

**CHILD SUPPORT ENFORCEMENT -
IT ONLY TAKES ONE**

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Attorney and Counselor at Law, Texas, 1987
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State Bar of Texas & Family Law Section
Board of Directors, Family Law Section of San Antonio Bar Association, 2002 - 2010;
President, 2007-2008
Texas Academy of Family Law Specialists - 2009 - present
Texas Family Law Foundation - Legislative Review Committee: 2009, 2011; 2013
San Antonio Family Lawyer's Association, Board of Directors 2011- 2012; President 2013-'14
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J.D., Texas Tech University School of Law, 1987
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Texas Super Lawyers 2008 - 2015 Family Law
San Antonio's Best Lawyers - Family Law, Scene in SA magazine 2005; 2007 - 2015
Texas Life Member, Harmony Hills Elementary PTA, 2010

SELECTED PUBLICATIONS & PRESENTATIONS

Acknowledged contributor, *O'Connor's Family Law Handbook 2009; 2010* (Jones-McClure)
Essay featured in *Women Attorneys Speak Out!* by Judi Craig, Ph.D., MCC, (Thomson-West 2008)
Creative Ways to Collect & Defend Child Support Claims, 2009 Marriage Dissolution Institute
(selected by Pro Bono Project of Texas Bar Family Law Section for distribution in *Family Law Essentials*)
Creative Ways to Collect & Enforce Child Support Claims, 2009 State Bar College Summer School (selected by Texas Bar
CLE for rebroadcast as part of "Best of 2009" series)
Child Support Enforcement - It Only Takes One, 41st Advanced Family Law Course, 2015
Child Support Workshop (with Frederick Adams, David Farr & Hon. Marilea Lewis), 35th Advanced Family Law
Course, 2009

Child Support & the Special Needs Child, 2012 State Bar College Summer School
Creative Ways to Set Child Support, 2011 State Bar College Summer School
Creative Ways to Enforce Child Support Claims, 2010 State Bar College Summer School
Judicial & Administrative Remedies for Enforcing Child Support, 2010 Texas Academy of Family Law Specialists Trial
Institute
Caution! Watch Out for Acronyms on the Interstate Case Highway (with Chris Nickelson), 2010 UT Parent-Child
Relationships: Critical Thinking for Critical Issues
Show Me the Money - Creative Child Support Remedies, 2009 Corpus Christi Bar Assoc. Family Law Seminar
Dividing Assets with Fluctuating Values: Slicing the Pie on a SeeSaw Webcast, panelist, 2009, State Bar of Texas
Money Matters (with Steven Sinkin & Ruth Lown), Extreme Family Law Makeover 2009, SA Bar Assoc. Family Law
Section
Obtaining Child Support (with Barry Brooks) 2009 UT Parent Child Relationships: Critical Thinking for Critical Issues
Unique Child Support Remedies Webcast, paper author and panelist, 2009, State Bar of Texas
Trial Treasures in Tampa, Trial Brief Author & planning committee, 2009, Texas Academy of Family Law Specialists
Trial Institute
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

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, 9/2010, Kingsville; 8/2012 Corpus Christi

SELECTED SIGNIFICANT CASES

Granado v. Meza, 398 S.W.3d 193 (Tex. 2013) [clerical error by Attorney General does not relieve obligor of child support obligation]

Holmes v. Williams, 355 S.W.3d 215 (Tex. App. – Houston [1st Dist.] 2011, no pet.) [child support lien §157.323 can be used to establish arrears when court loses jurisdiction under §157.005 to enter cumulative money judgment]

Taylor v. Speck, 308 S.W.3d 81 (Tex. App. – San Antonio 2010, no pet.) [dormancy not applicable to individual child support payments or to child support judgments]

In Re M.C.C., 142 S.W.3d 504 (Tex. 2006) [legislative amendments to statutes apply prospectively; interest rate on child support is rate in effect at time obligation accrued until 1/1/2002, thereafter 6% simple interest on all balances not reduced to money judgment]

In the Interest of S.C.S. 48 S.W.3d 831 (Tex. App.–Houston [14th Dist.] 2001) pet. denied *per curiam, sub. nom. Sprouse v. Sprouse*, 92 S.W.3d 502 (Tex. 2002) (with Steven A. Sinkin) [time periods for securing child support judgments are jurisdictional – legislature may extend time for a remedy]

In the Interest of D.T., No. 12-05-00420-CV, 2007 WL 4465250 (Tex. App.– Tyler 2007, no pet.) [child support lien reaches community property retirement of new spouse when lien was perfected before divorce and new spouse does not raise evidence of his/her interest]

In the Interest of A.D., 73 S.W. 3d 244 (Tex. 2002) (co-author, *amicus curiae* brief) [time periods for securing writs of withholding in child support are jurisdictional; the order adjudicating the obligation is the judgment; legislature may extend time periods for trial courts to enforce their judgments]

COMMUNITY ACTIVITIES

First Presbyterian Church, San Antonio, Deacon, Class of 2016; Godly Play Teacher 2005-present; JOY Ministry; Shawl Ministry (Circle 5)

Churchill HS Band Parents Association and Chaperone

Eisenhower MS PTA, Executive Board, 2011-2014

Harmony Hills Elementary PTA, San Antonio, 3rd VP, 2010-2011

Autism Society of Greater San Antonio, Board Member, volunteer General Counsel 2005 - 2008

GOLD Youth Leadership Foundation (Giving Opportunities for Leadership Development), Program Chair 2003, Board of Directors, 2003- 2006, general counsel to non-profit corporation

Hugh O'Brian Youth Leadership, West Texas Leadership Seminar, leadership training program for high school sophomores: Senior Staff, 1992-2002; Corporate Board 1994-2002; President of Board 1994-1999

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LICENSE & MEMBERSHIPS

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Board Certification, Texas Board of Legal Specialization, 1999-Present
Member, State Bar of Texas & Family Law Section
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Board of Directors, San Antonio Bar Association, Family Law Section 2012-Present
President, Family Law Section, San Antonio Bar Association 2014-2015
Texas Academy of Family Law Specialists 2000-Present
San Antonio Family Law Association 1999 - Present
Board of Directors, San Antonio Family Law Association 2001-2003, 2013-Present
Secretary, San Antonio Family Law Association, 2002-2003
College of the State Bar Of Texas 1993-Present
Registered Nurse, California License 1985-1988, State of Texas 1987-Present

EDUCATION

J.D., University of Texas School of Law, 1991
B.S., Allied Health, University of Texas Health Science Center, 1982
A.S. Nursing, University of the State of New York, 1985

RECOGNITIONS

Course Director, Extreme Family Law Makeover, San Antonio Bar Association,
Family Law Section 2014
Assistant Course Director, Extreme Family Law Makeover, San Antonio Bar Association,
Family Law Section, 2013, 201
Planning Committee, University of Texas Family Law Seminar, 2005
Municipal Judge, Part Time, City of San Antonio, 2004 to Present

SELECTED PUBLICATIONS & PRESENTATIONS

Dos and Don'ts in Family Law Mexican American Bar Association, 2013
Discovery Extreme Family Law Makeover, 2009
Dealing with Debt - University of Texas Family Law Seminar -2004
Tips for Taking the Specialization Exam, Advanced Family Law, 2000

COMMUNITY ACTIVITIES

Board Member and officer, Northwest Little League Association 2002-2005
Northside Independent School District member, Student Activity Team 2000-2004
Coastal Conservation Association, member, Raffle Committee

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CHILD SUPPORT ENFORCEMENT – IT ONLY TAKES ONE

I. SCOPE OF ARTICLE

This article focuses on lesser known issues in child support enforcement: medical support; using advanced collection methods and drafting tips and techniques for motions and orders. The title refers to the requirements of a motion for enforcement: it only takes one violation to find an obligor in contempt and assess the punishment of jail. We intend to give you new tools for your arsenal of child support collection remedies, including how to work with the Attorney General's office.

Many great articles have been written over the past few years for this seminar and other Texas Bar CLE courses that deal with the most common child support enforcement issues. For that reason, we refer you to those articles for the general procedures of a child support enforcement case. See Hoppes, Lisa Kay, *Enforcement, Marriage Dissolution 2014*; Naylor, Stephen, *Child Support Enforcement, Adv. Family Law 2012*; or Marvel, Karen, *Creative Ways to Enforce and Collect Child Support, State Bar College Summer School 2010*.

II. MEDICAL SUPPORT ENFORCEMENT

A. Collecting the Cash

There are two types of medical support payments: health insurance and medical payments not covered by health insurance. An obligor [child support payor] provides health insurance either by insuring the children through a plan s/he provides or by paying cash support to reimburse the obligee [child support payee] for the premiums. Tex. Fam. Code §154.182. The “reasonable and necessary expenses not covered by insurance” (aka uninsured expenses) are allocated by the court between the parties. Tex. Fam. Code §154.183. Most of the time the uninsured expenses are split 50/50. The Texas Family Law Practice Manual (TFLPM) language, drafted by many great volunteer lawyers in this group, sets forth the reimbursement methods for cash medical support for premiums and for uninsured expenses. Generally, the premium cost is added to the child support obligation and included in a withholding order. This method works fine until the premium increases – but the order usually contains language allowing the obligee to advise the obligor of the increase. Most obligees do not get the money because the obligor does not pay up and the obligee does not know how to enforce the change in premiums. There needs to be a better way – which we will explore below.

Uninsured expenses pose different problems. Most occur irregularly and for varying amounts so the

specificity requirement for a motion for enforcement is lacking.

B. Uninsured Expenses NOT Time Barred

There is a mistaken belief among some attorneys that uninsured expenses not submitted to the other party within 30 days are not collectible. This belief fails for many reasons. First, medical support, which includes uninsured expenses is child support – and as such is enforceable just like child support. Tex. Fam. Code §154.183(a)(2);(3); (c).

Second, language that requires the submission of medical bills within 30 days does not preclude their collectability. The Family Code requires the trial court to confirm child support arrearages and cannot reduce or modify the arrearages – including medical support. Tex. Fam. Code §157.263(b-1); *Williams v. Patton*, 821 S.W.2d 141 (Tex. 1991). Finally, the Texas Supreme Court eliminated the defense of equitable estoppel in child support cases in *Attorney General v. Scholer*, 403 S.W.3d 859, 863-66 (Tex. 2013). In *Scholer*, the Court considered whether estoppel could be applied to a statutory right like child support and concluded it could not. *Id.* This last nail in the coffin eliminates the argument (and overrules the cases that hold) that medical bills not timely submitted are waived. While the language in most orders states the party seeking reimbursement shall submit the medical bill within 30 days, it stands to reason in light of the above statutes and cases that the only penalty is that the uninsured expenses are not enforceable by contempt.

Judges Roy Moore and Diana Guariglia, wrote the only way to enforce uninsured medical expenses by contempt is to (1) file a motion seeking collection; (2) get an order with specific time periods for compliance and (3) when the obligor does not comply, move for contempt on the new order. Moore and Guariglia, *Enforcement and Contempt Essentials*, 2013 Adv. Family Law Drafting Course, p. 4. However, that does not mean that a party cannot secure a judgment on uninsured expenses at trial the first go round if contempt is not the goal. Collection methods like income withholding and levies on accounts are available if the obligor is solvent and/or working.

C. A New Approach

Train your client to submit uninsured expenses timely. Beginning in the temporary orders phase of the case, drill your client to assemble and submit the uninsured medical expenses monthly. The obligor should look for the medical expenses and ask if s/he has not received any. There are several ways to make this easy:

1. Use a scanner at home or on a smartphone. Scan each receipt as received and email it to

the other party immediately or in a batch at the end of the month. A quality iPhone scanner app is DocScanner8 by Haave Oy, for \$3.99, recommended by TechnoLawyer. If your client is an Android user, Google Drive has an App that scans from the phone by taking a picture of the document. Our Family Wizard includes receipt submission as well. If your client does not have a smartphone, take a picture of the receipt and do the same thing.

2. Pull Explanation of Benefits (EOB) statements from the health insurance company online.
3. For prescriptions, have the pharmacy print out a list of all prescriptions filled in the last 30 days for the children.

The trick here is gathering the bills and submitting the bills regularly. Once the parties get in the habit of doing it, particularly with recurring bills like orthodontic payments or maintenance medications, it becomes another routine like paying the electric bill. Have your client set a reminder on their phone for the 25th of each month to send the bills and a second reminder on the 30th to make sure it was done. Make this instruction part of your client intake – like your inventory and discovery instructions. Have the client form the habit NOW to stop the hemorrhage later. It's never too late to gather the bills.

If the client has never submitted medical bills, have him/her pull them all together now and send them out to the other parent. Give 30 days for payment and then start collection proceedings. Those \$25.00 co-pays at the doctor add up and it will be worth it – especially if there are other arrearages or another issue to bring before the court.

For the annual increase in health insurance premiums, why not offer to prepare new withholding order for your clients for a nominal cost plus the filing fee? Under the court order, the parent who has insurance has the responsibility of notifying the obligor of the new health insurance premium. For most lawyers, preparing a new withholding order and request for issuance takes a paralegal less than 30 minutes. Use it as a marketing opportunity. Email clients in September (open season enrollment for most health insurance) and tell them to contact you for new withholding orders. There is no requirement for service to the other side if they are notified of the increase in the amount of the premium.

III. CRITICAL THINGS TO REMEMBER IN A MOTION AND ORDER FOR ENFORCEMENT

Appendix A is a checklist of the critical parts of a motion for enforcement. Appendix B is a list of the

critical parts for the Order for Enforcement. So often attorneys get to court with every intention of asking for incarceration but do not have an order that permits the bailiff to take the contemnor into custody. Include this language in the order.

IV. USE OF QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS) IN CHILD SUPPORT CASES

The legislature gives child support the highest priority in collection. The Texas Constitution and statutes allow withholding from retirement accounts for current child support and arrearages.

A. What is a “Child Support” QDRO?

A “domestic relations order” (DRO) is a court order issued by a state that divides a pension plan and orders that a portion of it be paid to an alternate payee, the child(ren), as child support. The DRO magically becomes “qualified” and is a QDRO when the pension plan administrator accepts that DRO as meeting its requirements and agrees to honor the DRO. Federal law under the Employee Retiree Income Security Act (ERISA) 29 U.S.C. §1002(2) controls these DROs and QDROs. Pension plan administrators have great leeway under ERISA concerning the guidelines for DRO acceptance.

B. Where Can a QDRO be Used?

On any retirement plan – whether it is a defined benefit plan (monthly payout type) or defined contribution (401k). It is not necessary for an IRA. However, a QDRO cannot require the plan to perform any action it would not otherwise be required to do or that the participant is not eligible for. Example: if the participant cannot draw funds until 01/01/2017, the QDRO cannot require the plan to immediately disburse child support to the alternate payee. The alternate payee must wait until the participant's draw date to receive money.

C. Why Use a QDRO for Current Support?

If the obligor has no other income, the pension plan provides a regular source, just like an employer's withholding order. In *Quijano v Quijano*, 347 S.W.3d 345 (Tex. App. – Houston [14th Dist.] 2011, no pet.), the court approved the use of QDROs to pay the child support in a lump sum from husband's 401k account at Prudential and his retirement plan with ING. The plans named the child as alternate payee and the orders stated the funds were to be transferred into accounts in the child's name. The orders also stated the tax liabilities were the responsibility of the husband.

D. How to Secure a QDRO for Current Support

Just like a QDRO for the division of retirement benefits, the same form for a QDRO for child support

is used and is promulgated by the pension plan administrator. The biggest difference is that the child(ren) will be named as the alternate payee, not the child support obligee. Have the payments made payable through the State Disbursement Unit as you would do in an employer's withholding order so the obligor receives proper credit. Prepare the QDRO at the time the final order is prepared in the case and submit it in addition to or in lieu of a withholding order.

E. Protect the Child(ren) – Allocate the Taxes

Money from a QDRO is a taxable distribution. If the obligor is paying child support from this money, the obligor is the distributee for purposes of a child support distribution and is liable for the taxes on this money. *Quijano*, 347 S.W.3d at 355. Note this allocation is different from when a QDRO is used for a property division. In that case the spouse receiving the property is liable for the taxes.

F. How to Secure a QDRO for Arrearages

There must be an underlying court order that adjudicates the arrearages – a judgment, order for retroactive child support or determination of arrearages under a child support lien or writ of income withholding. *See* liens and levies section below; *Holmes v. Williams*, 355 S.W.3d 215 (Tex. App. – Houston [1st Dist.] 2011, no pet.) [child support lien §157.323 can be used to establish arrears when court loses jurisdiction under §157.005 to enter cumulative money judgment], and *In the Interest of A.D.* 73 S.W.3d 244 (Tex. 2002) [no time limits for collecting child support through writ of income withholding].

G. How to Prepare a DRO that Becomes a QDRO

These days most plan administrators promulgate proposed forms on the internet. Some plans even have websites with document assembly form building that prepare the order and print it out for submission to the court and administrator. There are also attorneys and services who prepare QDROs for a flat fee. CAVEAT: don't try to craft your own language – it will usually be rejected. If there are unusual issues, call the plan administrator and ask for suggested language.

V. CHILD SUPPORT LIENS

Under Texas Family Code §157.313, failure to pay child support as ordered may result in a child support lien. A sample child support lien is attached as Appendix C. A child support lien arises by operation of law when any child support payment is delinquent. Tex. Fam. Code §157.312(d). Every child support payment that is not timely made is a judgment. Tex. Fam. Code §157.261. There is no requirement that you receive a child support cumulative money judgment before filing a child support lien. A child support lien

may issue “regardless of whether the amounts have been adjudicated or otherwise determined.” Tex. Fam. Code §157.312(d). A lien can attach to all the property owned by the obligor except a homestead. Tex. Fam. Code §157.317.

The contents of the lien must include the following eleven elements, as set out in the statute:

- (1) the name and address of the person to whom the notice is being sent;
- (2) the style, docket or cause number, and identity of the tribunal of this or another state having continuing jurisdiction of the child support action and, if the case is a Title IV-D case, the case number;
- (3) the full name, address, and, if known, the birth date, driver's license number, social security number, and any aliases of the obligor;
- (4) the full name and, if known, social security number of the obligee;
- (5) the amount of the current or prospective child support obligation, the frequency with which current or prospective child support is ordered to be paid, and the amount of child support arrearages owed by the obligor and the date of the signing of the court order, administrative order, or writ that determined the arrearages or the date and manner in which the arrearages were determined;
- (6) the rate of interest specified in the court order, administrative order, or writ or, in the absence of a specific interest rate, the rate provided for by law;
- (7) the name and address of the person or agency asserting the lien;
- (8) the motor vehicle identification number as shown on the obligor's title if the property is a motor vehicle;
- (9) a statement that the lien attaches to all nonexempt real and personal property of the obligor that is located or recorded in the state, including any property specifically identified in the notice and any property acquired after the date of filing or delivery of the notice;
- (10) a statement that any ordered child support not timely paid in the future constitutes a final judgment for the amount due and owing, including interest, and accrues up to an amount that may not exceed the lien amount; and,
- (11) a statement that the obligor is being provided a copy of the lien notice and that the obligor may dispute the arrearage amount by filing suit under Section 157.323.

The lien shall be verified unless the Title IV-D agency is using it. Tex. Fam. Code §157.313(c)(e).

A. Time Periods

A child support 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 ... have been paid ...” Tex. Fam. Code §157.318(a).

B. Where To File Liens

A lien attaching to real property shall be recorded with the county clerk’s office. Within twenty-one days of the filing, the obligee shall then provide a copy of the lien to the obligor by first class or certified mail at the last known address. Tex. Fam. Code §157.314(c). A child support lien on real property has to be renewed every ten years. Tex. Fam. Code §157.318(d). For purposes of establishing priority of liens, a renewed lien dates back to the date of the original lien. *Id.* This change applies only to child support liens on real property filed after May 26, 2009. *Id.*

A child support lien may attach to a retirement plan, life insurance proceeds, cash surrender value in life insurance policies, claims owed to the obligor for personal injury or negligence, or an inheritance given to the obligor. Tex. Fam. Code §§157.316-317. 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 the majority of the bank mutual fund transactions in the United States. Filing a lien with all three of these funds increases the obligee’s chances of obtaining money the obligor is holding in a stock account. The mutual fund clearing houses are:

Fidelity Investments
Enterprise Processing Services
100 Crosby Parkway
Covington, Kentucky 41015
Fax (800) 974-9684

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

CIT Group/Consumer Finance, Inc.
715 S. Metropolitan Avenue
Oklahoma City, OK 73108
Tel: (800) 621-1437
Fax: (405) 553-4790

Brokerage houses like Edward Jones are not a member of these clearing houses and will require the filing of a

separate lien. If you know where the obligor banks, ask where the department for the liens and levies is for the brokerage accounts. Bank brokerage operations are set up under different corporate identities from the banks. For example, delivery to Bank of America does not necessarily mean you have service on the Bank of America brokerage department.

C. Effect of Lien Notice

If a person who has actual notice of the lien possesses any nonexempt property of the obligor that may be subject to the lien, that person is prohibited from turning over, releasing, selling, transferring, encumbering, or conveying the property unless a release of lien has been signed by the claimant, or a court has released the lien after notice to the claimant. A person who violates this provision may be joined as a party to a foreclosure action and is subject to the same penalties provided for the obligor. Tex. Fam. Code §157.319.

D. Property to Which Lien Attaches

Texas Family Code §157.317 states the property to which a child support lien can attach:

- (a) a child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including:
 - (1) an account in a financial institution;
 - (2) a retirement plan, including an individual retirement account;
 - (3) the proceeds of an insurance policy, including the proceeds from a life insurance policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation, or a settlement or award for the claim for compensation, due to or owned by the obligor; and
 - (4) property seized and subject to forfeiture under Chapter 59, Code of Criminal Procedure.
- (a-1) A lien attaches to all property owned or acquired on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is delivered to that party.
- (b) A lien attaches to all non-homestead real property of the obligor but does not attach to a homestead exempt under the Texas Constitution or the Property Code.

E. Financial Institutions

A child support lien may be filed on a financial institution that is holding money for an obligor. Tex. Fam. Code §157.3145. This includes banks and credit unions. The lien applies to all accounts that are in the obligor's name or in which the obligor has a beneficial interest. Tex. Fam. Code §157.311(1)(A).

A child support lien may be delivered to the institution's registered agent, main business address or an address designated by the financial institution to accept liens. The statute does not require service, only delivery. The lien does not have to be filed with the clerk's office. The lien is effective even if the institution's main office is not in Texas. Tex. Fam. Code §157.3145(b). Most banks have a garnishment department and would prefer to have the lien delivered to that specific department. You should contact the financial institution to find out where they want the lien delivered.

A child support lien served on a financial institution freezes the account. No other transactions can be made on that account. Tex. Fam. Code §§157.317, 157.318.

F. Motor Vehicles

If the lien is recorded on the title of a vehicle, that child support lien only attaches to that specific vehicle. Tex. Fam. Code §157.316(b). To be able to record the lien on the title, the court order enforcing the child support obligation (not a child support lien but an enforcement order or money judgment) must include the vehicle identification number of the vehicle and order the obligor to surrender the title to the obligee for recording. *Id.* The obligee may then 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
Tel: (512) 302-2378

A new title should be issued for the vehicle that reflects the lien on the title. The problem with this relief is that the obligor has to surrender the title to the obligee. If the obligor has not paid his child support to this point, asking for surrender of title is probably a futile effort. A writ of execution on a judgment to retrieve the vehicle would more likely yield results.

G. Foreclosure

Texas Family Code §157.323 allows a foreclosure on a child support lien. The foreclosure must be filed in the court in which the lien notice was filed, the district court of the county in which the property is located, or the court of continuing jurisdiction. *Id.*

If the court finds that a child support arrearage is owed, the court shall render a judgment against the

obligor. The court shall then order an authorized official [sheriff] to levy execution to satisfy the lien, costs, and attorney's fees. This satisfaction occurs by selling any property on which a lien is attached or ordering anyone in possession of nonexempt property or cash owned by the obligor to dispose of the property as the court may order. Tex. Fam. Code §157.323.

H. Contest of Child Support Lien

In order to issue a notice of child support lien, the only order the obligee needs is the original order setting child support. If a timely contest to the amount of arrearages in the child support lien is filed, the court has jurisdiction to make a determination of arrearages. Tex. Fam. Code §§157.323(a)(c).

VI. CHILD SUPPORT LEVY ON FINANCIAL ACCOUNTS

A child support lien freezes a financial account, but a levy is still required to be able to seize the money in the account. A judgment or administrative determination of child support arrears is required to file a child support levy. Tex. Fam. Code §157.327(a). An administrative determination of child support arrears occurs when the arrearages are determined by an administrative or judicial writ of withholding under Chapter 158 of the Texas Family Code.

A. How To File

A levy is delivered in the same way a child support lien is delivered. You must send a copy of the levy to the obligor at the same time you send the levy to the financial institution. Tex. Fam. Code §157.328.

B. Time Periods

A child support levy can be delivered anytime there is a child support judgment or upon rendition of an administrative determination of arrearages. Tex. Fam. Code §157.327(a).

C. Contest of Levy

A person with an interest in the financial account, including the obligor, must file an objection to the Notice of Levy within 10 days from the date of its receipt. Tex. Fam. Code §157.328(b). The contest of the levy is the same as the contest of a child support lien that is described more thoroughly under that subsection in this paper.

D. Payment of the Levy

If the obligor does not contest the levy, the financial institution shall pay the money to the obligee not earlier than the 15th day nor later than the 21st day after delivery of the levy. Tex. Fam. Code §157.327(b)(2). The financial institution that receives the levy is obligated to contact any other person that has an interest in the account so that they have an

opportunity to file a contest. If a financial institution does not honor the levy, that entity becomes liable for the amount equal to the property held by the institution, not to exceed the total amount of arrearages. Tex. Fam. Code §157.330.

VII. WORKING WITH THE ATTORNEY GENERAL

A. When is the Attorney General a Necessary Party?

The AG comes into cases several ways. A party can apply for services to establish, enforce or modify a court order. Tex. Fam. Code §231.101(a); 231.104(b). A party who applies for financial assistance under the Human Resources Code for Temporary Assistance to Needy Families (TANF), SNAP (formerly Food Stamps) or Medicaid assigns the rights of child support to the AG to recoup the assistance monies laid out by the state. Tex. Fam. Code §231.104(a). Married parties do not have to be divorced or in the process of a divorce for the AG to institute a SAPCR establishing support and conservatorship. Tex. Fam. Code § 231.101(a). In effect, the AG creates a legal separation that adjudicates rights and duties of the parents without dividing property. As a final way the AG gets involved in cases, in many urban counties under a local rule, a final order for child support in a divorce or parentage action automatically brings in the AG for monitoring.

If the Attorney General established a support order (parentage or SAPCR) and several years the parties later file a modification with private attorneys, the AG is still a party and requires notice of the pleadings. Luckily, rule 21a service is sufficient. How does the newly-hired lawyer in a case know this? A search of the court file will tell you if the AG has ever been in the case. If a party applied for services at any point, the AG usually files a notice in the court's file stating that the AG is providing services. When in doubt, send the AG a copy of your pleading, just in case, especially if the child(ren) ever received Medicaid, TANF or SNAP.

B. What Every Assistant Attorney General Wishes you Knew About (or do) in Your Child Support Case

The AG does not represent anybody but the state. Tex. Fam. Code §231.109. Do not ask them to accept service on behalf of the obligee or the obligor. Tex. Fam. Code §231.110. Do not ask them to sign a rule 11 agreement binding the obligee. Do not ask them to reset a case without the agreement of the obligee. The AG does not have the authority to do that. Although it appears the AG represents the obligee, in fact s/he is pro se.

Separate the child support judgment and the medical support judgment. The AG computer system requires separate judgments for the child support

arrearages and medical support (health insurance payments or uninsured health insurance expenses). The AG website where attorneys can access client pay histories with bar number and access code lists ONLY a combined number for the outstanding balance. Call and request the breakdown BEFORE you go to court. If you want a pay history with the breakdown ask for a "FINA". The AG will request a letter of representation or pleading that shows you represent the party to give you a copy of the FINA (if you are not listed as attorney of record already).

If the judgments are combined, the AG can file a motion for new trial, which causes problems for everybody and delays payment processing and credit.

When You Want the AG in Your Case

The AG brings lots of enforcement tools not available to a private attorney. These include:

- IRS refund intercept;
- Passport suspension;
- Lottery winnings intercept; and
- Negative credit reporting.

If you represent an obligee, you can work with the AG to augment the collection remedies available to your client. Many cases get resolved when the obligor and his new wife want to take a cruise for their honeymoon and need his passport released!

C. Trial in the IV-D Court

A trial in the IV-D court is conducted by an associate judge appointed by the regional administrative judge. The associate judge can be the final word, but like any other associate judge, may be appealed to the district court for a trial de novo upon timely notice. Tex. Fam. Code §201.015. The advantage to trying a case before the IV-D judge is that this judge sees so many of these cases that very few things shock their conscience. There is little chance for surprise – on either side of the case. Once a case is filed and the obligor is served, it moves quickly thanks to federal requirements for final orders. The heavy caseload of the AGs and the IV-D courts can be a blessing or a curse – depending on your point of view. The AG has customers – not clients. The Assistant AG advocates to collect child support – that is their mission.

VIII. CONCLUSION

Child support enforcement remedies are only limited by the creativity of the attorney. Texas law gives you many ways to protect and help your client and the children.

IX. APPENDIX A

A. CHECKLIST FOR MOTION FOR ENFORCEMENT OF CHILD SUPPORT

- Use TFLPM Form 33-3
- Jurisdiction period for contempt – 2nd anniversary of end of child support obligation – Tex. Fam. Code §157.005(a)
- Jurisdiction period for cumulative money judgment -- 10th anniversary of end of child support obligation – Tex. Fam. Code §157.005(b)
- Identify the portions of the order violated and sought to be enforced – Tex. Fam. Code §157.002(a)(1)
 - It is ORDERED that Joe Obligor pay Jane Obligee child support of \$100.99 per month, beginning January 1, 2013 and continuing monthly thereafter until the first occurrence of the following events . . . [or attach the relevant pages as an exhibit and incorporate by reference]
- State manner of noncompliance – Tex. Fam. Code §157.002(a)(2)
 - Joe Obligor failed to pay as follows:

DATE DUE	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
01/01/2013	\$100.99	\$100.99	\$0.00
02/01/2013	\$100.99	\$0.00	\$100.99
03/01/2013	\$100.99	\$0.00	\$100.99
04/01/2013	\$100.99	\$50.00	\$50.99

- Can attach table as an exhibit and incorporate by reference (ProCalc or OAG FINA calculations) that show all of the above to prove up elements of contempt. Tex. R. Civ. P. 59; Tex. Fam. Code 157.002(a)(2)
- Include pay history from State Disbursement Unit/OAG as evidence Tex. Fam. Code 157.002(b)(3); Tex. Fam. Code 157.162
- If contempt and incarceration are sought, personal service is REQUIRED
- DO NOT request more than 180 days incarceration for an offense—obligor is entitled to a jury trial (makes the judges annoyed)
- If the AG has EVER been in the case, add certificate of service and serve AG by Rule 21a
- Hearing can be held no earlier than 10 days from date of service EXCEPT if motion to modify is filed with motion for enforcement, the earliest date for hearing is after 10 am on first Monday following 20 days after date of service. Tex. Fam. Code 157.062(d)(1).
- If contempt is sought, court must sign an ORDER TO APPEAR. If judgment only is sought, court can sign a notice of hearing. See TFLPM Form 33-3
- At first hearing, if Obligor indicates s/he cannot afford an attorney, be sure the judge advises of right to counsel and determines if obligor wishes to request court appointed counsel before any issues on merits.
- At hearing on merits, be sure Obligor is advised of 5th Amendment right to remain silent on the record prior to the start of the hearing.

- Bring an Order for Capias TFLPM 33-11 to first hearing in case Obligor does not appear after personal service. ALWAYS request a cash bond, which is forfeited to obligee if posted.

APPENDIX B

CHECKLIST FOR ORDER ENFORCING CHILD SUPPORT OBLIGATION

- BRING YOUR PROPOSED ORDER TO COURT WITH YOU! It is better to have an order with blanks that you handwrite in. The biggest reason for habeas corpus applications and releases from custody is the lag time between incarceration and the date the order is signed by the Court.
- Use TFLPM Form 33-9 and 33-10 for commitment to jail (some counties may not need 33-10)
- Use TFLPM Form 33-6 if you want to suspend commitment and not incarcerate immediately
- DO NOT attach the exhibit from the motion for enforcement as the proof of violations of the order [it may have instances of full payment in it and then Obligor is not in contempt].
- Have client testify to several instances where no payment was made (best) or partial payment was made. Ask the Court to find Obligor in contempt for those instances. Fill in those blanks when the Court makes findings of those specific instances of contempt.
- Ask for contempt for each instance but the sentences should run CONCURRENTLY. Otherwise the Obligor has the right to a jury trial.
- Confirm a cumulative money judgment for everything that is owed, whether there is contempt or not on the items. Contempt is separate from the money judgment.
- Two separate judgments for medical support and child support. Do not combine them or the AG will file a motion for new trial to make you fix it.
- Attorney's fees are MANDATORY for child support enforcement and are enforceable like child support (including income withholding, liens and levies). Tex. Fam. Code §157.167(a). Testify to your fees and request a judgment.
- Consider a Deferred Commitment. "Obligor is ORDERED to report to this Court on September 15, 2015 at 9:00 a.m to begin his sentence of 180 days in the __ county jail. However, if Obligor complies with the following items by September 15, 2015, the court will suspend the sentence and place him on community supervision: [pay lump sum of \$1,500 on 8-15/15 by 5 pm to State Disbursement Unit; pay current support each month of \$350; pay medical support of \$125 each month]. Be very specific with the duties.

X. APPENDIX C

A. NOTICE OF CHILD SUPPORT LIEN SAMPLE

NO. _____

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
CHILD 1 AND CHILD 2,	§	999TH JUDICIAL DISTRICT
	§	
CHILDREN	§	SMALL COUNTY, TEXAS

NOTICE OF CHILD SUPPORT LIEN TO FINANCIAL INSTITUTION

TO: Hondo National Bank 1112 18th
 Street
 Hondo, TX 78861
 Telephone: 830-426-7218
 Facsimile: 830-741-4355

Obligor:
 Full name: JOE OBLIGOR
 Address: 1313 MAIN
 BigTown, TX 78861
 Birth Date: 01/01/1961
 SSN: 111-11-1111

Obligee:
 Full Name: JANE OBLIGEE
 SSN: XXX-XX-8248

Amount of the monthly child support and medical support obligation: \$500.00

Amount of child-support arrearages: \$27,346.88 as of 06/10/2015

Date of order or writ that determined arrearages: 07/26/2009

Date and manner arrearages were determined if different from
 payments due, less Total amount of above:
 payments made, if any

Rate of interest on arrearages: 6 percent per Texas statutes

Person or agency asserting lien: JANE OBLIGEE, c/o LAW OFFICE OF SMART & TALENTED, PLLC, 123 BEST STREET, BIGTOWN, TX.

The child support lien attaches to all nonexempt real and personal property of Obligor that is located or recorded in the state, including any property acquired after filing or delivery of this notice.

Any ordered child support not timely paid in the future constitutes a final judgment for the amount due and owing, including interest, and accrues up to an amount that may not exceed the lien amount.

Obligor is being provided a copy of this lien notice. Obligor may dispute the arrearage amount by filing suit under Section 157.323, of the Texas Family Code.

You shall immediately provide the claimant with the last known address of Obligor.

You shall immediately notify any other person having an ownership interest in the account that the account has been frozen in an amount not to exceed the amount of the child support arrearage identified in this notice.

I swear that the above facts are true and correct.

JANE OBLIGEE

SUBSCRIBED TO and SWORN TO before me on this date:

_____.

NOTARY PUBLIC, STATE OF TEXAS

PREPARED BY:
LAW OFFICE OF
SMART & TALENTED, PLLC
123 BEST STREET,
BIGTOWN, TX
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