



1-1-1990

Domestic Relations

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Domestic Relations*, 21 PAC. L. J. 465 (1990).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol21/iss2/18>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Domestic Relations

Domestic Relations; ex parte orders

Civil Code §§ 4600.1, 4607.1 (amended).
AB 1906 (Judiciary Committee); 1989 STAT. Ch. 1265

Under existing law, a court of proper jurisdiction may enter a temporary ex parte custody order for minor children of marriages pending dissolution of the marriage.¹ Chapter 1265 limits the court's authority to issue ex parte orders to instances where there is a showing of immediate harm to the child or immediate risk that the child will be taken out of California.²

PHB

1. CAL. CIV. CODE § 4600.1(c) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1265, sec. 1, at ____).

2. 1989 Cal. Stat. ch. 1265, sec. 1, at ____ (amending CAL. CIV. CODE § 4600.1(e)). The court must issue an order to the person receiving custody of the child to refrain from taking the child outside California pending notice and hearing of the order seeking or modifying custody. *Id.*

Domestic Relations; ex parte orders protecting children

Code of Civil Procedure § 546 (amended); Welfare and Institutions Code § 213.5 (new).

SB 221 (Petris); 1989 STAT. Ch. 1409

Sponsors: California Attorney General's Office; California Judicial Council

Support: California District Attorney's Association; California Peace Officers Association; California Judges Association; California Consortium of Child Abuse Councils; County Welfare Directors Association; Council on California Abuse Prevention-Fresno; Adam Walsh Child Resource Center; Central California Juvenile Officers Association; Visalia Police Department; Yreka Welfare Department; California Sexual Assault Investigators Association; California Professional Society on the Abuse of Children; Visalia Welfare Department; Court Appointed Special Advocates, Orange County;

National Association of Social Workers; California State PTA; Saywitz, Ph.D., Psychiatry-UCLA; California Teachers' Association

Under existing law, the court may issue ex parte emergency protective orders at the request of a police or sheriff's officer in order to prevent domestic violence.¹ Under Chapter 1409, the court may also issue ex parte orders when there are grounds to believe that a child is in danger of abuse.² Chapter 1409 also provides that emergency protective orders do not expire until the close of business on the second judicial business day after the order was issued.³

Chapter 1409 authorizes the juvenile court to issue ex parte orders to protect minor children during proceedings aimed at making a minor child a dependent child of the juvenile court.⁴ The ex parte orders may enjoin any parent, guardian, or member of the minor child's household from assaulting or battering the child, or any other minor child in the household, and from entering the residence of the person caring for the child.⁵

KAO

1. CAL. CIV. PROC. CODE § 546(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1409, sec. 1, at ____). The court may issue ex parte orders that: (1) Enjoin any party from contacting, attacking, molesting, assaulting, sexually assaulting, or battering the peace of the other party or other named household members, (2) excluding one party from the residence of the other or the family residence, and (3) enjoining either party from behavior that the court determines is necessary in order to effectuate its orders. CAL. CIV. CODE § 4359(a)(2), (3), (6). The court may also issue an order regarding the care of minor children of either of the parties. CAL. CIV. PROC. CODE § 546(a) (West Supp. 1989).

2. 1989 Cal. Stat. ch. 1409, sec. 1, at ____ (enacting CAL. CIV. PROC. CODE § 546(c)). The court may issue ex parte orders that: (1) Enjoin any parent from molesting, attacking, striking, assaulting, or battering the minor child, (2) excluding any parent, guardian, or member of the child's household from the residence of the child's care-giver, and (3) enjoining a parent, guardian, or member of the child's household from specified behavior that would interfere with the court's orders. 1989 Cal. Stat. ch. 1409, sec. 1, at ____ (enacting CAL. CIV. PROC. CODE § 546(c); *id.* sec. 2 at ____ (enacting CAL. WELF. & INST. CODE § 213.5(a)). The order must include: (1) The grounds asserted for the order, (2) the date and time that the order expires, (3) the address of the superior court, and (4) a prescribed statement. 1989 Cal. Stat. ch. 1409, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 546(c)). The statement must indicate in English and Spanish that the order will last only until the date and time noted and that the person seeking the restraining order may apply for a more permanent order and may seek the advice of counsel. *Id.* An emergency protective order may be issued even if the child must leave the household in order to avoid abuse. *Id.*

3. 1989 Cal. Stat. ch. 1409, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 546(b)).

4. 1989 Cal. Stat. ch. 1409, sec. 2, at ____ (enacting CAL. WELF. & INST. CODE § 213.5(a)).

5. *Id.* (enacting CAL. WELF. & INST. CODE § 213.5(a)). An order granted after a hearing that excludes a person from the dwelling of the minor child and the child's care-giver may remain in effect up to one year, and can be extended by mutual consent of all the parties or by a further order of the court. *Id.* (enacting CAL. WELF. & INST. CODE § 213.5(b)). Persons

seeking an order excluding another person from their residence must present evidence sufficient for the court to determine that they have a right to possession of the premises under law. *Id.* (enacting CAL. WELF. & INST. CODE § 213.5(c)). Law enforcement agencies CAL. WELF. & INST. CODE § 213.5(c)). Law enforcement agencies must be able to provide information regarding the existence, terms, and current status of any order to officers responding to a report of domestic violence. *Id.* (enacting CAL. WELF. & INST. CODE § 213.5(e)).

Domestic Relations; family support—wage attachments

Civil Code §§ 4390, 4390.1, 4390.2, 4390.3, 4390.4, 4390.5, 4390.6, 4390.7, 4390.8, 4390.9, 4390.10, 4390.11, 4390.12, 4390.13, 4390.14, 4390.15, 4390.16, 4390.17, 4390.18, 4390.19 (new); §§ 4700.2, 4701, 4726, 4726.1, 4801.1, 4801.6 (amended); Code of Civil Procedure § 704.114 (new); §§ 708.730, 708.740, 708.780 (amended); Evidence Code § 972 (amended); Government Code §§ 1151.5, 12419.3 (amended); Welfare and Institutions Code § 11484 (repealed); § 11475.1 (amended).

AB 1904 (Speier); 1989 STAT. Ch. 1359

Sponsor: Assembly Committee on Judiciary

Support: California Family Support Council; The State Bar of California, Family Law Section; Gray Davis, Controller of the State of California

Under existing law, a court must order the assignment of earnings¹ of parents owing court-ordered child support unless the parents can show to the satisfaction of the court that the support will be paid.² Under Chapter 1359, after July 1, 1990, the court must issue a wage assignment whenever the court orders payment or modification of support³ unless the obligor⁴ can show good cause why the court

1. Earnings include: (1) Wages, salaries, and bonuses as described in sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure; (2) payments for services of independent contractors, rents, royalties, dividends, residuals, and patent or mineral rights; (3) payments due from written or oral contracts for sales or services; and (4) any other payments due or becoming due periodically from an enforceable obligation. 1989 Cal. Stat. ch. 1359, sec. 1, at ____ (enacting CAL. CIV. CODE § 4390(c)(1)-(4)).

2. CAL. CIV. CODE § 4701(a)(1) (West Supp. 1989).

3. Support is any obligation owing on behalf of a child, spouse, or family. 1989 Cal. Stat. ch. 1359, sec. 1, at ____ (enacting CAL. CIV. CODE § 4390(h)).

4. An obligor is any person who owes a duty of support. *Id.* (enacting CAL. CIV. CODE § 4390(g)).

should not issue a wage assignment.⁵ Chapter 1359 also prescribes the procedure for obtaining a wage assignment to enforce a support order issued before July 1, 1990.⁶

Under Chapter 1359, employers must withhold and forward support as ordered by the court until they receive notice that the wage assignment order has terminated.⁷ An employer who willfully fails to comply with an assignment order is liable to the obligee for the amount of support.⁸ Chapter 1359 provides a procedure whereby persons whose wages have been assigned may move to quash or discontinue the assignment.⁹ Under existing law, judgment creditors

5. *Id.* (enacting CAL. CIV. CODE § 4390.3(a), (c)). Good cause is limited to situations where: (1) The obligor has a 12-month history of timely support payments or has not been subject to a payment order for the past 12 months and is able to post a bond equal to three months' support; (2) the obligor proves that a wage assignment would cause severe hardship; (3) the parties sign a written agreement providing for an alternative arrangement; or (4) the employer or district attorney has been unable to deliver support payments for a period of six months because the obligee failed to give notice of a change of address. *Id.* (enacting CAL. CIV. CODE § 4390.3(c)(1)-(4)). Each county must maintain a single organizational unit located in the district attorney's office to establish, maintain, and enforce child and spousal support obligations. *Id.* sec. 12, at ____ (amending CAL. WELF. & INST. CODE § 11475.1(a)). Chapter 1359 authorizes the district attorney to intervene by ex parte application in any action under the Family Law Act, the Uniform Parentage Act, or other proceeding where child support or spousal support is an issue. *Id.* (amending CAL. WELF. & INST. CODE § 11475.1(i)). See CAL. CIV. CODE §§ 4000-5004 (West 1983 & Supp. 1989) (describing the Family Law Act) and CAL. CIV. CODE §§ 7000-7021 (West 1983 & Supp. 1989) (describing the Uniform Parentage Act).

6. 1989 Cal. Stat. ch. 1359, sec. 1, at ____ (enacting CAL. CIV. CODE § 4390.5(a)-(e)). Persons seeking to enforce a support order issued or modified before July 1, 1990 may file an application, notice of motion, or order to show cause seeking a wage assignment. *Id.* (enacting CAL. CIV. CODE § 4390.5(a)). If the original support order did not contain a provision for wage assignment, the obligee must give the obligor 15 days written notice of the intent to seek a wage assignment. *Id.* (enacting CAL. CIV. CODE § 4390.5(d)). Chapter 1359 requires that both parties attach copies of the prior year's federal and state income tax returns to the income and expense declarations that accompany all requests and responses to requests for child and spousal support. *Id.* sec. 6, at ____ (amending CAL. CIV. CODE § 4801.1(c)). Chapter 1359 also requires that the health insurance coverage for supported children must be maintained by either or both parents if the insurance is available at no or reasonable cost. *Id.* sec. 4, at ____ (amending CAL. CIV. CODE § 4726(a)).

7. *Id.* sec. 1, at ____ (enacting CAL. CIV. CODE § 4390.10(a)). The employer must forward the support amount to the obligee within 10 days of the obligor being paid. *Id.* (enacting CAL. CIV. CODE § 4390.8(a)). The employer may deduct one dollar from the employee's earnings for each payment made pursuant to the order. *Id.* (enacting CAL. CIV. CODE § 4390.10(a)).

8. *Id.* (enacting CAL. CIV. CODE § 4390.10(b)). Service of the wage assignment order also creates a lien on the employee's earnings and the employer's property. *Id.* (enacting CAL. CIV. CODE § 4390.10(c)). Employers do not incur any liability for providing the district attorney with information regarding the obligor's employment and income information for the purpose of establishing, modifying, or enforcing support obligations. *Id.* (enacting CAL. CIV. CODE § 4390.16(a)). An employer who uses an assignment order as grounds for refusing to hire a person, discharging a person, or for taking disciplinary action against an employee is subject to a fine of up to \$500. *Id.* (enacting CAL. CIV. CODE § 4390.17).

9. *Id.* (enacting CAL. CIV. CODE § 4390.9(a)). The employer must deliver a copy of the assignment order to the employee together with a written statement of the employee's rights to move to quash the assignment. *Id.* (enacting CAL. CIV. CODE § 4390.8(b)). To move to

who are owed child support payments may request that the court issue a Notice of Child Support Arrearage, and any personal income tax refunds and lottery winnings are subject to the notice.¹⁰ Under Chapter 1359, this type of request can be made for child, spousal, or family support.¹¹

Under existing law, a married person has a privilege not to be called as a witness against a spouse except in specified proceedings.¹² Chapter 1359 adds another exception to the marital privilege by providing that a married person cannot refuse to provide information regarding income, expenses, assets, debts, and employment of a spouse in any proceeding brought against the spouse by a former spouse, the other parent of a child from a nonmarital relationship, or the guardian of a child of the spouse in order to establish, modify, or enforce a child support obligation.¹³

KAO

quash the assignment, the obligor must state under oath that the assignment order does not correctly state the amount of support, that the alleged obligor is not the obligor owing the support, or that the amount exceeds that allowable under federal law in subdivision (b) of section 1673 of Title 15 of the United States Code. *Id.* (enacting CAL. CIV. CODE § 4390.9(a)). If a garnishment order is for the support of any person, and the individual whose wages are garnished is supporting a spouse or dependent child other than the spouse or dependent child who is to receive support under the order, 50% of the individual's weekly disposable earnings may be garnished. 15 U.S.C. § 1673(b)(2)(A) (1982). If the individual whose wages are garnished is not supporting a spouse or dependent child other than the spouse or dependent child due to receive support under the order, then up to 60% if the individual's weekly disposable earnings may be garnished. 15 U.S.C. § 1673(b)(2)(B) (1982). The court terminates an order of assignment if past due support has been paid in full and if one of the following conditions exists: (1) If there is spousal support, the spouse to whom support is owed dies or remarries; (2) if there is child support, the child dies or is emancipated; (3) the court determines there is good cause to terminate the assignment; or (4) there was an improper termination of a stay of wage assignment. *Id.* (enacting CAL. CIV. CODE § 4390.14(a)-(d)).

10. CAL. CIV. PROC. CODE § 708.730(a), (d) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1359, sec. 9, at ____).

11. 1989 Cal. Stat. ch. 1359, sec. 9, at ____ (amending CAL. CIV. PROC. CODE § 708.730(d)).

12. CAL. EVID. CODE § 972(a)-(f) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1359, sec. 9.7, at ____).

13. 1989 Cal. Stat. ch. 1359, sec. 9.7, at ____ (enacting CAL. EVID. CODE § 972(g)).

Domestic Relations; marriage dissolution

Civil Code §§ 4513, 4800.9, 5120.110 (amended).
AB 1907 (Committee on Judiciary); 1989 STAT. Ch. 1266

Under existing law, when the court finds that a decree of dissolution should have been granted, but was not because of mistake, inadvertence, or negligence, the court may enter a date of judgment.¹ Chapter 1266 provides that this date may not be: (1) Prior to trial in the matter; (2) prior to an uncontested judgment hearing; or (3) prior to submission of an application for judgment on affidavit.² Further, under Chapter 1266, when the parties undergoing dissolution do not voluntarily agree to a division of community property, the court may submit the matter to arbitration if the value of the property in controversy does not exceed \$50,000.³ Chapter 1266 also states that community property is not subject to attachment for debts incurred by either spouse during a period of separation prior to a judgment for legal separation or marriage dissolution.⁴

KMS

1. CAL. CIV. CODE § 4513 (West Supp. 1989).

2. 1989 Cal. Stat. ch. 1266, sec. 1, at ____ (amending CAL. CIV. CODE § 4513). See CAL. CIV. CODE § 4511(b) (personal appearance for application for judgment on affidavit not required unless the court finds that reconciliation appears likely, child custody order proposed is not in the child's best interests, noncustodial parent proposed child support is less than they can pay, or in the interests of justice).

3. 1989 Cal. Stat. ch. 1266, sec. 1, at ____ (amending CAL. CIV. CODE § 4800.9(a)).

4. *Id.*