



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title

Family Law: Ex Parte Application to
Terminate Earnings Assignment Order

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form FL-430

Effective Date

January 1, 2014

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Kimberly J. Nystrom-Geist, Cochair

Date of Report

October 12, 2013

Contact

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Executive Summary

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. In addition, the form would be renamed, reorganized and additional information about the underlying order would be added to make it more intelligible for users.

Recommendation

Effective January 1, 2014, the Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise and rename form FL-430, from *Ex Parte Application for Earnings Assignment Order* to *Ex Parte Application to Issue, Modify, or Terminate an Earnings Assignment Order* to comply with the requirements of Assembly Bill 1727 (Stats. 2012, ch. 77), which allows an obligor to make an ex parte request for termination of an earnings assignment order.

Previous Council Action

Effective July 1, 1997, the Judicial Council adopted FL-430, *Ex Parte Application for Wage and Earnings Assignment Order*, previously California Rules of Court, rule 1285.65, to implement legislation that created California's current child support commissioner and family law facilitator program.

The form was subsequently revised effective January 1, 1998, to make an important technical change. The form was revised again effective July 1, 2002, and January 1, 2003, as part of the Judicial Council's renumbering system for family law forms and to make some additional technical changes.

Rationale for Recommendation

Form FL-430 currently allows a party to make an ex parte application for an earnings assignment order or for modification of an earnings assignment order. This form would be revised to reflect the changes to Family Code section 5240¹ that allow an obligor to make an ex parte application for termination of a support order 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. 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 are not always recoverable once distributed.

The current mandatory form, 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*. 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.

Comments, Alternatives Considered, and Policy Implications

Comment process

The invitation to comment on the proposal was circulated for public comment from April 19, 2013, through June 19, 2013, to the standard mailing list for family and juvenile law proposals including child support professionals, as well as to the regular rules and forms mailing list. These distribution lists include appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, child support commissioners, court administrators, attorneys, family law facilitators, court clerks, social workers, probation officers, mediators, the California Department of Child Support Services, Child Support Directors

¹ Assembly Bill 1727 (Stats. 2012, ch. 77).

Association (CSDA) forms committee and legal practices committee, title IV-D program directors, and other family and juvenile law professionals.

During the formal comment period, the committee received nine written comments. Of these, four commentators agreed with the proposed revisions, four agreed if suggested modifications were made, and one commentator did not indicate a position. The committee reviewed and analyzed the comments and made a number of revisions to the proposed form based on these comments. A chart of comments received and the committee's responses is attached at pages 8–19.

The commentators who agreed with the proposed changes to FL-430 believe that the revisions comply with the requirements of the law and will assist self-represented litigants in having access to the courts to address their concerns. The commentators who suggested changes to the form also agreed that the form was valuable, particularly to self-represented litigants, but believed that the form could be improved with some additional changes.

Two commentators suggested that item 7.a., which requests the court modify the earnings assignment order because custody of the children has changed, be removed. They believe that it may give litigants the false impression that the form can be used to modify the underlying child support order when the custody of the child has changed. Because this item may give litigants that false impression, the committee agrees with the comments and removed item 7.a. from the form. One of the commentators suggested replacing this item with a request to stay a current earnings assignment order to allow the litigants to go back to court to request the court modify the support order. Family Code section 5260 controls the request to stay an earnings assignment order. The request to stay cannot be made on an ex parte basis so that suggestion will not be incorporated into the form.

One of the issues that was specifically called out for comment in the Invitation to Comment was whether it would be useful to add item 7.e., which would change the payee of an earnings assignment to the local child support agency when a request for title IV-D services is made. One commentator indicated that because the local child support agencies have the ability to issue an administrative income withholding order, the local child support agency would choose to issue an administrative order rather than enforce ongoing support under the judicial earnings assignment order. Because this provision will not be used, item 7.e. was deleted from the form.

One commentator indicated that the form did not exactly track with the requirements of Family Code section 3901, where a child has reached the age of 18 but is no longer a full-time high school student. A new item 8.e. was added to ensure consistency with the law.

One commentator agreed with the changes to the form, but had a question about whether a request for termination of the earnings assignment order falls within the notice and appearance exceptions in California Rules of Court, rule 5.170. Because the termination or modification of an earnings assignment order is not specifically listed as an exception in the rule and because

there may be questions of fact, rule 5.165 applies as it governs the notice requirements for an ex parte application in family law cases.

Finally, some commentators believed that additional changes to legislation or other Judicial Council forms may also be helpful to litigants. These requests are beyond the scope of this proposal. Where appropriate, these comments will be considered when future forms changes are made.

Alternatives considered

The committee 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. In addition, the committee concluded that the changes to the form would streamline procedures for local courts in its case file review to determine whether the parties met the requirements of the legislation. This uniformity will result in reduced court time and ultimately result in cost saving for the courts.

Attachments

1. Form FL-430, at pages 5–7.
2. Chart of comments, at pages 8–19.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

TELEPHONE NO.: FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

FOR COURT USE ONLY

**DRAFT
Not Approved
by the Judicial
Council**

CASE NUMBER:

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**

APPLICANT DECLARES

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.

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. One or more of the following children listed in the child support order are emancipated (support is no longer required by law) as of the following dates (name each emancipated child and date of emancipation):
- 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. 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 18 and is no longer a full-time high school student as of (date):
 - e. The child reached age 19.
 - f. The child died on (date):
 - g. The child married on (date):
 - h. The child went on active duty with the armed forces of the United States on (date):
 - i. The child received a declaration of emancipation under Family Code section 7122 (name each child and give details):

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

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

- k. 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.
- l. Other (specify):

MODIFICATION OF SPOUSAL, DOMESTIC PARTNER, OR FAMILY SUPPORT EARNINGS ASSIGNMENT ORDER

9. 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 ORDER

10. 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:

(TYPE OR PRINT NAME)

SIGNATURE

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Family Law: Ex Parte Application to Terminate Earnings Assignment Order (revise form FL-430)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services Lara Chandler Attorney	AM	<p>1. On the current FL-430, number 6 refers to the modification of the existing earnings assignment order, and part a. states that a reason for modification of the order is the emancipation of the child(ren). The amended/draft form eliminates that reason from the list of possibilities and gives it as a reason to terminate the earnings assignment order only. The emancipation language of 6a. on the existing form should be kept on the amended/draft form as emancipation is a valid reason the order should be modified as well as terminated, i.e. cases where there are multiple children on a severable order. The Department would agree to the language of the form if this modification was made.</p> <p>2. The amended/draft FL-430 adds the language of 6e., <i>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.</i> As support is payable to the local child support agency <u>through</u> the State Disbursement Unit (SDU), the language should be modified as such. This language may also be appropriate in the termination of child support earnings assignment order section as well, but should remain in the modification section in case the order includes other fees and costs payable via</p>	<p>The committee agrees with the suggested change to the form and will add a new subsection in item 7 that will allow a party to request modification of an earning assignment order where one of the children has emancipated, but there is still ongoing child support for other children in the underlying order.</p> <p>The committee believes the commentator is referring to item 7.e. as circulated. For reasons discussed below, this item will be removed as unnecessary.</p>

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Family Law: Ex Parte Application to Terminate Earnings Assignment Order (revise form FL-430)

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	Commentator	Position	Comment	Committee Response
			<p>the order that are not child support related. The Department would agree to the language of the form if this modification was made.</p> <p>3. On the amended/draft FL-430, number 8 refers to the termination of the child support earnings assignment order. Part j. states, <i>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.</i> Whereas the six month timeframe is appropriate under FC § 17502 for cases enforced by IV-D agencies and §5240, FC § 5237(d)(2) indicates a 45-day timeframe if the case is not being enforced by a IV-D agency. Further research may be necessary to clarify the appropriate timeframe.</p> <p>4. On the amended/draft FL-430, number 10 refers to the termination of spousal, domestic partner, or family support earnings assignment order. Part g. refers to the same six month timeframe as above. Further research may be necessary to clarify the appropriate timeframe.</p>	<p>Assembly Bill 1727 (Stats. 2012, ch. 77) amended Family Code 5240 to permit a support obligor to seek ex parte relief to terminate an earnings assignment order under specified circumstances. Subsection (7) specifically states that a court can terminate an earnings assignment order when the State Disbursement Unit is unable to deliver payments for a period of six months.</p> <p>Family Code 5237(d)(2) referred to by the commentator identifies the requirements of the employer or State Disbursement Unit when it receives payments it is unable to deliver. Those timeframes are different from when an obligor can seek ex parte relief. Because the form correctly states the statutory timeframe in Family Code 5240, the change will not be made.</p> <p>As stated above, because the timeframe stated on the form is consistent with the statute, the change will not be made.</p>
2.	Hon. Christine Copeland Child Support Commissioner Superior Court of Santa Clara County	AM	If space allows, I would add a box for applicant to check if so desired which says "I reserve my right to seek reimbursement of overpaid support." This is a nice placeholder/reminder to	The committee does not recommend the proposed change as it may mislead a litigant into believing that he or she has put the issue of overpayment before the court An obligor must use the

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			give notice to both payee and payor about potential future claims (i.e. it still might not be over yet), and might assist the Court as well in resolving the matter.	appropriate legal process to resolve the issue. .
3.	Debbie Kruse Unit Manager Superior Court of Orange County	A	<p>Improved information about current support order, inclusion of domestic partner support and domestic partners support arrears.</p> <p>Request for Specific Comments</p> <ul style="list-style-type: none"> • Does the proposal reasonably achieve the stated purpose? Yes • Would this proposal have an impact on public’s access to the courts? Yes; via the allowance of an obligor to make an ex parte application for termination of a support order under specific circumstances <p>If a positive impact, please describe. If a negative impact, what changes might lessen the impact?</p> <p>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?</p> <p>Is it appropriate to include family support in items 9 and 10 regarding modifications and termination of spousal or partner support. Yes</p> <p>The advisory committee also seeks comments</p>	No response required.

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	Commentator	Position	Comment	Committee Response
			<p>from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? No <p>If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?</p> <ul style="list-style-type: none"> • What are the implementation requirements for courts? Advisement to staff; no cost. <p>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.</p> <ul style="list-style-type: none"> • Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • 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? Proposal is not too cumbersome. 	
4.	State Bar of California Standing Committee on the Delivery of Legal Services Sharon Ngim Program Dev. And Staff Liaison	A	Revisions to FL-430 will be helpful for self-represented litigants and addresses current law.	No response required.
5.	Superior Court of Los Angeles County	AM	Remove “Issue” from name of form -	When a party requests that the court modify or

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			<p>FC§5230 provides and requires that when the court orders a party to pay an amount for support...shall include in its order an earnings assignment order for support...”. It is not necessary to submit anything with the initial wage assignment order (after the court has made a specific order) to have it issued, exparte or otherwise, at least in Los Angeles County. Therefore, the recommendation is to remove the word “issue” in the name of the form.</p> <p>Rename form: The vast majority of litigants will use the FL-195 (Income Withholding Order, rather than Earnings Assignment Order (for spousal support). Therefore, our recommendation would be to rename the form as:</p> <p>EX PARTE APPLICATION TO MODIFY OR TERMINATE AN INCOME WITHHOLDING ORDER</p> <p>Delete items 4 and 5. Language incorporated from the previous form may now be moot. Therefore, in an effort to reduce the form to 2 pages, we recommend eliminating items 4 and 5. To comply with FC§5252, one sentence of instruction could be used citing requirements of a Declaration and Notice.</p> <p>Move renumbered item 6 to end of form as in a ‘prayer’ for relief. We suggest that the placement of this request should be at the end of the form, similar to a ‘prayer’ for relief” and</p>	<p>terminate an earning assignment order, he or she may also be requesting the court issue a new earnings assignment order. For example, if a party is requesting the court terminate an earnings assignment order because of the emancipation of the child he or she may be requesting the court issue an earnings assignment order to pay for outstanding arrears. Because the form may be used for this purpose, the requested change will not be made.</p> <p>The term "earnings assignment order" is used generically. This form may also be used to request a court ordered income withholding order.</p> <p>The committee believes that these items may still be used by litigants seeking child support or child support arrears, so does not recommend the removal of these items.</p> <p>Items 1 through 5 on the first page of the form are declarations of fact. Items 6 through 10 are all a prayer for relief. Further, except for the inclusion of domestic partner support, the language in the</p>

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			<p>include the original language used in the current form FL-430. We agree with the proposed change to include domestic partner support and domestic partner support arrears.</p> <p>Change language in item 7a to provide for a temporary stay and indicate custody change must be made by court order. The language of 7a may give litigants the false impression that they can use this form to modify a support order just based upon the child now residing with them, absent a court order. In a case where the litigant does have a change of custody order, and the child support is being enforced by Child Support Services Dept., an administrative stay is issued. Including a stay in this application allows time for the litigant to file a Request for Order to modify the support order without the litigant’s wages being garnished pending hearing. We suggest that 7a again be revised regarding a “stay” or clarify to a litigant completing this form, that a court order is needed to change custody. We therefore propose the following language for 7.a.: Custody of the following children has changed and I am requesting a “stay” of the current support order pending a hearing regarding modification of child support.</p> <p>Delete items 7d and 7e and add “*The local child support agency is not enforcing the current support obligation.” Child Support Services Dept. throughout the state, in IV-D cases, issue Administrative Income Withholding</p>	<p>proposed revised form remains unchanged. The committee does not recommend moving or changing Item 6.</p> <p>The committee agrees with this comment and will remove this item from the form. The suggested language regarding requesting a stay of the support order is not consistent with the law. Family Code §5260 requires notice be given and a hearing to allow the court to make a determination whether a stay is appropriate.</p> <p>Item 7.d. is currently used by a support obligee where the local child support agency is no longer enforcing on-going child support, but collecting support arrears assigned to the county. By checking this box, the obligee is informing the</p>

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			<p>Orders. These orders do not need to be signed by a judicial officer and CSSD would not use this form to modify an earnings assignment order. Instead, we would suggest a provision such as:</p> <p>“* The local child support agency is not enforcing the current support obligation.”</p> <p>Delete item 9 b. Item 9 b may be unnecessary pursuant to FC§5230 referenced in paragraph 1 above. An earnings assignment order shall issue with each support order – no application form is needed.</p> <p>By deleting items 4, 5, 7d, 7e and 9b, the result may be that FL-430 may remain 2 pages.</p> <p>RESPONSES TO REQUEST FOR SPECIFIC COMMENTS</p> <p><i>Does proposal reasonably achieve the stated purpose?</i> Yes.</p> <p><i>Would proposal have positive/negative impact on public’s access to the courts?</i> A positive impact overall.</p>	<p>court that although there may be an administrative wage assignment in place for the collection of the arrears by the local child support agency, it is appropriate for the court to issue an earnings assignment for on-going support payable to the obligee.</p> <p>Item 7.e. was added to the form in an effort to change the payee on the earnings assignment order issued by the court to the local child support agency where an obligee has requested governmental child support services. Because it is more likely that the local child support agency will issue an administrative income withholding order rather than enforce on-going support under the court's order, this item will be removed.</p> <p>Item 9.b. is used by an obligor where a support order changes by operation of law, but the current earnings assignment order does not reflect the support order. Thus, this item is needed and the committee recommends that it not be removed.</p> <p>No response required.</p>

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	Commentator	Position	Comment	Committee Response
			<p><i>Would local child support agencies use this form...?</i></p> <p>We do not believe that this form is necessary for IV-D cases. Defer to CSSD.</p> <p><i>Is it appropriate to include family support in items 9 and 10....?</i></p> <p>We do not believe it is appropriate to include family support. There are too many nuances in a family support order, which would necessitate a full noticed hearing.</p>	<p>Another commentator (see comment 3) indicated that the inclusion of family support on the form is appropriate, the committee recommends that this not be removed from the form.</p>
6.	<p>Superior Court of San Bernardino County Monica Mitchell Supervising Attorney</p>	NI	<p>The language at Item #8 does not exactly track FC 3901. If a child reaches 18 years and is no longer a full-time student, then the duty to support ends. Item #8 only includes the most common options of “18 years and completed the 12th grade” or “19 years”. There is no option for “18 years and not a full-time high school student”.</p> <p>It would probably be too cumbersome and/or confusing to try to define “full-time high school student” on the form, since it appears you have to look at the type of school program completed (see Education Code Section 46141) and the answer may also depend upon the local school board (see Education Code Section 46100).</p>	<p>The form will be revised to add a subitem at item 8. to address the circumstance where a child is 18 years of age and no longer a high school student either by graduating or leaving school.</p>
7.	<p>Superior Court of San Diego County Michael M. Roddy Court Executive Officer</p>	A	<p>Form FL-430 would be revised to comply with Assembly Bill 1727 (Stats. 2012, ch. 77), which amended Family Code section 5240 to permit a support order obligor to seek ex parte relief to terminate an earnings assignment order under specified circumstances.</p>	

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	Commentator	Position	Comment	Committee Response
			<p>Our court has the following comments:</p> <p>1) Agree that the proposed revisions to the <i>Ex Parte Application for Earnings Assignment Order</i> (form FL-430) reasonably achieve the stated purpose.</p> <p>2) An earnings assignment order based on an existing support order does not require notice or a personal appearance at a hearing under current rule 5.170. Does the same apply when a party seeks a termination of an earnings assignment order with form FL-430?</p>	<p>No response required.</p> <p>The notice requirements for an ex parte application in family law cases can be found in California Rule of Court 5.165. The exception to this requirement can be found at California Rule of Court 5.170 which allows a party to request an earning assignment order without the need for notice and an appearance. That exception does not apply to the request for termination or modification of an earnings assignment order. In those cases there may be a question of fact and the other party to the action must be given an opportunity to be present and heard on the request. The requesting party must provide notice to the other parties in the actions.</p>
8.	Superior Court of Shasta County Stacy Larson Family Law Facilitator	AM	I think this form is much needed—thank you for creating it! In my ideal world, obligors would be able to submit their request to terminate the existing income withholding order (IWO) at the beginning of the month of the last payment, and a provision would be added regarding the effective date of the termination. In a recent case, the existing IWO collected nearly \$2300 per month from the obligor’s wages for spousal support. The payroll periods at this employment meant that if he waited until the last payment was taken from his wages before	The suggested change would require a change in legislation and is therefore beyond the scope of the proposal. Further the purpose of the proposed form is merely to request the court issue, modify or terminate an earnings assignment order. It has no effect on the underlying child, spousal or family support order. If a party wishes to change his or her support order including the effective period, he or she must file a noticed motion and request the court make the appropriate order. That process would be inappropriate on an ex parte basis.

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			<p>submitting his termination, he would be deep enough into the new payroll period that it would be too late to process the termination before the next month, and an additional \$2300 would be withheld and sent to the obligee. The obligee had no job nor significant assets, so once overpaid this \$2300, it would be difficult or impossible for the obligor to recover the overpayment. The form has no provision for an “effective date” and the statute appears to require that the last payment actually be made before the obligor can petition the Court for termination. This is not an uncommon scenario, and the obligors who overpay face great difficulty in recovering their funds. It would seem to be easily resolved by adding a provision to the FL-430 and FL-435 (and possibly clarifying Family Code §5240 to allow obligors to submit the IWO termination a specified period before the last payment is made by listing an effective date for the termination IWO).</p> <p>Item 7(a) may cause confusion for litigants and inexperienced attorneys. If custody of the children has changed, this can affect the amount of child support ordered and withheld via wage assignment; however, this change can only occur after the Court has ordered a change in child support, etc., not simply as a result of a change in custody.</p> <p>It may be helpful to include at Item (1) and (2), which summarize the existing child-support</p>	<p>This item has been removed to eliminate the potential confusion noted by the commentator.</p> <p>The committee agrees with this comment and item 7(a) will be removed from the form.</p> <p>The form has a space to provide the date of the order. This information is sufficient to allow the</p>

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			<p>order, the effective dates of the existing orders.</p> <p>At Item (1)(f) and (2)(d), it may be helpful to reference the FL-420 Payment History form, which would provide a vehicle for litigants to document the arrears they claim at Item (1)(f) and (2)(d).</p> <p>The FL-435 should be revised to match the revised FL-430 in the following ways:</p> <p>In the caption of the FL-435, next to the box for “Modification,” we should consider adding a box for “Termination.”</p> <p>The FL-195, which is the income withholding order for child support, requires that a copy of the underlying support order be attached to the FL-195. It would seem to be equally relevant to attach a copy of the underlying support order to the FL-435.</p>	<p>court to make a determination about the ex parte request. The effective date of the order is unnecessary.</p> <p>The purpose of these items is to provide information to the court for the party to support the request for a specific amount for the repayment of arrears. The purpose is not for the court to make a determination of arrears. Referencing FL-420 may mislead litigants about the purpose of the ex parte motion.</p> <p>FL-435, <i>Earnings Assignment Order for Spousal or Partner Support</i>, is not part of the proposal for forms changes. The suggested changes will be kept on file and considered for future forms cycles. Although FL-435 is not being changed, it can be used when a request for termination of an earnings assignment is made. Specifically, item 8 on the form can be used to provide details about the termination of the earnings assignment order.</p>
9.	Hon. Rebecca Wightman Child Support Commissioner Superior Court of San Francisco County	A	I agree with the proposed changes. However, now that the law is allowing terminations of WAOs on an ex parte basis (where courts have little notice and very little information to go on), I do have a concern that this form may be misused by pro per litigants -- particularly where DCSS is already involved in enforcement, yet that fact may not be known by a regular Family Law bench officer. So, I	The Judicial Council has not developed an information sheet for the use of this form. Your comment is appreciated and will be considered for future Judicial Council forms cycles. Information for self-represented litigants is available on the self-help website at: http://www.courts.ca.gov/selfhelp.htm

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			would suggest that if there are any instructions re the use of this form, it be made clear when it can and cannot be used and/or that a litigant be required to indicate via a checkbox as to whether DCSS is involved in enforcing any support.	