

DETERMINATION AND ENFORCEMENT OF SUPPORT ARREARS IN TITLE IV-D PROCEEDINGS

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Commissioner

SAN DIEGO SUPERIOR COURT

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LOS ANGELES SUPERIOR COURT

AUGUST 31, 2023



- In January 2020, the court orders Hector to pay \$1,000 per month in child support.

Year 1 (2020):

- Hector pays \$750 each month (75% of the \$1,000 owed)
- For the year, Hector paid \$9,000 but owed \$12,000.
- His unpaid principal for 2019 is \$3,000 ($\$12,000 - \$9,000$)
- 10% annual interest on \$3,000 is \$300.
- At the end of 2020, Hector's total arrears are \$3,300.

Year 2 (2021):

- Hector pays \$750 each month again.
- He pays \$9,000 toward the \$12,000 owed.
- His new unpaid principal is \$3,000.
- 10% interest on the \$3,300 balance from 2019 is \$330.
- .At the end of 2021, Hector's total arrears are \$6,630

▶ Year 3 (2022):

▶ - Hector again pays \$750 monthly, so \$9,000 toward the \$12,000 owed.

▶ - His new unpaid principal is \$3,000.

▶ - 10% interest on the \$6,630 balance is \$663.

▶ - **At the end of 2022, Hector's total arrears are \$10,293. His CDL revoked, not able to renew passport.**

▶ So even paying a significant **75%** of what he owed, Hector's arrears grew quickly over 3 years due to the accumulating interest on the unpaid amounts. This shows how making partial payments can still result in unmanageable arrears over time



WHAT IS A JUDICIAL DETERMINATION OF ARREARS?

A Formal calculation of past due support that includes all credits/payments made with the applicable statutory interest included.

Family Code §155:

Support order means judgment or order of support in favor of obligee, whether temporary or final--regardless of the type of action or proceeding in which it is entered.

CCP §685.010(a):

Interest accrues at 10 percent per annum on principal amount of a money judgment remaining unsatisfied.

WHO CAN REQUEST A DETERMINATION OF ARREARS?

FAMILY CODE §17526(C):

ANY PARTY TO AN ACTION INVOLVING THE ENFORCEMENT SERVICES OF THE LOCAL CHILD SUPPORT AGENCY MAY REQUEST A JUDICIAL DETERMINATION OF ARREARS.

Obligee, Obligor, and/or LCSEA

- ▶ The motion shall include a monthly breakdown showing amounts ordered and amounts paid. FC § 17526(a)

Once arrears are determined for a certain time period, it is **RES JUDICATA** and cannot be relitigated. *Wodicka v. Wodica* (1976) 17 Cal. App. 3d 181, 188

TYPES OF ARREARS

- CHILD SUPPORT
 - Assigned & Unassigned
- SPOUSAL SUPPORT
- BONUS ARREARS (Ostler/Smith)
- CHILD CARE
- UNINSURED MEDICAL, DENTAL, OPTICAL
- OTHER ADD-ONS
- OUT OF STATE ORDERS/JUDGMENTS



REQUIRED FORMS -FAMILY CODES SECTIONS 17524(A),17526(C) AND 5230.5

MOVING PARTY

- Request for Order FL-300 (if Self)
- Notice of Motion FL-680 (If LCSA)
- Application to Determine Arrears FL-490
- Declaration of Payment History FL-420
- Payment History Attachment FL-421
- Income and Expense Declaration FL-150

Required Forms -Family Code Section 17524(A),17526(c) and FC 5230.5-cont.d


RESPONDING PARTY

- **Responsive Declaration to Request for Order** **FL-320 (if Self)**
- **Declaration of Payment History** **FL-420**
- **Payment History Attachment** **FL-421**
- **Income and Expense Declaration** **FL-150**

BURDENS/ANALYSIS IN REQUESTING DETERMINATION

- No specific Family Code section allocating burdens, BUT:
- General evidence law and procedural rules apply in family law cases per Family Code Section 210.
- Evidence Code §§ 500, 550: Party has burden to produce evidence and to prove claims made by that party.
- Proponent of a prior order has burden to produce admissible evidence of its existence and contents. E.g., *In re Marriage of Smith* (2007) 148 Cal.App.4th 1115 and *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492.

BURDENS/ANALYSIS IN REQUESTING DETERMINATION (CONT.)

- Is there an Order?
 - Order must be clear and specific
 - Evidence of payments made
 - Whose burden to show payments and/or reasons/defenses to obligation to pay
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RELEVANT STATUTES AND CASE LAW REGARDING POWERS AND LIMITATION OF THE COURT

- **Family Code §291(a):** Support judgment/order is enforceable until paid in full or otherwise satisfied.
- **Family Code §4503:** Action to recover support arrears may be maintained any time within the period otherwise specified for the enforcement of the judgment, notwithstanding the fact that the child has attained the age of 18 years.

ARREARS ARE FOREVER!

- No Statute of Limitation
 - Limitation, Laches defense if owed to the State . Family Code §291 (d)
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ADDITIONAL STATUTES AND CASE LAW REGARDING POWERS AND LIMITATION OF THE COURT

- ▶ No retroactive modification: Family Code 3651, 3653
- ▶ No court discretion to forgive support arrearages including accrued interest
- Limitations on Waiver: *Marriage of Sabine & Toshio M.* (2007) 153 Cal.App.4th 1203 (tender and satisfaction applies only if bona fide dispute as to amount of arrears)

ACTUAL PAYMENTS

- ▶ Collections and payments through SDU
- ▶ Payments directly to obligee when ordered to pay obligee directly
- ▶ Credit for Social Security Derivative Benefits: FC § 4504
- ▶ Non-conforming payments
 - ▶ Ordered to pay SDU, but instead pays obligee directly
 - ▶ Pays money to others on behalf of obligee and/or child(ren)—landlord, car note, phone bill, buying things for the children, etc.
- ▶ *IRMO Utigard* (1981) 126 Cal.App.3d 133; *Spivey v. Furtado* (1966) 242 Cal.App.2d 259

POSSIBLE DEFENSES TO PAYMENT

- ▶ Waiver (*Marriage of Sabine & Toshio M.*)
- ▶ Laches: Not unless arrears are owed to state (FC 291(d))
- ▶ Direct care/custody credits (*Jackson/Trainotti, Wilson*)
- ▶ Incarceration credits (FC 4007.5)
- ▶ Agreements between parties (*Armato*)
- ▶ Satisfaction of other debts: Not usually (*Williams, Epstein, Keith G.*)
- ▶ Child concealment throughout minority (*Damico, Comer*)
- ▶ Other equitable defenses? (e.g., reliance/estoppel, unclean hands (*Boswell*))

ENFORCEMENT OF ARREARS OPERATION OF LAW


Interest accrues as a matter of law on support, but not daycare or other add-ons until there is a determination of the amount owed

→ Unless ordered in a specific monthly dollar amount



ENFORCEMENT OF ARREARS

LCSA AND DCSS

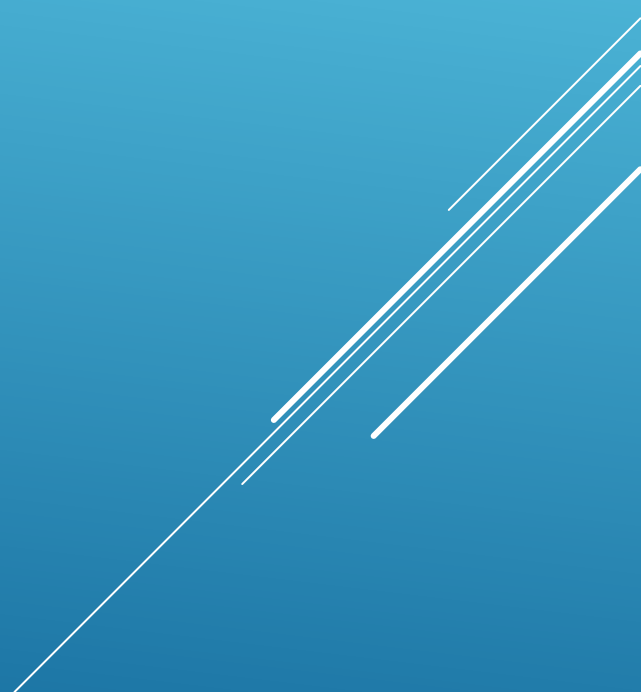
- ▶ Collection: Garnishment, Tax Refund Intercept, Bank Levies §17522
 - ▶ Liens on assets, lawsuit proceeds, etc. FC §17523
 - ▶ Qualified Domestic Relations Orders
 - ▶ Other remedies under the Enforcement of Judgment Law
 - ▶ Incentives/Punishments: Adverse Credit Reporting; License Denial/Suspension; Passport Holds; Possibility of Contempt
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HYPO QUESTION ONE


Direct payment of support to Kristy while she was on public assistance—does Carlos get credit for these payments or not?

- *Assume a proper NRPS was filed and served on Carlos indicating he should pay through SDU*
- *IRMO Utigard (1981) 126 Cal.App.3d 133; Spivey v. Furtado (1966) 242 Cal.App.2d 259*

HYPO QUESTION TWO

- ▶ Should the court validate Carlos' and Kristy's agreement that from January 1, 2021 through May 31, 2021, spousal support was \$0?
 - ▶ → IRMO Armato (2001) 88 Cal.App.4th 1030
 - ▶ → Cf. CCP § 664.6: writing signed by the parties required
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HYPO QUESTION THREE

- ▶ Assume the agreement to reduce spousal support to \$0 stands during the period January 1, 2021 through May 31, 2021
 - ▶ What about thereafter?
 - ▶ Does the agreement also extend to Carlos' obligation to pay child support?
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HYPO QUESTION FOUR

- ▶ (a) Is Kristy entitled to childcare/daycare arrears for the 12-month period from January 1, 2021 through December 31, 2021, when she was working 25 hours per week?
- ▶ (b) What about the 14-month period from January 1, 2022 through February 28, 2023, when she was working 35 hours per week?
 - ▶ → *What, if any, additional information do we need before deciding?*
- ▶ (c) What about the 5-month period from March 1, 2023 (when she entered rehab) through July 31, 2023 (when she got out of rehab)?
 - ▶ → *Assuming Kristy is entitled to childcare/daycare arrears, is she also entitled to interest going back in time to the dates the charges were incurred?*
 - ▶ → *Or as of the date the dollar value of the arrears is ascertained?*

HYPO QUESTION FIVE

- ▶ Is the January 2022 dental expense a proper item of arrears?
 - *What, if any, additional information is needed before deciding?*
 - *Assuming this is a proper item of arrears, as of when will interest accrue?*
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HYPO QUESTION SIX

Is Carlos liable for child support for the period March 1 through June 30, 2023, when the children lived exclusively with Kristy's parents?

→ *At this time, the children were 12 and 10 years old.*

→ IRMO Damico (1994) 7 Cal.4th 673 and IRMO Comer (1996) 14 Cal.4th 504 (estoppel)

→ IRMO Boswell (2014) 225 Cal.App.4th 1172 (“unclean hands” occasioned by delayed enforcement)

HYPO QUESTION SEVEN

▶ Can Carlos receive Jackson/Trainotti credit for his increased time share from July 1, 2023 through present?

→ *What, if any, additional information is needed before deciding?*

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HYPO TWISTS: *WHAT IF...* ?

- ▶ Carlos received Social Security Disability (SSDI) and the children got derivative benefits? Would he be entitled to credit?

→ FC § 4504(b)

- ▶ Carlos received SSDI and Kristy was ordered to apply for derivative benefits, but failed to do so?

→ FC § 4504(c)

WHAT IF . . . ?

- ▶ Carlos was in County jail from December 1, 2019 through February 28, 2023 (not DV)?

→ FC 4007.5(i): earlier versions of statute can be applied if (1) the earlier version provided for relief by operation of law; and (2) the person would have qualified for relief under the earlier version

WHAT IF . . . ?

- ▶ Carlos and Kristy reconciled, remarried, and lived together as a family with the children from January 1, 2021 through December 31, 2022?

→ *FC § 3602 (pendente lite orders)*

→ *Davis v. Davis (1968) 68 Cal.2d 290; IRMO Wilson & Bodine (2012) 207 Cal.App.4th 768*

WHAT IF . . . ?

- ▶ Carlos, Kristy, and the LCSA signed a formal agreement on Form FL-626, in which Kristy waived unassigned arrears?
→ *IRMO Sabine & Toshio M.* (2007) 153 Cal.App.4th 1203

WHAT IF . . . ?

- ▶ Instead of paying child support as ordered, Carlos paid off a Kristy's credit card? Would Carlos get credit?

→ IRMO Stutz (1981) 136 Cal.App.3d 1038

- ▶ What if the credit were sought against spousal support instead?

→ Williams v. Williams (1970) 8 Cal.App.3d 636; IRMO Chala (1979) 92 Cal.App.3d 996

- ▶ What if Carlos paid the mortgage while Kristy and the children remained in the family home?

→ IRMO Epstein (1979) 24 Cal.3d 76

- ▶ Instead of paying support to Kristy, Carlos gave the money to the children?

Q&A?

**FURTHER
DISCUSSION?**

THANK YOU

