

RESOLUTION 5-02-2002

DIGEST

Assignment Order: Inclusion of Attorneys' Fees

Amends Family Code section 5253 to include attorneys' fees in wage assignment orders.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Family Code section 5253 to include attorneys' fees in wage assignment 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 and 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 5253 to read as follows:

- 1 §5253
- 2 Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment
- 3 order requiring the employer of the obligor to pay to the obligee or the Child Support Centralized Collection
- 4 and Distribution Unit that portion of the earnings of the obligor due or to become due in the future as will be
- 5 sufficient to pay an amount to cover ~~both~~ of the following:
- 6 (a) The amount ordered by the court for support.

7 (b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage
8 or past due support amount.
9 (c) If attorney's fees have been ordered, an amount which shall be paid toward the liquidation of those
10 fees.
11 (d) Priority shall first be given to the current child support obligation, then the current spousal
12 support obligation, then the liquidation of child and then spousal support arrearages, followed by the attorney's
13 fees. Payments towards attorney's fees shall only be made if all the other payments total less than 50 percent of
14 the obligor's net disposable income.

(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.

IMPACT STATEMENT

This proposed resolution affects Family Code sections 5230 and 5238, which have companion resolutions proposing amendments.

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COUNTERARGUMENT

BEVERLY HILLS BAR ASSOCIATION

To provide the Judge discretion to include the payment of attorneys' fees and cost in an earnings assignment order, as set forth in Resolution 5-01-2002, is agreed; however, there is no basis to severely limit the Judge's discretion in making such order when based on the facts and evidence presented as set forth in Resolutions 5-02-2002 and 5-03-2002. Further, the limitations set forth in these resolutions are in direct conflict with Family Law Section 5206, which defines the sources of income subject to an earnings assignment order. Family Law Section 5206 provides the Judge with wide discretion to order support from any and all sources of income the obligor may have or from which the obligor may receive income at any time in the future, whether in the form of direct cash, or some other form, such as bonuses, benefits, payments and credits due or to become due at some time in the future, dividends, rents, residuals, patent rights, and mineral or other natural resources; and to order any and all of these sources of income subject to an earnings assignment order when applicable.