

Memorandum 2005-45

**Enforcement of Money Judgment Under Family Code  
(Draft of Recommendation)**

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BACKGROUND

A Family Code judgment is not subject to the general rules on the time period for enforcement or renewal of a judgment, except to the extent that the Family Code provides otherwise. Code Civ. Proc. § 683.310.

The Family Code applies the general enforcement period and renewal rules to only one type of judgment, a judgment for possession or sale of property. Fam. Code § 291.

A Family Code money judgment is subject to different rules. A **support** judgment is expressly made enforceable until paid in full, may be renewed at the option of the judgment creditor, and is generally exempt from the equitable defense of laches. Fam. Code § 4502.

There is no fixed time period for the enforcement of a **non-support** money judgment. Nor are there provisions authorizing renewal of the judgment or exempting the judgment from laches.

The Commission examined the various timing rules for enforcing a Family Code judgment and tentatively recommended that all Family Code money judgments and judgments for possession or sale of property be subject to the same enforcement period: a Family Code judgment should be enforceable until fully satisfied.

The Commission made a number of minor changes to its tentative recommendation in response to comments received from the Executive Committee of the Family Law Section of the State Bar ("FLEXCOM"). See Minutes (September 2005), pp. 5-6 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)). In addition, two questions were identified for further analysis: (1) How would the proposed law affect enforcement of a Family Code judgment after the death of the judgment debtor? (2) Can a Family Code judgment be enforced in a limited civil case? Those issues are discussed in this memorandum.

A draft recommendation is attached for the Commission's review. If approved, with or without changes, the staff will seek to find an author to introduce implementing legislation in 2006.

#### ENFORCEMENT OF FAMILY CODE JUDGMENT AFTER DEATH OF JUDGMENT DEBTOR

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 Code Civ. Proc. § 686.020 (after death of judgment debtor, enforcement of judgment governed by Probate Code); Prob. Code §§ 9000-9354 (creditor claim against decedent's estate), 19000-19403 (creditor claim against revocable trust of deceased settlor).

FLEXCOM expressed uncertainty about whether the proposed language might have some unintended consequence on how a Family Code judgment is enforced after the death of the judgment debtor. The staff contacted the Executive Committee of the Trusts and Estates Section to ask for their input on the issue. The Executive Committee's response is attached as an Exhibit.

The Executive Committee unanimously supports the proposed law and agrees with the staff's analysis of the issues relating to enforcement of a judgment after the death of the judgment debtor.

The Executive Committee also suggests that it might be helpful to add language to proposed Section 291(e) to specifically reference the creditor's claim procedure. Such a reference would have educational value, especially for self-

represented litigants. However, any reference should be kept very general and open-ended, so as to avoid any implication that the reference is intended to be comprehensive and limiting.

**That approach has been implemented in the attached draft**, by revising proposed Family Code Section 291(e) as follows:

- (e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor, including any requirement that a judgment creditor file a timely creditor's claim after the death of a judgment debtor.

#### ENFORCEMENT REMEDIES

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.

Prior to unification, family law matters were within the exclusive jurisdiction of the superior court. Fam. Code § 200. Consistent with that limitation, Code of Civil Procedure Section 580(b)(4) was amended to provide that a family law judgment or order cannot be enforced in a limited civil case:

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.

The Commission tentatively recommended the deletion of Section 580(b)(4), on the grounds that it is not necessary (on the assumption that any court action involved in enforcing a Family Code judgment would be part of a family law proceeding and would therefore not be part of a limited civil case).

That assumption was incorrect. The Commission learned that there are special judgment enforcement procedures that could be used to enforce a Family Code judgment in a limited civil case: a creditor's suit (Code Civ. Proc. § 708.210 *et seq.*), or the filing of a lien against a debtor's interest in a pending case (Code Civ. Proc. § 708.410 *et seq.*).

Section 580(b)(4) would seem to bar the use of those remedies to enforce a Family Code judgment in a limited civil case. Is that an appropriate result?

In order to answer that question, the staff has done additional research on judgment enforcement remedies, to determine which remedies might involve action in a limited civil case. The results of that research are discussed below. The research has also identified a new issue, which is discussed first.

#### NEW ISSUE: COURT SUPERVISION OF JUDGMENT ENFORCEMENT

In reviewing the law governing judgment enforcement remedies, the staff identified an additional complicating factor. Family Code Section 290 provides, in relevant part:

[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.

That language continues the substance of former Civil Code Section 4380. In turn, Section 4380 continued language from former Civil Code Section 139.

On its face, Section 290 appears to be a simple grant of discretion as to the methods by which a judge may enforce a Family Code judgment.

However, the courts have construed the language differently. In cases interpreting the predecessors to Section 290, the court held that the language requires court approval before the issuance of a writ of execution to enforce a Family Code judgment. See *In re Marriage of Farner*, 216 Cal. App. 3d 1370, 1377, 265 Cal. Rptr. 531 (1989) (“In most family law matters execution requires court approval....”); *Bonner v. Bonner*, 63 Cal. App. 3d 156, 167, 133 Cal. Rptr. 592 (1976) (“[In] a dissolution case a writ of execution is not issued as a matter of course and requires a court order.”); *Messenger v. Messenger*, 46 Cal. 2d 619, 630, 297 P.2d 988 (1956) (“the trial court now has discretion to determine in each case whether execution is an appropriate remedy for enforcing its order.”).

This is an exception to the general rule that a writ of execution is issued by the clerk of the court, ministerially, without an authorizing court order. Code Civ. Proc. § 699.510.

Presumably, Section 290 also reserves to the family court the authority to enforce a Family Code judgment by appointment of a receiver, contempt, or by any other type of court order.

This raises two related policy questions: Should the family court be supervising the enforcement of Family Code judgments in this way? If so, what types of remedies should be supervised? In order to answer these questions it is

necessary to identify the policy rationale for family court supervision of writs of execution and then consider how that policy is implicated in each type of enforcement remedy.

### **Alternative View**

Before discussing the merits of family court supervision of judgment enforcement, it should be noted that there is some disagreement about whether the judicial construction of Section 290 is correct.

In the course of researching the effect of Section 290, the staff asked FLEXCOM for input on how the provision is understood by practitioners. We received an informal response from one of FLEXCOM's members, Raymond R. Goldstein.

Mr. Goldstein believes that the authorities have misconstrued the law. He maintains that the original predecessor to Section 290 was never intended to require judicial approval of a writ of execution. It merely established broad judicial discretion as to the means of enforcement.

However, regardless of whether *Messenger* was decided correctly, it has been the law since 1956 and has not been reversed by any court. Nor has it been reversed by legislative act. To the contrary, the relevant language in Section 290 has been reenacted twice. In addition, the Legislature added an express exemption for support judgments (in Family Code Section 5100):

5100. Notwithstanding Section 290, a child, family, or spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 17522 of this code without prior court approval.

That provision only makes sense as a response to the judicial interpretation of Section 290. If Section 290 does not require judicial approval before issuance of a writ of execution, then there would be no need for Section 5100. See also Ahart, *Cal. Prac. Guide: Enforcing Judgments & Debts* § 6:349 (The Rutter Group 2005) ("A court order is required to obtain a writ of execution to enforce a Family Code judgment that is **not** for child, spousal or family support.") (emphasis in original).

That history suggests legislative acquiescence in the court's interpretation of Section 290 and its predecessors.

However, Mr. Goldstein reports that he has personally applied for writs of execution in family law cases, in most of the state's 58 counties, and has never

been required to obtain a court order before issuance of a writ. At a minimum, this suggests a significant gap between the judicial interpretation of Section 290 and the practices of some court clerks.

### **Rationale for Court Supervision of Family Code Judgment Enforcement**

The opinion in *Bonner v. Bonner* sheds some light on why the court's approval should perhaps be required before a Family Code judgment is enforced: "To the extent that a judgment of dissolution is not self-executing in respect of any division of property therein ordered, the court retains jurisdiction to make any such further orders as are appropriate to compel obedience to its judgment." *Bonner*, 63 Cal. App. 3d at 166. This may be a specific example of the general rule that a "court of equity retains inherent jurisdiction to oversee and enforce execution of its decrees." *Id.*

Continuing jurisdiction to oversee enforcement of a Family Code judgment allows the court to ensure that the equitable and practical considerations that were balanced in fashioning the judgment are not undone through the process of enforcement. For example:

- *Bonner* indicates that it is traditional for the family court to require that any home sold for purposes of marital property division must be sold for the appraised value or higher. *Bonner*, 63 Cal. App. 3d at 167-68. This protects the interests of all parties involved in the proceeding. This condition would not be present in the typical sheriff's sale carried out pursuant to a writ of execution. By requiring judicial approval of execution, Section 290 allows the court to put such safeguards into place.
- In some cases, levy on personal property might have a significant deleterious effect on the judgment debtor's ability to satisfy an ongoing support obligation. Suppose that H is self employed as a backhoe operator and owns his own equipment. H has not satisfied a money judgment arising from the dissolution of his marriage to W, but **has** been making monthly child support payments. W seeks a writ of execution to enforce the nonsupport judgment and instructs the levying officer to seize and sell the backhoe. Assuming that the "tools of the trade" exemption (Code Civ. Proc. § 704.060) is not sufficient to prevent sale of the backhoe, H could lose his means of livelihood, thereby disrupting his ability to make support payments. This may not be in the best interests of the dependent child. The family court might prefer a less disruptive enforcement remedy.
- Suppose that the only way to satisfy a money judgment arising from marital property division would be to sell the judgment debtor's home. This forces a relocation, which could have a

significant effect on the welfare of a dependent child who lives in the home. The family court might prefer a less disruptive enforcement remedy.

In other words, given the continuing interdependence of the interests of former spouses and their children, it may be appropriate to require continuing court supervision. This can moderate the potential disruptive effect of judgment enforcement, in order to preserve the balance of equities struck by the family court in fashioning its judgment.

On the other hand, judicial oversight of Family Code judgment enforcement places an additional burden on family law litigants. This burden may be particularly onerous for the sizeable majority of family law litigants who are self-represented. One of the main thrusts of the proposed law is to make the enforcement of a Family Code judgment simpler. Family Code Section 290 cuts the other way.

What's more, Mr. Goldstein's experience is that most courts are not requiring court approval before the issuance of a writ of execution to enforce a Family Code judgment. That suggests that many of these judgments are being enforced without court supervision, apparently without disastrous results. Of course, it may also be true that some of these cases are producing bad results, but the problem isn't visible because the parties are self-represented or indigent.

The effect of clarifying Section 290 in either direction would be significant. The staff does not believe that we have had enough input on this issue to make a final decision on how to proceed. This is problematic, because further delay to solicit comment on this issue could delay the approval of a final recommendation and introduction of legislation in 2006.

The best solution might be to split the issues — approve a final recommendation that does not address the meaning of Section 290 and then circulate a separate tentative recommendation asking for further input on Section 290. The tentative recommendation could be directed specifically to the Judicial Council and the California Judges Association for input from the courts.

Another alternative would be to leave the issue alone. When the Commission first decided to look at the period for enforcement of a Family Code judgment, it was with the expectation that the matter could be quickly and easily resolved. After some study, we found that the issue was more complex than expected and a more comprehensive reform was warranted. If we keep pulling at loose threads, we may find ourselves drawn gradually into a much broader study than

was originally conceived. Although the staff believes that it would be best to clarify the meaning of Section 290, there is no evidence of an imminent problem that needs immediate attention.

**Does the Commission wish to work on clarifying the effect of Section 290?**

If so, the Commission should also consider the proper **scope** of any judicial oversight. Under existing law, Section 290 applies to a writ of execution, appointment of a receiver, contempt, and “any other orders” deemed appropriate. Should that scope be narrowed or broadened? That question is discussed below, in the context of the specific enforcement remedies available.

The remedies are divided into four categories: (1) unsupervised remedies, (2) nondisruptive remedies, (3) remedies implemented in the court that entered the judgment, and (4) remedies implemented in other courts.

**Unsupervised Remedies**

In general, a writ of execution or writ of possession or sale of property is issued ministerially by the clerk of the court. The levying officer then enforces the judgment against the property named in the writ.

*Writ of Execution Generally*

Family Code Section 290 expressly applies to enforcement by writ of execution. That makes sense. Execution is the primary means of enforcing a money judgment. It includes a wide variety of levying techniques that can have a significant disruptive effect on the debtor’s finances (e.g., wage garnishment, the seizure of tangible personal property, the sale of real property, etc.). What’s more, enforcement takes place without the direct involvement or oversight of the court.

**If the court is to supervise judgment enforcement, execution should be within the scope of supervision.**

*Writ of Execution to Enforce Support Judgment*

As noted above, Family Code Section 5100 expressly provides that court approval is **not** required for the enforcement of a **support** judgment by writ of execution.

That rule seems to be at odds with the policy justification discussed above. If the court must supervise judgment enforcement in order to preserve the equitable balance struck in the underlying judgment, then it would seem that enforcement of a support judgment should also be supervised. The same

enforcement remedies are available in both situations (e.g., wage garnishment, seizure of personal property, sale of the home, etc.). Each type of judgment can be disruptive to the finances of the judgment debtor.

However, the Legislature may have determined that there are differences that justify the exemption:

- The need for support enforcement may be more acute than the need to enforce other types of judgments. A failure to make support payments may create an immediate crisis affecting the ability to pay for housing, medical insurance, child care, and other pressing needs. The delay involved in seeking court approval of an enforcement remedy could make matters worse.
- A support judgment is typically paid in installments. This raises the possibility of a multiplicity of enforcement actions, as the judgment debtor repeatedly catches up and then falls back into delinquency. Court supervision imposes a procedural burden on the litigants and the court. Repeated enforcement actions would multiply that burden.

Given the preferential treatment that the Legislature has generally given to support judgment enforcement, we can assume that there is a strong commitment to the existing exemption of support judgment enforcement from the scope of Section 290. **That exemption should probably be retained.**

#### *Writ of Possession or Sale*

A judgment for possession or sale of property is enforced by issuance of a writ of possession or sale. The procedure for issuance of the writ is very similar to that for issuance of a writ of execution. See Code Civ. Proc. § 712.010 *et seq.* The writ is generally issued by the clerk of the court, without the involvement of a judge.

The levy methods available to enforce a writ of possession or sale substantially overlap with the methods of levy available when enforcing a writ of execution. They include seizure of personal property “in the same manner as a levy under a writ of execution” (Code Civ. Proc. § 714.020) and sale of real or personal property in the manner prescribed “for levy under a writ of execution” (Code Civ. Proc. § 716.020).

In some circumstances, a writ for possession or sale of property can be used to enforce a money judgment, as if it were a writ of execution. Code Civ. Proc. § 712.040.

In short, there are significant similarities and procedural overlaps between a writ of possession or sale and a writ of execution. Each type of writ can have a significant disruptive effect on the debtor's property (e.g., seizure or forced sale).

By its terms, Family Code Section 290 does not seem to apply to a writ of possession or sale. **It probably should.** A writ of possession or sale is so similar to a writ of execution in procedure and effect, that there is no clear policy reason to differentiate between the two in regard to court supervision.

### **Nondisruptive Remedies**

Some remedies facilitate enforcement of a judgment without disrupting the judgment debtor's present use of his or her property.

#### *Judgment Lien*

A judgment lien on real property can be created by recording an abstract of the judgment with the county recorder. Code Civ. Proc. § 697.310. A judgment lien on certain personal property can be created by filing papers with the Secretary of State. Code Civ. Proc. § 697.510. The court is not involved in the creation of a judgment lien.

By its terms, Family Code Section 290 does not apply to the creation of a judgment lien. That seems appropriate, for two reasons:

- (1) A judgment lien is not a very disruptive remedy. It establishes the creditor's priority with respect to any other lien holders and it places a burden on title, but it does not interfere with the present use of the property. It is therefore unlikely to disrupt the balance of equitable and practical factors considered by the court in fashioning the judgment. There is therefore no clear need for court supervision.
- (2) If court approval were required for the creation of a judgment lien, what would be the result if a lien is created without the required approval? Would the lien be ineffective? How would a title insurer know whether a judgment lien against real property is effective? This problem could perhaps be minimized by requiring that an authorizing court order be recorded, along with the abstract of judgment. However, considering the prevalence of pro per litigants in family cases, it seems likely that this step would be overlooked by some. This would place the burden on the recording clerk to recognize that the judgment is a Family Code judgment and impose the special filing requirement. Errors seem likely, with problematic results.

**The staff recommends against court supervision of the creation of a judgment lien.**

*Written Interrogatory and Inspection Demand*

A judgment creditor may serve a written interrogatory on the judgment debtor in order to facilitate the enforcement of a money judgment. Code Civ. Proc. § 708.020. The creditor may also serve a demand for the production of relevant documents. Code Civ. Proc. § 708.030.

Although a written interrogatory or inspection demand may be served on a judgment debtor without the involvement of the court, court proceedings could result. See Code Civ. Proc. § 2030.090 (protective orders), 2030.260 (modification of time to respond), 2030.290 (motion to compel response and impose monetary sanctions), 2030.300 (motion to compel further response).

**The staff sees no reason why court approval should be required before a written interrogatory or inspection demand is served on a judgment debtor.** All that these processes do is gather information about the debtor's assets. They do not affect the present ownership or use of any of those assets. It may be a nuisance, but it isn't substantively disruptive of the debtor's financial situation.

Any court proceeding that does arise from a written interrogatory or inspection demand would be in the court that entered the judgment that is being enforced. Code Civ. Proc. § 680.160 ("court" means the court that entered the judgment to be enforced).

*Debtor Examination*

A judgment creditor may apply to the "proper court" for an order requiring the judgment debtor to appear before the court (or a referee) for examination in connection with enforcement of a money judgment. Code Civ. Proc. § 708.110. A court may also order examination of a third party in possession of property in which the judgment debtor has an interest. Code Civ. Proc. § 708.120.

At the conclusion of the examination, the court may issue a "turnover order" directing that specific property be applied to the satisfaction of the judgment. This creates a lien on the property. Code Civ. Proc. § 708.205. The turnover order would then be enforced by writ of execution.

A lien by itself is not a disruptive remedy. It is execution that has the disruptive effect, and execution would be subject to Section 290. That should be sufficient. **The staff does not recommend that court approval be required prior to a debtor examination.**

Note that the “proper court” for examination is generally the court in which the money judgment is entered. Code Civ. Proc. § 708.160(a). However, a person is not required to submit to examination in a court outside the county in which the person resides or has a principal place of business (unless the distance to that court is less than 150 miles). Code Civ. Proc. § 708.160(b). If a change in venue is necessary, a person may be examined in another county in a court of “similar” or “higher” jurisdiction. Code Civ. Proc. § 708.160(c).

#### *Judgment Renewal*

Judgment renewal does not directly enforce a judgment. It extends the period for enforcement and updates the amount owing on the judgment (to reflect payments made, accrued interest, and installment payments that have come due).

Under the proposed law, any Family Code judgment would be renewable, but renewal (or nonrenewal) would have no effect on whether a judgment could be enforced.

Renewal has no present effect on the judgment debtor’s property. An application for renewal is filed with the court that entered the judgment to be renewed. Code Civ. Proc. § 683.120. **The staff sees no reason to require any additional court supervision of renewal.**

#### **Remedies in the Court that Entered the Judgment**

All but one of the remedies discussed below involve proceedings before the same court that entered the judgment that is being enforced. That should provide sufficient court supervision to protect the balance of equities struck in fashioning the judgment that is being enforced.

The one exception is the “charging order,” which may be issued by any court of competent jurisdiction. As will be discussed below, the staff recommends that the jurisdiction to issue a charging order to enforce a Family Code judgment be limited to the court that entered the judgment that is being enforced. That would bring the charging order into line with the other remedies described in this part of the memorandum.

#### *Charging Order*

If a money judgment is entered against a partner or a member of a limited liability company (but not against the partnership or limited liability company

itself), the judgment debtor's interest in the business entity may be applied to the satisfaction of the judgment. Code Civ. Proc. § 708.310.

This is done by means of a "charging order," which is issued by a "court of competent jurisdiction." Corp. Code §§ 15673, 16504, 17302. Issuance of a charging order imposes a lien on the partner's or member's interest. *Id.* In a general partnership or limited liability company, the lien may be foreclosed on and the interest sold to satisfy the judgment. The purchaser has the rights of an assignee. Corp. Code §§ 16504, 17302.

A charging order can deprive a judgment debtor of his or her livelihood. That could have a significant effect on the balance of equities struck by the family court in fashioning its judgment, and could make it difficult or impossible for the debtor to make any required support payments.

If the family court is to supervise Family Code judgment enforcement, then the issuance of a charging order should be supervised.

Rather than require court approval prior to application for a charging order, the law could be revised to provide that, in a family law case, a charging order may only be issued by the court that entered the judgment. That would apply the general EJL rule that enforcement actions are carried out in the court that entered the judgment being enforced. The only reason that the general rule does not apply to a charging order is because the EJL incorporates charging order provisions from the Corporations Code. Those provisions are not governed by the EJL definition of "court."

The proposed change would also avoid any uncertainty about whether a proceeding to obtain a charging order may be classified as a limited civil case (if the amount in controversy is \$25,000 or less). **The staff recommends this approach.**

#### *Assignment Order*

A judgment creditor may apply to the court for an order assigning to the judgment creditor any right of the judgment debtor to a payment that is presently due or will become due in the future. Code Civ. Proc. § 708.510.

In deciding whether to issue an assignment order, the court is required to consider "all relevant factors," including:

The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

Code Civ. Proc. § 708.510(c)(1) (emphasis added). That is exactly the sort of determination that a family court judge would be best able to make in a family law case.

However, there is no need for court approval before issuance of an assignment order, because existing law requires that the order be issued by the court that entered the judgment being enforced.

#### *Obligation of Public Entity*

If a judgment debtor is owed money by a public entity (e.g., tax refund, contract payment, lottery winnings), the obligation of the public entity may be applied to the satisfaction of the judgment. Code Civ. Proc. § 708.720. This can be accomplished through wage garnishment or a lien in a pending action. If those remedies are unavailable, the law provides a special claim procedure. *Id.*

Under that procedure, the judgment creditor must file an abstract of the judgment and an affidavit with the public entity. Code Civ. Proc. §§ 708.730-708.750. The amount owed is then paid by the public entity to the court. The court holds hearings to determine whether any exemption applies or any other legal requirement limits payment of the money to the judgment creditor. Code Civ. Proc. § 708.775. If not, then the amount held by the court is paid to the judgment creditor. *Id.*

This is a proceeding before the court that entered the judgment. That should provide sufficient supervision to protect the interests of the parties.

#### *Public Franchise*

If a public entity grants a franchise (e.g., a franchise to operate a cable television service) to a judgment debtor, a court may apply the franchise to the satisfaction of a judgment. Code Civ. Proc. §§ 708.910-708.920. This is a proceeding before the court that entered the judgment. That should provide sufficient supervision to protect the interests of the parties.

#### *Nonvested Property Interest*

A nonvested property interest of a judgment debtor (e.g., a contingent remainder) can be applied to the satisfaction of a judgment. In deciding whether to do so, a court is specifically required to protect the interests of both the judgment debtor and judgment creditor. Code Civ. Proc. § 709.020. This determination is made by the same court that entered the judgment. That should provide sufficient supervision to protect the interests of the parties.

### *Receivership*

A receiver may be appointed to enforce a judgment. Code Civ. Proc. §§ 708.610-708.630. The decision would be made by the court that entered the judgment to be enforced. Receivership is restricted to those cases in which the remedy would be a “reasonable method to obtain the fair and orderly satisfaction of the judgment” taking into account the interests of both the judgment creditor and judgment debtor. Code Civ. Proc. § 708.620. That should provide sufficient supervision to protect the interests of the parties.

### **Remedies in Other Courts**

Some judgment enforcement procedures provide for actions that involve third parties. These actions will occur outside of the family court, in connection with a general civil case, trust administration, or the administration of a guardianship or conservatorship estate. While it would arguably be best to have a Family Code judgment enforced by the court that entered the judgment, the involvement of these non-family courts is probably sufficient to protect the interests of all of the parties involved.

### *Creditor's Suit*

A judgment creditor may bring 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. § 708.210.

Although a creditor suit is against a third person, its real object is the property of the judgment debtor. It could therefore have a disruptive effect on the debtor's finances and has the potential of upsetting the balance of equities struck by the family court in fashioning its judgment. For that reason, some measure of court supervision is warranted.

While it might be best to have a creditor suit supervised by the court that entered the judgment to be enforced, the involvement of the judge in a regular civil case is probably sufficient to protect the interests of all of the interested parties.

### *Lien in Pending Action*

A judgment creditor may 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. Code Civ. Proc. § 708.410 *et seq.*

As in a creditor suit, the object is to apply assets of the judgment debtor to the satisfaction of the judgment. It therefore has the potential of upsetting the balance of equities struck by the family court in fashioning its judgment.

However, the involvement of the judge in the civil case probably provides adequate supervision of the remedy.

#### *Interest in Trust*

Subject to any “spendthrift trust” limitations on the transfer of a beneficiary’s interest in a trust (Prob. Code §§ 15300-15309), a judgment debtor’s interest as beneficiary of a trust can be applied to the satisfaction of a judgment. However, that process is governed by trust law rather than by specific procedures in the EJL. Code Civ. Proc. § 709.010. The necessary order must be obtained from the court that has jurisdiction over the trust. Prob. Code § 17000.

An order applying a judgment debtor’s interest in a trust to the satisfaction of a judgment could have a significant effect on the debtor’s finances. However, the determination would be made by a judge. That should provide sufficient supervision to protect the interests of the parties.

#### *Property in Guardianship or Conservatorship Estate*

Property in a guardianship or conservatorship estate is not subject to enforcement under the EJL. Code Civ. Proc. § 709.030. However, a judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending for an order requiring payment of the judgment. *Id.*

The application would be governed by general guardianship and conservatorship law. See Prob. Code § 1400 *et seq.*

An order applying a judgment debtor’s property that is in a guardianship or conservatorship to the satisfaction of a judgment could have a significant effect on the debtor’s finances. However, such an order could only be issued by a judge. That would probably provide sufficient supervision to protect the interests of the parties.

#### **Recommendation**

The staff is on the fence about whether the Commission should revise Section 290 to make its meaning clearer. There does appear to be a significant disconnect between the interpretation stated in the cases (and echoed by secondary sources)

and the way in which the section appears to be understood and applied by court clerks. It would be helpful to address that inconsistency.

On the other hand, there is no evidence of an imminent problem resulting from the ambiguity. The Commission may decide that there are more pressing demands on its resources and set the issue aside (with the possibility of revisiting it at some point in the future).

**If the Commission decides to tackle Section 290 in connection with the current study, the staff would recommend the circulation of a tentative recommendation that would codify, in express terms, the judicial interpretation of Family Code Section 290.** As with any tentative recommendation, this may not be the result that the Commission ultimately recommends. However, it is consistent with judicial precedents, is defensible on policy grounds, and is likely to provoke useful commentary (especially from family court judges, who would be called upon to conduct the required supervision).

The revised section should also address the scope of the approval requirement. The staff's recommendations on that issue can be summarized as follows:

- Court approval **should** be required for enforcement remedies that proceed without any court involvement (i.e., writ of execution and writ of possession or sale). However, the existing exception for enforcement of a support judgment should be continued and broadened to include a writ of possession or sale.
- Court approval **should not** be required for remedies that do not interfere with the present use of property (i.e., judgment lien, interrogatories, debtor examination, and judgment renewal).
- Court approval **should not** be required for remedies that would involve proceedings before the same court that entered the judgment (i.e., assignment order, action against money owed by public entity, action against public franchise, action against nonvested property interest, appointment of receivership). The staff recommends that the law be revised to require that a charging order to enforce a Family Code judgment be issued by the court that entered the judgment. A charging order would then fall under this category.
- Court approval **should not** be required for proceedings before other courts (i.e., creditor's suit, lien in pending action, action against interest in trust, action against guardianship or conservatorship estate). If the law governing the issuance of a charging order is not changed, then a charging order would fall under this category.

These recommendations could be implemented by revising Family Code Section 290 as follows:

~~290. Subject to Section 291, a~~ (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.

~~(b) Express approval of the court is required before a judgment creditor may apply for a writ of execution or a writ of possession or sale. This subdivision does not apply to a child, family, or spousal support order.~~

~~(c) The court that made or entered a judgment or order pursuant to this code has exclusive jurisdiction to issue a charging order to enforce the judgment or order.~~

**Comment.** Subdivision (a) of Section 291 is amended to reflect the repeal of Section 291.

The first sentence of subdivision (b) codifies the judicial interpretation of subdivision (a) with respect to execution. See *In re Marriage of Farner*, 216 Cal. App. 3d 1370, 1377, 265 Cal. Rptr. 531 (1989) ("In most family law matters execution requires court approval...."); *Bonner v. Bonner*, 63 Cal. App. 3d 156, 167, 133 Cal. Rptr. 592 (1976) ("[In] a dissolution case a writ of execution is not issued as a matter of course and requires a court order."); *Messenger v. Messenger*, 46 Cal. 2d 619, 630, 297 P.2d 988 (1956) ("the trial court now has discretion to determine in each case whether execution is an appropriate remedy for enforcing its order."). It also generalizes the requirement so that it applies to a writ of possession or sale.

The second sentence of subdivision (b) generalizes the substance of former Section 5100.

Subdivision (c) is new. It is consistent with the general rule that court proceedings under the Enforcement of Judgments Law are brought in the court that entered the judgment to be enforced. Code Civ. Proc. § 680.160 ("court" means the court that entered the judgment to be enforced).

If that approach is taken, Family Code Section 5100 would no longer be necessary and could be repealed:

~~5100. Notwithstanding Section 290, a child, family, or spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 17522 of this code without prior court approval.~~

## ENFORCEMENT IN A LIMITED CIVIL CASE

The preceding section of the memorandum describes the various judgment enforcement remedies. That discussion provides a basis for determining whether a Family Code judgment can and should be enforced in a limited civil case.

### **Actions Taken Without Direct Court Involvement**

In general, a writ of execution or writ of possession or sale are issued by the clerk of the court, without a court hearing. Enforcement by these methods does not involve court proceedings and therefore will not arise in a limited civil case.

As discussed, there may be one exception. The court may be required to issue an order authorizing a writ of execution before it will be issued by the clerk. However, that decision would be made in a family law proceeding and would not be part of a limited civil case.

### **Matters Decided by Court that Entered Judgment**

For many of the remedies described above, the law requires that the matter proceed before the same court that entered the judgment. That should preclude the use of those remedies to enforce a Family Code judgment in a limited civil case. In enforcing a Family Code judgment, the court that entered the judgment would be the family law department of the superior court. Proceedings before the family court are not limited civil cases.

### **Matters Decided by Other Courts**

The class of remedies that might be used in a limited civil case to enforce a Family Code judgment are those remedies that proceed in a court other than the court that entered the judgment that is being enforced. This includes the following remedies:

- (1) *Creditor's suit.* If the amount is controversy is \$25,000 or less, a creditor's suit is a limited civil case. Code Civ. Proc. § 86(a)(9).
- (2) *Lien in a pending action or proceeding.* A lien could be filed in a pending limited civil case, in which case a Family Code judgment could be enforced in a limited civil case.
- (3) *Action against debtor's interest as trust beneficiary.* This is a probate proceeding and therefore is not a limited civil case.
- (4) *Action as debtor's property in guardianship or conservatorship.* This is a probate proceeding and therefore is not a limited civil case.

As noted, only the first two of these four remedies could result in the enforcement of a Family Code judgment in a limited civil case. Those are the remedies that were identified and discussed in prior materials. See Memorandum 2005-37 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

In that memorandum, the staff recommended that Code of Civil Procedure Section 580(b)(4) be deleted, in order to allow the use of those two remedies to enforce a Family Code judgment in a limited civil case. That still appears to be appropriate. All other enforcement remedies would either take place outside of the court or in the same court that entered the judgment.

**The attached draft implements that recommendation.**

#### NEXT STEP

The Commission should decide whether to approve the attached draft recommendation as its final recommendation. That would make it possible to seek introduction of implementing legislation in 2006.

The Commission also needs to decide whether to address the ambiguity of Family Code Section 290, preferably by issuance of a separate tentative recommendation.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary



## TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

November 7, 2005

Mr. Brian Hebert  
California Law Revision Commission  
3200 Fifth Avenue  
Sacramento, CA 95814

Re: **Study F-1307**

Dear Brian:

At its meeting on November 5, 2005, the executive committee of the State Bar Trusts & Estates Section ("Excom") voted unanimously to support the Law Revision Commissioner's draft of new Family Code §291 as set forth on page 7 of Staff Memorandum 2005-21. Excom specifically supports the retention of subsection (e), which provides, "Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor."

Because everyone appears to agree that the requirement of filing a creditor's claim following the judgment debtor's death remains in effect, Excom's position is that the language of subsection (e) is necessary and useful as a reminder that a claim must be filed in the deceased judgment debtor's estate. In fact, we would suggest that consideration be given to including a specific reference to the requirement of a creditor's claim. Excom also agrees with the analysis regarding subsection (e) as set forth at page 7 of Staff Memorandum 2005-37.

Excom wishes to thank the commission for its excellent work in this area. If you or the commission have any other questions, please let me know.

Kindest regards,

Yours very truly,

Christopher M. Moore

CMM/mn

cc: Larry Doyle  
Tracey Potts  
John Hartog

1                   **ENFORCEMENT OF JUDGMENTS**  
2                   **UNDER THE FAMILY CODE**

3       Under the Enforcement of Judgments Law, a money judgment or judgment for  
4       possession or sale of property is enforceable for a period of ten years.<sup>1</sup> That period  
5       can be extended through renewal of the judgment.<sup>2</sup>

6       The ten-year enforcement period and judgment renewal provisions do not apply  
7       to a judgment arising under the Family Code, unless the Family Code specifically  
8       provides otherwise.<sup>3</sup>

9       There are currently three rules governing the period for enforcement of a  
10      judgment under the Family Code:

- 11      (1) A judgment for possession or sale of property is subject to the ten-year  
12       enforcement period and renewal procedure provided by general enforcement  
13       of judgments law.<sup>4</sup>
- 14      (2) A judgment for support is enforceable until paid in full and is not subject to  
15       the equitable defense of laches (except as to any part of the judgment that is  
16       owed to the state). The judgment may be renewed to update the amount  
17       owed on the judgment.<sup>5</sup>
- 18      (3) A non-support money judgment has no stated time period for enforcement  
19       and is not subject to the judgment renewal procedure or any exemption from  
20       laches.<sup>6</sup>

21      This multiplicity of rules is potentially confusing and can lead to inequitable  
22      results. A recent appellate decision illustrates the problem. In *Wilcox v. Wilcox*,<sup>7</sup> a  
23      judgment in a marital dissolution awarded the family home to the former husband,  
24      but required that he make an equalizing cash payment to his former wife. The  
25      award of the house was a judgment for possession of property and was therefore  
26      subject to the ten-year enforcement period. The order to make an equalizing cash  
27      payment was a money judgment and was therefore not subject to the ten-year  
28      enforcement period. This is potentially unfair. While there are differences in the  
29      methods by which a money judgment and judgment for possession or sale of  
30      property may be enforced, the parties to a marital dissolution probably do not  
31      expect significant differences in the enforcement period.

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1. Code Civ. Proc. § 683.020.

2. Code Civ. Proc. §§ 683.110-683.220.

3. Code Civ. Proc. § 683.310.

4. Fam. Code § 291.

5. Fam. Code § 4502.

6. Code Civ. Proc. § 683.020.

7. 124, Cal. App. 4th 492, 21 Cal. Rptr. 3d 315 (2004).

The proposed law would make a judgment under the Family Code enforceable until satisfied. This simple rule would avoid confusion and would be consistent with the general legislative policy favoring the enforcement of Family Code judgments.

## DISCUSSION

There are a number of factors that weigh in favor of a simplified rule for enforcement of judgments under the Family Code: (1) family law proceedings can have a profound effect on the economic stability and welfare of former spouses and their dependent children, (2) special pressures in family law cases may delay the enforcement of a judgment, and (3) the unusual prevalence of self-represented litigants in family law cases argues in favor of simplicity in the law. These factors are discussed below.

## **Economic Effect of Family Code Judgments**

Dissolution or annulment of marriage can have a significant effect on the economic independence of former spouses and the welfare of their dependent children:

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.<sup>8</sup>

Concern about the heightened risk of poverty following dissolution of marriage underlies the existing policy in favor of simplified enforcement of a support judgment.<sup>9</sup> Enforcement of a support judgment helps a former spouse to find his or her feet economically and reduces dependence on public assistance programs.

8. Letter from Assembly Member Sheila J. Kuehl to Assembly Committee on the Judiciary (November 7, 1995).

9. In addition to the exemption from the general ten-year enforcement period, there have been numerous legislative reforms aimed at facilitating the enforcement of a support judgment. See, e.g., Code Civ. Proc. § 703.070 (exempt property may be applied to satisfaction of support judgment); 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

1      Other types of Family Code judgments also serve those purposes. An award of  
2      marital property can provide resources essential to the transition from married to  
3      single life, including funds to pay for vocational training, childcare, insurance  
4      coverage, and the procurement of new housing. Other Family Code judgments  
5      provide for recovery of costs relating to maternity,<sup>10</sup> domestic violence,<sup>11</sup> or  
6      breach of a child custody obligation.<sup>12</sup>

7      If concern about the economic independence and welfare of former spouses and  
8      their children justifies a more lenient approach to enforcement of a support order,  
9      then it also weighs in favor of the same approach for other types of Family Code  
10     judgments.

11     **Special Reasons for Delay in Enforcement**

12     Many civil cases involve an arms-length commercial transaction or a conflict  
13     between strangers. Family law cases are different. The parties have a history  
14     together that can involve deep bonds of affection, a sense of mutual obligation,  
15     and concern for the welfare of children. Family law cases can also involve  
16     personal betrayal, enmity, and abuse. This tangle of emotions and connections  
17     may persist long after dissolution or annulment of marriage, especially if there is  
18     an ongoing obligation of support or shared custody of children.

19     Unlike the typical lawsuit, where there is likely to be no reason for delay in  
20     enforcing a judgment, a family law case may involve justifiable reasons for delay.  
21     For example:

- 22        • A party awarded ownership of the family home may allow a former spouse  
23        to continue living in the home out of a sense of obligation for the former  
24        spouse's welfare.
- 25        • A party may delay enforcement of a judgment in order to avoid conflicts  
26        that could undermine the welfare of minor children.
- 27        • A party may feel physically or psychologically intimidated by a former  
28        spouse and forego enforcement of a judgment in order to avoid harm. For  
29        example, in one case a judgment creditor deferred enforcement of a support  
30        order for nearly thirty years, out of fear of a physically abusive former  
31        spouse. The court found this delay to be reasonable under the  
32        circumstances.<sup>13</sup> Concern about intimidation of judgment creditors may also  
33        underlie the rule providing that the ten-year enforcement period does not  
34        apply to a crime victim restitution award.<sup>14</sup>

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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).

10. Fam. Code § 7637.

11. Fam. Code § 6342.

12. Fam. Code § 3028.

13. In re Marriage of Dancy, 82 Cal. App. 4th 1142, 98 Cal. Rptr. 2d 775 (2000).

14. See Penal Code § 1214(d).

1 Family law cases present special considerations, absent in most other cases, that  
2 can lead to significant delay in the enforcement of a judgment. These  
3 considerations are not limited to cases involving enforcement of a support  
4 obligation; they can arise in any type of family dispute. To the extent that these  
5 causes for delay justify a more lenient approach to enforcement of a support  
6 obligation, they also justify a similar approach for other Family Code judgments.

7 **Uniformity and Simplicity**

8 A very high percentage of the parties in family law cases are unrepresented by  
9 counsel. One recent study indicated that 67% of marital dissolution cases involve  
10 unrepresented parties. By contrast, the rate of self-representation in general civil  
11 litigation is 16%.<sup>15</sup> The unusually high rate of self-representation in family law  
12 cases argues in favor of uniformity and simplicity in family law procedures, in  
13 order to avoid pitfalls for nonlawyers.

14 The current system of three different rules for enforcement of different types of  
15 judgments is potentially confusing. That confusion could be avoided by the  
16 creation of a single simplified rule that would apply to all judgments entered under  
17 the Family Code.

18 **LACHES**

19 The statutory period for enforcement of a judgment is not the only time-based  
20 limitation on enforcement. The equitable defense of laches may also apply.

21 Laches may be raised as a defense if the delay in enforcement was unreasonable  
22 and prejudiced the judgment debtor, such that the granting of the relief requested  
23 would be inequitable.<sup>16</sup> Prejudice may arise from a range of circumstances,  
24 including detrimental reliance, changed conditions, or the loss of relevant  
25 evidence.<sup>17</sup> “The difficulty of effecting complete justice between the parties to a  
26 controversy, after their rights with respect to the matter have long been obscured  
27 by the passage of time, is a fundamental consideration in the application of  
28 laches.”<sup>18</sup>

29 The absence of a statute of limitations does not preclude the application of  
30 laches.<sup>19</sup> Thus, laches has been raised as a defense to the enforcement of a support

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15. Judicial Council, Statewide Action Plan for Serving Self-Represented Litigants 5 (2004).

16. *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 256, 69 Cal. Rptr. 2d 120, 123 (1997).

17. See, e.g., *In re Marriage of Fogarty & Rasbeary*, 78 Cal. App. 4th 1353, 93 Cal. Rptr. 2d 653 (2000) (reasonable belief that obligation satisfied combined with lack of records of payments made was prejudicial); *Plescia*, 59 Cal. App. 4th at 256 (reasonable belief that obligation had been satisfied combined with intervening retirement of judgment debtor was prejudicial); but see *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 1160, 98 Cal. Rptr. 2d 775, 787-88 (2000) (remarriage and loss of records not sufficient to establish prejudice). See generally 30 Cal. Jur. 3d *Equity* §§ 45-47 (3d ed. 2005).

18. 30 Cal. Jur. 3d *Equity* § 38 (3d ed. 2005).

19. *Plescia*, 59 Cal. App. 4th at 260.

1 judgment despite the fact that a support judgment remains enforceable until paid in  
2 full.<sup>20</sup> However, a support judgment has since been expressly exempted from the  
3 application of laches (except as to any amount of a judgment that is owed to the  
4 state).<sup>21</sup>

5 The proposed law preserves the existing exemption of a support judgment from  
6 laches, but does not extend that exemption to other types of Family Code  
7 judgments. Support judgments have long been given special treatment under the  
8 law.<sup>22</sup> Enforcement of a support judgment may have a direct effect on the welfare  
9 of dependent children. “[Child] support is owed to the child rather than the  
10 dilatory parent, which strongly militates against the application of laches in the  
11 child support context....”<sup>23</sup> The same considerations are not as directly implicated  
12 in the enforcement of a nonsupport judgment.

### 13 DEATH OF JUDGMENT DEBTOR OR CREDITOR

14 The proposed law would make a judgment under the Family Code enforceable  
15 until satisfied. However, this would not supersede general law governing the  
16 enforcement of a judgment after the death of a judgment debtor or creditor. This is  
17 consistent with a recent appellate decision that stated, in dictum, that Family Code  
18 Section 4502 “does not address the procedural requirements for reaching the assets  
19 of a judgment debtor after that debtor’s death.”<sup>24</sup>

20 The proposed law preserves the careful balance struck in the Probate Code  
21 between the interests of a debtor’s creditors and heirs.

### 22 RENEWAL OF JUDGMENT

23 Under existing law, a judgment for support may be renewed. Renewal has no  
24 effect on the enforceability of the judgment. It merely provides a mechanism for  
25 updating the amount owed on the judgment (to reflect accrued interest and  
26 installments that have come due).<sup>25</sup> Renewal for that limited purpose should be  
27 available for all judgments entered under the Family Code, regardless of whether a  
28 judgment is subject to the ten-year enforcement period.

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20. *Id.*

21. Fam. Code § 4502(c).

22. See *infra* note 9.

23. *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 1156, 98 Cal. Rptr. 2d 775, 785 (2000).

24. *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

25. Fam. Code § 4502.

1                   **ENFORCEMENT OF FAMILY CODE JUDGMENT**  
2                   **IN LIMITED CIVIL CASE**

3                 Code of Civil Procedure Section 580 was amended in connection with the  
4                 unification of the trial courts to specifically provide that a Family Code order  
5                 cannot be enforced as part of a limited civil case.

6                 That limitation interferes with the availability of two judgment enforcement  
7                 procedures that could otherwise be used to enforce a Family Code judgment in a  
8                 limited civil case:

- 9                 (1) A judgment creditor may bring suit against a third person in possession or  
10                 control of property in which a judgment debtor has an interest, or against a  
11                 third person who is indebted to the judgment debtor, in order to satisfy the  
12                 judgment.<sup>26</sup> If the amount in controversy is \$25,000 or less, such a suit  
13                 would be classified as a limited civil case.<sup>27</sup>
- 14                 (2) A judgment creditor may file a lien on a debtor's cause of action in a  
15                 pending civil case, including a limited civil case. The judgment creditor can  
16                 then intervene in the case and the court may order satisfaction of the  
17                 judgment from assets at issue in the case.<sup>28</sup>

18                 The Commission sees no reason to deny a family law judgment creditor access to  
19                 these remedies. For that reason, the proposed law would amend Code of Civil  
20                 Procedure Section 580 to delete the limitation on enforcement of a Family Code  
21                 judgment in a limited civil case.

22                 Other judgment enforcement procedures, which do not give rise to enforcement  
23                 in a limited civil case, would not be affected by the proposed change. Those  
24                 procedures fall into one of the following categories: (1) a procedure conducted  
25                 without a court hearing,<sup>29</sup> (2) a procedure conducted in the same court that entered  
26                 the judgment to be enforced (or in a court of the same or higher jurisdiction),<sup>30</sup> or  
27                 (3) a special proceeding under the Probate Code.<sup>31</sup>

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26. Code Civ. Proc. §§ 708.210-708.270.

27. Code Civ. Proc. § 86(a)(9).

28. Code Civ. Proc. §§ 708.410-708.480.

29. Code Civ. Proc. §§ 697.310-697.410 (judgment lien on real property), 697.510-697.670 (judgment  
lien on personal property), 699.010-701.830 (execution), 708.010-708.030 (written interrogatory or  
inspection demand), 712.010-716.030 (enforcement of writ of possession or sale).

30. Code Civ. Proc. §§ 708.110-708.205 (debtor examination), 708.310-708.320 (charging order),  
708.510-708.560 (assignment order), 708-610-708.630 (appointment of receiver), 708.710-708.795  
(enforcement against obligation of public entity), 708.910-708.930 (enforcement against franchise),  
709.020 (action against nonvested property interest).

31. Code Civ. Proc. §§ 709.010 (enforcement against debtor's interest as beneficiary of trust), 709.030  
(enforcement against debtor's interest in guardianship or conservatorship estate).

1

## PROPOSED LEGISLATION

2   **Code Civ. Proc. § 580 (amended). Relief granted in limited civil case**

3   SEC \_\_\_\_\_. Section 580 of the Code of Civil Procedure is amended to read:

4   580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed  
5   that which he or she shall have demanded in his or her complaint, in the statement  
6   required by Section 425.11, or in the statement provided for by Section 425.115;  
7   but in any other case, the court may grant the plaintiff any relief consistent with  
8   the case made by the complaint and embraced within the issue. The court may  
9   impose liability, regardless of whether the theory upon which liability is sought to  
10   be imposed involves legal or equitable principles.

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

13   (1) Relief exceeding the maximum amount in controversy for a limited civil case  
14   as provided in Section 85, exclusive of attorney's fees, interest, and costs.

15   (2) A permanent injunction.

16   (3) A determination of title to real property.

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

18   (5) Declaratory relief, except as authorized by Section 86.

19   **Comment.** Section 580 is amended to authorize the enforcement of a Family Code judgment in  
20   a limited civil case. The change would affect two judgment enforcement procedures: (1) a  
21   creditor's suit (Code Civ. Proc. §§ 708.210-708.270.), and (2) a lien filed against a judgment  
22   debtor's interest in a pending case (Code Civ. Proc. §§ 708.410-708.480).

23   Other judgment enforcement procedures, which do not give rise to enforcement in a limited  
24   civil case, are not affected by the amendment. Those procedures fall into one of the following  
25   categories:

26   (1) A procedure conducted without a court hearing. See Code Civ. Proc. §§ 697.310-697.410  
27   (judgment lien on real property), 697.510-697.670 (judgment lien on personal property), 699.010-  
28   701.830 (execution), 708.010-708.030 (written interrogatory or inspection demand), 712.010-  
29   716.030 (enforcement of writ of possession or sale).

30   (2) A procedure conducted in the same court that entered the judgment to be enforced (or in a  
31   court of the same or higher jurisdiction). See Code Civ. Proc. §§ 708.110-708.205 (debtor  
32   examination), 708.310-708.320 (charging order), 708.510-708.560 (assignment order), 708-610-  
33   708.630 (appointment of receiver), 708.710-708.795 (enforcement against obligation of public  
34   entity), 708.910-708.930 (enforcement against franchise), 709.020 (action against nonvested  
35   property interest).

36   (3) A special proceeding under the Probate Code. See Code Civ. Proc. §§ 709.010  
37   (enforcement against debtor's interest as beneficiary of trust), 709.030 (enforcement against  
38   debtor's interest in guardianship or conservatorship estate).

39   **Fam. Code § 290 (amended). Enforcement of judgment**

40   SEC. \_\_\_\_\_. Section 290 of the Family Code is amended to read:

41   290. ~~Subject to Section 291, a~~ A judgment or order made or entered pursuant to  
42   this code may be enforced by the court by execution, the appointment of a  
43   receiver, or contempt, or by any other order as the court in its discretion  
44   determines from time to time to be necessary.

1       **Comment.** Section 290 is amended to reflect the fact that new Section 291 does not limit the  
2 enforcement of a judgment or order made or entered pursuant to this code.

3       **Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property**

4       SEC. \_\_\_. Section 291 of the Family Code is repealed.

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

9       **Comment.** Section 291 is repealed. New Section 291 provides a general rule for enforcement  
10 of a judgment under this code.

11     **Fam. Code § 291 (added). Enforcement of judgment**

12     SEC. \_\_\_. Section 291 is added to the Family Code, to read:

13     291. (a) A money judgment or judgment for possession or sale of property that  
14 is made or entered under this code, including a judgment for child, family, or  
15 spousal support, is enforceable until paid in full or otherwise satisfied.

16     (b) A judgment described in this section is exempt from any requirement that a  
17 judgment be renewed. Failure to renew a judgment described in this section has no  
18 effect on the enforceability of the judgment.

19     (c) A judgment described in this section may be renewed pursuant to Article 2  
20 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2  
21 of the Code of Civil Procedure. An application for renewal of a judgment  
22 described in this section, whether or not payable in installments, may be filed:

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

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

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

32       (e) Nothing in this section supersedes the law governing enforcement of a  
33 judgment after the death of the judgment creditor or judgment debtor, including  
34 any requirement that a judgment creditor file a timely creditor's claim after the  
35 death of a judgment debtor.

36       (f) On or before January 1, 2008, the Judicial Council shall publish self-help  
37 materials that include: (1) a description of the remedies available for enforcement  
38 of a judgment under this code, and (2) practical advice on how to avoid disputes  
39 relating to the enforcement of a support obligation. The self-help materials shall be  
40 made available to the parties in a proceeding under this code.

41       (g) As used in this section, "judgment" includes an order.

1       **Comment.** Subdivisions (a)-(c) of Section 291 continue the substance of former subdivisions  
2 (a)-(b) of Section 4502 and generalize the substance of those provisions so that it applies to any  
3 judgment or order for the payment of money or the possession or sale of property that is made or  
4 entered under this code.

5       The reference in former Section 4502(a) to an order for reimbursement under Section 17402 is  
6 not continued. This is a nonsubstantive change. Section 291 applies to any judgment or order for  
7 payment of money made or entered under this code. This includes an order to pay money under  
8 Section 17402.

9       Subdivision (d) continues former Section 4502(c) without substantive change.

10      Subdivision (e) is new. It is consistent with a recent appellate decision that stated, in dictum,  
11 that Family Code Section 4502 “does not address the procedural requirements for reaching the  
12 assets of a judgment debtor after that debtor’s death.” See Code Civ. Proc. §§ 686.010 (after  
13 death of judgment creditor, judgment enforceable by judgment creditor’s executor, administrator,  
14 or successor in interest), 686.020 (after death of judgment debtor, enforcement of judgment  
15 governed by Probate Code); Prob. Code §§ 9000-9354 (creditor claim against decedent’s estate),  
16 19000-19403 (creditor claim against revocable trust of deceased settlor).

17      Subdivision (g) makes clear that the section applies to both judgments and orders.

18 **Fam. Code § 4502 (repealed). Enforcement of support judgment**

19      SEC \_\_\_\_\_. Section 4502 of the Family Code is repealed.

20      4502. (a) ~~Notwithstanding any other provision of law, a judgment for child,~~  
21 ~~family, or spousal support, including a judgment for reimbursement that includes,~~  
22 ~~but is not limited to, reimbursement arising under Section 17402 or other~~  
23 ~~arrearages, including all lawful interest and penalties computed thereon, is~~  
24 ~~enforceable until paid in full and is exempt from any requirement that judgments~~  
25 ~~be renewed.~~

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

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

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

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

42      **Comment.** Section 4502 is repealed. Its substance is continued in Section 291. New Section  
43 4502 provides a cross-reference to Section 291.

1      **Fam. Code § 4502 (added). Enforcement of support judgment**

2      SEC \_\_\_\_\_. Section 4502 is added to the Family Code, to read:

3      4502. The period for enforcement and procedure for renewal of a judgment or  
4      order for child, family, or spousal support is governed by Section 291.

5      **Comment.** Section 4502 provides a cross-reference to the general rule on enforcement of a  
6      judgment under the Family Code. Section 291 continues the substance of former Section 4502.

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