

Judicial Council of California • Administrative Office of the Courts

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IN V I T A T I O N T O C O M M E N T
SPR13-21

Title	Action Requested
Family Law: Ex Parte Application to Terminate Earnings Assignment Order	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes Revise form FL-430	Proposed Effective Date January 1, 2014
Proposed by Family and Juvenile Law Advisory Committee Hon. Kimberly Nystrom-Geist, Cochair Hon. Dean T. Stout, Cochair	Contact Anna L. Maves, Senior Attorney 916-263-8624 anna.maves@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising the *Ex Parte Application for Earnings Assignment Order* (form FL-430), effective January 1, 2014, to comply with Assembly Bill 1727 (Stats. 2012, ch. 77), which amended Family Code section 5240 to permit a support obligor to seek ex parte relief to terminate an earnings assignment order under specified circumstances.

Background

Family Code section 5240 permits a support obligor to seek ex parte relief to terminate an earnings assignment (1) due to the death or remarriage of the spouse, (2) due to the death or emancipation of the child, (3) because a previous stay of wage assignment was improperly terminated as specified, or (4) where an employer or the child support agency has been unable to deliver the support payments for at least six months due to the obligee's failure to notify them of his or her change of address.

Form FL-430 is a mandatory form. It would be reorganized and revised to add further information about the underlying support order; separate the child support order from the spousal, partner, or family support order; and add specific items to reflect the requirements for seeking modification of an earnings assignment or termination of the earnings assignment order.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

Form FL-430 currently allows a party to make an ex parte application for an earnings assignment or for modification of an earning assignment order. This form would be revised to reflect the changes to Family Code section 5240 that allow an obligor to make an ex parte application for termination of a support order under specific circumstances. Timely application for relief is critical for an obligor who may be having support inappropriately withheld from his or her income. Time is of the essence because these payments must continue to be withheld until relief is obtained from the court, and the support payments may not be recoverable once distributed.

The current FL-430, *Ex Parte Application for Earnings Assignment Order* would be revised and renamed as *Ex Parte Application to Issue, Modify, or Terminate an Earnings Assignment Order*. This form would also be revised as outlined below:

- Item 1 would be revised to add more detailed information about the current support order including the names, dates of birth, and order amount for each of the children for which the earning assignment was issued.
- The existing item 7 would be renumbered as item 6, with a heading added to provide additional clarification for the use of the renumbered item. This item would also be revised to include domestic partner support and domestic partners support arrears.
- The proposed item 7 (currently item 6) would be revised to add a heading to provide additional clarification for the use of the item. It would also be revised to be used exclusively for requests for modification of an existing child support earnings assignment order and the items that request termination of the earnings assignment order would be removed.
- Item 8 would be added to be used exclusively for requests for termination of an existing child support earnings assignment order. This item would include items previously listed in item 6 as well as some new items for situations where child support terminates by operation of law.
- Items 9 and 10 would be added to be used exclusively for spousal, domestic partner, or family support. Item 9 would be used for modification of the support order. Item 10 would be used for termination of the support order and would include some items previously listed in item 6.

Alternatives Considered

The committee and task force considered taking no action to change the form or deferring the proposal for the spring 2014 public comment cycle. These options were not considered viable because the current form does not comply with the requirements of law. Litigants, attorneys, and courts rely on the forms to reflect the current law relating to access to the judicial process.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal. Courts will incur reproduction costs to distribute the revised forms only if the courts provide those forms.

Litigants and counsel may also obtain the forms on the California Courts website and from public law libraries, thus reducing the need for courts to maintain a large number of copies on site.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Would the local child support agencies use this form to modify a judicial earnings assignment order to change the payee rather than requiring an obligee to terminate the earnings assignment when they request IV-D services?
- Is it appropriate to include family support in items 9 and 10 regarding modification and termination of spousal or partner support?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. Form FL-430 at pages 4–6.
2. Assembly Bill 1727 is found at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1701-1750/ab_1727_bill_20120710_chaptered.pdf

ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Fam. Code, §§ 17400, 17406) (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 PARTY/PARENT:

**EX PARTE APPLICATION TO ISSUE, MODIFY, OR TERMINATE
AN EARNINGS ASSIGNMENT ORDER**

**Draft -
Not approved
by the Judicial
Council**

CASE NUMBER:

APPLICANT DECLARATIONS

1. **Child support** was ordered as follows on (date):
 a. Child's name b. Date of birth c. Monthly amount d. Payable by (party): e. Payable to (party):

f. Total amount unpaid (arrears) is at least: \$ _____ as of (date):

2. **Spousal or domestic partner support** **family support** was ordered as follows:

a. Date of order:
 b. Payable by petitioner respondent other parent
 c. Payable to petitioner respondent other (specify):
 d. Total amount unpaid (arrears) is at least: \$ _____ as of (date):

3. **Interest and penalties**

a. The amount of arrears stated in items 1f and 2d does does not include interest at the legal rate. (*If interest is not included, it is not waived.*)
 b. The amount of arrears stated in items 1f and 2d does does not include penalties at the legal rate. (*If penalties are not included, they are not waived.*)

4. **(Complete for support ordered before July 1, 1990, only)**

Payment of child support spousal or partner support is overdue in the sum of at least one month's payment.

Written notice of my intent to seek an earnings assignment was

a. given at least 15 days before the date of filing this application
 (1) by first class mail.
 (2) by personal service.
 (3) contained in the support order described in item 1 or 2.
 (4) other (specify):

b. waived (explain):

5. An earnings assignment order has not been issued for support ordered after July 1, 1990.

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PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	CASE NUMBER:
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ISSUANCE OF EARNINGS ASSIGNMENT ORDER

6. I request an earnings assignment order issue for the following monthly deductions:

- a. \$ per month current child support.
- b. \$ per month current spousal or domestic partner support.
- c. \$ per month current family support.
- d. \$ per month child support arrears.
- e. \$ per month spousal or domestic partner support arrears.
- f. \$ per month family support arrears.

g. Total deductions per month: \$

MODIFICATION OF CHILD SUPPORT EARNINGS ASSIGNMENT ORDER

7. The existing earnings assignment order for child support should be modified as follows (specify):

The modified earnings assignment order is requested because (check all that apply):

- a. custody of the following children has changed (specify):
- b. the support arrears in this case are paid in full, including interest.
- c. the earnings assignment order must be conformed to the most recent support order as follows (specify):

- d. the local child support agency is no longer enforcing the current support obligation in this case but is required to collect and enforce any arrears owing.
- e. The local child support agency is providing services pursuant to Family Code sections 4200 and 4201 and although the amount of child support has not changed, child support payments are payable through the local child support agency.
- f. Other (specify):

TERMINATION OF CHILD SUPPORT EARNINGS ASSIGNMENT ORDER

8. The earnings assignment order for child support should be terminated because (check all that apply):

- a. Past due support has been paid in full, including any interest due.
- b. There is no current support order.
- c. The child reached age 18 and completed the 12th grade on (date):
- d. The child reached age 19 years on (date):
- e. The child died on (date):
- f. The child married on (date):
- g. The child went on active duty with the armed forces of the United States on (date):
- h. The child received a declaration of emancipation under Family Code section 7122 (name each child and give dates):

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY/PARENT:	CASE NUMBER:
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8. (continued)

- i. The previous stay of the earnings assignment was improperly terminated (*specify*):

- j. The State Disbursement Unit has been unable to deliver payment for a period of six months due to the failure of the support recipient to notify the State Disbursement Unit of a change in his or her address.
- k. Other (*specify*):

MODIFICATION OF SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT EARNINGS ASSIGNMENT ORDER9. The existing earnings assignment order for spousal, domestic partner, or family support should be changed as follows (*specify*):

The modified earnings assignment order is requested because (*check all that apply*):

- a. the support arrears in this case are paid in full, including interest.
- b. the earnings assignment order must be conformed to the most recent support order as follows (*specify*):

- c. other (*specify*):

TERMINATION OF SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT EARNINGS ASSIGNMENT ORDER10. The earnings assignment order for spousal, domestic partner, or family support should be terminated because (*specify*):

- a. Past due support has been paid in full, including any interest due.
- b. There is no current support order.
- c. The supported spouse or domestic partner remarried or registered a domestic partnership on (*date*):
- d. The supported spouse or partner died on (*date*):
- e. By terms of the current order, spousal, partner, or family support terminated on (*date*):
- f. A previous stay of wage assignment was improperly terminated (*specify*):

- g. The employer State Disbursement Unit has been unable to deliver payment for a period of six months due to the failure of the support recipient to notify that employer or the State Disbursement Unit of a change in his or her address.
- h. Other (*specify*):

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

Date:



(SIGNATURE OF APPLICANT)