QDROs Can Be Used for Collecting Spousal Support and Child Support

By Elizabeth Van Clief, Esq.

The use of a Qualified Domestic Relations Order ("QDRO") is an often overlooked tool for assisting family law attorneys and divorcing spouses with the collection of child support or spousal support.

A QDRO can be used against a defined benefit plan (which pays monthly benefits over a participant’s lifetime) to collect ongoing monthly child support or spousal support. The participant must be in pay status in order for the defined benefit plan to be able to pay the monthly amount.

In other words, if the participant is not yet retired, the benefits will likely not be payable from the Plan under a child support or spousal support QDRO. Certain exceptions apply.

A QDRO can be used for a defined contribution plan (which has a current account balance) for the collection of spousal support or child support in a lump sum, such as arrears.

The authority for this collection activity resides in ERISA which provides that a QDRO can alienate benefits of the participant if it relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent and is made pursuant to a state domestic relations law. (29 U.S.C. § 1056(d)(3) (B)(ii)(I) and (II)).

Finally, it is important to note that child support QDROs and spousal support QDROs are somewhat specialized with regard to the tax consequences. Child support payments from a retirement plan are taxed to the participant, not the alternate payee.
Judgment Creditor’s Post-Judgment “Trial”

By Keith A. Jones, Esq.

In November 2018, the Foothills Bar Association's Family Law Section had the privilege to hear attorneys from the Fickel & Davis law firm discuss practical information and insight to assist lawyers with enforcement of judgments. Tips to assist the judgment creditor included levying or garnishing the judgment debtor's property held by a third party, e.g. bank levy or wage garnishment. Not surprisingly, judgment debtors don't always disclose all assets despite being under oath for judgment debtors' examinations or being served with written discovery.

A judgment creditor should not despair if it suspects that the judgment debtor is lying or concealing information about its assets. After all, the judgment creditor can set a post-judgment "trial" and subpoena third party witnesses to attend and produce documents at the hearing.

The "trial" in reality is a judgment debtor's examination scheduled by the judgment creditor via the court order to appear process. Wise judgment creditors also require the judgment debtor to produce documents about assets via a subpoena duces tecum, also served with the court order to appear for the examination.

But why stop at requiring only the judgment debtor to produce documents at the hearing? A recent California appellate decision analyzed California Code of Civil Procedure provisions governing enforcement of judgments. Specifically, it addressed whether a judgment creditor could subpoena a third party to produce documents at a judgment debtor's examination.

The debtor in the lawsuit claimed that he owned or had interests in two limited liability companies, that one of them paid some of his expenses, and that he had signatory authority over their bank accounts. The creditor scheduled the judgment debtor's examination and served a subpoena duces tecum ("SDT") on the bank holding the accounts for both limited liability companies. Both limited liability companies, owned by relatives of the debtor, objected on privacy rights and asserted that the bank account information was irrelevant. They also claimed that the creditor's previous subpoena duces tecum had been quashed in a different superior court.
Continued from Page 2…

The creditor filed a motion to compel, arguing the SDT required the bank to produce the records at the judgment debtor's examination just if the hearing was a trial. The trial court denied the motion to compel after taking notice of the order to quash issued by the superior court in the earlier hearing (because the subpoena duces tecum had been served under CCP Sec. 2025.010, et seq. in relation to a deposition), and finding that an appearance by a subpoena duces tecum would have been appropriate only if tethered to the third party examination of the bank, but not to someone else, including the judgment debtor.

The creditor appealed, arguing the SDT was authorized under CCP Section 708.130 because it sought documents in connection with the judgment debtor's examination scheduled pursuant to CCP Section 708.110. It argued that CCP Section 708.130 permits a party to require witnesses to appear "'in any examination proceeding' under this article in the same manner as upon the trial of an issue" and was not limited to just requiring a third party to appear at a third party examination proceeding.

The appellate court analyzed the statutory language against the backdrop of judgment debtor and third party examinations which are authorized so that there is "no stone unturned" in a creditor's efforts to locate assets to satisfy a judgment. The court also reasoned that public policy does not favor permitting a judgment debtor to conceal assets from a judgment creditor.

To the appellate court, the wide scope of inquiry into a debtor's assets would be permitted where a third party subpoena duces tecum is tethered to a judgment debtor's examination because the statute didn't state that the procedure was only available for third party examinations. Rather, construed to accomplish the purpose to satisfy judgments, permitting a broad application was consistent with the statute permitting a party to subpoena witnesses as if a judgment debtor's examination was a trial.

The appellate court directed that the trial court vacate its order denying access to the records sought by the SDT. It also remanded the motion to the trial court to determine the privacy and relevancy objections posed by the two limited liability companies who held the accounts with the bank.

One has to wonder whether the decision on the motion would be a mini-trial of sorts since the trial court would need to address the judgment creditor's contention that production would be appropriate based on the judgment debtor's representations that: a) he owned interests in both entities; b) he paid some of his expenses from both of the entities' accounts; and c) he was a signatory on the accounts for both entities. If the judgment creditor succeeds on remand, then the "trial" at the judgment debtor's examination may lead to turning over a few stones under which the judgment debtor had been hiding assets.
Christian Legal Aid Clinics in Search of Church in East County to Host a Monthly Legal Clinic

By William A. Hannosh

Christian Legal Aid Clinics of San Diego County (C.L.A.) is currently in search of a church in East County which would be willing to host one of its legal clinics. The legal clinic, which is customarily held on one Saturday morning per month, between 9 a.m. and noon, frequently has volunteer attorneys available to help and advise individuals facing various legal disputes. C.L.A. attorneys cannot represent clients in any court or tribunal, but they do provide legal advice, answer questions and, depending on the specific case, sometimes provide minimal assistance with forms or documents. Although the majority of people served by C.L.A. have domestic or family law issues, the clinic also provides assistance in areas such as criminal law; landlord-tenant law; bankruptcy; consumer law; employment law and trust and estate disputes. In the event that individuals are in need of additional legal services for a more involved legal matter or dispute, C.L.A. attempts to refer such people to other attorneys, public services agencies, or pro bono social services, depending on the need.

The church organization willing to host a C.L.A. legal clinic on its property would have at least one representative available during the clinic hours, to make sure that the client files are prepared for use by the volunteer attorney and to greet or receive incoming people. Individuals receiving assistance from the C.L.A. clinics are scheduled with a volunteer attorney during the days leading up to the meeting.

C.L.A. presently holds two legal clinics in the North County area, which are also held on Saturday mornings. Recipients of legal services are not required or expected to hold any particular belief, faith or religious view. For more information on Christian Legal Aid Clinics, please contact attorney, L. Jerry Hansen, at SDCLegalAid@gmail.com.

C.L.A. is 501(c)(3) non-profit organization.
Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Chair Steven Banks at: sbanks@krigerlawfirm.com or 619-589-8800.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the second Tuesday of each month. The next meeting will be on April 9, 2019 at the Law & Mediation Firm of Klueck & Hoppes, APC., 7777 Alvarado Road, Suite 413, La Mesa, CA 91942 beginning at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming event planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.
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El Cajon, CA 92022

Addressee Name
4321 First Street
Anytown, State 54321
FOOTHILLS BAR ASSOCIATION
FAMILY LAW SECTION MEETING

Tuesday, April 16, 2019
12:00 pm – 1:15 pm

LOCATION:
Testo Pepesto Italian Restaurant
221 East Main Street, El Cajon, CA 92020

TOPIC:
MILITARY DISSOLUTION
SCRA & Credit Reporting Issues for Deployed Servicemembers

SPEAKER:
Sara Khosroabadi, Esq. ~ SKB Law

THIS EVENT IS FREE FOR MEMBERS OF THE FOOTHILLS BAR ASSOCIATION

**Civil and Criminal Law practitioners are also welcome to attend this Family Law Section MCLE**

This presentation qualifies for one unit (1.0 credit hour) toward California Minimum Continuing Legal Education (MCLE).

For questions, please contact Amy E. West, CFLS at (619) 448-6500 or Amy@familylawsandiego.com
April 2, 2019

NOTICE TO ATTORNEYS

NEW, REVISED OR REPEALED FORMS FOR THE JUDICIAL COUNCIL AND SAN DIEGO SUPERIOR COURT EFFECTIVE APRIL 1, 2019

Attached is a list of new, revised or repealed Judicial Council and San Diego Superior Court forms effective April 1, 2019. Court forms available on the Internet may be found at: www.sdcourt.ca.gov, and/or printed forms may be found at the San Diego Superior Court business offices as indicated.

Attachment

Distributed for Publication
## SUPERIOR COURT OF CALIFORNIA
### COUNTY OF SAN DIEGO

### NEW / REVISED / REPEALED FORMS

* INDICATES MANDATORY FORM

Forms with INTERNET checked may be found at www.sdcourt.ca.gov.
Forms with PRINTED checked may be found at San Diego Superior Court business offices.

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