

**CREATIVE WAYS TO COLLECT &
ENFORCE CHILD SUPPORT CLAIMS**

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LICENSE & MEMBERSHIPS

Attorney and Counselor at Law, Texas, 1987
Board Certified - Family Law, Texas Board of Legal Specialization
State Bar of Texas & Family Law Section

Board of Directors, Family Law Section of San Antonio Bar Association, 2002 - ; President, 2007-2008
Texas Academy of Family Law Specialists
San Antonio Family Lawyer's Association
Domestic Relations Office Advisory Board of Bexar County, 2009 -

EDUCATION

J.D., Texas Tech University School of Law, 1987
B.A. in English (Writing) and Psychology, McMurry University, Abilene, TX 1984

former staff attorney, Bexar County Child Support Enforcement Office, 1994 - 1997

HONORS/RECOGNITIONS

Texas *Super Lawyers* 2008, Family Law
San Antonio's Best Lawyers – Family Law, Scene in SA magazine 2005, 2007, 2008, 2009
President's Award of Excellence – San Antonio Bar Association Family Law Section 2005

PUBLICATIONS & PRESENTATIONS

How to Collect & Defend Child Support Claims, 2009 Marriage Dissolution Institute
Money Matters, Extreme Family Law Makeover 2009, SA Bar Association Family Law Section
Obtaining Child Support (with Barry Brooks) 2009 UT Law School CLE Parent Child Relationships: Critical Thinking for Critical Issues
Unique Child Support Remedies Webcast, paper author & panelist, 2009 State Bar of Texas
Dealing with Children with Special Needs (with Sally Holt Emerson), 2008 Marriage Dissolution Institute
Setting & Collecting Child Support (with Hon. Conrad Moren), 2007 State Bar of Texas Annual Meeting
Case Law Update, Extreme Divorce Practice Makeover V! 2007
Collecting on Divorce Judgments, Extreme Family Law Practice Makeover IV!, 2006
Getting Blood from a Turnip, Corpus Christi Bar Association Family Law Seminar, 3/2005
Getting the Child Support Paid (with Steven A. Sinkin), Extreme Family Law Practice Makeover!, 3/2005
Enforcing Visitation & Support (with H.E. Mendez), 2004 Advanced Family Law Course
Dealing with the Attorney General (paper author & panelist), SA Family Lawyer's Association, 1/2003
New Trends in Child Support Collection, SA Bar Assoc. Family Law Sec. 7/2002
Working Against (& with) the Office of the Attorney General & in the IV-D Court (paper author and panelist), SA Bar Assoc. Family Law Sec., 7/2001
Case Law Update, Texas Assoc. of Domestic Relations Off. (TADRO) 14th Annual Meeting & Seminar, 1998
Case Law Update, TADRO 13th Annual Meeting and Seminar, 1997

Legislative Issues & Top Ten Child Support Mistakes, Mexican American Bar Association, 10/1995

Course Co-Director (with Charles E. Hardy) - seminars sponsored by SA Bar Assoc. Family Law Section:

Extreme Family Law Makeover 2008

Extreme Divorce Practice Makeover V! 2007

Extreme Family Law Practice Makeover! 2006

Course Director - seminars sponsored by SA Bar Assoc Family Law Section:

Extreme Divorce Practice Makeover! 2004

Techniques & Strategies for Trying Custody Cases on a Budget 2003

Course Director, 13th Annual Meeting and Seminar, TADRO 1997

Acknowledged contributor, *O'Connor's Family Law Handbook 2009*, (Jones McClure)

Contributing Editor, *How to Do Your Own Divorce in Texas* (Nolo Press-Occidental), 1993-2001

State Bar Pro Bono Law Project Speaker: 9/2005 Eagle Pass; 6/2007 Kerrville; 9/2007 Big Spring

Essay featured in *Women Attorneys Speak Out!* by Judi Craig, Ph.D., MCC (Thomson-West 2008)

David D. Farr

** Board Certified - Family Law
Texas Board of Legal Specialization (2004)*

Employment

- Civilian

Tindall & England, P.C.
December 2008 to Present

312th Family District Court
Presiding Judge, November 2007 to December 2008

257TH Judicial District Court
Associate Judge, January 2002 to November 2007

Harris County Domestic Relations Office
*Staff Attorney/Prosecutor/Friend of Court to the 257th District Court,
December 1996 to January 2002*

LAW OFFICE OF SUSAN W. VANDIVER/CAPUDER, GAITHER & AMANN, LLP
Attorney, Of Counsel, November 1994 to December 1996

- Military

Texas Army National Guard – State Military Judge for the Joint Forces Command, Office of the General Counsel, Camp Mabry, Texas
January 2007 to Present

Operation Enduring Freedom, Kosovo – KFOR 7, NATO Headquarters (Active Duty)
KFOR Liaison Officer and Advisor to the United Nations Mission in Kosovo, Department of Justice, January 2006 to January 2007

Operation Hurricane Katrina, Joint Task Force Lone Star - 36th Infantry Division, New Orleans, Louisiana (Active Duty)
Task Force Judge Advocate and Legal Counsel, September 2005

Texas Army National Guard - 36th Infantry Division, Camp Mabry, Texas
*Chief, Legal Assistance Division, March 2003 to July 2004
Chief, Administrative Law Division, July 2004 to December 2005*

Texas Army National Guard – 111th Area Support Group, Austin, Texas
Judge Advocate and Trial Counsel, January 2002 to March 2003

Operation Joint Forge, Bosnia-Herzegovina - 3rd Armored Cavalry Regiment (Active Duty)
Command Judge Advocate, February 2000 to October 2000
Texas Army National Guard – 49th Armored Division, Camp Mabry, Texas
Judge Advocate, February 1997 to January 2002

- Membership Organizations

- Texas Board of Legal Specialization in Family Law (2004)
- Texas Academy of Family Law Specialists (TAFLS)
- Houston Bar Association Family Law Section
 - Member, Board of Directors (2007)
- State Bar of Texas - Family Law and Military Law Sections
- Gulf Coast Family Law Specialists
 - Member, Board of Directors (2007)
- Burta Roads Rayborn Inns of Court
 - Master Status (2005 to Present)
- College of the State Bar of Texas
- Texas Aggie Bar Association and Association of Former Students, Texas A&M
- Texas Aggie Corps of Cadets Association

• Presentations

- ***Military Law Applications to the Family Law Practice or "May I Buy A Vowel, Pat?" (DFAS, LES, APO, FPO, DoD, BAH, BAS, TRICARE, USFSPA, SSCRA, USERRA, etc.)*** – 257th District Court CLE presentation, May 2003
- ***Catch and Release: The Sport of Contempt*** – (with Shawn Casey), HBA Family Law Section Lunch, November 2003
- ***Soldiers' and Sailors' Civil Relief Act*** – South Texas College of Law Family Law CLE Conference, February 2004
- ***Servicemembers' Civil Relief Act- What You Need to Know About the New Law*** – HBA Family Law Section Lunch, April 2004
- ***Military Law and the Family Law Practice*** – Burta Rhodes Rayburn Inns of Court, Team 8 Presentation, April 2004
- ***The ABC's of Military Jargon*** – Panel discussion presented at University of Texas CLE – Family Law on the Front Lines Conference, Galveston, Texas, June 17, 2004
- ***Soldiers' and Sailors' Civil Relief Act*** – Associate Judges Conference, Texas Center for the Judiciary, July 7, 2004 – Member - Planning Committee
- ***Sampson & Tindall's Texas Family Code Annotated (Current Edition)*** – Guest Commentator on Servicemembers' Civil Relief Act
- ***National Institute for Trial Advocacy (NITA) program*** – University of Houston Law Center, Trial Advocacy program for law students, November 12-14, 2004 – Member – Faculty
- ***Family Law Boot Camp*** – Texas Southern University, Thurgood Marshall School of Law, Family Law CLE program, Speaker on general family law matters and child support contempt, December 4, 2004
- ***Servicemembers' Civil Relief Act*** – Winter Regional Conference, Texas Center for the Judiciary, January 27, 2005 – Horseshoe Bay Resort
- ***Servicemembers' Civil Relief Act*** – Winter Regional Conference, Texas Center for the Judiciary, February 28, 2005 – San Luis, Galveston
- ***Computer/Internet Evidence – Where To Find It, How To Get It, and How To Get It In*** – Gulf Coast Family Law Specialists, March 10, 2005 Meeting
- ***Panel Discussion on Issues of Family Law Litigation Techniques*** – HBA Family Law Institute, April 8, 2005
- ***Predicates, Objections, and Preserving Error*** – State Bar of Texas Seminar, April 15, 2005, El Campo, Texas
- ***Military Law Issues in Family Court*** – North Harris County Bar Association, October 2005, Houston, Texas
- ***Protective Orders and Family Violence*** – (with Judge Judy Warne) North Harris County Bar Association, March 2007, Houston, Texas
- ***Effectively Trying Your Property Case*** – (with Bret Bosker, Patricia Carter and Craig Haston) Family Law Conference, South Texas College of Law, February 2007, Houston, Texas

- ***The Trial of a Family Law Jury Case*** – (with Judge Bonnie Hellums) Family Law Conference, South Texas College of Law, January 10-11 2008, Houston, Texas
 - ***The Basics of Family Law*** – (with Allyson Brupbacher) HBA CLE, January 18 2008, Houston, Texas
 - ***Military Issues*** – Family Law Conference, South Texas College of Law, March 6, 2008, Houston, Texas
 - ***Servicemembers' Civil Relief Act in Family Law Cases*** – Houston Bar Association Family Law Section CLE Lunch, April 2, 2008, Houston, Texas
 - ***Motions for Enforcement*** – HBA CLE, April 4, 2008, Houston, Texas
 - ***Military Issues in CPS Cases*** – CPS Judicial Conference, Texas Center for the Judiciary, August 26, 2008, Austin, Texas
 - ***Enforcement Drafting in Family Law*** – Advanced Drafting Course, Texas State Bar CLE, December 5, 2008, Austin, Texas
- **Teaching**
 - ***University of Maryland, Europe*** – Adjunct Professor, Constitutional Law and Criminal Procedure, Spring/Summer terms of 2000 – Camp Dobil, Bosnia-Herzegovina
 - ***University of Houston Law School, Law Center*** – Adjunct Law Professor, Pretrial Texas Procedure I, Spring term of 2005
 - ***University of Maryland, Europe*** – Adjunct Professor, Business Law and Business Law II, Summer/Fall terms of 2006 – Camp Bondsteel, Kosovo. Serbia
 - ***South Texas College of Law*** – Adjunct Law Professor, Texas Family Law, Fall term of 2007; Spring term of 2008

Education

- **Civilian**

TEXAS A&M UNIVERSITY

Bachelor of Arts, History (August 1991)

Texas Southern University, Thurgood Marshall School of Law

Juris Doctor (May 1994)

State Bar of Texas

Licensed (November 1994)

- **Military**

Texas A&M University

*U.S. Army 3 Year ROTC Scholarship Recipient
Corps of Cadets (August 1987 to May 1991)*

Air Assault School

Fort Campbell, Kentucky (August 1988)

Judge Advocate General Corps Officer Basic Course

U.S. Army Judge Advocate General's School, University of Virginia (June 1997)

Operational Law Course

U.S. Army Judge Advocate General's School, Univ. of Virginia (March 1999)

Judge Advocate General Corps Officer Advanced Course

U.S. Army Judge Advocate General's School, University of Virginia (January 2003)

U.S. Army Europe (USAREUR) Legal Assistance Course

U.S. Army Judge Advocate General's School, Heidelberg, Germany (October 2006)

U.S. Army Command and General Staff College – Graduate (August 2007)

- - Military Awards
 - Texas Federal Service Medal (2nd Award)
 - Texas Medal of Merit (2nd Award)
 - Texas Faithful Service Medal (2nd Award)
 - Texas Governor's Unit Citation
 - Army Reserve Training Overseas Ribbon
 - United States Army Service Ribbon
 - Army Overseas Service Ribbon
 - NATO Medal (2nd Award)
 - National Defense Service Medal (2nd Award)
 - Humanitarian Service Medal
 - Armed Forces Reserve Medal (with "Mobilization" device) (2nd Award)
 - Armed Forces Expeditionary Medal
 - Global War on Terror Service Medal
 - Global War on Terror Expeditionary Medal
 - Kosovo Campaign Medal
 - Army Reserve Component Achievement Medal (3rd Award)
 - Army Achievement Medal (3rd Award)
 - Army Commendation Medal
 - Defense Meritorious Service Medal
 - Air Assault Badge

**Child Support Workshop:
UIFSA, Above Guideline Child Support,
Effective Use of Financial Documents,
Utilization of QDROs & Child Support Liens;
Enforcement Techniques**

Workshop Table of Contents

NOTE: This workshop is based on several papers prepared for other seminars and updated for this Advanced Course, which the panelists hope will give you most every child support reference you need in one place. The panelists graciously thank the original authors of these papers for graciously allowing us to share and present their materials.

Creative Ways to Collect & Enforce Child Support Claims (includes child support liens and QDROS)– Karen Marvel 1

Drafting Issues in Enforcement Actions – David D. Farr and UIFSA – Angela Pence England, updated by David D. Farr 2

Child Support Update: Within & Outside the Guidelines – Kathryn J. Murphy 3

Child Support: Maximizing Your Chances of Hitting a Home Run – Janice L. Green 4

The Kids Really Need More, Judge: Above Guidelines Support & Providing for Special Needs & Disabled Children – Wendy Burgower & Sara C. Springer 5

Dealing With Children With Special Needs – Sally Holt Emerson & Karen L. Marvel 6

Private Schools, Cars & Cell Phones: Strategies for Obtaining Support Outside the Guidelines – Janice L. Green 7

Creative Ways to Collect & Enforce Child Support Claims

Table of Contents

CREATIVE WAYS TO COLLECT & ENFORCE CHILD SUPPORT CLAIMS

I. INTRODUCTION & SCOPE OF PAPER	1
II. THERE ARE NO TIME LIMITS FOR ENFORCING CHILD SUPPORT ARREARAGES PURSUANT TO A CHILD SUPPORT LIEN, LEVY, AND/OR WRIT OF INCOME WITHHOLDING	1
A. The Judgment That Adjudicates the Child Support Obligation is the Judgment of Divorce	1
B. Court's Jurisdiction for each Remedy is Independent	1
C. Statutes in Effect at Time A.D. Litigated and Statutes in Effect Now	2
D. Remedies Do Not Create New Liabilities	3
E. Section 157.269 Gives Courts Jurisdiction to Collect Arrearages.	3
F. Legislative Update	3
III. NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING	3
A. Requirements	3
B. Time Period	3
C. Delivery and Response	4
D. Administrative Determination.	4
E. Administrative Writ of Withholding.	4
III. CHILD SUPPORT LIENS	5
A. Legislative Update	5
B. Time Periods	5
C. Child Support Liens to Financial Institutions	5
D. Other Places to file Child Support Liens	5
E. Effect of Lien	6
F. Contest of Lien	6
G. Lien on Vehicles	6
IV. LEVIES ON FINANCIAL INSTITUTIONS.	6
A. How to File	6
B. Time Periods	6
D. Payment of the Levy.	6
E. Use for Collecting Attorney's Fees.	6
V. JUDGMENT	7
A. Legislative Update	7
B. Procedure	7
Legislative Update	7
C. First Class Mail Service	7
D. Defenses To a Motion for Cumulative Judgment	7
E. Legislative Update	8
F. Attorney's Fees	8
G. Legislative Update	8
H. Updates on Contempt	8
VI. SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT.	9
A. Overview.	9
B. Time to File.	9
C. What and Where to File.	9
D. Hearing and Order.	9

E.	Suspension of Licenses.	9
F.	Challenge of the OAG Administrative Order.	9
1.	Grounds for Review	9
2.	Procedure for Review.	10
G.	Stay of Suspension.	10
H.	Motion to Revoke Stay of Suspension.	10
I.	Denial of License Renewal.	10
VII.	WRITS OF EXECUTION TO SATISFY CHILD SUPPORT JUDGMENT.	10
A.	Relevant Statutes	11
B.	Analysis	11
C.	Securing a Writ of Execution	11
D.	Use for Collecting Attorney’s Fees	12
VIII.	TURNOVER ORDERS	12
A.	Relevant Statutes	12
B.	Requirements	12
C.	How to File	12
D.	Uses for a Turnover Order	12
E.	Attorney’s Fees	13
IX.	AUTOMATED MONITORING BY OAG IN CERTAIN COUNTIES.	13
X.	ENFORCEMENT RESOURCES RESTRICTED IN USE TO THE OAG CHILD SUPPORT DIVISION (CSD).	13
A.	Information Resources.	13
B.	Data Matches With Financial Institutions.	14
C.	Garnishment of Unemployment Insurance Benefits.	14
D.	Interception of Income Tax Refunds.	14
E.	Passport Sanctions.	14
F.	Credit Bureau Reporting.	14
G.	Administrative Enforcement Actions.	14
XI.	USE OF QUALIFIED DOMESTIC RELATIONS ORDERS FOR CHILD SUPPORT ENFORCEMENT	15
A.	Very brief overview on QDROs.	15
B.	Requirements.	15
XII.	CONCLUSION.	16

CREATIVE WAYS TO COLLECT & ENFORCE CHILD SUPPORT CLAIMS

I. INTRODUCTION & SCOPE OF PAPER.

Over the past 20 years, the Legislature broadened the remedies to collect child support. Texas is now at the forefront, instead of our usual ranking at the bottom of the states, for protecting children by vigorously enforcing child support orders. This article addresses unique methods for collecting child support arrearages and some of the defenses available to child support obligors. This article is based on a paper prepared by this author, Steven Sinkin and Ruth Lown called *Money Matters*, presented at the San Antonio Bar Association 2009 Extreme Family Law Makeover! Seminar in February, 2009. Because this article is about creative ways to collect child support, the paper will not address contempt except to give a couple of case law updates. To learn all about contempt, please see these excellent articles: *Nobody's Doin' What They're Spoused To*, by JoAl Cannon Sheridan, 2006 Advanced Family Law Course, Chapter 17; *Enforcing Support and Possession Orders*, by the Hon. Dennise Garcia, 2007 Advanced Family Law Course, Chapter 16; and *Show Me the Money! Advanced Collection Methods* by Stephen J. Naylor, 2008 Advanced Family Law Course, Chapter 32. This article also addresses some of the administrative remedies utilized by the Office of the Attorney General to establish, modify and enforce child support. The additional remedies available to pry money from the obligor's hands and put it into the obligee's pocketbook include a notice of application for judicial writ of income withholding, child support liens and levies. The paper will also discuss the application of an ordinary debt remedy (judgment) found in Chapter 157 and two remedies from civil law that flow from that remedy: writ of execution and a turnover order.

Section X of this article is taken, with very minor tweaks and updates, from *Understanding Child Protective Services and Child Enforcement Services*, by Charles G. Childress and Alicia G. Key, 2006 Advanced Family Law Course, Chapter 30. The author profusely thanks Ms. Key for permission to use this section of her paper and reminds the readers that the rest of this article does not necessarily reflect the views of Ms. Key or of the Office of the Attorney General, Child Support Division.

Legislative Updates for the newest enactments from our friends in Austin will be noted as appropriate.

II. THERE ARE NO TIME LIMITS FOR ENFORCING CHILD SUPPORT ARREARAGES PURSUANT TO A CHILD SUPPORT LIEN, LEVY, AND/OR WRIT OF INCOME WITHHOLDING.

A. The Judgment That Adjudicates the Child Support Obligation is the Judgment of Divorce. The "divorce judgment" is the judgment that adjudicates the child support obligation. The Texas Supreme Court stated in *In the Interest of A.D.*, 73 S.W.3d 244 (Tex. 2002),

The 1974 *divorce judgment* established Kenneth's obligation to pay, and Shirley's right to receive, \$160 per month in child support. The only issue that remained unresolved after 1974 was securing Kenneth's compliance with the court's order.

* * *

In this case, the administrative writ is a remedy for Kenneth's repeated and continuing violation of the 1974 divorce decree that ordered him to pay specific amounts for his children's support.

* * *

An administrative writ of withholding for delinquent child support does not seek to impose a legal liability on the obligor to support his children. Instead, **it is one of several methods the Family Code provides as a remedy to secure performance of a previously adjudicated liability.**" 73 S.W.3d at 247 (emphasis added).

B. Court's Jurisdiction for each Remedy is Independent.

The time periods that the court has jurisdiction over each of the independent remedies are set forth in separate subchapters and are specific as to each remedy. The conclusion that the separate and independent remedies arise from the divorce judgment and not from the "single cumulative judgement" is further reinforced by the Supreme Court's holding in *A.D.* that a "statute of limitations" does not apply to past due child support because the child support obligation and the duty to pay child support was adjudicated at the time the divorce judgment was signed. *A.D.*, 73 S.W.3d at 249. Each method of collecting unpaid child support is a separate post judgment remedy and is not dependent on any other post judgment remedy. *A.D.*, 73 S.W.3d at 246.

The Supreme Court in *A.D.* clearly articulated that at the time the writ of income withholding was issued in *A.D.*, in 1998 there was not a "single cumulative judgment" and a determination of arrears pursuant to single cumulative judgment was not required for the issuance of a writ of income withholding. In *A.D.* the amount of arrearages was determined to be \$41,000 pursuant to the statutory provisions provided for in the remedy of a writ of income withholding. TEX. FAM. CODE §158.309. As the arrearages that are determined pursuant to a writ of income withholding can serve as the basis of arrearages for a child support lien, a cumulative judgment and the availability of a cumulative judgment are not requirements for issuing and utilizing a lien for the collection of unpaid child support. *A.D.*, 73 S.W.3d at 247-48.

At the time *A.D.* was litigated, the children were 32 and 26 years of age when the writ of income withholding was issued. When *A.D.* was litigated, the court did not have jurisdiction to make an arrearage calculation pursuant to a cumulative money judgment. TEX. FAM. CODE §157.005 (Vernon 1998). (Jurisdiction ended four years after

emancipation of children, i.e., 22.). A cumulative money judgment did not exist and was not available. However, the court had jurisdiction over a writ of income withholding for the collection of unpaid child support until all child support arrearages, costs and attorney's fees had been paid. TEX. FAM. CODE §158.102 (Vernon 1998). The Supreme Court held "a wage-withholding order is available to remedy past violations of a support order whether or not the court has reduced the delinquent amount to a single, cumulative judgment." and whether or not the court has jurisdiction to enter a cumulative judgment. *Id.* at 246.

The Supreme Court observed that all that a cumulative judgment accomplishes is that "cumulative judgments are enforceable, by any means available for the enforcement of judgments for debts." *Id.* at 246 fn1. Without a cumulative judgment, the enforcement remedies for unpaid child support would be limited to the remedies found in the family code, which are liens, levies, writs of income withholding, and license suspension. With a cumulative judgment, one may additionally avail themselves of the remedies available for the collection of regular debts.

C. Statutes in Effect at Time A.D. Litigated and Statutes in Effect Now. Family Code §157.005(b), in 1998, at the time A.D. was litigated, read as follows:

The court retains jurisdiction to confirm the total amount of child support arrearages and render judgement for past-due child support if a motion for enforcement requesting a money judgement is filed not later than the 4th anniversary after the date: (1) the child becomes an adult; or (2) on which the child support obligation terminates under the child support order or by operation of law.

Family Code §157.005(b) as amended on June 18, 2005 now reads:

The court retains jurisdiction to confirm the total amount of child support arrearages and render judgement for past-due child support if a motion for enforcement requesting a money judgement is filed not later than the 10th anniversary after the date: (1) the child becomes an adult; or (2) on which the child support obligation terminates under the child support order or by operation of law.

The statutes are identical in every aspect except 4 years became 10 years. No other change of any kind occurred.

The same situation exists today as it did in 1998 when A.D. was litigated. The court had jurisdiction over the remedy of a writ of income withholding and liens until all child support was paid. The court at the time A.D. was litigated did not have jurisdiction over a "single cumulative judgment." The Supreme Court held that the statutory provisions for a writ of income withholding set forth a specific mechanism for the calculations of the amount of child support arrearages which is separate and independent from §157.005(b). Liens, levies and Writs of income withholding are "one of several methods the Family Code

provides as a remedy to secure performance of a previously adjudicated liability." A.D., 73 S.W.3d at 247. The independent remedies of liens and levies have the same time periods for jurisdiction as a writ of income withholding. Each of these remedies and subchapters on liens levies and writs of income withholding have specific statutory provisions for the calculation of arrearages if the arrearages are contested. TEX. FAM. CODE §§157.312, 157.323(a), (c)(1), 158.309.

The appellate courts have uniformly held that the jurisdiction of the court is determined by the specific subchapter for the remedy utilized for the collection of unpaid child support. Justice Paul Green in *Cannon* held "[T]he time restraints of section 157.005 are unrelated to the time restraints for the income withholding remedy." *In Re Cannon*, 993 S.W.2d 354, 356 (Tex. App. – San Antonio 1999, orig. proc.) citing *In Re Digges*, 981 S.W.2d 445, 446 (Tex. App. – San Antonio 1998, no pet.). In *Digges*, the obligor contended the support was barred because the arrearages had not been reduced to a single cumulative judgment and a single cumulative judgment was not available. The Court in *Digges* rejected this position. The Court held the provisions of the Family Code creates the court's jurisdiction over the income withholding remedy to collect past due support. The Court additionally held the jurisdiction continues indefinitely and is not controlled by the time limitations set forth in §157.005(b) for a "single cumulative judgment", which had already expired. *Digges*, 981 S.W.2d at 446. The Family Code places no time limits on jurisdiction on writs of withholding, no time limits on jurisdiction on liens or levies. Additionally, the courts have uniformly held that the time limits in §157.005(b) do not apply to any other remedies for the collection of past due support. A.D., 73 S.W.3d at 246, 247; *In the Interest of S.C.S.*, 48 S.W.3d 831, 834 (Tex. App. – Houston [14th Dist. 2001], *pet. denied sub. nom. Sprouse v. Sprouse*, 92 S.W.3d 502 (Tex. 2002); *In Re Digges*, 981 S.W.2d at 446; *In Re Cannon*, 993 S.W.2d at 356.

A recent case from the Fort Worth court of appeals clarifies this issue. In *Packard v. Davis*, No. 2-08-022-CV, 2008 WL 4925998 (Tex. App. – Fort Worth 2008, no pet.), the obligee filed a writ of withholding thirteen years after the duty to pay child support ended, when the youngest child was 31. The obligor argued the trial court did not have any jurisdiction to determine any arrearages because the time periods had expired under § 157.005(b). *2. The court of appeals affirmed that the trial court had

signed an enforcement order and an order for wage withholding under chapter 158 of the family code; it did not render a cumulative judgment for past-due child support as prohibited by section 157.005(b).

...

Thus, section 158.102 now contains no express deadline on the trial court's jurisdiction to enter an order that provides for income withholding and authorizes the entry of such an order "until all current support and child support arrearages, interest, and any applicable fees and costs have been paid." *Id.* [citation and footnote omitted].

This case is important because it was decided after the 2005 amendment to § 157.005 that limited the trial court's jurisdiction to grant cumulative money judgments to ten years after the child support obligation ends. The opinion specifically addresses that § 157.005 does not apply to the chapter 158 remedy of income withholding. *Id.*

D. Remedies Do Not Create New Liabilities. In *S.C.S.*, the 14th Court of Appeals held the post judgment remedy of a single cumulative judgment is not a new legal liability; instead it is one of several methods to enforce a previously adjudicated liability. 48 S.W.3d at 834. The court in *S.C.S.* also cites with approval the holding in *Digges* that the time periods set forth in §157.005(b) do not control the jurisdiction of the court over any other remedy for the collection of past due child support.

Once the divorce judgment is entered the adjudication of the child support obligation has occurred. *A.D.*, 73 S.W.3d at 248; *S.C.S.*, 48 S.W.3d at 833. The remedies available to enforce the previously adjudicated child support obligation may be expanded or contracted but the elimination, limitation or expansion of one remedy does not eliminate, limit or expand any other remedies. The Supreme Court in *A.D.* stated:

When [the parties] divorced in 1974, the only means available to enforce the support order were contempt and a cumulative judgment. Later, the Legislature and Texas voters added wage withholding to the court's enforcement mechanisms, and the court could have used this method to collect [Obligor]'s overdue support whether or not it existed as a remedy when [Obligor] failed to meet his child-support obligations. . . Now, the Legislature has created another enforcement method, administrative wage withholding, and has made it available regardless of how long an obligor has avoided his court-ordered support duty. The Legislature has thus elected not to reward [Obligor]'s sixteen-year refusal to follow the terms of his divorce decree by forever excusing his duty to support his family. The Legislature was free to adopt new remedies for collecting delinquent child support, such as the administrative writ at issue here, and to apply those remedies in cases in which the court's enforcement power had lapsed." *A.D.*, 73 S.W.3d at 249 (citations omitted).

E. Section 157.269 Gives Courts Jurisdiction to Collect Arrearages. The Texas Family Code also establishes that the trial court's jurisdiction to enforce its divorce decree does not expire until all arrears are paid:

A court that renders an order providing for the payment of child support retains continuing jurisdiction to enforce the order, including by adjusting the amount of the periodic payments to be made by the obligor or the amount to be withheld from the obligor's disposable earnings, until all current support and medical support and child support arrearages, including interest and any

applicable fees and costs, have been paid. TEX. FAM. CODE § 157.269.

It is clear from these cases and statutes the Legislature intends that each remedy available under the Texas Family Code to enforce past due child support have its own time period for enforcement. The time period applicable to each remedy will be discussed in each section.

F. Legislative Update. An amendment to the Civil Practice and Remedies Code finally settles that child support judgments, whether a judgment by operation of law (§157.261) or by court rendition (§ 157.263), are not subject to the dormancy of judgment provisions of Civil Practice & Remedies Code § 34.001. Act of May 28, 2009, 81st Leg., R.S., S.B. No. 865, § 31 (to be codified as an amendment to TEX. CIV. PRAC. & REM. CODE § 34.001(c)). The effective date is June 19, 2009 and applies to all pending cases. Act of May 28, 2009, 81st Leg., R.S., S.B. No. 865, §§ 50, 51. This amendment ensures that private litigants now have the identical remedies as cases brought by the Office of the Attorney General, who were never subject to the dormancy restriction. *In re T.L.K.*, 90 S.W.3d 833 (Tex. App.– San Antonio 2002, no pet.) (CPRC § 16.061 exempts Office of Attorney General from dormancy provisions of §34.001; child support judgments enforced by Attorney General not dormant if more than ten years old even if not timely revived.)

The amendment to TEX. CIV. PRAC. & REM. CODE § 34.001 also overrules the Dallas court of appeals's decision in *Burnett-Dunham v. Spurgin*, 245 S.W.3d 14 (Tex. App. – Dallas 2007, pet. filed). In *Burnett-Dunham*, the Dallas court held any unpaid child support payments that accrued ten years prior to the enforcement proceeding were dormant and unenforceable.

III. NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING.

A. Requirements. The Family Code allows an administrative remedy to collect child support when an obligor's child support is at least one month delinquent. TEX. FAM. CODE § 158.301, *et. seq.* The Notice of Application for Judicial Writ of Withholding (NOA) may be filed by a private attorney representing the obligee. TEX. FAM. CODE § 158.301(b)(5). The NOA must state that withholding from the obligor's employer will occur if the obligor does not object to the NOA within 10 days of receipt. The NOA sets out the amount of arrearages owed, including interest and the amount that will be deducted monthly from the obligor's wages (in addition to current support and medical support owed, if any) to repay the arrearages. The NOA must be verified. The requirements for a NOA are set forth in TEX. FAM. CODE § 158.302. The form can be found in the *Texas Family Law Practice Manual* published by the State Bar of Texas at #9-4. The NOA must also include a suggested form for the motion to stay issuance that an obligor can file to stop the issuance of the writ. TEX. FAM. CODE § 158.302(8).

B. Time Period. The NOA may be filed so long as current child support and arrearages are owed by the obligor. TEX.

FAM. CODE §§ 158.102, 158.502. “The . . . writ at issue in this case, however, imposes no new substantive obligations on [obligor]. The 1974 divorce judgment established [obligor]’s obligation to pay, and [obligee]’s right to receive, \$160 per month in child support. The only issue that remained unresolved after 1974 was securing [obligor]’s compliance with the court’s order . . . [A]llowing the Attorney General to issue the writ administratively merely added a different procedural vehicle to secure fulfillment of the existing obligation. *In the Interest of A.D.*, 73 S.W.3d 244, 248 (Tex. 2002).

C. Delivery and Response. The NOA is delivered to the obligor – usually by mail. TEX. FAM. CODE § 158.306. Service by citation is permitted but not required. The obligor has ten days to file a verified motion to stay. TEX. FAM. CODE §§ 158.306(c); 158.307(a). The sole grounds to contest a NOA are (1) the arrearages are wrong; or (2) the obligor listed is the wrong party. TEX. FAM. CODE § 158.307(b). If the obligor does not file a timely motion to stay (which requests a hearing on the applicability of the notice), the obligee has the right to request the district clerk issue a judicial writ of income withholding to the employer. TEX. FAM. CODE § 158.311.

D. Administrative Determination. An “administrative determination” of child support arrearages occurs when an obligee files a Notice of Application for Judicial Writ of Withholding and the obligor does not file a timely motion to stay to invoke the jurisdiction of the trial court. *Attorney General v. Mitchell*, 819 S.W.2d 556 (Tex. App. – Dallas 1991, no writ); *Effner v. Moore*, No. 04-01-00294-CV, 2002 Tex. App. LEXIS 1449 (Tex. App. – San Antonio 2002, no pet.) (mem. op.); *see also* TEX. FAM. CODE § 101.0201 (“Notice of Application for Judicial Writ of Withholding” means the document delivered for the nonjudicial determination of arrears and initiation of withholding). However, if the obligee fails to go forward to request issuance of the writ, s/he may waive it. *See, Glass v. Williamson*, 137 S.W.3d 114 (Tex. App. – Houston [1st Dist.] 2004, no pet.). At that point, the obligee may request that the District Clerk issue a the writ of withholding to the obligor’s employer. TEX. FAM. CODE § 158.312(a). If the obligor claims s/he did not receive the NOA, the obligor has 30 days from the date the first payment is deducted from wages to file a motion to stay in conformity with the provisions of § 158.307. TEX. FAM. CODE § 158.317(a).

If the obligor timely requests a hearing on a motion to stay, the court shall hear evidence and at the end of the hearing either (1) render an order for income withholding that includes a determination of the arrearages or (2) grant the motion to stay. TEX. FAM. CODE § 158.309. When a timely contest to the amount of arrearages stated in Notice of Application for Judicial Writ of Withholding occurs, the Legislature gave the court jurisdiction and empowered the court to make a determination of arrearages. TEX. FAM. CODE § 158.309(c).

Section 158.309 of the Family Code requires that, upon a hearing the trial “court shall: (1) render an order for income withholding that includes a determination of the amount of the child support arrearages . . .” TEX. FAM. CODE § 158.309(c)(1). This determination of arrearages is not dependent on,

pursuant to or limited in any way by §157.005(b). *A.D.*, 73 S.W.3d at 246; *In Re Cannon*, 993 S.W.2d at 356.

When an obligor timely contests the amount of arrearages stated in an Administrative Writ of Withholding (issued by the Title IV-D agency) under §158.506, the Legislature gave the court jurisdiction and empowered the court to make a determination of arrearages. TEX. FAM. CODE §158.506. This determination of arrearages is not dependent on, pursuant to or limited in any way by §157.005(b). The arrearages in *A.D.* were determined to be \$41,000 even though there was no jurisdiction to determine arrearages pursuant to a cumulative judgment *A.D.* at 247.

Practice Tip: This section is extremely easy to use because it does not require personal service on an obligor. Consider using a Notice of Application when the obligee’s place of employment is known but his exact whereabouts are not. Service by both certified mail and first class mail provides the best proof the Court of the attempt to notify the obligor. If an order in the case requires the obligor to provide his/her address to the other party and clerk of the court under TEX. FAM. CODE § 105.006, the last address on file with the clerk can be used if no other address is known.

E. Administrative Writ of Withholding. The Office of the Attorney General can secure an administrative determination of arrears by filing a Notice of Administrative Writ of Withholding under TEX. FAM. CODE § 158.501 *et. seq.* This Notice of Administrative Writ remedy is not available to private parties. The major difference between the judicial writ and the administrative writ is that the OAG is not required to give the obligor notice of the writ prior to issuance. The obligor may contest the writ, but it remains in place while the contest is pending. TEX. FAM. CODE § 158.506.

If the obligor wishes to contest the administrative writ, the obligor requests review with the OAG, who conducts an “administrative” review by telephone conference or in person. TEX. FAM. CODE § 158.506(b). If the obligor is not satisfied with the outcome of the review, the obligor (1) files a motion to withdraw the writ of withholding no later than the 30th day after receiving notice of the OAG’s determination at the “administrative” review and (2) requests a hearing with the court. TEX. FAM. CODE § 158.506(c). Income withholding will not be interrupted while the motion to withdraw the writ is pending. *Id.* A hearing is held just like a hearing on a motion to stay a judicial writ of income withholding.

Practice Tip: Although there is no case law on this issue and the statute says “may” and not “shall”, a practitioner should be wary of skipping the “administrative” review under § 156.506(b). Because these procedures are administrative in nature, parties are generally required to exhaust their administrative remedies prior to filing actions in court. *See, e.g., O’Neal v. Ector County Independent School District*, 251 S.W.3d 50, 52 (Tex. 2008). If an obligor contacts you about contesting an administrative writ, the prudent practice would be to immediately prepare a motion to stay following the requirements of § 158.307 that you deliver on the Office of the Attorney General only (do not file) and request a review under §158.506(b).

III. CHILD SUPPORT LIENS.

A child support lien arises by operation of law when any payment is delinquent. TEX. FAM. CODE § 157.312(d). Every child support payment not timely made is a judgment. TEX. FAM. CODE § 157.261. There is no requirement to secure a child support cumulative money judgment before filing a child support lien. The Family Code provides that a child support lien may issue “regardless of whether the amounts have been adjudicated or otherwise determined.” TEX. FAM. CODE § 157.312(d). This provision was enacted in 1997 by the Legislature. TEX. FAM. CODE § 157.312 (Vernon 1998). A lien attaches to all property owned by the obligor except his/her homestead. TEX. FAM. CODE § 157.317. The lien is recorded with the county clerk’s office, which cannot charge the obligee a recording fee for filing the lien. The obligee has 21 days from the date of filing the lien to provide copies of the lien to the obligor by first class or certified mail at his/her last known address. TEX. FAM. CODE § 157.314(c). A form for the Notice of Child Support Lien is in the *Texas Family Law Practice Manual* (TFLPM) at #24-22.

A. Legislative Update. Two amendments made minor changes to the child support lien statutes which do not affect enforceability. The first change is a new section that permits an obligor to file a release of lien if s/he believes the notice of child support lien attached to his/her homestead. Act of May 26, 2009, 81st Leg., R.S., S.B. No. 1661, § 1 (to be codified as TEX. FAM. CODE § 157.3171; effective June 19, 2009). In other words, this statute is for all those title companies that cannot comprehend the plain language of TEX. FAM. CODE § 157.317(a) (see above) which clearly exempts a homestead from the child support lien. The obligor can file the affidavit to notify the world the child support lien does not attach to his/her homestead property.

The second section of the same bill requires the child support obligee to renew a child support on real property every ten years. Act of May 26, 2009, 81st Leg., R.S., S.B. No. 1661, § 2 (to be codified as an amendment to TEX. FAM. CODE § 157.318(d); effective June 19, 2009). For purposes of establishing priority, a renewed lien relates back to the date of filing of the original lien. *Id.* This change in the statute applies only to child support liens on real property filed after May 26, 2009, the effective date of the Act. Act of May 26, 2009, 81st Leg., R.S., S.B. No. 1661, §§ 4, 5.

B. Time Periods. “A lien is effective until all current support and child support arrearages, including interest, any costs and reasonable attorney’s fees, and any Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible, have been paid TEX. FAM. CODE § 157.318(a).

C. Child Support Liens to Financial Institutions. A child support lien also may be served on any financial institution that holds money belonging to the obligor. TEX. FAM. CODE § 157.3145. The obvious target will be banks, credit unions and savings & loans. The lien applies to all funds held by the institution in the name of or on behalf of the obligor or in which the obligor has a beneficial interest. TEX. FAM. CODE § 157.311(1)(A).

A lien may be delivered to the bank’s registered agent, main business address or an address designated by the bank to accept liens. The statute does not require service, only delivery. The lien does not have to be filed with the District Clerk’s office. Many banks will accept faxes; others require U.S. mail or certified mail. Most national banks have a lien/garnishment department which handles child support liens for the entire country. The child support lien is applicable regardless of whether the bank’s main office is in Texas. TEX. FAM. CODE § 157.3145(b).

Practice Tip: Contact the financial institution’s garnishment department and ask how they accept service of notices of child support liens to speed up your service. It has been the author’s experience that most banks prefer the liens be delivered directly to the garnishment department and not to the registered agent for service of process.

D. Other Places to file Child Support Liens. The child support lien attaches to retirement plans, life insurance proceeds, cash surrender value in life insurance policies, claims owed to the obligor (for personal injury or negligence) and an inheritance given to the obligor. TEX. FAM. CODE § 157.316, 157.317. A child support lien does not attach to worker’s compensation claims or to a homestead.

A child support lien may also be filed against mutual funds, 401k accounts and money market accounts. There are three mutual fund clearing houses that process 90% of the bank mutual fund transactions in the U.S. Filing a lien with these three funds has a good chance of capturing money the obligor is holding in a stock account. The addresses for the mutual fund clearing houses are:

Fidelity Investments
Enterprise Processing Services
100 Crosby Parkway
Covington, Kentucky 41015
Via Fax No. (800) 974-9684

Legal Department
Pershing, L.L.C.
1 Pershing Plaza
Jersey City, New Jersey 07399
(800) 443-4342 Telephone
(201) 413-4799 Facsimile

CIT Group/Consumer Finance, Inc.
715 S. Metropolitan Avenue
Oklahoma City OK 73108
(800) 621-1437 ext 2-1672 Telephone
(405) 553-4790 Facsimile

Brokerage houses like Edward Jones are not part of these clearing houses and will require separate liens. If you know where the obligor has accounts, ask the bank if it has a separate department for liens and levies on their brokerage accounts. Bank brokerage operations are set up under different corporate identities from the banks. Service on Bank of America does not always count as service on the Bank of America brokerage department. Be sure and ask the

contact in the garnishment section how to serve the mutual funds and brokerage section of the bank.

E. Effect of Lien. A child support lien served on a financial institution freezes the account. The financial institution can allow no further transactions. TEX. FAM. CODE §§ 157.317, 318. A child support lien filed of record is not superior to a purchase-money instrument, but the lien must be satisfied in order to clear title to the property. A child support lien remains in effect until all child support, current and past due, is paid, along with interest, costs and attorney's fees. It is difficult to attach a lien to items of personal property, because a bona fide purchaser may not be aware of the lien. See the section below for perfecting child support liens on motor vehicles.

Practice Tip: A child support lien costs nothing to file. The banks are used to receiving these notices from the OAG, who has paved the way for you to use this method. If you do not know where the obligor banks, try filing liens on all banks within a five mile radius of his residence or place of employment.

F. Contest of Lien. The only adjudication the obligee needs to issue liens is the divorce judgment. When a timely contest to the amount of arrearages stated in a child support lien occurs, the Legislature gave the court jurisdiction and empowered the court to make a determination of arrearages. TEX. FAM. CODE §§ 157.323(c) and 157.318. Texas Family Code §157.323 states “[i]n addition to any other remedy provided by law,” in an action to “dispute the amount of arrearages stated in the child support lien”, “the court shall (1) render judgment against the obligor for the amount due, plus costs and reasonable attorney's fees” TEX. FAM. CODE §§ 157.323(a); (c)(1) (emphasis added). Additionally, §157.323 provides that the obligee can file a foreclosure action on a child support lien, which will result in a levy on any property subject to a child support lien. TEX. FAM. CODE §157.323(c)(2).

G. Lien on Vehicles. A child support lien does not attach to a specific vehicle unless the lien is recorded on the title of the vehicle. TEX. FAM. CODE § 157.316(b). In order for the obligee to record the lien on the title, the court order enforcing the obligation (not a child support lien but an enforcement order or money judgment) **must** include the VIN number of the automobile **and** order the obligor to surrender the title to the obligee for recording. *Id.* Then the obligee may send a certified copy of the order and the application for title to: Texas Department of Transportation, Operations Branch, 4000 Jackson Ave., Austin, TX 78731, Telephone (512) 302-2378. A new title will be issued for the vehicle that shows the lien on its face.

Practice Tip: Don't bother with this cumbersome procedure. If the obligor won't pay his child support and has to be threatened with jail or money judgment, what makes TxDOT think he will gladly hand over his vehicle title so it can be engraved with a child support lien? A writ of execution can be used to pick up a vehicle after a judgment if it is worth seizing and auctioning off.

IV. LEVIES ON FINANCIAL INSTITUTIONS.

A child support lien to a financial institution freezes the money so the obligor cannot reach it. A levy is required to actually put the money in the obligee's pocket. A judgment or administrative determination of child support arrears is required in order to file a child support levy. TEX. FAM. CODE § 157.327(a). An administrative determination of child support arrearages occurs when the arrearages are determined under a judicial or administrative writ of withholding in chapter 158 (see above). The *Texas Family Law Practice Manual* (TFLPM) form is #24-24.

A. How to File. A levy is delivered to a financial institution in the same manner as a child support lien. The obligor must be sent a copy of Notice of Levy at the same time it is delivered to the financial institution. TEX. FAM. CODE §157.328.

B. Time Periods. A levy can be issued anytime there is a child support judgment or administrative determination of arrearages has been rendered. TEX. FAM. CODE § 157.327(a).

C. Contest. The obligor or person with an interest in the account must file an objection to the Notice of levy within 10 days from the date of receipt of the levy. TEX. FAM. CODE § 157.328(b). The contest is described under the lien procedure in §157.323. See the contest procedure under Child Support Liens, above.

D. Payment of the Levy. If the financial institution does not receive notice from the obligor that s/he contests the levy the financial institution shall remit the monies to the obligee not earlier than the 15th day or later than the 21st day after delivery of the levy. TEX. FAM. CODE § 157.327(b)(2). The financial institution is also required to notify any other person who has a beneficial interest in the accounts of the Notice of Levy so that person has an opportunity to file a suit under TEX. FAM. CODE § 157.323 to contest the child support levy. A financial institution that does not honor the levy is liable for the amount equal to the property held by the institution, not to exceed the total amount of arrearages owed. TEX. FAM. CODE § 157.330.

Practice Tip: Some financial institutions will disclose the amount of money they are holding prior to disbursing the levy. The most important part of this procedure is having proof of service on the obligor and on the financial institution, in case there is ever any question.

E. Use for Collecting Attorney's Fees. Attorney's fees are part of a child support obligation and may be enforced as child support. TFC §157.167(d). These procedures can be used to collect attorney's fees assessed against the obligor. The Family Code provides an order of application of any payment received from the obligor: (1) current child support; (2) non-delinquent child support; (3) accrued interest on a child support judgment; (4) past due support not yet reduced to judgment; (5) child support cumulative money judgment; and (6) attorney's fees and costs. TEX. FAM. CODE § 157.268. This collection mechanism would be useful when

the obligor pays off the child support arrears at the time of the hearing, and is also assessed attorney's fees.

V. JUDGMENT.

The most common method of collecting child support aside from contempt is the cumulative money judgment found in Chapter 157. It is usually used in conjunction with contempt and provides the obligee with all the remedies of a judgment creditor under the Rules of Civil Procedure, Property Code and Civil Practice & Remedies Code in addition to the Family Code remedies discussed above and in this section. The biggest advantage of a child support judgment is that it is not limited by the personal property exemptions of the Property Code. The only property that cannot be reached by a child support judgment is an individual's homestead. TEX. PROP. CODE § 42.005. A "single cumulative judgment" (as it is referred to in *A.D.*, 73 S.W.3d at 246) is not a new cause of action. A single cumulative judgment is a cumulation of the judgments that arise by operation of law under TEX. FAM. CODE § 157.261(a) and determine a sum certain.

A. Legislative Update. If the county where the cumulative money judgment will be filed operates a statutory domestic relations office (DRO) under Family Code Chapter 203, new filing fees will be assessed for DRO operations effective June 19, 2009. Act of May 26, 2009, 81st Leg., R.S., S.B. No. 865, § 3 (to be codified as an amendment to TEX. FAM. CODE § 110.006).

Time Periods. A cumulative money judgment can be filed in conjunction with a motion for contempt under TEX. FAM. CODE § 157.005(a) (if filed on or before the second anniversary of the date the child support obligation terminates) or as a separate remedy. A motion for cumulative judgment must be filed on or before the 10th anniversary of the date the child support obligation terminates. TEX. FAM. CODE § 157.005(b).

B. Procedure. The motion is filed in the court of continuing, exclusive jurisdiction. TEX. FAM. CODE § 157.001(d). The motion must: identify the provision of the original order violated (§ 157.002(a)(1)); state how the obligor failed to comply – i.e., s/he missed payments (§ 157.002(a)(2)); state the requested relief (§ 157.002(a)(3)); include the amount of child support owed, the amount paid and the amount due (§ 157.002(b)(1)); and be signed by the movant or movant's attorney (§ 157.002(a)(4)). The motion may include: a copy of the pay history (§ 157.002(b)(3)); a statement that additional violations may occur on dates between the date the motion is filed and the date of the hearing (§ 157.002(e)). Any other claim may be joined with a motion for enforcement. TEX. FAM. CODE § 157.003.

Unlike a motion for contempt, a motion seeking a cumulative money judgment does not need to set out every payment owed and every payment missed – totals are sufficient.

Legislative Update. Beginning January 1, 2010, child support arrearages will be calculated differently, with all payments received **after January 1, 2010** applied to principal first, then interest. Act of May 28, 2009, 81st Leg.,

R.S., S.B. No. 865, § 18 (to be codified as an amendment to TEX. FAM. CODE § 157.268) (effective January 1, 2010). The amendment effectively reduces the interest rate from 6% down to 2 - 3%, depending on how much is owed in the case. Also, there will probably need to be two schedules run because it is unlikely that any arrearage calculator or spreadsheet can apply payments to interest first and principal first in the same file.

Hearing. The court sets the hearing on an enforcement action on request of the filing party. TEX. FAM. CODE § 157.061 (b). This procedure differs from contempt, which requires the court to set the hearing upon receipt of the motion. TEX. FAM. CODE § 157.061(a). A hearing can be held as early as the 10th day after the obligor is personally served. TEX. FAM. CODE § 157.062(c). However, if another motion (such as a modification) is joined with the enforcement action, the earliest the enforcement action can be heard is 10 am on the first Monday following the 20th day after the obligor is served. TEX. FAM. CODE § 157.062(d)(1).

C. First Class Mail Service. The Family Code provides for service of the notice of hearing by first class mail in an enforcement action that only seeks a cumulative money judgment if the obligor was ordered to update his/her contact information with the court and the state case registry. TEX. FAM. CODE § 157.065(a). The first class mail service can be executed by the clerk of the court or the movant's attorney. The notice is served to the last known address of the obligor or the address on file with the clerk. Practically every divorce decree, parentage order or modification order signed since the mid 1980's contains the notification requirement so it can be used in practically every case. If the obligor appears at the hearing and does not object to the form of notice, s/he waives any objections to the form of service. TEX. FAM. CODE § 157.063.

D. Defenses To a Motion for Cumulative Judgment.

The obligor must affirmatively plead and prove defenses by a preponderance of the evidence. TEX. FAM. CODE § 157.008. If the obligee voluntarily relinquishes the child to the obligor for an extended period (beyond the court-ordered possession and access) and the obligor provides actual support to the child, it is a defense to a motion for enforcement for failure to pay support. TEX. FAM. CODE § 157.008(a); (b). An obligor may request reimbursement from the obligee for supporting the child if s/he continued to pay child support while caring for the child. The obligor is allowed an offset, not to exceed the amount of the obligor's monthly child support obligation, for each month the child is in his/her custody and child support is not paid for up to the monthly child support obligation. *In the Interest of A.M.*, 192 S.W.3d 570, 574 (Tex. 2006). The Court discusses that there is a difference of opinion among the courts of appeals as to what level of proof is required for the obligor to get reimbursement, but does not resolve the issue. Instead it states that, in part because the obligee testified she did not pay any support to obligor when the children lived with her, that obligor was "entitled to equate his monthly child support obligation to the actual support he provided each child." 192 S.W.3d at 576. The San Antonio court of appeals has previously held

that actual amounts of expenditures should be used to prove up an offset claim. *In the Interest of C.Z.B.*, 151 S.W.3d 627, 634 (Tex. App. – San Antonio 2004, no pet.) In *C.Z.B.*, the child support was \$700 monthly and father requested credit for that amount but did not provide evidence of expenditures. Father testified he bought the son a horse and a truck and paid for rodeo fees. The parties disagreed on amount of time the son lived with the father; mother claimed only between one and five months while the father said ten months. The trial court gave credit for \$200 monthly for ten months and the court of appeals found this amount was not an abuse of discretion. *Id.* Other cases on offset include *Beck v. Walker*, 154 S.W. 3d 895, 905 (Tex. App.-Dallas 2005, no pet.); *Curtis v. Curtis*, 11 S.W. 3d 466, 472-74 (Tex. App.-Tyler 2000, no pet.); *Buzbee v. Buzbee*, 870 S.W.2d 335, 339-41 (Tex. App.-Waco 1994, no writ); and *Gonzalez v. Tippit*, 167 S.W. 3d 536, 543 (Tex. App.-Austin 2005, no pet.).

The term “voluntarily relinquished” in the statute can be tricky. One case states “a managing conservator cannot merely tolerate or acquiesce in a child’s change of residence, she or he must affirmatively agree to it.” *Norman v. Norman*, 683 S.W.2d 548, 550 [en banc], *rev’d on other grounds*, 692 S.W. 2d 655 (Tex. 1985). Payment is also a defense to a motion for cumulative judgment and the other remedies listed above, but be sure and plead payment in accordance with Rule 95 of the Rules of Civil Procedure.

E. Legislative Update. A long overdue offset has finally been codified by the legislature. An obligor whose children receive a lump sum social security disability payment can offset the lump sum against a child support judgment and interest. Act of May 26, 2009, 81st Leg., R.S., S.B. No. 1514, § 1 (to be codified at TEX. FAM. CODE § 157.009.) This offset will only apply to a child support judgment after June 19, 2009. There were several cases that considered this problem and urged the legislature to correct the “double dipping” of a child support obligee who received social security money and still was entitled to receive money from the (now disabled) child support obligor.

F. Attorney’s Fees. In a child support enforcement case seeking a cumulative money judgment, the court shall award attorney’s fees to the obligee’s attorney if the court finds obligor failed to pay all child support. TEX. FAM. CODE § 157.167(a). The court can waive the requirement for attorney’s fees only if good cause is shown and the court states the reasons supporting the waiver. TEX. FAM. CODE § 157.167(c). However, if the court finds obligor in contempt or more than \$20,000 is owed, the court cannot waive the attorney’s fees unless the court also finds the obligor is involuntary unemployed or disabled or lacks financial resources to pay attorney’s fees. TEX. FAM. CODE § 157.167(d).

G. Legislative Update. Even if the obligor pays the child support owed between the date of the filing of the motion and the date of the hearing, the court may award attorney’s fees to the obligee for the cost and hassle of bringing the motion, although the court may not hold the obligor in contempt if nothing is owed as of the date of the hearing. Act of May 28, 2009, 81st Leg., R.S., S.B. No. 865,

§ 15 (to be codified as an amendment to TEX. FAM. CODE § 157.162(e)). This section is effective June 19, 2009.

H. Updates on Contempt. In 2008 a couple of important cases on contempt were handed down that every practitioner should know.

In Re Zandi, 230 S.W.3d 76 (Tex. 2008) sets forth the requirement that an order suspending a contempt finding and resetting the case for later review must apprise the obligor that s/he may be subject to revocation of the suspended sentence. When this case was released in May of 2008 it caused an uproar in the Attorney General and Domestic Relations Office community, because it appeared that the normal practice of resetting a case with an order to appear in a suspended sentence would no longer be sufficient and new service would be required for each setting. Luckily, the Supreme Court issued a supplemental hearing in response to an *amicus curiae brief* clarifying that if the initial order sets forth the terms by which obligor can maintain compliance and avoid jail, it is sufficient. The problem with the original order in *Zandi* is that the sentence was suspended for six months for “review and status” which did not put the obligor on notice of possible incarceration. Read the supplemental opinion because it clears up a lot of confusion over how to revoke a suspended sentence at a compliance review hearing.

Practice Tip: Review the statute when drafting an order. Use the *Family Law Practice Manual* forms and don’t draft by the seat of your pants. Borrow forms from the Office of the Attorney General when drafting for incarceration and suspension because their office has learned by trial and error what language is appeal and mandamus proof. If you want it to stick, your order better be bullet proof.

In Re Burcie, No. 2-08-221-CV, 2008 Tex. App. LEXIS 5859 (Tex. App. – Fort Worth 2008, orig. proc.)(mem. op.) presented a problem that too much of a good thing got the obligor out of jail. The motion for enforcement had an exhibit that listed all the dates child support was due, payments made and payments missed. When the court found the obligor in contempt and ordered the obligor incarcerated, the obligee’s attorney attached the same exhibit to the order as a detail of the violations. The court of appeals granted the application for writ of habeas corpus. An order for contempt must specify how the obligor criminally and/or civilly disobeyed the order of the court. In this case, the exhibit not only showed months of no payments, it showed months when obligor paid in full and when he paid more than was due. The order did not identify the dates of noncompliance, how many violations occurred, and whether the sentences ran concurrently or consecutively. Op. at *3.

Practice Tip: Attaching an exhibit to your motion listing all dates payments are due and payments made or not made is acceptable. In the order, pick a few dates when no payments were made and use those as the basis of the punishment. Again, the Attorney General has a great form that you can “borrow” from that has passed muster in every county in this state for enforcement by contempt.

VI. SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT.

A. Overview. A license suspension is a powerful tool to collect child support. Any license issued by the state of Texas is subject to suspension as set forth below. How does the obligee find out which licenses the obligor holds? Why, the Internet, of course? Most Texas licensing agencies list licensees online in a database. Another good source is www.accurint.com, a Lexis company, which will run database searches in Texas for about \$6.50 per person and turn up many licenses. Usually, the obligee knows what trades the obligor works (cosmetologist, mortician, plumber) so it is fairly easy to narrow down the places to look. Also, never forget to do a generic suspension to the Texas Department of Public Safety for the driver's license and the Texas Parks and Wildlife Department for hunting and fishing licenses, just in case your obligor is a stereotypical Texan. There are very few cases that address license suspensions so this section of the paper will examine the relevant statutes.

B. Time to File. A license suspension may be brought at any time so long as the following criteria are met: (1) The obligor owes overdue support equal to or greater than three months of support due under a support order (TEX. FAM. CODE § 232.003(a)(1)); (2) Obligor was given an opportunity to make payments on the overdue support through a court ordered or agreed repayment schedule (TEX. FAM. CODE § 232.003(a)(2)); and (3) Obligor failed to comply with the schedule (TEX. FAM. CODE § 232.003(a)(3)). A license suspension is designed to be brought in addition to other remedies. *In the Interest of M.E.G.*, No. 13-01-117-CV, 2002 Tex. App. LEXIS 1948, *4 (Tex. App. – Corpus Christi 2002, no pet.) (not designated for publication).

C. What and Where to File. A private litigant files a petition to suspend the license or permit in the court of continuing, exclusive jurisdiction, or the court where the order was registered under Chapter 159 (Uniform Interstate Family Support Act). TEX. FAM. CODE § 232.004(b). In a Title IV-D case, the OAG brings the petition as an administrative action within the IV-D agency. TEX. FAM. CODE § 232.004(b). The case is heard by an administrative law judge designated by the director of the child support program. TEX. FAM. CODE § 232.004(d).

A private litigant files a petition to suspend the licenses that must include the following information: the name of the obligor and social security number, if known; the type, and if known, the number of the license along with the issuing authority; and the amount of arrearages owed under the order. The petition may also include a pay history to show the missing payments. TEX. FAM. CODE § 232.005. A form can be found at TFLPM #24-28.

Practice Tip: although the statute does not require it, attaching a copy of the court order or agreed payment plan that obligor violated as an exhibit will certainly make the proof at trial much easier – as one of the elements of proof is showing that the obligor was in a payment plan and disregarded it. In *In Re C.G.*, 261 S.W.3d 842, 850 (Tex. App. – Dallas 2008, no pet.) the obligee tried to argue that §

232.0004 which requires a three month delinquency, was a separate and independent ground sufficient to grant a license suspension. The Dallas court of appeals disagreed and reversed the license suspension because no prior court ordered or agreed repayment plan was shown by the evidence.

The clerk issues service by: (1) citation or, (2) if an underlying order in the case requires the parties to provide notice of address changes to the clerk of the court and the state case registry, by first class mail to the last mailing address of obligor on file with the clerk and the state case registry. TEX. FAM. CODE § 232.006(b).

Practice Tip: TEX. FAM. CODE § 232.006(c) contains mandatory language that must be included in the notice. Because license suspensions are not a normal part of the clerk's everyday process, type up the language on a separate sheet of paper and provide it to your clerk to attach to the notice in case the clerk, especially in a smaller jurisdiction, does not have the language readily available.

If the OAG files the license suspension motion, it will issue the petition itself and perfect service. In a Title IV-D case, the petition must also include a form for the obligor to request a hearing. TEX. FAM. CODE § 232.006(a).

D. Hearing and Order. The obligor must file a motion to stay suspension and request hearing with the court or OAG by the 20th day after date of service of the notice. TEX. FAM. CODE § 232.007(a). Once a hearing is requested, the license suspension is stayed and the court or OAG shall promptly schedule a hearing and notify all parties. TEX. FAM. CODE § 232.007(b). The form for the answer and request for hearing is TFLPM #24-30.

At the hearing, a copy of payment record from the OAG or the local registry shall be admitted and is evidence of whether payments were made, although controverting evidence may also be offered. The party seeking suspension must also show the other elements of §232.003, i.e., failed to comply with a court ordered or agreed to payment plan in an amount not less than the total due for three months under the order.

There are three possible results at a hearing. (1) The court shall suspend the licenses; (2) The court finds the obligor proves all arrearages and the current month's support have been paid, which results in a dismissal of the petition; or (3) the court suspends the licenses but then issues a stay of the suspension (similar to a probated sentence) with conditions for a reasonable repayment schedule. TEX. FAM. CODE § 232.008. See TFLPM form #24-32.

E. Suspension of Licenses. After the order for license suspension is signed, the court forwards the order to all licensing agencies identified by the movant. There is a \$5.00 charge for each licensing agency.

F. Challenge of the OAG Administrative Order.

1. Grounds for Review. If the OAG holds an administrative hearing and suspends the license, it is a "final agency determination" and must be challenged under chapter 2001 of the Government Code. TEX. FAM. CODE §

232.010; TEX. GOV'T CODE § 2001.171, *et. seq.* All administrative remedies within the OAG must be exhausted prior to seeking judicial review. TEX. GOV'T. CODE § 2001.171. The judicial review falls under a “substantial evidence review”. TEX. FAM. CODE § 232.010. In a substantial evidence review,

the court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:

- (1) may affirm the agency decision in whole or in part; and
- (2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
 - (A) in violation of a constitutional or statutory provision;
 - (B) in excess of the agency's statutory authority;
 - (C) made through unlawful procedure;
 - (D) affected by other error of law;
 - (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
 - (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. TEX. GOV'T. CODE § 2001.174.

2. Procedure for Review. A petition for review is filed by the 30th day after the agency's determination is final. TEX. GOV'T CODE § 2001.176(a). The obligor must serve the OAG with a petition seeking review of the license suspension filed in the court of continuing, exclusive jurisdiction. TEX. FAM. CODE § 232.004(b); TEX. GOV'T. CODE § 2001.175(a). The OAG files the record from the administrative proceeding with the clerk of the court. TEX. GOV'T CODE § 2001.175(b). Any party may apply to the court to present additional evidence. The court may accept the evidence if it finds the evidence is material and there were good reasons the evidence was not presented at the agency hearing. TEX. GOV'T CODE § 2001.175(c). The license suspension is not stayed during the pendency of the appeal. TEX. GOV'T CODE § 2001.176(b)(3).

Practice Tip: This section of the Government Code is mandatory reading for an appeal. Many times the obligor will come to you after a default judgment and ask you to try to undo it. From reading this section, undoing it is not likely. There are other possible remedies, such as requesting a stay of the suspension under § 232.008(b) (see below), which allows the obligor to keep his/her license(s) while making payments.

G. Stay of Suspension. The court or the OAG may suspend the license and concurrently issue a stay of the suspension, which will be conditioned on the obligor complying with a repayment plan. TEX. FAM. CODE § 232.008(b). In the event of a stay, no order is forwarded to the licensing authorities. TEX. FAM. CODE § 232.008(c). The stay of suspension can be the best of both worlds for all

parties because it provides incentive to make regular payments with a ready to go penalty in the event of default.

H. Motion to Revoke Stay of Suspension. Of course, some obligors are not going to comply with the reasonable repayment schedule set up with the stay of suspension provided in § 232.008(b). In that case, the stay of suspension can be revoked. Notice to the obligor is given by personal service or by mail to the address provided by the obligor in the order suspending license. The motion to revoke stay must include notice of a hearing and notice must be provided not less than 10 days before the hearing. TEX. FAM. CODE § 232.012(b). The notice must specify the manner in which the obligor failed to comply with the repayment plan. TEX. FAM. CODE § 232.012(c).

Practice Tip: Although the statute does not require a copy of the pay history for the motion to revoke stay, it would be very helpful evidence and make the proof at the hearing very easy.

If the court or OAG finds the obligor is not in compliance with the repayment plan, it shall revoke the stay of suspension. TEX. FAM. CODE § 232.012(d).

I. Denial of License Renewal. A new section of the Family Code added in 2007 allows the OAG, a domestic relations office or any agency working in a cooperative agreement with the OAG (“child support agency”) to request that all licensing agencies deny renewal of licenses to any person who is six months delinquent in child support. TEX. FAM. CODE § 232.0135(a). The agency cannot renew the individual's license unless it is notified by the child support agency that (1) all child support arrearages are paid; (2) a satisfactory repayment schedule has been established; (3) the obligor was granted an exemption; or (4) the obligor successfully contested the denial of the renewal. TEX. FAM. CODE § 232.0135(b). The obligor must receive notice from the child support agency at the same time the agency notifies the licensing authority. TEX. FAM. CODE § 232.0135(c). An obligor may challenge the denial by requesting a review under § 232.0135(d).

Practice Tip: Expect to see a lot more of these type of suspensions from the OAG and the domestic relations offices. They are easier and faster than the petition to suspend license and do not require a repayment plan – only that the obligor have a six month delinquency instead of a three month delinquency. Read subsection (d) carefully to follow the procedural requirements for challenging the denial of a renewal. It is an administrative proceeding that must be followed before the obligor can invoke a judicial remedy.

VII. WRITS OF EXECUTION TO SATISFY CHILD SUPPORT JUDGMENT.

“... [T]he sheriff can seize the clothes out of the closet, the watch off the wrist, and the macaroni and cheese out of a child support obligor's pantry if the claimant has a valid child support lien.”

Eccles, James “Beau”, *Down to the Bare Walls*, Texas Bar Journal, December 2003, p. 952.

http://www.texasbar.com/Template.cfm?Section=Texas_Bar_Journal1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=6657

A. Relevant Statutes.

Texas Rules of Civil Procedure

Rule 622. Execution

An execution is a process of the court from which it is issued. The clerk of the district or county court or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, but shall be addressed to any sheriff or any constable within the State of Texas.

Rule 630. Execution on Judgment for Money

When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

Rule 649. Sale of Personal Property

Personal property levied on under execution shall be offered for sale on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property. When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Rule 650. Notice of Sale of Personal Property

Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

TEX. PROP. CODE § 42.005 Child Support Liens.

Sections 42.001, 42.002, and 42.0021 of this code do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code. [Family Code, §§ 157.311 et seq.].

B. Analysis. Once the judgment is granted, then what do you do? Most practitioners remember from law school

that Texas is a “debtor’s paradise” because the generous homestead exemption and expansive personal property exemptions make collection of judgments from all but the wealthiest of debtors futile. Those exemptions do not apply to child support obligations. Property Code §42.005 specifically exempts child support liens from the personal property exemptions. In *Dryden v. Dryden*, 97 S.W.3d 863 (Tex. App. – Corpus Christi 2003, no pet.) the obligor argued that Property Code §42.005 violated the Texas Constitution’s protection of a debtor’s personal property from execution for debt. The Corpus Christi Court of Appeals held “. . . [I]t has long been held that the obligation to support one’s child is not a debt, but a natural and legal duty.” 97S.W.3d at 866. Because child support is not a “debt”, the Legislature may allow the collection of child support against the obligor’s personal property. *Id.* The trial court allowed execution against all personal property of the obligor. The *Down to the Bare Walls* article quoted above provides an outstanding overview of how the Texas Constitution exemptions do not apply in child support cases. It can be downloaded by copying the link listed below the quote or read at the State Bar website at www.texasbar.com by clicking on the Texas Bar Journal tab on the home page. Like a child support levy, a judgment or administrative determination is required to collect child support using a writ of execution.

C. Securing a Writ of Execution. The District Clerk prepares and issues the writ of execution based upon the judgment. A writ of execution is valid for 30, 60, or 90 days, upon the request of the creditor. T.R.C.P. 629. If the writ will be executed in the county where it is issued, the District Clerk will forward the writ to the Sheriff’s department. Otherwise, the clerk will return the writ to you for forwarding to the Sheriff of the county where the property is located. A private process server cannot serve a writ of execution. After the Sheriff’s office receives the writ, they will attempt to locate and seize the property belonging to the obligor. After the property is seized, it will be held for 10 days (to allow the obligor to attempt to reclaim it through payment) before it is sold at auction by the Sheriff or a contract auctioneer. After the costs for execution and sale have been deducted, the remaining proceeds are paid to the obligee.

Practice Tip: If you know items in the possession of the obligor that qualify, tell the Sheriff about them. Vehicles can be seized with the proper VIN number or license plate number provided to the Sheriff, as well as the year, make and model of the vehicle. [This remedy is much easier than putting a child support lien on a vehicle.] For other items, an exhibit list can be attached stating: “including but not limited to these items of personal property: Sony big screen television, personal computer, king size waterbed” etc. Any other information will be helpful. For an obligor who is a creature of habit, state: “2001 Ford F-350 double cab truck, license number Ddbeat Dad, VINAL486DKFJ11ELEKJ. Debtor is at the ‘I Don’t Know Yet’ Bar on Babcock Road at Hillcrest every weeknight from 5 pm to 7 pm. Debtor is 5’10”, weight 200, brown short hair, brown eyes.” Be sure and contact the Sheriff’s office and ask if they have any questions or problems with the writ of execution. Send them

a copy of the *Dryden* case and the *Down to the Bare Walls* article when they receive the writ. These authorities will clear up confusion the Sheriff's department may have based on their previous experience with the Property Code exemptions. After the property is seized, be sure and contact the person conducting the sale to make sure they understand this sale is collect child support. The auctioneer will generally be more sympathetic and try to get the best price possible. Although in some cases, the property may not seem to be worth the cost of the writ and its attendant fees, the satisfaction of making the obligor wince is very healing for your client. A good candidate for a writ of execution is the self-employed obligor who claims to have little income but always drives a nice truck, lives in a nice house and has lots of big toys.

D. Use for Collecting Attorney's Fees. Attorney's fees are part of a child support obligation and may be enforced as child support. TEX. FAM. CODE § 157.167(d). These procedures can be used to collect attorney's fees assessed against the obligor. The Family Code provides an order of application of any payment received from the obligor: (1) current child support; (2) non-delinquent child support; (3) accrued interest on a child support judgment; (4) past due support not yet reduced to judgment; (5) child support cumulative money judgment; and (6) attorney's fees and costs. TEX. FAM. CODE § 157.268. This collection mechanism would be useful when the obligor pays off the child support arrears at the time of the hearing, and is also assessed attorney's fees.

VIII. Turnover Orders.

A. Relevant Statutes.

TEX. CIV. PRAC. & REM. CODE § 31.002. Collection of Judgment Through Court Proceeding

(a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:

(1) cannot readily be attached or levied on by ordinary legal process; and

(2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

(b) The court may:

(1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;

(2) otherwise apply the property to the satisfaction of the judgment; or

(3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the

proceeds to the judgment creditor to the extent required to satisfy the judgment.

(c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.

(d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.

(e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees.

(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code.

This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support. (emphasis added)

(g) With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver appointed under Subsection (b)(3) do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.

B. Requirements. In order to use the turnover statute, a party must have an ordinary debt remedy of judgment under § 157.264, a judgment determination through a child support lien determination under § 157.323 or an administrative determination via the judicial or administrative writ of withholding in Chapter 158.

C. How to File. An application for turnover order and the granting of it is an *ex parte* proceeding that does not require notice to the obligor. *Ross v. 3D Tower Limited*, 824 S.W.2d 270, 272 (Tex. App. – Houston [14th Dist.] 1992, writ denied); *Sivley v. Sivley*, 972 S.W.2d 850, 861 (Tex. App. – Tyler 1998, no pet.), citing *Ex Parte Johnson*, 654 S.W.2d 415, 418 (Tex. 1983). A form for an application and order for turnover relief can be found in the ProDoc Litigation module form ## 24-1413 and 24-1414 or in the *Texas Collections Manual* (State Bar of Texas) ## 14-13 and 14-14. The application must be filed and the application and an order must be presented to the court. In order to grant an order for turnover relief the court must find that there are nonexempt assets (in child support includes everything except the homestead) that cannot be reached by ordinary means. TEX. CIV. PRAC. & REM. CODE § 31.002(a). Be prepared to show the court information on the assets that will be subject to the turnover order.

After the order is signed, a copy of the application and order must be mailed to the obligor.

D. Uses for a Turnover Order. The following items may be reached by a turnover order:

- Rental income. *Copher v. First State Bank of Pittsburg*, 852 S.W.2d 738, 740 (Tex. App. – Fort Worth 1993, no writ)
- Obligor’s right to litigate. The turnover order allows the obligee to “step into the shoes” of the obligor in a contract dispute to litigate his interest and recover any monies for the benefit of the obligee. This right would apply if obligor and his current spouse are divorcing (which frequently happens after a child support lien is filed, regardless of whether obligor and his/her spouse continue to cohabit) to secure any assets awarded to obligor and apply the assets to the child support arrearages.
- “Earnings” not recoverable through a lien or a writ of withholding. Although both the lien statute and the writ of withholding statute are very broad, there may be situations where a turnover order is the easiest way to capture money due to the obligor.
- An inheritance right owed to the obligor. If the obligor is executor and chooses not to distribute the estate, a turnover order would give the obligee the right to act as executor and distribute the inheritance (which the prudent attorney had already protected for the obligee by filing a notice of child support lien).
- Accounts receivable owed to the obligor. *Ross*, 824 S.W.2d at 272.
- Receiver. A receiver can be appointed to receive rents or other monies, to hold a partnership interest or other interest in a business or to take charge of the property turned over by the turnover order.

E. Attorney’s Fees. The trial court can award attorney’s fees for the preparation and securing of an application for turnover relief. TEX. CIV. PRAC. & REM. CODE § 31.002(e). A turnover order can also be used to collect attorney’s fees awarded for any of the other enforcement remedies discussed in this paper. The attorney’s fees awarded to collect child support in a turnover proceeding are just like attorney’s fees awarded for the collection of child support generally and therefore are collectible as child support generally.

IX. AUTOMATED MONITORING BY OAG IN CERTAIN COUNTIES. In sixteen Texas counties, the OAG provides automated monitoring and enforcement of every case in which child support is ordered after a certain date, which varies from county to county. This program applies to divorces, parentage suits, enforcement orders, judgments and modifications, even if the original court order was signed before the date the program started. For example, in Bexar County, the original pilot project county, the district judges signed an order requiring for every case that had any order concerning child support signed after September 1, 1997, to automatically become a Title IV-D case and be part of the Attorney General’s system unless the obligee opts out of the program. This program allows for a faster attack on cases to avoid large accumulations of arrearages. If an obligor changes jobs, the OAG is notified by the National New Hire Database and can immediately send out a wage

withholding order, instead of finding out months later through the grapevine that the obligor has gainful employment. If payments are missed, the OAG can start sending out letters and begin enforcement action immediately, without waiting for the obligee to apply for services.

The program is staffed in different ways. In Dallas, Harris, Tarrant and Taylor counties, the counties provide staffing under a contract with the OAG so it may look like “business as usual” to the unaware eye. In Bexar, Cameron, Ector, Gregg, Harrison, Hidalgo, Midland, Panola, Smith, Upshur, Webb and Wichita counties, an OAG field office in that county monitors all the new child support orders under the project. Some of these counties have closed their child support registry offices altogether and rely on the SDU to process all cases.

Practice Tip: If you represent an obligee or obligor in one of these counties in a case subject to this project, the OAG is a **party** to your client’s child support case and must be given Rule 21a notice of all activity. TEX. R. CIV. P. 21a; TEX. FAM. CODE § 231.109(d)(OAG represents interest of state). If there is no reimbursement money owed by your client to the State (for TANF or Medicaid), the OAG probably will not participate. Remember the OAG only represents the State of Texas and not individuals involved in the child support matter. TEX. FAM. CODE § 231.109(d). The OAG cannot accept service on the obligee or obligor, even if it is advocating his/her interests in the child support enforcement case. TEX. FAM. CODE § 231.110. How do you find out if your case is subject to the automated monitoring program? Ask the head of the child support registry in your affected county or the managing attorney in the OAG’s office when cases became subject to the OAG automated monitoring program.

X. ENFORCEMENT RESOURCES RESTRICTED IN USE TO THE OAG CHILD SUPPORT DIVISION (CSD).

To the extent federal law permits, the Texas Legislature has made federally mandated enforcement remedies (e.g., child support lien and levy and license suspension) available to the private bar. There are, however, certain enforcement resources and tools that are limited by federal law to the use of the Title IV-D program. Texas Family Code Chapter 231, lays out the powers and duties of the CSD and the resources available to it as the Texas Title IV-D agency.

A. Information Resources. The CSD has access to a significant range of information through both federal and state sources. On the federal level, in addition to the information available through the Federal Parent Locator Service (FPLS) to any other “authorized person,” including a private attorney representing a custodial parent, it has access to FPLS information derived from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). TEX. FAM. CODE § 231.301. More important, perhaps, are the data matches made within the various components of the FPLS, particularly the National Directory of New Hires and the Federal Case Registry. The

information in the National Directory of New Hires alone already houses an enormous quantity of data from the states, including state new hire directories and state employment security agencies, and from the federal government (e.g., federal employees, including active and retired members of the uniform services). Currently, the National Directory of New Hires houses over 600 million employment records incorporating information provided by state directories, as well as quarterly wage reports and data on unemployment insurance benefits provided by responsible state agencies. The Federal Case Registry began receiving case data from states in 1998 and was constructed to accommodate an extensive database, with an enormous computer and network capacity, interconnected with state automated systems, in order to receive a constant flow of case information from state case registries and related sources. In addition to these federal resources, the CSD has the authority to obtain locate information from interstate networks relating to law enforcement and motor vehicles. It may also use its administrative authority to secure extensive information on support obligors and obligees and their property from virtually any private or public entity in the state. *See* Tex. Family Code, §231.302.

Private attorneys may apply for information from the Federal Parent Locator Service. A copy of the most recent application for locate services is attached to this paper as an appendix. Here is the link to the pdf form online which can be found in Child Support Interactive at the OAG website: http://www.oag.state.tx.us/AG_Publications/pdfs/1a010e.pdf.

Private litigants can also apply for services with the OAG to take advantage of the services available only through the IV-D system by having their client apply for services with the OAG and working side by side with the OAG to collect the child support. The website to apply for services is: <http://www.oag.state.tx.us/cs/index.shtml>.

B. Data Matches With Financial Institutions. Under The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as the Welfare Reform Act, states are required to have laws enabling the state Title IV-D agency to conduct quarterly data matches with financial institutions for the purpose of identifying financial assets of delinquent obligors. State Title IV-D agencies must enter into agreements with financial institutions doing business in their states (not just banks, but any kind of entity that offers “an account,” including brokerage firms, insurance companies, credit unions, etc), to coordinate with the financial institutions (and with the FPLS in the case of multi-state financial institutions) in the development and operation of a data match system under which the financial institutions will provide information to the state Title IV-D agency regarding the assets held by the institutions on behalf of delinquent non-custodial parents. The state agency may pay a reasonable fee to the financial institution for conducting the match. Upon receiving a child support lien notice or notice of levy, a financial institution must encumber or surrender, as the case may be, the assets of an identified obligor. Financial institutions are protected from liability for disclosures, seizures, and any other action taken in good faith to comply with federal and state law requirements. In addition to identifying financial assets of a

delinquent obligor that may be levied upon and seized, the data matches provide the state agency with important locate information.

C. Garnishment of Unemployment Insurance Benefits.

The state Title IV-D agency is authorized to garnish unemployment insurance benefits for the collection of child support from the state’s employment security agency (in Texas, the Texas Workforce Commission). This is accomplished through automated interface between the two agencies and periodic transmission of information on support obligors in Title IV-D cases.

D. Interception of Income Tax Refunds.

A state Title IV-D agency may intercept state and federal income tax refunds for payment of past-due child support. 42 U.S.C. 666(c)(1)(G) This is a very important enforcement mechanism, and accounts for about 7 percent of support collections nationally and, in Texas, a little over 10 percent. Effective in 2009, the “IRS intercept” no longer ends when the child turns 18 but will continue so long as child support remains unpaid. The “IRS intercept” is augmented by the federal Administrative Offset Program, created under the Debt Improvement Act of 1996 and reinforced by Executive Order, which allows the collection of past-due child support from certain federal payments, such as federal retirement benefits and payments made to private vendors.

E. Passport Sanctions.

In Title IV-D cases, delinquent obligors owing past due support in amounts exceeding \$2,500 may be subject to passport sanctions. The state Title IV-D agency certifies the names of such non-custodial parents to the federal Office of Child Support Enforcement (OCSE) for communication to the Secretary of State. While the provision under PRWORA authorizing this enforcement mechanism speaks broadly of the denial of issuance or renewal of passports and the imposition of restrictions or revocation on existing passports, the current program actually operates with respect to denial of an application for a passport when there is a match between data provided by OCSE and the information on the identities of passport applicants held by the Secretary of State. Once a passport is issued, of course, it continues in effect for a 10-year period, which means that many delinquent obligors will not be affected by this enforcement mechanism.

F. Credit Bureau Reporting.

The state Title IV-D program is authorized to report the names of delinquent support obligors and the amounts of the delinquencies to consumer credit bureaus, subject to appropriate due process protections under which the obligor may contest the amount of the arrearage being reported.

G. Administrative Enforcement Actions.

PRWORA required states to have laws providing state Title IV-D agencies with broad administrative powers. These include the ability, through administrative process, to secure assets by intercepting or seizing periodic or lump-sum payments, attaching and seizing assets of the obligor held in financial institutions, attaching public and private retirement funds, imposing liens and forcing the sale of property and

distribution of proceeds. State law must also enable a state Title IV-D agency to change the payee under a support order in appropriate cases (e.g., so that support payments are made to the State Disbursement Unit), to subpoena financial information, order genetic testing in contested paternity actions, and to require all entities in the state (including for-profit, nonprofit, and governmental employers) promptly to provide, in response to a request by the Title IV-D agency of that or any other state, information on the employment, compensation, and benefits of any individual employed as an employee or contractor, subject to sanctions for failure to respond to such a request. Moreover, state Title IV-D agencies must be able to obtain access - subject to safeguards on privacy and information security, and subject to the non-liability of entities that afford such access - to information contained in the records of other state and local government agencies, including: vital statistics (including records of marriage, birth, and divorce); state and local tax and revenue records (including information on residence address, employer, income and assets); records concerning real and titled personal property; records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities; employment security records; records of agencies administering public assistance programs; records of the motor vehicle department; and corrections records.

XI. USE OF QUALIFIED DOMESTIC RELATIONS ORDERS FOR CHILD SUPPORT ENFORCEMENT

A. Very brief overview on QDROs. A “qualified domestic relations order” is an order issued by a state court to a pension plan subject to the federal Employee Retirement Income Security Act of 1974 (ERISA). Conner, Charla Bradshaw, *Retirement: QDROs for Qualified Plans Under ERISA (Including Using QDROs for Child Support)*, 29TH ANNUAL ADVANCED FAMILY LAW COURSE, State Bar of Texas, Ch. 18, p. 1.

The use of a QDRO in child support is similar to the use of a QDRO in the division of property in a divorce. Like a QDRO in a divorce, the QDRO must be “qualified”, that is, accepted by the plan administrator in order for the plan to comply with the domestic order exception of ERISA that allows the division of a benefit plan.

B. Requirements. The basic requirements of any QDRO is that it must: be directed to the Benefits Administrator; identify the plan to which it applies; contain the name, mailing address and social security number of the Participant; identify the amount of current child support and/or child support arrearages; contain the name and address of the child support recipient (“Alternate Payee”); and the amount of the child support recipient’s interest in the benefits plan. 29 U.S.C. §1056(d)(3)(C)(i), (ii). Those requirements are all the “magic language” that is required in a QDRO under federal statute. Instead of listing a percentage or dollar value of property, a QDRO for child support will include the current periodic child support obligation (if any), the total amount of the arrearages and the terms of the repayment obligation (example: \$500.00 monthly or the total arrearage of \$10,000.00). The definition of “alternate payee”

includes a child or other dependent who the QDRO recognizes is entitled to a share of the participant’s benefits. 29 U.S.C. §1056(d)(3)(K); Conner, *Retirement* at p. 21.

It ought to be simple enough to get a QDRO to hold the money. 42 U.S.C.(b) mandates that all states shall require orders or writs withholding child support and arrears from income of obligors. “[T]he term ‘income’ means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker’s compensation, disability, payments pursuant to a pension or retirement program, and interest.” 42 U.S.C.(b)(8) (emphasis added).

This part seems simple enough. If the federal government has mandated that income withholding orders apply to all income and the term income includes retirement and pensions, shouldn’t an order or writ to withhold income from earnings for child support suffice for the plan administrator?

In many jurisdictions, withholding orders and child support liens have been accepted. A notice of child support lien was a domestic relations order pursuant to *Galenski v. Ford Motor Co.* 421 F.Supp.2d 1015, 1020 (E.D. Mich. 2006) and *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 422 (6 th Cir.1997). Despite the fact the order did not include all the magic language required by the plan administrator, the 7th Circuit Court of Appeals in *Metropolitan Life Ins. Co. v. Wheaton*, 42 F.3d 1080, 1085 (7 th Cir.1994) held:

To require more specificity would defeat the purpose of the provision creating an exception to inalienability for qualified domestic relations orders . . . It is asking too much of domestic relations lawyers and judges to expect them to dot every *i* and cross every *t* in formulating divorce decrees that have ERISA implications.

However, in this author’s experience, plan administrators ignore the case law and have consistently refused to honor child support liens. A withholding order signed by a judge that has all the “magic language” required by 29 U.S.C. §1056(d)(3)(C)(i), (ii) should at least require the plan administrator to hold the funds pending receipt of a QDRO in the form the plan administrator likes best. I have not given up and will continue my quest to draft a child support order sufficient to comply with federal law and ERISA. If you have any luck on this front, please send me the name of the plan administrator so I can send him/her flowers and get them to speak to all the rest of the administrators!

Every family law practitioner has nightmare stories (or nightmares) about dealing with plan administrators and the requirements to get an order that satisfies the ERISA requirements of the plan administrator and achieves the directives of the state court’s decree. The most important issues in using QDROs for child support include: (1) determining the type of plan and how benefits are payable under the plan; (2) determining the requirements of the plan to qualify the order; and (3) preparing an order that meets the demands of the plan administrator.

Remember that the terms of the pension plan will dictate how your client will receive his/her money. If the

plan is a defined benefit plan that pays a monthly benefit when the plan participant reaches retirement age, the alternate payee may be restricted to the same terms. If the plan is a defined contribution plan, an immediate lump sum distribution may be available.

In considering using a QDRO for child support or spousal support, the threshold question should be to ascertain when the payment to the alternate payee can be made according to the plan's rules. The QDRO cannot change the form of benefit payable by a qualified plan. I.R.C. §414(p)(3)(A); ERISA §206(d)(3)(D)(I). The important thing to remember is to make sure that the payment(s) ordered do not violate the terms of the plan. And, that the form of the payments are a payment option available under the plan.

Conner, *Retirement*, at 22.

XII. CONCLUSION. The Texas Family Code provides practitioners with many creative opportunities to collect unpaid child support. The remedies and time periods available should ensure that every obligee and child receives all child support owed under the court order. Thanks to the hard work of Texas legislators and family law advocates, no obligor should be rewarded for failing to live up to his legal and moral responsibilities to support his children and no child should be forced to do without.