

First Supplement to Memorandum 2005-37

**Enforcement of Money Judgment Under Family Code
(Further FLEXCOM Comments)**

The Executive Committee of the Family Law Section of the State Bar of California ("FLEXCOM") has submitted additional comments. Its letter is attached as an Exhibit and is discussed briefly below. Except as indicated, all statutory references in this memorandum are to the Family Code.

Section Locations

FLEXCOM supports the staff recommendation on the location and general content of Sections 291 and 4502. See Exhibit p. 1.

Specifically, a new Section 291 would be added to provide a general rule on enforcement of a Family Code judgment. Section 4502 would be amended in place, to provide a cross-reference to Section 291.

Effect of Non-Renewal

Under the proposed law, renewal of a judgment is optional and has no effect on the period for enforcement of the judgment. Proposed Section 291(b) provides: "The option of renewing the judgment has no effect on the enforceability of the judgment or order."

FLEXCOM prefers the following: "The failure to renew a judgment or order entered pursuant to this code has no effect on its enforceability." See Exhibit p. 1.

Does the reference to *nonrenewal*, standing by itself, imply that *renewal* could have an effect on enforceability? A slight modification of FLEXCOM's language would eliminate that implication: "Renewal or nonrenewal of a judgment or order entered pursuant to this code has no effect on its enforceability." **The staff recommends use of that language.**

Laches

FLEXCOM renews its support for the availability of laches as a defense to the enforcement of a nonsupport Family Code judgment or order. However, that should not be read as an endorsement of the existing rule limiting the availability of laches as a defense to enforcement of a support judgment. See Exhibit p. 1.

Effect of Death of Judgment Debtor

FLEXCOM notes that a support order can expressly provide that the obligation to provide support is not terminated by the death of the obligor or obligee. See Exhibit p. 1. FLEXCOM suggests that the Commission give more thought to whether that the proposed law might inadvertently affect such a provision.

The staff has requested that the Estate Planning Section of the State Bar review the proposed law and offer its input on the issue. We should have that input before the Commission's November meeting.

Orders and Judgments

FLEXCOM suggests that the proposed law's references to a "judgment" should be revised to refer to a "judgment or order" to encompass orders that are not judgments. See Exhibit pp. 1-2:

Family law cases frequently include orders that are not judgments but which deal with support, property, or payment of attorney fees, and may require enforcement, and the law should make it clear that parties in cases under the Family Code should have the same enforcement rights for court orders that are not judgments as they have, or will have, for judgments.

The staff will examine this drafting issue before preparing the next iteration of the proposed law.

Enforcement of Family Code Judgment in Limited Civil Case

FLEXCOM supports the deletion of Code of Civil Procedure Section 580(b)(4), which prohibits enforcement of a Family Code judgment in a limited civil case. It feels that the existing prohibition could deny useful enforcement tools to a family law judgment creditor. See Exhibit p. 2. FLEXCOM suggests that any equitable considerations requiring a judge with specialized family law experience could perhaps be handled through some sort of referral process. *Id.*

Notice to Obligors and Obligees

FLEXCOM has proposed that an instructive notice be provided to family law judgment obligors and obligees. The staff recommended that the drafting of the notice be delegated to the Judicial Council, rather than spelled out in the statutory text. FLEXCOM supports that approach. See Exhibit p. 2.

The staff has consulted informally with staff of the Judicial Council. They too would probably prefer a statutory delegation over a statutory text. In addition to allowing greater flexibility as to the phrasing of the notice, a delegation would also provide flexibility as to the form the notice would take. This would allow use of informal mechanisms (such as the Internet) that are more easily and expeditiously created or modified.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Exhibit

**COMMENTS OF EXECUTIVE COMMITTEE OF FAMILY
LAW SECTION OF STATE BAR (BY EMAIL)**

1. We endorse the modification of Family Code Sec. 4502 as recommended on p. 4 of Memo 2005-37. Further in a final review of existing 4502(b) language, as well as our previous recommendation, we believe that the following language more appropriately addresses renewals, or rather lack thereof, as related to Family Code judgments: **The failure to renew a judgment or order entered pursuant to this code has no effect on its enforceability.** Since we are recommending that non-support judgments and orders also be exempt from renewal requirements, this same language should also be incorporated into the newly proposed section 291.”

2. We endorse the modification of the Family Code to expressly preserve laches for non-support orders (as recommended by CLRC Staff on p. 6 of Memo 2005-37), but we note that this endorsement of laches only for non-support Family Code orders is not intended as an implied endorsement of the Legislature's 2002 decision to eliminate laches as a defense in enforcement of support orders, a decision made over Flexcom's earlier objection.

3. We are unclear about the impact of proposed Family Code § 291(e), dealing with enforcement of a Family Code judgment after the death of a judgment debtor, on support orders. A child support order is not terminated by the death of the support-paying parent. While most spousal support orders terminate on the death of either party, by stipulation a judgment may provide that the payor's obligation to pay spousal support to the payee is not terminated by the death of the payor. It is unclear to the subcommittee, which does not pretend to expertise in probate matters, whether Family Code § 291(e) would vitiate what has been understood to be ongoing support obligations of the payor after the payor's death. We recommend that CLRC assure itself that proposed Family Code § 291(e) will not cut off the rights of support obligees. As to non-support provisions of judgments and orders made in Family Code cases, we have no reason to think that the Probate Code claim filing rules are inappropriate.

4. We also are concerned that whenever the proposal references "judgments" that the proposed statute also references "orders" where appropriate (whether pendente lite child support orders, post-judgment child or spousal support orders, or other orders). Family law cases frequently include orders that are not judgments but which deal with support, property, or payment of attorney fees, and may require enforcement, and the law should make it clear that parties in cases

under the Family Code should have the same enforcement rights for court orders that are not judgments as they have, or will have, for judgments. We therefore suggest that a specific code section be enacted to provide that, unless otherwise provided by statute or case law, the laws governing enforcement of judgments shall also apply to enforcement of orders involving money or property entered in Family Code cases. We believe that "money or property" would cover every Family Code order or judgment that might require utilization of the Enforcement of Judgments Act for enforcement. We have no opinion whether "entered in Family Code cases" is too narrowing. In addition, but not as an alternative to the foregoing suggestion, we suggest that wherever an enforcement of judgment statute references "judgment," that the words "or order" be inserted; and similarly that where it references "judgments," that "or orders" be inserted.

5. We support having the CLRC Staff delete references to Family Code sec. 290 in describing the period for enforcement of non-support Family Code orders and judgments.

6. We formally support the removal of Code of Civil Procedure § 580(b)(4) from the code. Regarding how equitable defenses to enforcement of a Family Code order or judgment should be decided, i.e., by the judge hearing the limited jurisdiction case or in the Family Law court, the issue should probably be adjudicated in the limited jurisdiction court (as it is a Superior Court), but perhaps the law could authorize the limited jurisdiction judge to refer the equitable defenses to the Family Law court if the limited jurisdiction judge does not want to handle it. The issue is analogous to that of an interpleader. The subcommittee feels strongly, however, that the problem of how or where equitable defenses should be adjudicated should not be used to deprive Family Code obligees from two valuable tools for enforcement of judgments that are available to every other kind of judgment creditor. The subcommittee feels that on balance it is much more important to preserve Family Code support creditors' ability (i) to lien limited jurisdiction causes of action per Code of Civil Procedure § 708.410, et seq., and (ii) use the limited jurisdiction courts to file creditor's suits against third parties who are in possession or control of property in which the Family Code obligor has an interest, or who are indebted to the Family Code obligor, per Code of Civil Procedure § 708.210 et seq., than to worry about whether a non-family law judge will be able to handle the equitable defenses that might on occasion, but surely not in every case, arise when a Family Code creditor is trying to enforce her/his Family Code judgment or order.

7. We endorse the suggestion in Memo 2005-37 that the notice to Family Law litigants about support obligations should be produced via the Judicial Council rather than the Legislature.