

RESOLUTION 5-01-2002

DIGEST

Support Orders: Inclusion of Attorneys Fees in Earnings Assignment Orders

Amends Family Code section 5230 to include ordered attorney fees in wage assignment support orders.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Family Code section 5230 to include ordered attorney fees in wage assignment support orders. This resolution should be disapproved because it is inappropriate and impractical.

This resolution proposes that when a court issues a wage assignment order directing a payor spouse's employer to withhold support payments from the paycheck, it must also include any attorneys' fees the court has ordered the payor spouse to pay. This resolution is inappropriate because it conflicts with Family Code sections 5208 and 17200, et seq. Family Code section 5208 was amended, effective January 1, 2000, to require that when a court orders child or family support, any earnings assignment order for support must be issued on an "order/notice to withhold income for child support" form as required in 42 U.S.C. section 666. This was part of an effort to standardize support orders to assist in nationwide enforcement. As a consequence, there is now a federally mandated wage assignment form for child or family support. There is also a different California Judicial Council form for wage assignment for spousal support. Neither form includes attorneys' fees.

This resolution is also impractical because it cannot be enforced. As a continuation of the standardization effort, Family Code sections 17200, et seq., effective January 1, 2000, transferred the collection and enforcement of child and spousal support to the newly created Department of Child Support Services ("DCSS") under the California Health and Human Services Agency. DCSS is empowered, pursuant to section 17202, to collect only child and spousal support payments. It has no authority to collect attorneys' fees. Thus, in order to enact this resolution, these two statutes and possibly others would have to be amended.

While having fees included on a wage assignment order would gain an attorney priority over general creditors, this priority is not enforceable and would come at the price of frustrating efforts to create nationwide support order enforcement. It should be disapproved.

SECTION/COMMITTEE REPORT

FAMILY LAW SECTION EXECUTIVE COMMITTEE

Recommendation: Approve in Principle

Reasons: The Family Law Executive Committee supports this resolution because it is recognized that having parties or litigants be able to afford representation is of significant benefit to the Courts. That

being so it can only facilitate representation to insure a party's ability to get the funds ordered for fees in the least expensive way possible.

We do note, however, that the question of whether this change in the law would be applicable in governmental support cases is not addressed here and should be, as well as the applicability to the federal wage assignment forms.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Family Code section 5230 to read as follows:

- 1 §5230
- 2 (a) When the court orders a party to pay an amount of support or orders a modification of
- 3 the amount of support to be paid, the court shall include in its order an earnings assignment order
- 4 for support that orders the employer of the obligor to pay to the obligee that portion of the obligor's
- 5 earnings due or to become due in the future as will be sufficient to pay an amount to cover ~~both of~~
- 6 the following:
- 7 (1) The amount ordered by the court for support.
- 8 (2) An amount which shall be ordered by the court to be paid toward the liquidation of
- 9 any arrearage.
- 10 (3) If attorney's fees have been ordered, an amount which shall be paid toward the
- 11 liquidation of those fees.
- 12 (b) An earnings assignment order for support shall be issued, and shall be effective and
- 13 enforceable pursuant to Section 5231, notwithstanding the absence of the name, address or other
- 14 identifying information regarding the obligor's employer.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Permits only child support, spousal support, and arrearages to be included on a Wage and Earnings Assignment Order and does not provide for the inclusion of Attorney's Fees which have been ordered.

This Resolution: Would allow for the inclusion of the award of Attorney's Fees on the Wage and Earnings Assignment Order as it did in the past.

The Problem: Under current law, if the obligor fails to voluntarily pay the court ordered attorney's fees, the attorney and/or his client would have to go back to court to enforce the court order, thus incurring even more time and fees for the client.

IMPACT STATEMENT

This proposed resolution affects Family Code Sections, 5238, and 5253, which have companion resolutions to this one.

AUTHOR AND/OR PERMANENT CONTACT: Barry I. Besser, Esq., 2230 W. Chapman Ave., Ste. 200, Orange, CA 92868, 714/978-1788.

RESPONSIBLE FLOOR DELEGATE: Barry I. Besser, Esq.