

RESOLUTION 01-10-05

DIGEST

Assignment Order: Priority of Support, Arrearages and Attorney's Fees

Amends Family Code section 5238 to give priority to support payments before attorney fees in assignment orders, and limit the availability of earnings toward payment of fees.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE AS AMENDED

History:

Identical to Resolution 05-03-02, which was approved in principle; similar to Resolution 05-02-02, which was approved in principle; and related to Resolution 01-09-05.

Reasons:

This resolution amends Family Code section 5238 to give priority to support payments before attorney fees in assignment orders, and limit the availability of earnings toward payment of fees. This resolution should be approved as amended because should attorney fees be included in assignment orders, it creates reasonable limitations on payment of such fees.

There is no current authority for including court-ordered attorney fees in a wage and earnings assignment order. Resolution 01-09-05 seeks to amend the Family Code to provide for such inclusion. Should the law be amended, this resolution provides a needed prioritization and limitation on the new authority. There is a strong public interest in insuring that support payments be paid to maintain a family's financial well-being after the separation of the parties. If attorney fees are to be added to the list of payments which can be made by means of a wage assignment, it must be clear that such fees should be paid only after the satisfaction of all current and past support payments. The limitation that attorney fees may be paid only if all other payments total less than 50% of the obligor's net disposable income is a reasonable means of providing for the financial well-being of the obligor as well as of the remaining family unit. However, in order to maintain consistency within the statute, the added language on line 7 should be "disposable earnings" rather than "disposable income."

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.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code section 5238 to read as follows:

- 1 § 5238
- 2 (a) Where an assignment order or assignment orders include ~~both~~ current support, ~~and~~
- 3 payments towards the liquidation of arrearages, and attorney's fees, priority shall be given first to the
- 4 current child support obligation, then the current spousal support obligation, and thereafter to the
- 5 liquidation of child and then spousal support arrearages, followed by the attorney's fees. Payments
- 6 towards attorney's fees shall only be made if all the other payments total less than 50% of the obligor's
- 7 net disposable income.
- 8 (b) Where there are multiple assignment orders for the same employee, the employer shall

9 prorate the withheld payments as follows:
10 (1) If the obligor has more than one assignment for support, the employer shall add together the
11 amount of support due for each assignment.
12 (2) If 50 percent of the obligor's net disposable earnings will not pay in full all of the assignments
13 for support, the employer shall prorate it first among all of the current support assignments in the same
14 proration that each assignment bears to the total current support owed.
15 (3) The employer shall apply any remainder to the assignments for arrearage support in the
16 same proportion that each assignment bears to the total arrearage owed.

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

PROPOSER: Orange County Bar Association

STATEMENT OF REASONS:

Existing Law: Does not provide for the inclusion of attorney's fees in a Wage and Earnings Assignment Order.

This Resolution: Would modify the Family Code providing for the inclusion of an order of attorney's fees in a Wage and Earnings Assignment Order.

The Problem: Under current law, there is no provision for the inclusion of an attorney's fee order in the Wage and Earnings Assignment Order. Therefore, if the obligor does not voluntarily pay, the attorney and/or the client must go back into court to enforce the order, incurring more time and expense.

IMPACT STATEMENT

This resolution affects Family Code sections 5230 and 5253.

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