



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2007-09) DEFINES SUPPORT TO INCLUDE COURT-ORDERED FEES AND COSTS

TO: Larry Doyle, Chief Legislative Counsel, State Bar Office of Governmental Affairs

FROM: Karen Pedersen Stevens

DATE: May 22, 2006

RE: Defining Support in Family Law Cases to Include Court Ordered Attorneys Fees and Costs. Amends Family Code §150.

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee/Standing Committee: April 7, 2006

Approval vote: 10-4

Contact

Diane Wasznicky
Bartholomew & Wasznicky LLP
4740 Folsom Blvd.
Sacramento, CA 95819
Telephone: (916) 455-5200
Fax: (916) 455-6300
Diane@DivorceWithRespect.com

Section Legislative Chair

Elizabeth L. Harrison
451 Main Street #9
Placerville, CA 95667
Telephone: (530) 621-4700
Fax: (530) 642-2761
elh-family-law@comcast.net

DIGEST:

This Resolution amends Family Code §150 to provide that “Support” also includes an award of attorney fees or costs awarded under the Family Code when the court orders such attorney fees or cost paid to the party or party’s attorney in the nature of support.

PURPOSE:

1) The Problem:

In some family law support cases the court orders one party to pay a portion of other party's attorney fees and costs. In making these orders a court takes into consideration the need of the party who is to receive the award of fees and costs and the ability of the other party to pay those fees and cost. In some cases, the conduct of the party ordered to pay these fees and costs is taken into consideration. Because need and ability to pay is the overriding reason for a award of attorney fees and costs in support cases it is, in effect, in the nature of support.

Currently awards of attorney fees and costs from one party to the other in support cases, because these fees and costs are not defined as support, may not be protected in bankruptcy. This can result in substantial hardship and unfairness to the party to whom those fees and costs were awarded since that party remains responsible for the fees and costs. This would allow the supported spouse/parent to continue to have representation where the court has determined that the party needs assistance with payment of attorney's fees.

1) The Remedy:

The remedy would be to add a provision to the existing code to provide that the court has authority to award attorney's fees and costs payable by one party to the other in support cases (including orders directly to the other party's attorney) as support.

ILLUSTRATIONS:

See the answer to "The Problem" set forth above which illustrates the need for this legislation.

DOCUMENTATION:

To the author's knowledge, there are no formal studies, reports, or statistics which support the conclusion that there is a problem. The recent real life examples as described in the ILLUSTRATIONS section above form the factual basis that this is a common problem.

HISTORY: None

There have been previous efforts to revise the Judicial Council forms to allow attorney's fees orders in family law support cases to be paid by wage assignment but that was not done. It is possible that the revision to the Judicial council forms was not done because only support orders can be basis for a wage garnishment and at this time attorney fees orders arising in support cases are not in the nature of support, and as such, cannot be on the wage assignment.

LIKELY SUPPORT & OPPOSITION:

Support

1) Family law attorneys

Why?

Most family law attorneys represent, at different times, payors and recipients of these types of attorney fees orders in support cases and they would be in support of this legislation.

2) Women's groups

Women's groups representing mothers and/or recipients of child or spousal support orders. This amendment would help ensure attorneys fees orders given in support cases are easier to enforce and are not dischargeable in bankruptcy.

Oppose

Possibly groups representing divorced men

Why?

Because it would make it harder for payors of such attorneys fees orders in support cases to escape payment.

FISCAL IMPACT: None

TEXT OF PROPOSAL

SECTION 1. Section 150 of the Family Code is amended to read:

150. "Support" refers to a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to Section 17402. It also includes past due support or arrearage when it exists. "Support," when used with reference to minor child or a child described in Section 3901, includes maintenance and education. *"Support" also includes an award of attorney fees or costs awarded under this code when the court orders such attorney fees or cost paid to the party or party's attorney in the nature of support.*