

AMENDMENT TO RESOLUTION 01-09-05

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 the
3 amount of support to be paid, the court shall include in its order an earnings assignment order for
4 support and/or attorney fees that orders the employer of the obligor to pay to the obligee that portion
5 of the obligor's earnings due or to become due in the future as will be sufficient to pay an amount to
6 cover ~~both~~ of 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 any
9 arrearage.

10 (3) If attorney's fees have been ordered, an amount which shall be paid toward the
11 liquidation of those fees, if any remains after child and spousal support is paid.

12 (b) An earnings assignment order for support and/or attorney fees shall be issued, and shall
13 be effective and enforceable pursuant to Section 5231, notwithstanding the absence of the name,
14 address or other identifying information regarding the obligor's employer.

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

RESOLUTION 01-09-05

DIGEST

Support Orders: Inclusion of Earnings Assignment Order

Amends Family Code section 5230 to allow inclusion of an award of attorney fees on a wage and earnings assignment order.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Identical to Resolution 05-01-02, which was approved in principle, and related to Resolution 01-10-05.

Reasons:

This resolution amends Family Code section 5230 to allow inclusion of an award of attorney fees on a wage and earnings assignment order. This resolution should be disapproved because it equates attorney fees with child and spousal support payments, and because it would be difficult to enforce.

The importance of protecting the financial well-being of families after the separation of the parties justifies using the court's power to directly take a portion of a party's earnings for payment of child and spousal support. Payment of an attorney's fees does not have the same public interest importance and so does not merit the same judicial action. This resolution would give attorneys a priority they would not have in other contexts. Moreover, in really egregious cases, the court may exercise its discretion to deem attorney fees as child or spousal support, allowing the fees to be included in the assignment order.

This resolution fails to prioritize how limited earnings should be allocated if necessary to pay both child and spousal support, and attorney fees. The language as proposed implies that support arrearages might be left unpaid in favor of paying some or all ordered attorney fees. Moreover, the resolution gives attorney fees a greater priority than the obligor's other expenses, including such necessities as food, clothing, housing and transportation.

This resolution is also impracticable because the collection and enforcement of child and spousal support payments may be handled by the Department of Child Support Services. (Fam. Code, § 17200 et seq.) Section 17202 empowers DCSS to collect only child and spousal support payments, not attorney fees. Moreover, the federally mandated wage assignment form for child or family support, which is incorporated into California law by Family Code section 5208, does not provide for inclusion of attorney fees.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION RECOMMENDATION

APPROVE IN PRINCIPLE

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

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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.)

PROPOSER: 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.

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution is unacceptable as drafted. It should be amended to clarify that in earnings assignment orders which include both support and attorney fees and attorney fees, attorney fees are only payable if there is sufficient funds remaining after the payment of child and spousal support. The following amendment would cure this defect: (a) on line four after the word "support", add "and/or attorney fees"...; (a)(3) add at the end of the sentence, ", if any remains after child and spousal support is paid."; (b) add on line 12 after the word "support," "and/or attorney fees"...