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EARLELAW NEWSLETTER

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Five Tips for Making Child Support Payments Count

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There is no statute of limitations for the enforcement of California child support orders. Such orders are “per se enforceable until paid in full, and . . . not retroactively modifiable either as to accrued arrearages or any interest due thereon.” In re: Marriage of Hamer, 810 C.A.4th 712, 718, superceded by statute on other grounds. As a result, claims that court-ordered child support was never paid often arise many years after – sometimes even after the child for whom support was ordered has reached age 18 – the payments came due. Not only is there no statute of limitations for enforcing child support orders, the payor of child support bears the burden of proving payments were made, in the event a payee later claims support payments were not made.

Claims of unpaid past child support often total tens of thousands, if not \$100,000 or more, plus interest.

Willful failure to pay court-ordered child support can also constitute contempt of court. Contempt is punishable by, among other things, a period of confinement in a local jail. Contempt is not always a preferred remedy, however, because often the payee may not want to impair the payor’s ability to earn funds which will be used to make support payments. Unlike child support orders, which are “per se enforceable until paid in full”, there is a statute of limitations which applies to contempt actions. Thus, even though a contempt action may be time-barred, it may still be possible to bring an action to collect unpaid child support.

There is an equitable (as opposed to statutory) limitation – known as the doctrine of laches – which may, in certain cases, limit the “per

se enforceable until paid in full” character of child support orders. For a laches defense to succeed, the payor must prove that the payee unreasonably delayed in bringing an action to enforce a child support order and that the payor was prejudiced by that delay. California appellate courts have held that delay alone – even many years of delay – without a showing of prejudice, is insufficient for a laches defense to succeed.

The defense of laches, although still available in limited class of cases, was significantly restricted by a 2003 amendment to California law which provides that the defense is available only in cases in which the Department of Child Support Services (DCSS) is responsible for the enforcement of child support orders. DCSS is not responsible for the enforcement of most child support orders; consequently, a laches defense will not be available in most cases. If you have been ordered to pay child support:

1. Keep a record of each child support payment. Detailed and accurate records which prove payments were made and received will be essential to the successful defense of an action to collect past child support. Such actions often are brought many years after the due date of the payment (10 years to 20 years is not unheard of), sometimes even after the child has turned 18. Thus, the importance of keeping accurate records cannot be understated: Imagine looking forward to retirement in the near future, even after the recent decline in the stock market and retirement account holdings in publically traded stocks, only to be served with an action for past-due child support, totaling tens of thousands if not \$100,000 or more, in child support.

2. Make child support payments by wage assignment. Child support payees are entitled, by law, to a wage assignment order, which is an order that requires the payor's employer to deduct court-ordered child support from the payor's paycheck and forward payment directly to the payee.

3. Do not "off-set" (reduce) child support payments against debts owed by the child support payee. It is not uncommon for the person to whom child support is owed to also owe the child support payor money for any number of debts or other obligations. For example, a child support payee may owe the support payor money related to a property division settlement in a divorce case, or a support payee may owe the support payor rent for a residence the payee rents from the payor. The fact that a support payee owes the support payor a debt is not a defense to non-payment of child support. Accordingly, support payors should resist the temptation to reduce child support payments to the child support payee by the amount the support payee owes the support payor, or by any amount.

4. Child support payors should consider asking the DCSS to assume responsibility for collecting child support payments. Typically, it is the support payee who seeks the assistance of DCSS. However, there is no logical reason why payors should not also take advantage of this government service which is being funded by taxpayers.

5. Immediately upon termination of a child support obligation, promptly obtain a judicial determination that all child support payments have been made. Once a child support obligation terminates, the payor of support usually is content simply to discontinue making support payments. This course of action leaves the door open for the payee to, many years down the road, attempt collection of accrued, but allegedly unpaid, support payments. To close the door to this possibility, hire an attorney to obtain a judicial determination that no support arrears are owed; the cost of doing so will be substantially less than the cost of proving, perhaps years later, that all support payments have been made.

Please contact Earle Law Offices by telephone -- 408.786.1060 -- or email -- www.EarleLaw.com/contactus -- to request assistance with this or another legal issue.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has also served as a Judge Pro Tempore for the Santa Clara Superior Court. In addition to practicing law, Mr. Earle is also a licensed Real Estate Broker.

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