

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Enforcement of Judgments under the Family Code

May 2005

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN August 15, 2005.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

There are three different rules for the enforcement of a judgment under the Family Code: a judgment for support is enforceable until paid in full, a judgment for possession or sale of property is enforceable for ten years (with the option to extend the enforcement period through renewal of the judgment), and all other judgments are enforceable at the discretion of the court. This multiplicity of rules is potentially confusing and can lead to inequitable results.

The special character of family law disputes and the prevalence of self-represented parties in family law proceedings argue in favor of a simplified approach. The proposed law would replace the current system with a single rule providing that any judgment under the Family Code is enforceable until satisfied in full. This would have no effect on existing law governing the enforcement of a judgment after the death of a debtor or creditor.

The proposed law would also delete an apparently unneeded provision precluding enforcement of a Family Code order in a limited civil case.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

ENFORCEMENT OF JUDGMENTS UNDER THE FAMILY CODE

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

4 The ten-year enforcement period and judgment renewal provisions do not apply
5 to a judgment arising under the Family Code, unless the Family Code specifically
6 provides otherwise.³

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

- 9 (1) A judgment for support is enforceable until paid in full.⁴
- 10 (2) A judgment for possession or sale of property is subject to the ten-year
11 enforcement period and renewal procedure provided by general enforcement
12 of judgments law.⁵
- 13 (3) All other judgments are enforceable at any time, subject to the discretion of
14 the court.⁶

15 This multiplicity of rules is potentially confusing and can lead to inequitable
16 results. A recent appellate decision illustrates the problem. In *Wilcox v. Wilcox*,⁷ a
17 judgment in a marital dissolution awarded the family home to the former husband,
18 but required that he make an equalizing cash payment to the former wife. The
19 award of the house was a judgment for possession of property and was therefore
20 subject to the ten-year enforcement period. The order to make an equalizing cash
21 payment was a money judgment and was therefore not subject to the ten-year
22 enforcement period. This is unfair. Orders made in the course of a marital
23 dissolution proceeding should be subject to the same period for enforcement,
24 regardless of whether they involve the possession of property or the payment of
25 money.

26 The Law Revision Commission recommends that the rule governing
27 enforcement of a support judgment be generalized to apply to all judgments arising
28 under the Family Code. This simple rule would avoid confusion and would be
29 consistent with the general legislative policy favoring the enforcement of a Family
30 Code judgment.

1. Code Civ. Proc. § 683.020.

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

3. Code Civ. Proc. § 683.310.

4. Fam. Code § 4502.

5. Fam. Code § 291.

6. Fam. Code § 290.

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

1 POLICY ANALYSIS

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

9 **Economic Effect of a Family Code Judgment**

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

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

21 According to data developed by the Center for Law and Social Policy (CLASP),
22 in California in 1993, 38% of mother-only families and 20% of father-only
23 families were poor. Fully 85% of mother-only families and 39% of father-only
24 families have income less than twice the poverty line.⁸

25 Concern about the heightened risk of poverty following dissolution of marriage
26 underlies the existing policy in favor of simplified enforcement of a support
27 judgment.⁹ Enforcement of a support judgment helps a former spouse to rebound
28 economically and reduces dependence on public assistance programs.

29 Other types of Family Code judgments also serve those purposes. An award of
30 marital property can provide resources essential to the transition from married to
31 single life, including funds to pay for vocational training, childcare, insurance
32 coverage, and the procurement of new housing. Other Family Code judgments

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., Fam. Code §§ 4002 (county may proceed on behalf of child support obligee), 4003 (case involving child support has scheduling priority over all cases that are not also given statutory scheduling priority), 4011 (child support obligation has priority over other debts), 5100 (support obligation enforceable by writ of execution or notice of levy without prior court approval), 4720-4733 (civil penalty for child support delinquency), 17520 (suspension of driver's license or business license for child support delinquency).

1 provide for recovery of costs relating to maternity,¹⁰ domestic violence,¹¹ or
2 breach of a child custody obligation.¹²

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

7 **Special Reasons for Delay in Enforcement**

8 A typical civil case involves an arm's-length commercial transaction or a
9 conflict between strangers. A family law case is different. The parties have a
10 history together that can involve deep bonds of affection, a sense of mutual
11 obligation, and concern for the welfare of children. A family law case can also
12 involve personal betrayal, enmity, and abuse. This tangle of emotions and
13 connections may persist long after dissolution or annulment of marriage,
14 especially if there is an ongoing obligation of support or shared custody of
15 children.

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

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

32 A family law case presents special considerations, absent in most other cases,
33 that can lead to significant delay in the enforcement of a judgment. These
34 considerations are not limited to a case involving enforcement of a support
35 obligation; they can arise in any type of family dispute. To the extent that these

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 causes for delay justify a more lenient approach to enforcement of a support
2 obligation, they also justify a similar approach for other Family Code judgments.

3 **Uniformity and Simplicity**

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

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

14 **DEATH OF JUDGMENT DEBTOR OR CREDITOR**

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

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

23 **RENEWAL OF JUDGMENT**

24 Under existing law, a judgment for support may be renewed. Renewal has no
25 effect on the enforceability of the judgment. It merely provides a mechanism for
26 updating the amount owed on the judgment (to reflect accrued interest and
27 installments that have come due).¹⁷ Renewal for that limited purpose should be
28 available for any judgment entered under the Family Code, regardless of whether
29 the judgment is subject to the ten-year enforcement period.

30 **ALTERNATIVES**

31 An alternative to the proposed law would be to address only the problem raised
32 in *Wilcox v. Wilcox* — the inconsistent treatment of judgments arising from a
33 marital property division. There are two ways in which this could be done: (1)

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

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

17. Fam. Code § 4502.

1 repeal Family Code Section 291 (in which case any marital property judgment
2 would be exempt from the ten-year enforcement period and would instead be
3 enforceable at the discretion of the court), or (2) revise Section 291 to provide that
4 the ten-year enforcement period would apply to any judgment entered in a
5 proceeding to divide marital or quasi-marital property.

6 The Commission requests comment on these alternative approaches.

7
8 RELATED TECHNICAL MATTER

8 In connection with the unification of the trial courts, Code of Civil Procedure
9 Section 580 was amended to specifically provide that a Family Code order cannot
10 be enforced as part of a limited civil case.

11 That limitation appears to be unnecessary. A family law proceeding is not a
12 limited civil case. It is a special proceeding that is governed by Court Rules.¹⁸
13 Thus, it appears that enforcement of a Family Code order would never arise in the
14 context of a limited civil case.

15 The proposed law would delete the Family Code provision from Section 580.
16 The Commission specifically requests comment on whether that change would
17 have any substantive effect.

18. “Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this code.” Fam. Code § 211. See also Cal. R. Ct. 5.10 *et seq.*

CONTENTS

| | |
|--|----|
| PROPOSED LEGISLATION | 9 |
| Fam. Code § 291 (added). Enforcement of judgment | 9 |
| CONFORMING AND TECHNICAL AMENDMENTS AND REPEALS | 10 |
| Code Civ. Proc. § 580 (technical amendment). Relief granted | 10 |
| Fam. Code § 290 (amended). Enforcement of judgment | 10 |
| Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property | 10 |
| Fam. Code § 4502 (repealed). Enforcement of support judgment | 11 |

PROPOSED LEGISLATION

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

2 SEC. _____. Section 291 is added to the Family Code, to read:

3 291. (a) A judgment or order made or entered pursuant to this code, including a
4 judgment for child, family, or spousal support, is enforceable until paid in full or
5 otherwise satisfied and is exempt from any requirement that a judgment be
6 renewed.

7 (b) Although not required, a judgment described in subdivision (a) may be
8 renewed pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of
9 Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. The option of
10 renewing the judgment has no effect on the enforceability of the judgment or
11 order.

12 (c) An application for renewal of a judgment described in subdivision (a),
13 whether or not payable in installments, may be filed:

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

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

20 (d) In an action to enforce a judgment or order made or entered pursuant to this
21 code, the defendant may raise, and the court may consider, the defense of laches
22 only with respect to any portion of the judgment that is owed to the state.

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

25 **Comment.** Subdivisions (a)-(d) of Section 291 generalize the enforcement rules provided in
26 former Section 4502 so that they apply to any judgment or order made or entered under this code.
27 The reference in former Section 4502(a) to an order for reimbursement under Section 17402 is
28 redundant and is not continued. Section 291 applies to a judgment entered under this code.

29 Subdivision (e) is new. It is consistent with a recent appellate decision in which the court
30 stated, in dicta, that Family Code Section 4502 “does not address the procedural requirements for
31 reaching the assets of a judgment debtor after that debtor’s death.” See Civ. Code §§ 686.010
32 (after death of judgment creditor, judgment enforceable by judgment creditor’s executor,
33 administrator, or successor in interest), 686.020 (after death of judgment debtor, enforcement of
34 judgment governed by Probate Code); Prob. Code § 9300 (judgment against decedent must be
35 filed in the same manner as other claims).

36 ☞ **Note.** The Commission requests comment on whether the limitation provided in subdivision
37 (c) can be stated in simpler terms without creating a problem, thus: “(c) An application for
38 renewal of a judgment described in subdivision (a) may not be filed if the judgment was renewed
39 at any time in the preceding five years.”

CONFORMING AND TECHNICAL AMENDMENTS
AND REPEALS

1 **Code Civ. Proc. § 580 (technical amendment). Relief granted**

2 SEC. _____. Section 580 of the Code of Civil Procedure is amended to read:

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

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

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

14 (2) A permanent injunction.

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

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

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

18 **Comment.** Section 580 is amended to delete an unnecessary reference to enforcement of an
19 order under the Family Code. This is a nonsubstantive change. A proceeding under the Family
20 Code is not a limited civil case. It is a special proceeding that is governed by court rules of
21 procedure. See Fam. Code § 211; Cal. R. Ct. 5.10 *et seq.*

22 ☞ **Staff Note.** The Commission particularly solicits comment on whether the proposed change to
23 Section 580 would have any substantive effect. Is it correct that, even without Section 580(b)(4),
24 enforcement of a Family Code order could never arise in the course of a limited civil case?

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

26 SEC. _____. Section 290 of the Family Code is amended to read:

27 290. Subject to Section 291, a judgment or order made or entered pursuant to
28 this code may be enforced by the court by execution, the appointment of a
29 receiver, or contempt, or by any other order as the court in its discretion
30 determines from time to time to be necessary.

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

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

34 SEC. _____. Section 291 of the Family Code is repealed:

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

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

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

4 SEC. ____ . Section 4502 of the Family Code is repealed.

5 ~~4502. (a) Notwithstanding any other provision of law, a judgment for child,~~
6 ~~family, or spousal support, including a judgment for reimbursement that includes,~~
7 ~~but is not limited to, reimbursement arising under Section 17402 or other~~
8 ~~arrearsages, including all lawful interest and penalties computed thereon, is~~
9 ~~enforceable until paid in full and is exempt from any requirement that judgments~~
10 ~~be renewed.~~

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

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

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

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

27 **Comment.** Section 4502 is repealed. The substance of the former section is generalized in new
28 Section 291.