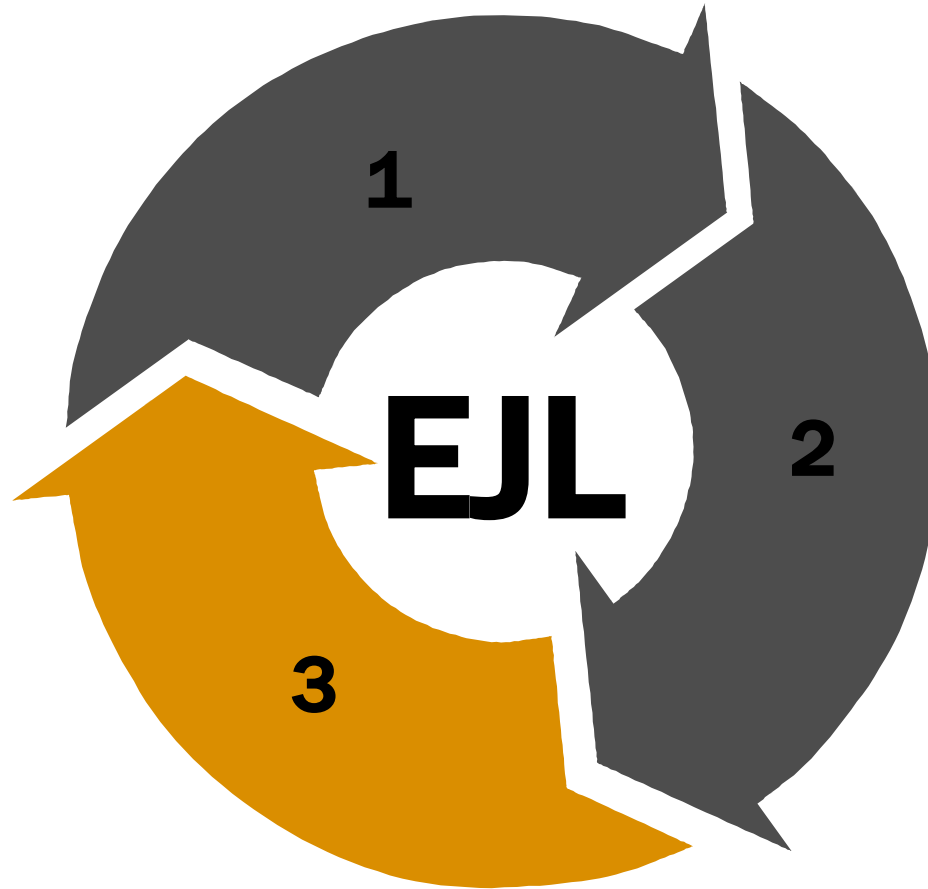




Making Your Judgment a Reality with Judicial Enforcement Remedies

Three Phase Cycle

Divorce lawyers are familiar with three EIL statutes concerning enforcement rights of third-party creditors against spouses



EJL – Community Property Subject to Third-Party Money Judgment Enforcement



► CCP § 695.020

(a) Community property is subject to enforcement of a money judgment as provided in the Family Code.

Pre-divorce Property Subject to Third- Party Money Judgment Enforcement



► FC § 910

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

Post-divorce Property Subject to Third-Party Money Judgment Enforcement



► FC § 916

(a) . . . after division of community . . . property: (2) . . . property received by the person . . . is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property.

Civil Code § 25

“A civil action arises out of:

1. An obligation;
2. An injury.”

Civil Code § 26

- “An obligation is a legal duty, by which one person is bound to do or not to do a certain thing, and arises from:

One – Contract; or

Two – Operation of law.”

When enforcing an equalizing payment, a divorce lawyer should become familiar with EIL statutes concerning enforcement rights of a judgment creditor ex-spouse against a judgment debtor ex-spouse

EJL – Property subject to levy

► CCP §699.710

Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 is subject to levy under a writ of execution to satisfy a money judgment.

EJL – Bank Levy Rights

► CCP §700.160(b)

A court order is not required as a prerequisite to levy on a deposit account or safe-deposit box standing in the name of any of the following: (1) The judgment debtor, whether alone or together with third persons.

EJL – Other Levies

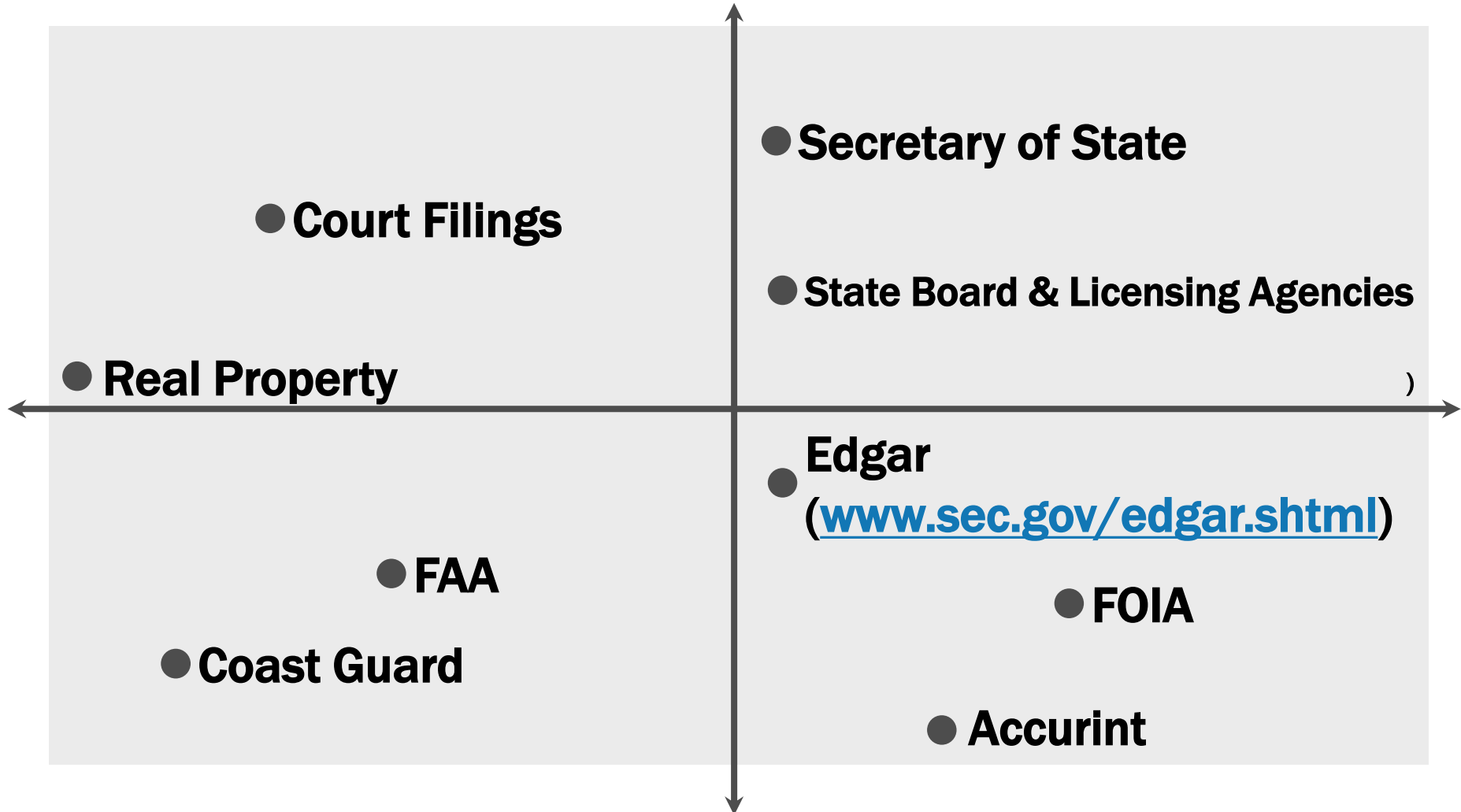
- ▶ **Real Property (CCP § 700.015)**
- ▶ **Tangible Personal Property (CCP § 700.030)**
- ▶ **Vehicle or Vessel (CCP § 700.090)**
- ▶ **Securities (CCP § 700.130)**
- ▶ **Debtor's interest as an heir (CCP § 700.200)**

EJL – Property Not Subject to Levy



- ▶ CCP § 699.720
 - ▶ The interest of a partner in a partnership or member in a limited liability company
 - ▶ The loan value of an unmaturred life insurance, endowment, or annuity policy
 - ▶ A cause of action
 - ▶ An alcoholic beverage license

Locating Assets



Making Your Judgment a Reality

- *“The Option Option”*



Wife:
Irma
In-Spouse

Husband:
Oliver
Out-Spouse

Attorney:
Connie Counsel

Attorney:
Lee Lawyer

**CloudBank, Inc.
Shareholders:**

Irma In-Spouse 60%

Peter Pobloy 30%

Teresa Third 10%

CloudBank, Inc.

Value: \$18 million

CP: \$14 million

WSP: \$4 million

GOALS

Avoid triggering the due on encumbrance provision in the senior lien **1**

Get the out-spouse that equalizing payment! **2**

Provide the in-spouse reasonable discretion to run the business, while insuring fiduciary duty compliance and protection of the out spouse **3**

Make continued operation of the business worthwhile for all stakeholders (e.g., business co-owners, customers, employees, lenders, vendors), and not just the divorcing couple. **4**

Strategies

- ▶ Defer division of the business asset for a specified time period, with the parties continuing co-ownership during the period.
- ▶ **Give the operating spouse an option to have the business awarded to her/him upon performance of certain terms and conditions, including full payment of the option price.**
- ▶ The “option price” is the court-ordered equalizing payment.

Strategies

- ▶ Designate the in-spouse as the operating spouse under Family Code section 1100(d).
- ▶ **Allocate 100% of the operating revenues to the operating spouse as compensation for her/his post-separation efforts.**
- ▶ Provide spousal support for the out-spouse.
- ▶ **(Spousal support shifts the income tax liability, provides more enforcement options, and is better protection against bankruptcy)**

Strategies

- ▶ Require the in-spouse to furnish the out-spouse certain documents and reports.
 - ▶ (The same documents and reports the in-spouse already furnishes the senior lienor).
- ▶ Designate those documents and reports as the in-spouse's "stipulated compliance" with his/her fiduciary duties to provide the out-spouse material facts and information concerning the business.

Strategies

“A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.”

Fam. Code 290

Strategies

- ▶ The family court may retain jurisdiction to value and divide a specified asset where retention is based on events to occur within a specified time:
 - *Marriage of Munguia* (1983) 146 Cal.App.3d 853, 858-859
 - *Marriage of Kilbourne* (1991) 232 Cal.App.3d 1518, 1524-1525

Making Your Judgment A Reality

With Contract Remedies

**Wife:
Wanda**

**Husband:
Harold**

**Attorney:
Carol Counsel**

**Attorney:
Luke Lawyer**

Judgment Enforcement: Remedies

Judicial or Contract

Judicial Remedies

- ▶ Contempt
- ▶ Judgment lien, levy, execution
 - ▶ (EJL: CCP § 680-724)

Contract Remedies

- ▶ Suit for contract rescission
- ▶ Suit for contract breach
- ▶ Suit for specific performance

The BIG Question

- ▶ **May both types of remedies be preserved?**

Does merger kill the contract star?



Family Code §2122

Grounds and time limits for motion to set aside judgment

a	FRAUD	File motion within ONE year after complaining party discovered, or SHOULD HAVE DISCOVERED, the fraud
b	PERJURY	File motion within ONE year after complaining party discovered, or SHOULD HAVE DISCOVERED, the perjury
c	DURESS	File motion within TWO years after ENTRY of judgment
d	MENTAL INCAPACITY	File motion within TWO years after ENTRY of judgment
e	MISTAKE	File motion within ONE year after ENTRY of judgment
f	FAILURE TO DISCLOSE	File motion within ONE year after complaining party discovered, or SHOULD HAVE DISCOVERED, the nondisclosure

FC §2128 Effect on other law:

(b) “Nothing in this chapter [Chapter 10 “Relief from Judgment” – sections 2120 through 2129] changes existing law with respect to contract remedies where the contract has not been merged or incorporated into a judgment.”

***Hough v. Hough* (1945) 26 Cal.2d 605, 609-610**

“A decree which incorporates an agreement is a decree of court nevertheless, and as soon as incorporated into the decree the separation agreement is superseded by the decree, and the obligations imposed are not those imposed by contract, but are those imposed by decree, and enforceable as such.”

Continuing *Hough* quotation

“Once the contract is merged into the decree, the value attaching to the separation agreement is only historical. [Emphasis added.] And it should logically and justly follow therefrom that thereafter there is no right of action on the agreement incorporated in the decree.”

***IRMO Corona* (2009) 172 Cal.App.4th 1205, 1221**

“The question of whether a marital settlement agreement is merged into the divorce decree is one of law. (Citation.) The MSA and judgment here satisfy the criteria for a merger. The MSA is attached to and explicitly incorporated by reference in the supplemental judgment, which states: “The marital settlement agreement executed by the parties herein, the original of which is attached hereto, is incorporated into and made a part of the judgment of dissolution of marriage filed and entered with this court on August 16, 1995, as though set forth in full therein.

Continuing *Corona* quotation

“The question of whether a marital settlement agreement is merged into the divorce decree is one of law. (Citation.) The MSA and judgment here satisfy the criteria for a merger. The MSA is attached to and explicitly incorporated by reference in the supplemental judgment, which states: “The marital settlement agreement executed by the parties herein, the original of which is attached hereto, is incorporated into and made a part of the judgment of dissolution of marriage filed and entered with this court on August 16, 1995, as though set forth in full therein.”

Form FL-180 Judgment

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date: _____

JUDICIAL OFFICER

5. Number of pages attached: _____

► **Bender**

By Matthew Bender & Company, Inc., member of the LexisNexis Group, subsidiary of Reed Elsevier

- Kathryn Kirkland
- Ira H. Lurvey (dec)
- Diana Richmond
- Stephen James Wagner

► **Rutter**

California Practice Guide: Family Law (subsidiary of Thomson Reuters)

- Judge William P. Hogoboom (dec)
- Justice Donald B. King (Ret.)
- Judge Kenneth A. Black (Ret.)
- Judge Thomas Trent Lewis
- Michael Asimow
- Bruce E. Cooperman

► **Rutter §9:443**

“Those provisions that are merged in the judgment become an order of the court; the ‘merged’ agreement is superseded by the judgment and ceases to be of independent legal significance. *Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1220-1221; *Marriage of Lynn* (2002) 101 Cal.App.4th 120, 130; *Marriage of Jones* (1987) 195 Cal.App.3d 1097, 1104.”

► **Bender §211.05**

“If the agreement is merged in the judgment, the provisions of the agreement so merged must be enforced as a judgment and not as a contract . . . contractual remedies, such as an action for breach of contract, are no longer available

For example . . . a husband's warranty of having provided accurate and current financial information would be extinguished by merger of the agreement into the dissolution judgment.” (citing *In re Marriage of Lane*)

► **Bender §211.05**

“Therefore, counsel should exercise caution in determining whether to merge any particular portions of an agreement in the judgment . . . if the parties anticipate the need for a certain type of contract-related remedy, such as specific performance, the provision should not be merged.”

► **Bender §211.05**

FIRST ALTERNATIVE (MERGED):

- “. . . this Agreement shall be attached to the judgment of dissolution of marriage and merged into the judgment for the purpose of becoming an operative part of the judgment.”

► **Bender §211.05**

SECOND ALTERNATIVE (NOT MERGED):

- “Either party who obtains a judgment . . . shall . . . request that . . . this Agreement . . . be incorporated by reference only into any judgment It is intended by the parties that this Agreement not be merged in any judgment, but that it shall survive the judgment and be binding on the parties for all time.”

► **Bender §211.05**

THIRD ALTERNATIVE (PARTIALLY MERGED):

- “A party who obtains a judgment . . . shall attach this Agreement to the judgment
- The parties agree that the court shall be requested to:
- (1) Approve the entire agreement as fair and equitable.

► **Bender §211.05**

- (2) Merge [e.g., the provisions relating to child custody, visitation, child support, and spousal support] . . . into the judgment for the purpose of being operative parts of the judgment.
- (3) Incorporate the remainder of the provisions of this Agreement by reference into the judgment for the sole purpose of identification.”

► **Rutter §9:445**

“The parties’ intent about ‘merger’ should be clarified in the settlement agreement. But the consequent legal effect makes it essential to carefully select the language used to be sure it achieves the intended result. [¶] Consider, for example, terminology that would preserve all possible avenues of relief – i.e., through a provision expressly requiring the agreement to be “merged” in the judgment but specifically preserving contractual remedies notwithstanding.

► **Rutter §9:445**

This is especially important if the agreement includes warranties: Again, remember that if there is a merger and there is no language in the judgment indicating the parties intend otherwise, warranties will not survive and the aggrieved spouse will not have a cognizable breach of warranty claim.”

► **Rutter, Ch. 9, FORM 9B**

“This Agreement shall be incorporated in and become a part of the judgment of dissolution in the pending court proceeding for the purpose of merging the Agreement into the judgment, and for the purpose of a court order requiring the parties to perform the executory provisions of this Agreement (and, if appropriate, add: ‘. . . except that any warranties contained in this Agreement shall survive its merger and be enforceable independently of the judgment by a breach of warranty action’).”

► **One law office's provision:**

“Merger of this Agreement with the parties’ Judgment shall not extinguish contractual obligations (e.g., warranties) contained herein. To the contrary: a) all contractual obligations shall continue in full force and effect, and b) the court shall have the power to enforce such obligations with contractual remedies (e.g., breach of contract) as well as with judicial remedies (e.g., contempt).”

The Price Wasn't Right

- ▶ **Let's hear see how the First District Court of Appeal's 1948 Price v. Price decision was overruled by the California Supreme Court's 1954 Flynn v. Flynn decision**



***Price v. Price* (1948) 85 Cal.App.2d 732**

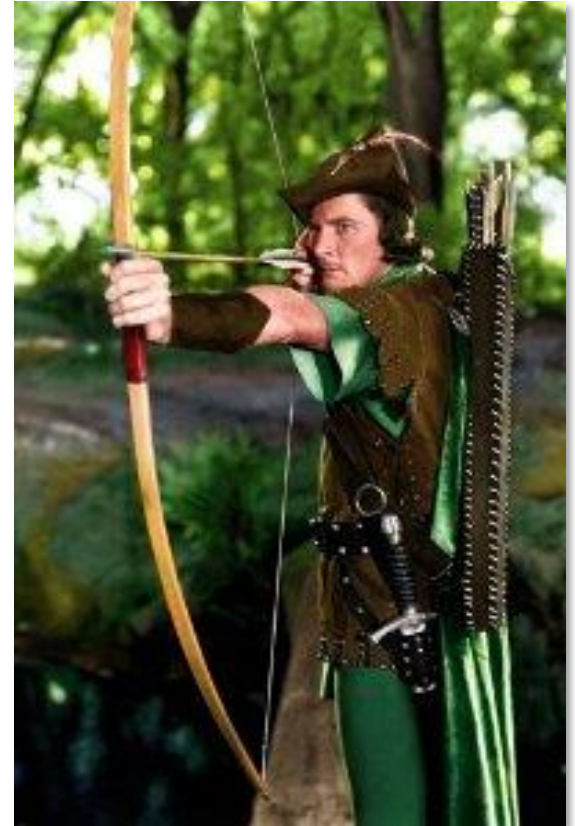
The parties' MSA, not physically attached to their judgment, was incorporated by reference into the judgment

Held: the MSA didn't merge with the judgment, and may not be judicially enforced:

“ . . . an agreement referred to in a decree and made a part thereof by reference only does not actually become a part of the decree for the purpose of enforcement as part of a judgment” (Id. at p. 738.)

Flynn v. Flynn (1954) 42 Cal.2d 44

- ▶ **Errol and Liliane Flynn divorced**
 - ▶ **The trial court:**
 - Received the parties' MSA into evidence;
 - Incorporated the MSA by reference into the divorce judgment;
 - Ordered the parties to perform the MSA's executory provisions; and
 - Returned the original MSA to the parties without retaining a copy in the court file.



- ▶ **Nine years later, Errol moved to reduce his child and spousal support payments due to changed circumstances.**

- The trial court denied his motion on the ground that the court lacked jurisdiction to modify the judgment.

- Reason: the MSA had not been physically placed in the court file, but had only been incorporated into the judgment by reference



Say What!

► ***The California Supreme Court reversed:***

“It is settled that a document may be incorporated either expressly or by apt reference into a judgment or decree so as to make it an operative part of the order of the court.” (Id., at 59; emphasis supplied.)

“Thus in this case, the decree may be given its intended effect by referring to the adequately identified document, and the fact that the document is not a part of the permanent records of the court does not vitiate the decree. [Citations omitted.] Price v. Price, 85 Cal.App.2d 732 [194 P.2d 101], is contrary to the foregoing authorities and is disapproved.” (Id. at p. 60; emphasis supplied.)



Enforcing Support

Child Support & Spousal Support Orders and Judgments

Common Techniques

For child support and spousal support orders

1

Child Support

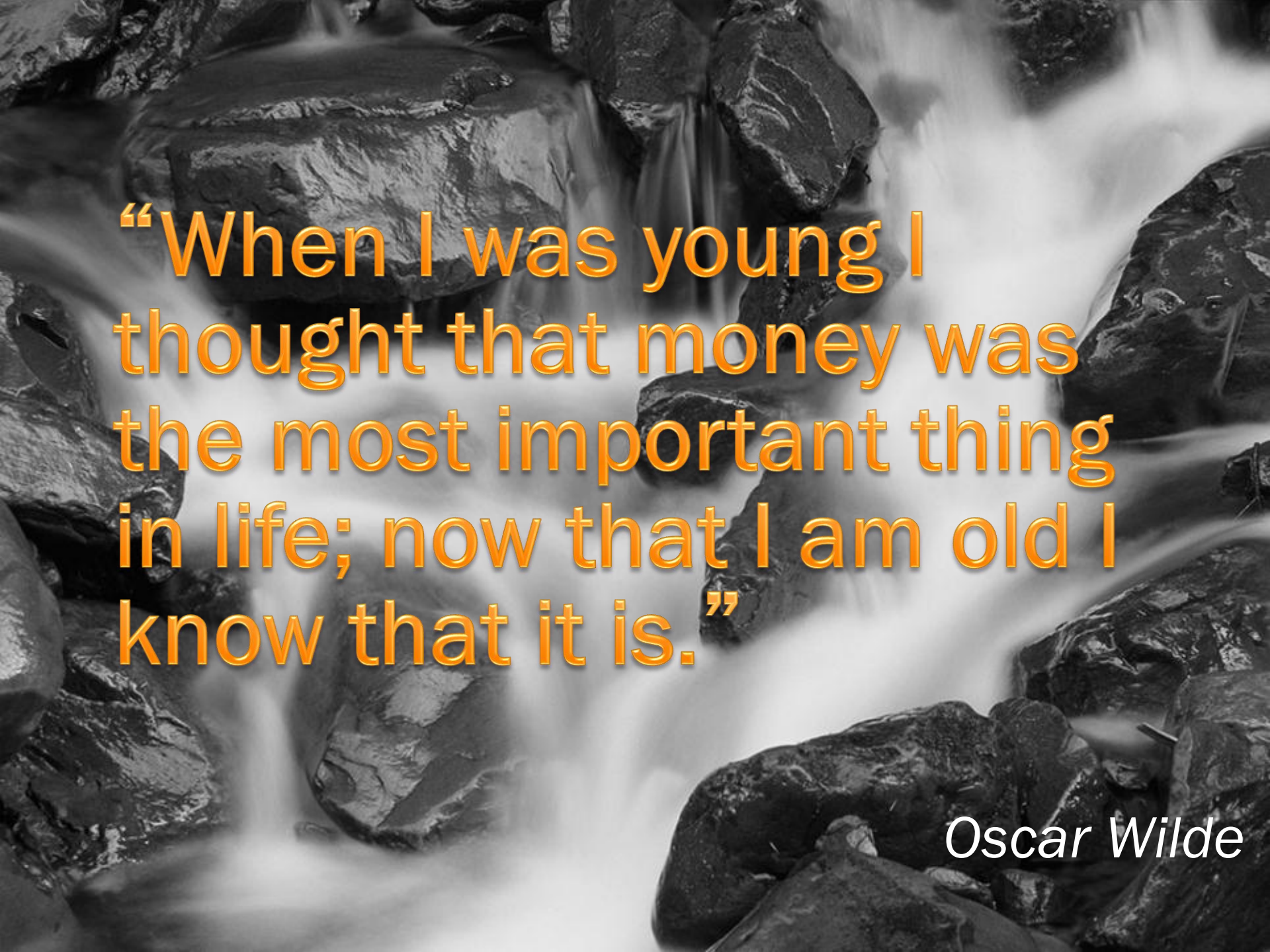
Enforcement techniques unique to child support orders

2

Spousal Support

Enforcement techniques unique to spousal support

3



“When I was young I
thought that money was
the most important thing
in life; now that I am old I
know that it is.”

Oscar Wilde

The Easy Way

► Income withholding order for support

- Indefensible

► Takes advantage of the State Disbursement Unit

► All the support

- Child and spousal
- Current and arrears

FL-195

INCOME WITHHOLDING FOR SUPPORT

☐ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
☐ AMENDED IWO
☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
☐ TERMINATION of IWO

Date: _____

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions <http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm-forms>). If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory _____ Remittance Identifier (include w/payment) _____
 City/County/Dist./Tribe _____ Order Identifier _____
 Private Individual/Entity _____ CSE Agency Case Identifier _____

Employer/Income Withholder's Name _____ RE: _____
 Employee/Obligor's Name (Last, First, Middle) _____
 Employer/Income Withholder's Address _____ Employee/Obligor's Social Security Number _____
 _____ Custodial Party/Obligee's Name (Last, First, Middle) _____
 Employer/Income Withholder's FEIN _____

Child(ren)'s Name(s) (Last, First, Middle) _____ Child(ren)'s Birth Date(s) _____

ORDER INFORMATION. This document is based on the support or withholding order from _____ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ _____ Per _____ current child support
 \$ _____ Per _____ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No
 \$ _____ Per _____ current cash medical support
 \$ _____ Per _____ past-due cash medical support
 \$ _____ Per _____ current spousal support
 \$ _____ Per _____ past-due spousal support
 \$ _____ Per _____ other (must specify) _____

for a **Total Amount to Withhold** of \$ _____ per _____

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____ per weekly pay period \$ _____ per semimonthly pay period (twice a month)
 \$ _____ per biweekly pay period (every two weeks) \$ _____ per monthly pay period
 \$ _____ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION. If the employee/obligor's principal place of employment is _____ (State/Tribe), you must begin withholding no later than the first pay period that occurs _____ days after the date of _____. Send payment within _____ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to _____ % of disposable income for all orders. If the employee/obligor's principal place of employment is not _____ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm for the employee/obligor's principal place of employment.

Document Tracking Identifier _____

CEB 1

A Support Order Is A Judgment

- ▶ **“A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary”**
- FC 290



A Support Order Is A Judgment

And all that goes along with that . . .

Fact 1

- ▶ A support order is a judgment. FC 290.
- ▶ Family law judgments carry the full power of California's Enforcing Judgments Law (*EJL*).
- ▶ Without being subject to many of the *EJL*'s limitations and controls.

Fact 2

- ▶ Family Law judgments never expire.
- ▶ They *do not* have to be renewed. FC 291

Fact 3

- ▶ Amounts owed never go away. FC 291
- ▶ Limited defenses to enforcement actions.

Remember!

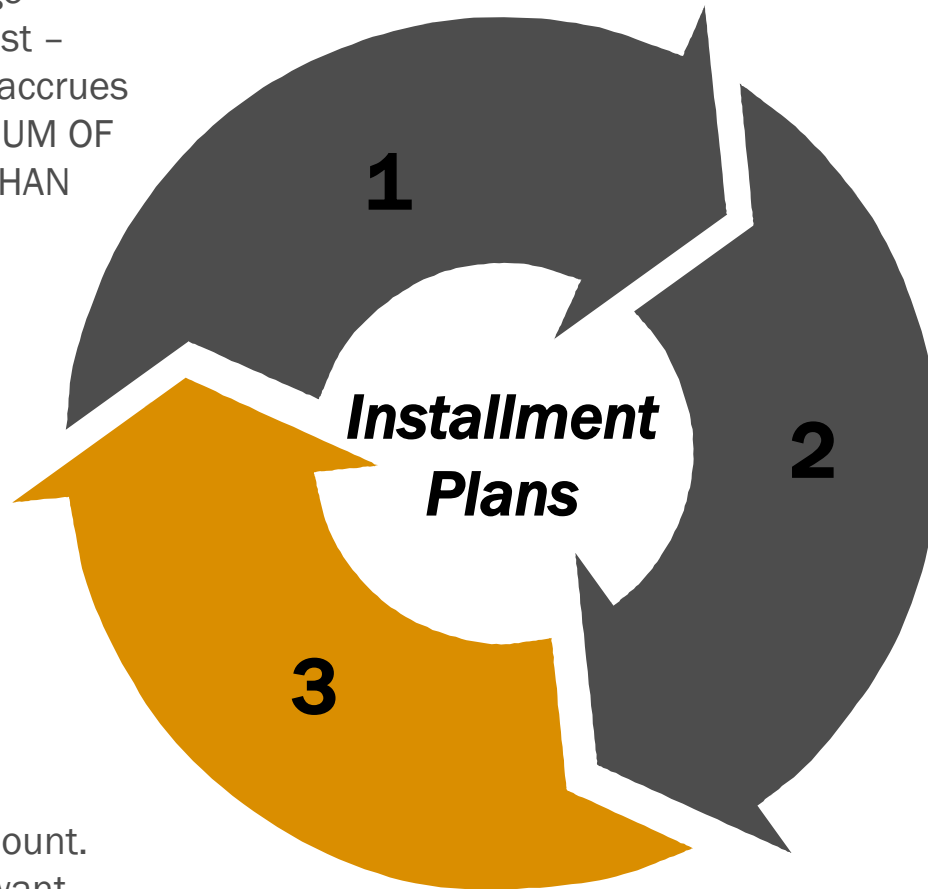
A support order is like an installment account

Missed Payments

What each missing installment gets you

Interest

It isn't the entire arrearage balance that draws interest – Each missed installment accrues interest on its own. THE SUM OF THE PARTS IS GREATER THAN THE WHOLE.



Evid C. 653

“An obligation possessed by the creditor is presumed not to have been paid.”

Control

You set the aggregate amount.
You go after it when you want.

Request For Order

Comfort derives from familiarity, yet comfort may not be the most productive choice . . .

When You Must

- ▶ When arrearage amounts are not known
 - ▶ Usually due to poor record keeping
- ▶ When amounts are not calculable:
 - ▶ Smith/Ostler orders
 - ▶ Reimbursements of medical, special needs, tuition, etc.

Why You Should'nt

- ▶ Takes away the element of surprise
- ▶ Buys the judgment creditor time to plan
- ▶ Waiting for your court date compounds the financial hardship on your client

Writ of Execution

- ▶ **Court process directing the levying office to seize property**
 - Most of debtor's property vulnerable
- ▶ **Legal taking**
 - Levying offices goes and gets the property



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Telephone: (925) 417-2202
jharding@hardinglaw.com

Attorney for Petitioner
Wilma Flintstone

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

In re the Marriage of:

WILMA FLINTSTONE,

Petitioner,

and

FRED FLINTSTONE,

Respondent.

Case No. AF0123456

APPLICATION FOR WRIT OF EXECUTION

[Fam. Code §5100, et seq.]

I, WILMA FLINTSTONE, do hereby declare:

1. I am the petitioner in the above-captioned proceeding.
2. The judgment/order for support was made and entered on January 2, 2015.
3. The judgment/order for support as entered provides:
 - a. Judgment Creditor: Wilma Flintstone, c/o John E. Harding, JD, CFLS, Harding & Associates Family Law, 78 Mission Drive, Suite B, Pleasanton, CA 94566.
 - b. Judgment debtor: Fred Flintstone, 301 Cobblestone Way, Bedrock, CA 70777.
 - c. Amount of order: \$1,500 per month until respondent dies, remarries, or further order of court.
4. This is a family law judgment/order entitled to priority under Code of Civil Procedure §699.510.



5. The writ is to be issued to: Wilma Flintstone.
6. Below is the total amount ordered, amount actually paid, date paid and whether applied to order and/or to accrued interest, and balance due. Failure to claim interest shall be deemed a waiver thereof for the purpose of this writ only:

TOTAL ORDERED PAID		ACTUALLY PAID		
Due date	Amount	Date paid	On order	On accrued interest
02/01/2015	\$1500	-	-	-
03/01/2015	\$1500	-	-	-
04/01/2015	\$1500	-	-	-
05/01/2015	\$1500	-	-	-
BALANCE DUE				
On order		On accrued interest		
\$6000		\$96.99		

There is actually due on said order the sum of \$6000.00, plus \$40.00 accrued costs (statutory fee for issuance of writ), plus \$96.99 accrued interest, plus \$1.23 per day accruing from date of his application to date of writ, for which sum it is prayed that a writ of execution issue in favor of Wilma Flintstone and against Fred Flintstone.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of May, 2015 at Pleasanton, California.

WILMA FLINTSTONE



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): <input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ PLAINTIFF: _____ DEFENDANT: _____	FOR COURT USE ONLY CASE NUMBER: _____
WRIT OF <input type="checkbox"/> EXECUTION (Money Judgment) <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> Real Property <input type="checkbox"/> SALE <input type="checkbox"/> Limited Civil Case <input type="checkbox"/> Small Claims Case <input type="checkbox"/> Unlimited Civil Case <input type="checkbox"/> Other _____	CASE NUMBER: _____

1. To the Sheriff or Marshal of the County of:

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or CCP 715.040.

3. (Name):

is the ☐ judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name, type of legal entity stated in judgment if not a natural person, and last known address):

☐ Additional judgment debtors on next page

5. Judgment entered on (date):

6. ☐ Judgment renewed on (dates):

7. Notice of sale under this writ

- a. ☐ has not been requested.
 b. ☐ has been requested (see next page).

8. ☐ Joint debtor information on next page.

9. ☐ See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.

10. ☐ This writ is issued on a sister-state judgment.

11. Total judgment \$ _____

12. Costs after judgment (per filed order or memo CCP 685.090) \$ _____

13. Subtotal (add 11 and 12) \$ _____

14. Credits \$ _____

15. Subtotal (subtract 14 from 13) \$ _____

16. Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) .. \$ _____

17. Fee for issuance of writ \$ _____

18. Total (add 15, 16, and 17) \$ _____

19. Levying officer:

- (a) Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) of \$ _____
 (b) Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(i)) \$ _____

20. ☐ The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

Issued on (date): _____ Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.

Page 1 of 2

WRIT OF EXECUTION

Code of Civil Procedure, §§ 699.520, 712.010, 715.010
 Government Code, § 6103.5
 www.court.ca.gov

PLAINTIFF: _____ DEFENDANT: _____	CASE NUMBER: _____
--------------------------------------	--------------------

Items continued from page 1-

21. ☐ Additional judgment debtor (name, type of legal entity stated in judgment if not a natural person, and last known address):

22. ☐ Notice of sale has been requested by (name and address):

23. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)

- | | |
|---|---|
| a. on (date): | a. on (date): |
| b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor: | b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor: |

c. ☐ additional costs against certain joint debtors (itemize):

24. ☐ (Writ of Possession or Writ of Sale) Judgment was entered for the following:

a. ☐ Possession of real property: The complaint was filed on (date):

(Check (1) or (2)):

- (1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
 (2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.
 (a) \$ _____ was the daily rental value on the date the complaint was filed.
 (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify): _____
 b. ☐ Possession of personal property.
 ☐ If delivery cannot be had, then for the value (itemize in 24e) specified in the judgment or supplemental order.
 c. ☐ Sale of personal property.
 d. ☐ Sale of real property.
 e. Description of property: _____

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).
 WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.
 WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.
 ▶ A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

WRIT OF EXECUTION

Liens

► Real Property

- Clouds title
- Issued by the clerk of the court

► Personal Property

- Impedes transfer or sale
- Creates creditor priority
- Prepared by the attorney and filed with the Secretary of State

<p>ALL COURT DOCUMENTS WITHOUT ATTORNEY FEES ARE RETURNED</p> <p><input type="checkbox"/> Forwarding copy to court of record to _____</p> <p>TELEPHONE:</p> <p><input type="checkbox"/> ATTORNEY'S OFFICE <input type="checkbox"/> JUDGE'S OFFICE <input type="checkbox"/> COURT CLERK'S OFFICE</p>	<p style="text-align: right;">FOR APPEARANCE USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</p> <p>JUDGMENT ASSIGNED:</p> <p>ISSUED ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>COURT NAME:</p>	
<p>PETITIONER/PLAINTIFF:</p> <p>RESPONDENT/DEFENDANT:</p>	
<p style="text-align: center;">ABSTRACT OF SUPPORT JUDGMENT</p> <p>I, the <input type="checkbox"/> petitioner and/or <input type="checkbox"/> assignee of record, applies for an abstract of a support judgment and represents the following:</p> <p>a. Judgment debtor's _____ name and last known address _____</p> <p><input type="checkbox"/> _____</p> <p>b. Driver's license no. and state _____</p> <p>c. Social Security number: XXX-XX-____ (provide only last four digits)</p> <p>d. Birth date: _____</p> <p>Date: _____</p>	<p>DATE RECEIVED</p> <p>FOR COURT USE ONLY</p>
<p style="text-align: center;">(NAME OF COURT) _____</p> <p>2. I CERTIFY that the judgment entered in this action contains an order for payment of alimony, family, or child support.</p> <p>3. Judgment creditor (name): _____</p> <p>where address appears on this form above the court's name.</p> <p>4. <input type="checkbox"/> The support is ordered to be paid to the following county officer (name and address): _____</p>	<p>5. Judgment debtor (full name as it appears in judgment): _____</p> <p>6. a. <input type="checkbox"/> Judgment with interest on (date) _____ b. <input type="checkbox"/> Renewal was entered on (date) _____ c. <input type="checkbox"/> Renewal was entered on (date) _____</p> <p>7. <input type="checkbox"/> An execution lien is established on the judgment as follows: a. Amount \$ _____ b. In favor of (name and address): _____</p>
<p>8. A stay of enforcement has: a. <input type="checkbox"/> not been entered by the court b. <input type="checkbox"/> been entered by the court effective until (date) _____</p> <p>9. <input type="checkbox"/> This is an initial mini judgment.</p>	
<p>10. <input type="checkbox"/> This abstract moved to _____ (date) _____</p>	<p>Clerk by _____, Deputy</p>

For copies of the Summary of California Court Rules, call (800) 785-2000 or visit www.courtinfo.ca.gov

ABSTRACT OF SUPPORT JUDGMENT

LACK OF A FILING STAMP MAY BE A SIGN OF A PROBLEM
 2011-2012

Debtor's Examination

- ▶ With the service of an examination order the judgment debtor must appear in court to furnish information to aid in enforcement of the money judgment.

- CCP Sec. 708.110(a)

- ▶ **Rutter Group: Enforcing Judgments and Debts**

AT-138, EJ-125	
<p style="font-size: x-small;">ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)</p> <p style="font-size: x-small;">TELEPHONE NO. FAX NO.</p> <p style="font-size: x-small;">ATTORNEY FOR (Name)</p> <p style="font-size: x-small;">NAME OF COURT:</p> <p style="font-size: x-small;">STREET ADDRESS:</p> <p style="font-size: x-small;">MAILING ADDRESS:</p> <p style="font-size: x-small;">CITY AND ZIP CODE:</p> <p style="font-size: x-small;">BRANCH NAME:</p> <p style="font-size: x-small;">PLAINTIFF:</p> <p style="font-size: x-small;">DEFENDANT:</p>	<p style="font-size: x-small;">FOR COURT USE ONLY</p> <p style="font-size: x-small;">CASE NUMBER:</p>
<p style="text-align: center;">APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION</p> <p style="font-size: x-small;"> <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person </p>	
<p style="text-align: center;">ORDER TO APPEAR FOR EXAMINATION</p> <p>1. TO (name):</p> <p>2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to</p> <p style="font-size: x-small;">a. <input type="checkbox"/> furnish information to aid in enforcement of a money judgment against you.</p> <p style="font-size: x-small;">b. <input type="checkbox"/> answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.</p> <p style="font-size: x-small;">c. <input type="checkbox"/> answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.</p>	
<p style="font-size: x-small;">Date: Time: Dept. or Div.: Rm.:</p> <p style="font-size: x-small;">Address of court <input type="checkbox"/> shown above <input type="checkbox"/> is:</p>	
<p>3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):</p> <p style="font-size: x-small;">Date: _____</p> <p style="text-align: right; font-size: x-small;">JUDGE OR REFEREE</p>	
<p style="font-size: x-small;">This order must be served not less than 10 days before the date set for the examination.</p> <p style="border: 1px solid black; padding: 2px;">IMPORTANT NOTICES ON REVERSE</p>	
<p style="text-align: center;">APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION</p> <p>4. <input type="checkbox"/> Judgment creditor <input type="checkbox"/> Assignee of record <input type="checkbox"/> Plaintiff who has a right to attach order to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.</p> <p>5. The person to be examined is</p> <p style="font-size: x-small;">a. <input type="checkbox"/> the judgment debtor.</p> <p style="font-size: x-small;">b. <input type="checkbox"/> a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.</p> <p>6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.</p> <p>7. <input type="checkbox"/> This court is not the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.</p> <p>8. <input type="checkbox"/> The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.</p> <p style="font-size: x-small;">I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p> <p style="font-size: x-small;">Date: _____</p>	
<p style="font-size: x-small;">(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)</p> <p style="text-align: center; font-size: x-small;">(Continued on reverse)</p>	
<p style="font-size: x-small;">Form Adopted for Mandatory Use Judicial Council of California AT-138, EJ-125 (Rev. July 1, 2004)</p> <p style="text-align: center;">APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION (Attachment—Enforcement of Judgment)</p> <p style="text-align: right; font-size: x-small;">Code of Civil Procedure, §§ 491.110, 708.110, 708.120</p>	

Debtor's Examination

The secret discovery tool . . .

Pros

- ▶ Service of the examination order creates a **one-year lien** on all non-exempt property
 - ▶ Usually due to poor record keeping
- ▶ More Effective than written discovery
- ▶ Conducted in the presence of the judge
- ▶ Turnover orders obtainable
- ▶ Third party discovery
 - ▶ Accountants, new spouse, etc.

Cons

- ▶ Expensive. Attorney time.
- ▶ Gives the debtor a heads-up
- ▶ Invokes FD CPA

Collection Attorneys

Child and Spousal Support Collection Specialists

- ▶ **You, Me, The Other Guy or Gal**

- Contingency practice

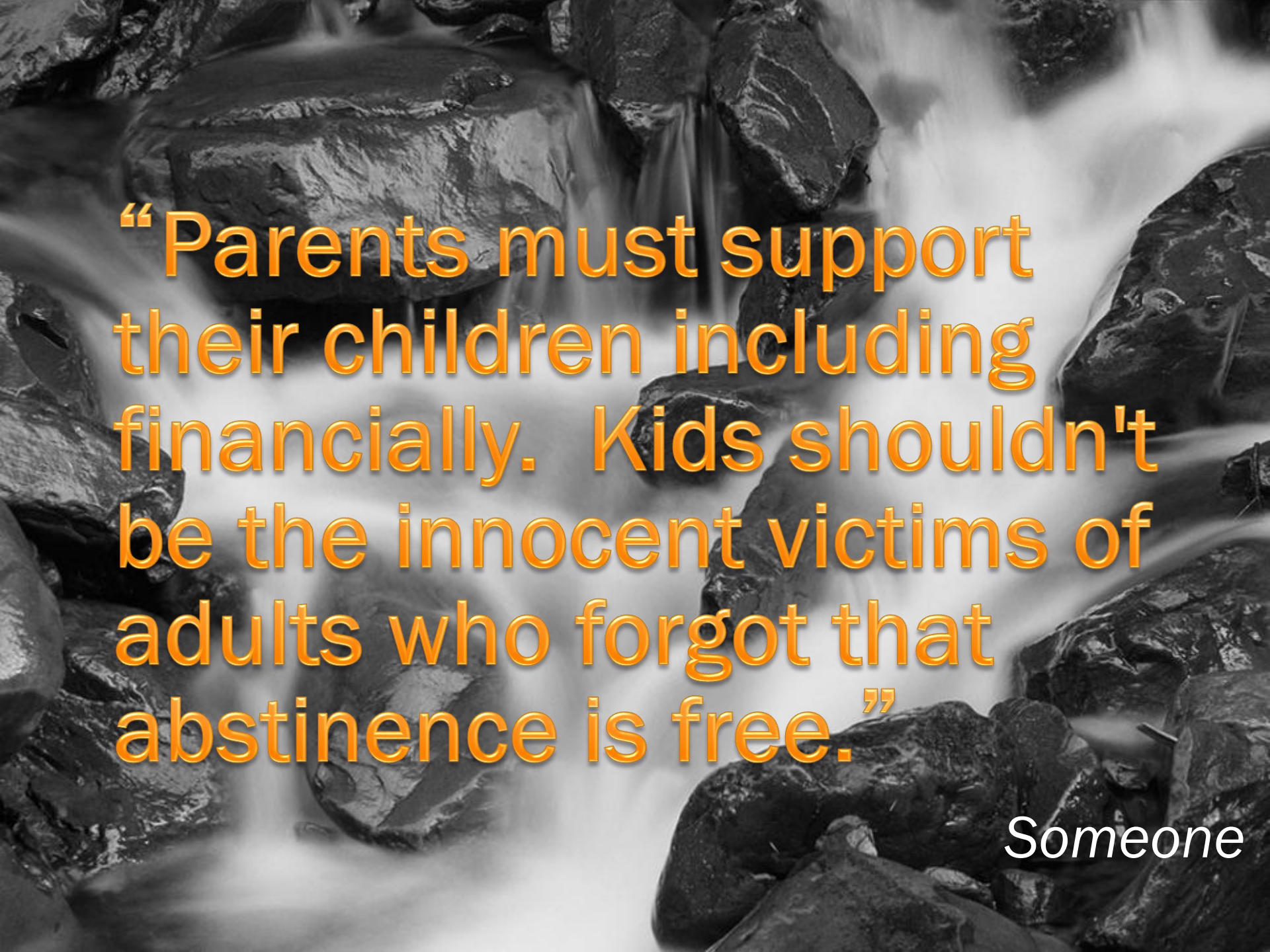
- ▶ **Center for Enforcement of Family Support**

- Raymond R. Goldstein, Esq.
- www.enforcesupport.com



Child Support

Enforcement techniques unique to child support orders.



“Parents must support their children including financially. Kids shouldn't be the innocent victims of adults who forgot that abstinence is free.”

Someone



► **DCSS**

- Free and powerful
- Slow and inefficient

► **Private Child Support Enforcement Agency**

- Family Code Section 5616

► **Private Child Support Enforcement Agency**

- Any post-2009 child support order must include a separate money judgment compelling the child support obligor to pay a private child support collector's fee.
 - Not to exceed 33.3% of the total amount in arrears and 50% of the fees charged by the private child support collector.
 - These fees are not child support, and not an offset against child support or arrearages.

Cal. Fam Code Section 5616

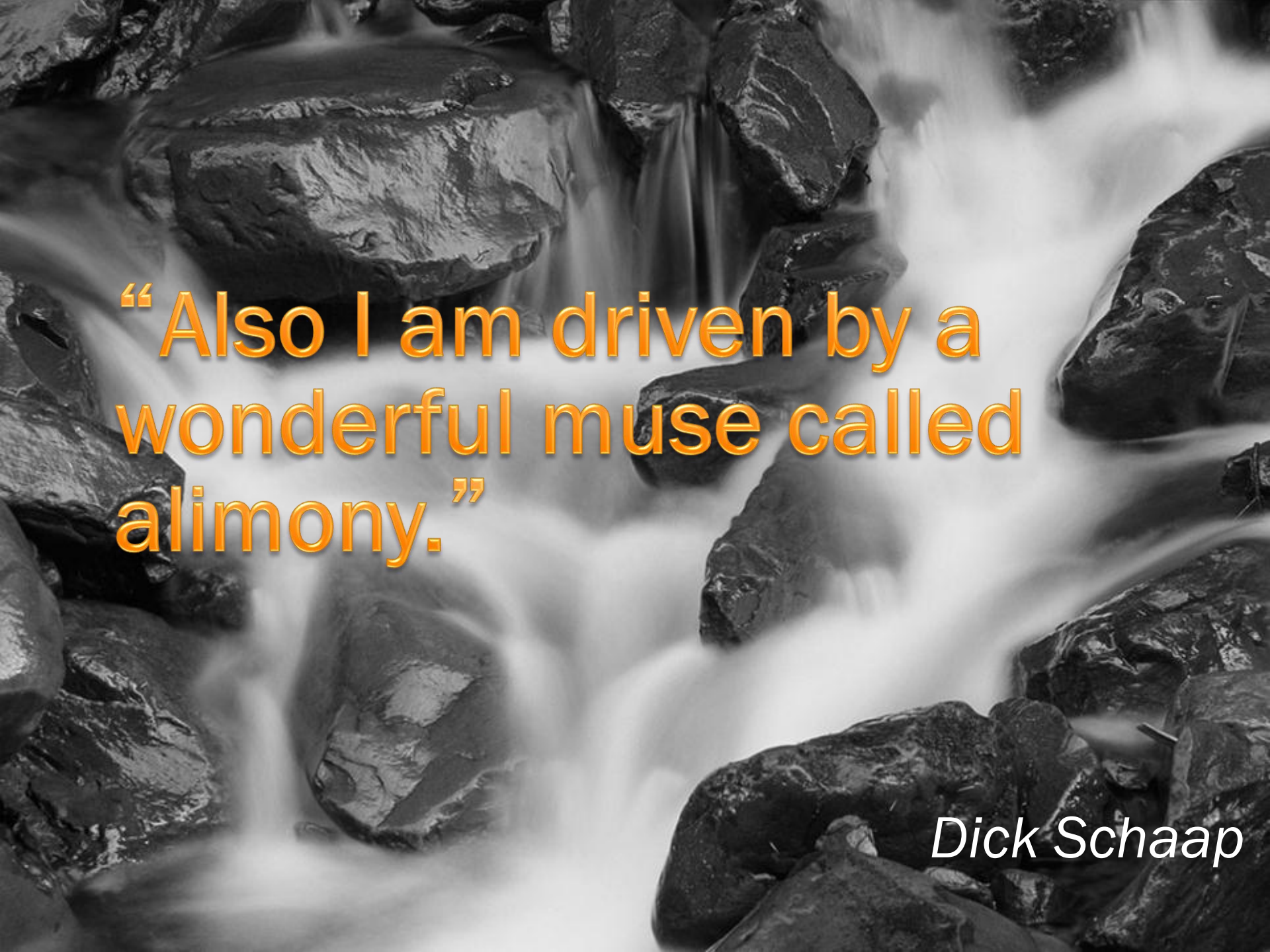
Judgment in Favor of a Private Child Support Collector. This judgment shall constitute a separate money judgment owed by the child support obligor to pay a fee not to exceed 33 and 1/3 percent (33 1/3%) of the total amount in arrears, and not to exceed 50 percent (50%) of the fee as charged by a private child support collector pursuant to a contract complying with the requirements of California Family Code section 5616, and any other child support collections costs expressly permitted by the child support order for the collection efforts undertaken by the private child support collector. The money judgment shall be in favor of the private child support collector and the child support obligee, jointly, but shall not constitute a private child support collector lien on real property unless an abstract of judgment is recorded. The Parties understand that the money judgment may be enforced by the private child support collector by any means available to the obligee for the enforcement of the child support order without any additional action or order by the court. Fees that are deducted by a private child support collector may not be credited against child support arrearages or interest owing on arrearages or any other money owed by the obligor to the obligee. Not later than five days after the date that the private child support collector makes its first collection, written notice shall be provided to the obligor of (1) the amount of arrearages subject to collection, (2) the amount of the collection that shall be applied to the arrearage, and (3) the amount of the collection that shall be applied to the fees and costs of collection. The notice shall provide that, in addition to any other procedures available, the obligor has 30 days to file a motion to contest the amount of collection fees and costs assessed against the obligor.

Private Child Support Collectors



Spousal Support

Enforcement techniques unique to spousal support orders.



“Also I am driven by a
wonderful muse called
alimony.”

Dick Schaap

Earning Assignment Order for spousal or partner support

FL-435

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
OTHER PARENT:		
EARNINGS ASSIGNMENT ORDER FOR SPOUSAL OR PARTNER SUPPORT <input type="checkbox"/> Modification		CASE NUMBER:

TO THE PAYOR: This is a court order. You must withhold a portion of the earnings of (specify obligor's name and birthdate):
and pay as directed below. (An explanation of this order is printed on page 2 of this form.)

- THE COURT ORDERS
1. You must pay part of the earnings of the employee or other person who has been ordered to pay support, as follows:
- a. ☐ \$ per month current spousal or partner support
- b. ☐ \$ per month spousal or partner support arrearages
- c. Total deductions per month: \$
2. ☐ The payments ordered under item 1a must be paid to (name, address):
3. ☐ The payments ordered under item 1b must be paid to (name, address):
4. The payments ordered under item 1 must continue until further written notice from the payee or the court.
5. ☐ This order modifies an existing order. The amount you must withhold may have changed. The existing order continues in effect until this modification is effective.
6. This order affects all earnings that are payable beginning as soon as possible but not later than 10 days after you receive it.
7. You must give the obligor a copy of this order and the blank Request for Hearing Regarding Earnings Assignment (form FL-450) within 10 days.
8. ☐ Other (specify):
9. For the purposes of this order, spousal or partner support arrearages are set at: \$ as of (date):
- Date: _____

The End



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