcement procedures may be used to enforce a Family Code judgment in a limited civil case.

Is there a good policy reason to preclude use of those procedures to enforce a Family Code judgment in a limited civil case?

One could argue that Family Law cases present specialized equitable concerns that require special judicial expertise to properly weigh. For example, suppose a judgment creditor files a lien against a judgment debtor's interest in a limited civil case. The debtor asserts a laches defense. Would the judge in the limited civil case be able to properly evaluate whether the creditor's delay in enforcing the judgment was reasonable under the circumstances? Or should the law require that enforcement procedures be limited to cases in the court's "family court" department, where the judges presumably have greater expertise in weighing those considerations?

On the other hand, many enforcement cases will be very straightforward, without any specialized "family-related" issues. In these garden variety judgment enforcement cases, it isn't clear why the creditor should be prevented from using procedures available to creditors in other types of cases.

The staff would like to take additional time to research the various special enforcement procedures that might be available in a limited civil case, in order to evaluate whether any such procedure would present a problem if applied to the enforcement of a Family Code judgment. Further input from FLEXCOM would also be helpful.

NOTICE PROVISION

FLEXCOM suggests that an explanatory notice be provided to family law litigants:

On a final, unrelated topic to the requested comments, but in the interests of justice and to reduce fraud, litigation, misunderstandings and other inequities, we believe that family law litigants would be well served by receiving a required information sheet telling them important information regarding support obligations. Obligees, whether in support or nonsupport cases, can be benefited by knowing certain rights and good practices to protect their interests. Therefore, we recommend enactment of a statute that requires the promulgation of a mandatory information sheet and distribution of this form to every family law litigant whenever the court makes or modifies a family law order or judgment. The single best method of distribution of this Information Sheet has not yet been determined.

See Exhibit p. 7. The text of the proposed notice can be found at Exhibit pp. 9-10.

A notice of this type might be helpful. However, rather than putting the text of the notice in a statute, it would probably be better to assign responsibility to

the Judicial Council to develop the form and content of the notice. The staff will raise the issue with the Judicial Council and get their reaction.

WHAT NEXT?

Some of the issues discussed above may require further public input and analysis. Unless the Commission feels it is ready to approve a final recommendation without further analysis, the staff will contact FLEXCOM, the Judicial Council, and the Estate Planning Section of the State Bar and ask for their assistance in addressing any unresolved matters.

Barring any serious complications, that would still leave us on track to approve a final recommendation at the November meeting. We could then seek introduction of implementing legislation in 2006.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

August 10, 2005

Law Revision Commission
RECEIVED

AUG 17 2005

File: _____

Mr. Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Family Law Executive Committee Comments
Tentative Recommendation - Enforcement of Judgments Under the Family Code

Dear Mr. Sterling:

On behalf of the Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM), I offer the following comments on the California Law Revision's Tentative Recommendation on Enforcement of Judgments Under the Family Code (Study F-1301). The executive committee of the Family Law Section of the State Bar of California is composed of practitioners and adjudicators with extensive experience and expertise in the field of family law.

This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

FLEXCOM's Standing Committee on Financial Issues established a subcommittee to offer responses and recommendations to the CLRC's Tentative Recommendation, dated May 2005, regarding Enforcement of Judgments under the Family Code. The subcommittee's responses and recommendation were subsequently reviewed by FLEXCOM, and approved with modifications. The modified report follows.

The California Law Revision Commission has correctly observed, and sought to rectify, the inconsistent treatments of enforceability periods between the various types of monetary and property awards that may be ordered pursuant to the California Family Code.

The Commission stated that the following three rules currently govern the period for enforcement of a judgment under the Family Code:

- (1) A judgment for support is enforceable until paid in full.

- (2) A judgment for possession or sale of property is subject to the ten-year enforcement period and renewal procedure provided by general enforcement of judgments law.
- (3) All other judgments are enforceable at any time, subject to the discretion of the court.

While we believe that the commission has correctly stated the prevailing law with regard to the first two 'rules', we are less convinced about the third. Notwithstanding our different analysis of this final rule, we wholeheartedly agree with the Commission that legislation should be introduced unifying the treatment of Family Law awards as related to Renewal of Judgment law and enforceability periods.

Our analysis of the Commission's Tentative Recommendation (dated May 2005) begins by examining the various types of awards issued in family law proceedings. In addition to orders concerning marital status, paternity, custody, visitation and injunctive relief, none of which are the subject of these recommendations, family law court awards may generally be classified into one of three categories, examples of which follow:

- **Support Orders (actual, 'add-ons' and 'in the nature of')**
 - Child, Spousal, Family
 - Health & Life Insurance premiums
 - Medical & Dental reimbursements
- **Division of Real & Personal Property**
- **Non-Support, Monetary Orders**
 - Equalizing awards re division of community property
 - Liabilities to Third Parties (credit cards, loan repayments, non-support tuition)
 - Attorney fees & costs

Support Orders

The Commission's statement that Support Orders are 'enforceable until paid in full' finds unequivocal support under Family Code section 4502. Section 4502 entitled "*Renewal of Support Order Judgment. Allowed but not Required*", presently states:

- (a) Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 17402 or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed.
- (b) Although not required, a judgment described in subdivision (a) may be renewed pursuant to the procedure applicable to money judgments generally under

Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. As provided in subdivision (a), the option of renewing the judgment has no effect on the enforceability of the amount due. An application for renewal of a judgment described in subdivision (a), whether or not payable in installments, may be filed:

(1) If the judgment has not previously been renewed as to past due amounts, at any time.

(2) If the judgment has previously been renewed the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

(c) In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment owed to the state.

It should be noted that the phrase 'enforceable until paid in full', in and of itself, does not have the plain meaning one would necessarily expect since at least two courts have stated that the lack of an express legislative intent to exclude the defense of laches was indicative of the Legislature's intent to specifically allow for such a defense. *In re Marriage of Plescia* (1997) 59 Cal.App.4th 252 [69 Cal.Rptr.2d 120]. Since *Plescia*, some courts have continued the application of a laches defense, even extending it to child support, while others disapprove of such an interpretation.

Thus, in 2002, the Legislature amended Section 4502 explicitly precluding the defense of laches to a support obligation, except those obligations that have been assigned to the state. Still unclear in this regard is whether this laches amendment constitutes a substantive change in the law, or merely a procedural one, thereby governing whether said amendment is applied retroactively, or only prospectively. Review of this important issue is presently pending before the California Supreme Court in the case of *In re Marriage of Fellows*, (2004) 121 Cal. App. 4th 607.

Division of Real & Personal Property

The Commission's statement regarding the necessity of renewing property division order finds equal support in Family Code section 291, entitled "*Periods of Enforceability and Renewal*," which presently reads:

A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the

procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

As illuminated in the 2004 case of *In re Marriage of Wilcox*, 124 Cal.App.4th 492; 21 Cal.Rptr. 3d 135, there exists an inherent inequity whereby a spouse must renew his or her property order to extend enforcement beyond 10 years, but, the other spouse need not comply with the same renewal requirements in order to enforce the reciprocal order for payment of a community property equalization obligation.

As discussed below, we will recommend that this statutory scheme be amended in order to bring simplicity, uniformity and equity to enforcement of Family Law Awards.

Non-Support, Monetary Orders

We part ways with the Commission's analysis that Family Code Section 290 stands for the proposition that Non-Support, Monetary Orders, such as those for equalization obligations, are "enforceable at any time, subject to the discretion of the court." (See page 1, lines 13-14, and related footnote 6, of the Commission's Tentative Recommendation dated May 2005.)

We believe that a plain reading of current Family Code § 290, as well as the vast majority of cases discussing this section¹, fairly interprets the language as providing a court with the discretion to employ various and broad *remedies* regarding the *enforcement* of existing Family Code orders, but not a basis for determination as to the underlying order's enforceability period.² As recited in *Marriage of Cordero* (2002) 95 Cal.App.4th 653 [115 Cal.Rptr.2d 787], "Family Code section 290 merely counts the ways in which a support order 'may be enforced' and says the court may make any other order as the trial court 'in its discretion' may be 'necessary.' "

Presently, Section 290, entitled, "*Methods of Enforcement*," reads:

Subject to Section 291, 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 any other order as the court in its discretion determines from time to time to be necessary.

¹ And its predecessor, Civil Code § 4380.

² Interestingly, and notwithstanding CLRC's 1999 comment to the 2000 amendment of 290, it appears the court's rare use of '290' type language to support limited defenses stems from *Messenger v. Messenger* (1956) 46 Cal.2d 619 [297 P.2d 988], interpreting Civil Code section 139, the precursor to Family Code 290, twice removed. Referring to a 1951 amendment to C.C. 139, the *Messenger* court said, "... a provision was added that orders thereunder 'may be enforced by the court by execution or by such other order or orders as in its discretion [the trial court] may from time to time deem necessary.' Under this provision the trial court now has discretion to determine in each case whether execution is an appropriate remedy for enforcing its order. In the present case the court found on sufficient evidence that to permit the issuance and enforcement of a writ of execution would discredit defendant professionally and impair his ability to make the monthly payments and discharge the arrearages."

However, regarding Non-Support, Monetary orders, we do note a substantial confusion regarding Renewal procedures and therefore, enforceability periods, as a result of the interplay between Code of Civil Procedure § 683.310 and Family Code § 4502. Code of Civil Procedure section 683.310, entitled, “*Chapter No[t] Applicable to Judgments or Orders Under Family Code,*” presently states:

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

As a practical matter and from personal experience, some court clerks charged with the duty of issuing Renewals of Judgments, often interpret C.C.P. § 683.310, as disallowing Renewals of Judgment for Non-Support, Monetary Orders. Such an interpretation is not unreasonable when the section is read as neither requiring compliance with, *nor offering the advantages of*, the Renewal Chapter. A clerk's position is further bolstered by C.C.P. § 683.310's exception clause referencing the Family Code, which only in section 4502, permits Renewals for Support. Presently, though, the Family Code is silent as to permitting Renewals for Non-Support, Monetary orders.

Therefore, we are left with a statutory scheme that exempts Non-Support, Monetary Orders from the 10 year limitation period, but, so too are these judgment creditors unfairly precluded from availing themselves of the Chapter's valuable benefits by use of the Renewal process. These benefits include (1) the ability “to freshen” an order for purposes of interstate or foreign enforcement; (2) a straightforward, court sanctioned mechanism of placing a debtor on notice that the debt remains, allegedly, owed (as well as providing related contest remedies available to the debtor in response thereto); and (3) combining of accrued principal and accrued interest into a new lump-sum judgment amount.

PUBLIC POLICY

In its Tentative Recommendation, the Commission has aptly noted both the economic dynamics and familial concerns that distinguish Family Law Judgments from other civil money or property judgments. The Commission's Policy analysis also discusses practical and logistical reasons that Family Law Judgments can suffer from delayed enforcement, including the often tangled emotional web that exists long after judgment is entered, affecting relationships, children, and, of course, the nuts of bolts of judgment enforcement.

For all the reasons stated herein, and under the Policy Analysis section of the Tentative Recommendation, we too, concur, that simplicity and uniformity should be brought to all Family Law awards with regard to renewal requirements and rights.

The Family Law Section of the State Bar of California according makes the following recommendations:

RECOMMENDATIONS

While we support the Commission's amendments in principal, we recommend a different statutory implementation, still accomplishing the intended results, but with a minimum of disruption to these historically complex statutes and related case analyses. In this regard, we suggest, (1) minor clean-up language to section 290; (2) repeal of section 291, in toto; and (3) extension of Renewal exemptions and rights to non-support awards, within section 4502.

Specifically, we recommend:

1. All Family Law Orders (and judgments), whether for sale or possession of property, equalization awards, attorney fees, support or other awards, be exempt from the 10 year Renewal requirements.
2. All Family Law Orders be *entitled* to optional Renewal rights, at the creditor's prerogative.
3. Continue present law with laches being *unavailable* as a defense to non-assigned support obligations, while allowing its assertion to non-support, family law awards³. (In this way, our proposed language differs from the Commission's proposed language of section 291, whereby the Commission's proposal allows laches to be *unavailable* to *any* non-assigned Family Code order.) A minority of the committee recommends reviving the defense of laches to support obligations, at least with regard to accrued interest.
4. Amend the existing sentence of 4502(b), "**As provided in subdivision (a), the option of renewing the judgment has no effect on the enforceability of the amount due.**" to more accurately reflect legislative intent that *failure* to renew has no effect on the enforceability of the amount due. While a Renewal is not prima facie evidence that the renewed debt remains owed, it is not accurate to state that the renewal itself has no effect on the enforceability of amount owed. For example, by its very nature, a renewal affects the amount owed by combining principal and interest into one lump sum. As another example, relating to certain equitable arguments, the court may consider as relevant the fact that a debtor was given notice of an alleged debt vis-a-vis the renewal process.
5. Regarding the Commission's requested comments (see page 9, lines 36-39 of the Tentative Recommendation), and although not incorporated into the proposed statutory language set forth herein, we see no reason that the Commission's simplified proposal to the renewal section not be amended to "An application for renewal of a judgment described in subdivision (a) may not be filed if the judgment was renewed at any time in the preceding

³ We believe that by allowing a laches defense to non-support orders (both monetary and property), courts will properly evaluate the equities of allowing enforcement on a case by case basis. In this way, a court may consider the creditor's knowledge of the law and ability to enforce, say, for example, when the creditor is an attorney to whom a direct fee award was rendered, versus a similar order payable to the family law litigant herself. And, distinct from money awards which are not generally payable from a specific 'pot,' property awards often relate to a specific piece of personal or real property, making enforcement and defenses thereto more appropriate for a court's equitable remedies.

five years.” If amended in this way, we do suggest a comment that said amendment is not a substantive change to the law.

6. Regarding the Commission’s requested comments to Code of Civil Procedure section 580, we believe that such an amendment **could adversely** affect a Family Law litigant’s ability to enforce their order, and therefore, we do not endorse such an amendment. While not all possible effects have been analyzed, one instance of where the proposed amendment would curtail family law remedies would be when a support creditor, for example, sought to utilize the enforcement remedies contained within Code of Civil Procedure section 708.410, et. seq. These sections provide that a judgment creditor may file a *lien on a pending court action* in order to seek enforcement against their debtor’s right to receive money in a separate, but pending action. This remedy applies equally whether the debtor’s action lies in a limited or unlimited civil action.
7. On a final, unrelated topic to the requested comments, but in the interests of justice and to reduce fraud, litigation, misunderstandings and other inequities, we believe that family law litigants would be well served by receiving a required information sheet telling them important information regarding support obligations. Obligees, whether in support or non-support cases, can be benefited by knowing certain rights and good practices to protect their interests. Therefore, we recommend enactment of a statute that requires the promulgation of a mandatory information sheet and distribution of this form to every family law litigant whenever the court makes or modifies a family law order or judgment. The single best method of distribution of this Information Sheet has not yet been determined. A sample draft of such an Information Sheet is attached.

PROPOSED AMENDMENTS

FAM. CODE § 290. (amended). Methods of Enforcement

~~Subject to Section 291, a~~ 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 any other order as the court in its discretion determines from time to time to be necessary.

FAM. CODE § 291. (repealed). Periods of Enforceability and Renewal

~~A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.~~

FAM. CODE § 4502. Renewal of Support Orders Entered Pursuant to this Code; Judgment Allowed but not Required

(a) Notwithstanding any other provision of law, any judgment or order entered pursuant to this Code, including, but not limited to, a judgment for equalization payments, attorney fees, costs, child, family, or spousal support, including a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 17402 or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed.

(b) Notwithstanding any other provision of law, a judgment or order for possession or sale of property made or entered pursuant to this code is enforceable until fully performed and is exempt from any renewal requirements.

~~(b)~~ (c) Although not required, a judgment described in subdivisions (a) and (b), may be renewed pursuant to the procedure applicable to money judgments generally under Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. ~~As provided in subdivision (a), the option of renewing the judgment has no effect on the enforceability of the amount due.~~ An application for renewal of a judgment described in subdivision (a), whether or not payable in installments, may be filed:

- (1) If the judgment has not previously been renewed as to past due amounts, at any time.
- (2) If the judgment has previously been renewed the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

~~(e)~~ (d) In an action to enforce a judgment for child, family, or spousal support, the ~~defendant~~ obligor may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment owed to the state.

[COMMENTS: The inclusion of equalization payments, attorney fees, and costs in subdivision (a), is a nonsubstantive change since the Renewal Chapter commencing at C.C.P. § 683.010, et. seq., has, ab initio, excluded Family Code Orders from Renewal requirements, unless otherwise dictated by the Family Code. (See C.C.P. § 683.310.) And, the Family Code has never subjected any monetary order to Renewal requirements. However, subdivision (b) does constitute a substantive change in the law as orders for Sale or Possession of property were governed by Renewal requirements pursuant to former Family Code § 291. This amendment is not intended to affect a person's right to assert other equitable defenses which may exist in statutory or case law.]

Important Information about your Court Order

Almost all child support obligations and most spousal support obligations are subject to modification for installments that have not yet matured. The basis for such modifications include change of financial or other circumstances, change in visitation or custody, as well as many other factors. The court cannot order a retroactive modification. If you believe your order should be modified, either up or down, immediately seek the assistance of an attorney, the Department of Child Support Services or your local family law facilitator's office within the courthouse. The following are some recommendations regarding issues that may affect your obligation to pay or receive money, in the future. An attorney can advise you further.

OBLIGOR

(A PERSON WHO IS ORDERED TO PAY MONEY.)

- 1.) Obtain an "Acknowledgment of Satisfaction of Judgment" from the Obligee once you have paid your entire obligation. You may obtain blank forms from the forms window at your local courthouse, or on the web. If the Obligee does not comply with your demand to furnish a signed Acknowledgment, you may ask the court to issue one. You may periodically request that the Obligee provide an Acknowledgment of Satisfaction of Matured installments, thereby proving that your obligation is current through a particular date.
- 2.) Until you have obtained a signed Acknowledgment of Satisfaction of Judgment, **never** discard any of your proof that you have paid money to the Obligee. Such proof would include cancelled checks, money order receipts, bank statements, etc. Although not recommended, if paying in cash, always obtain a signed receipt from the Obligee. Also, save copies of all correspondence you send, and those that you receive, regarding your obligation.
- 3.) Seek the advice of an attorney prior to entering into any agreement with the Obligee. In the event that you and the Obligee agree to modify your obligation, be sure to do so only in writing, signed by both parties with notarizations. Never enter into any oral agreements.
- 4.) Be sure that the Obligee always has a way of communicating with you, preferably in writing.
- 5.) If you do not pay what has been ordered, interest will be added and penalties may be charged.

OBLIGEE

(A PERSON WHO IS ENTITLED TO RECEIVE MONEY PURSUANT TO A COURT ORDER.)

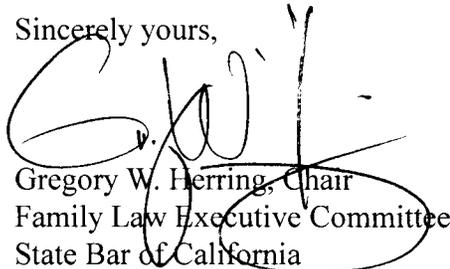
- 1.) Until the Obligor has completely satisfied his obligation, keep copies of documents regarding your obligation, including check copies, bank statements, correspondence (both sent and received), and everything else which reflects the payments the Obligor did, and did not, make.
- 2.) Seek the advice of an attorney prior to entering into any agreement with the Obligor. In the event that you and the Obligor agree to modify your obligation, be sure to do so only in writing, signed by both parties with notarizations. Never enter into any oral agreements.
- 3.) Even if the Obligor is not presently delinquent on his obligation, seek advice about creating a lien against any real property interests that the Obligor may have now, or may acquire in the future.
- 4.) Be sure the Obligor always has a way of communicating with you, preferably in writing.

Don't sit on your rights. If an Obligor is not complying with their obligation, see an attorney.

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I hope that the Family Law Executive Committee's comments and suggests have been helpful. If we can be of further assistance in this regard, please do not hesitate to contact me.

Sincerely yours,



Gregory W. Herring, Chair
Family Law Executive Committee
State Bar of California

cc: Members, FLEXCOM
Larry Doyle, Chief Legislative Counsel, State Bar of California
John Snetsinger, Co-Chair, Board Committee on Communications & Bar Relations
David Marcus, Co-Chair, Board Committee on Communications & Bar Relations
Anthony Williams, Director of Governmental Affairs, State Bar of California
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