

PARALEGAL ROUNDTABLE OUTLINE

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I. INCOME WITHHOLDING ORDER

A. What is it?

An enforcement of a court order for child and or family/spousal support that will allow monies to be automatically deducted from the obligor's income. **This enforcement is required by law.**

When a Child Support Information And Order Attachment (FL-342) accompanies a Findings and Order after hearing, Judgment, or Stipulation to Modify Child Support, item #8 on said form states: An earnings assignment order is issued. The Summons and Complaint Or Supplemental Complaint Regarding Parental Obligations (FL-600) also states, in item #9, that a wage and earnings assignment be issued. Notice that both of these are statements, not options; no prior checkbox is needed.

❖ Have you seen other uses? _____

B. What forms are required?

- Ex Parte Application to Issue, Modify, or Terminate an Income Withholding Order FL-430
- Declaration of Payment History FL-420
- Payment History Attachment FL-421
- Income Withholding Order FL-195
- Request For Hearing On Earnings Assignment Order FL-450
- Earnings Assignment Order For Spousal or Partner Support FL-435

❖ What are some other requirements in your court? _____

C. What additional information is needed?

- Obligor's name
- Social Security Number
- Birth date
- Employer's name and address
- If request includes enforcement of child support, the obligee must open an account with the California State Disbursement Unit



- ❖ What have you done in circumstances where the above information is unavailable?

- ❖ Have you run into any issues when issuing a wage assignment order to a seasonal or migrant worker?

D. What is needed to initiate, modify, or terminate an Income Withholding Order?

i. To Initiate

- Current support order
- Payment history information for what months have/have not been paid
- Arrears may be established

- ❖ What else do your courts require? _____

- ❖ When do you see the Request for Order (FL-300) used? _____

- ❖ Do your courts expect the Request for Hearing Re: Earnings Assignment (FL-450) to be served? If so, at what point is it served? _____

ii. To Modify

- Current support order
- Payment history information; what months have/have not been paid
- Arrears may be established
- Reason for modification (usually requested when income of one or both party's income has changed or in cases with more than two children, one has emancipated)

iii. To Terminate

- Must have current support order
- Payment history information; what months have/have not been paid
- Reason for termination; proof may be required (usually requested when last child has emancipated (Family Code §7002) or spousal/partner support has reached maturity)
- If the reason for termination of support is because the child has completed the 12th grade (per Family Code §3901), include the diploma as proof. Tip, Family Code §3025 states: Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

❖ Are your courts expecting more from litigants? _____

❖ What other types of proof do your courts request? _____

E. What to do once complete- who gets served?

Once the Income Withholding Order or Earnings Assignment Order is signed, the obligee must mail a copy to the following employer/agency that issues the obligor's income:

- Employer- to employer's address or Human Resources office
- Unemployment- Employment Development Department (EDD)
- State Disbursement Unit (SDU)
- Disability- Local Social Security Office or Regional Counsel in San Francisco
- Worker's Compensation- Worker's Compensation Board
- Social Security- Local Social Security Office or Regional Counsel in San Francisco

❖ Do you have other examples? _____



INCOME WITHHOLDING ORDER AMOUNTS TO WITHHOLD (CHEAT SHEET)			
Per Month	Monthly payment = M	M	\$1,200
Per Semimonthly	Monthly payment divided by 2	M/2	1,200/2= \$600
Per Biweekly	Monthly payment multiplied by 12, divided by 26	$(M*12)/26$	1,200*12= \$14,400/26 = \$553.85
Per Weekly	Monthly payment multiplied by 12, divided by 52	$(M*12)/52$	1,200*12= \$14,400/52 = \$276.92

Notes/Questions:

II. INCOME AND EXPENSE DECLARATION

A. Income and Expense Declaration (FL-150) vs. Financial Statement (Simplified) (FL-155)

Financial Statement (Simplified) can be used if you or the other party is **NOT** requesting:

- Spousal support or a change to spousal support
- Attorney fees

And you (the filing party) are **NOT**:

- Self-employed
- Receiving money from sources other than:
 1. Welfare
 2. Disability
 3. Unemployment
 4. Interest
 5. Wages/Salary
 6. Retirement
 7. Worker's Compensation
 8. Social Security

❖ Do your courts instruct not to use the Financial Statement (Simplified) (FL-155)?

❖ Which Courts use the Financial Statement (Simplified) (FL-155)? _____

Income and Expense Declaration (FL-150) can always be used, and usually is preferred.

B. What is 'other party's income' (item 4)?

Basis of Income: It has been seen, heard, or estimated by the filing party. If not, unknown.

Imputed Income: A set amount of income which may be attributed to a party by the Court when no income information has been provided, or in other circumstances.

❖ How do you see your courts using this information? _____

❖ How much detail do your courts require? _____

C. How is the average gross monthly income calculated?

- If party has seasonal jobs: accumulated salary from all seasonal jobs in past 12 months, divided by 12.
 - If party has two jobs: accumulated regular, accumulated, overtime, and accumulated bonus/commissions in the past 12 months, each divided by 12.
 - Multiple sources of income- same as having two jobs (above).
 - If using year-to-date totals and party was employed since January 1st, divide by current point on calendar. Example: October 16 is 9 complete months and 2nd full week into the next month. Assuming each week = .25, divide year to date by 9.5.
- ❖ Have your courts seen unusual income patterns? If so, how have you dealt with them?

❖ Do your courts find many people have trouble with the 'last month vs. average month' concept? If yes, how do you explain it to them?

D. Additional Income and/or change in income (items 8 and 9)

- Additional one-time income
 1. Casino jackpot/winnings
 2. Lottery winnings
 3. Sale of property
 4. Inheritance
 5. Payoff/Settlement
 6. _____

- ❖ Change in Income
1. Began/Ended a job
 2. Began/Ended Unemployment
 3. Promotion/Demotion



❖ What kind of proof do your courts require? _____

E. The following people live with me (item 12)



Let's not get technical! It is not who lives with you, or who you live with; it is everyone that shares the same address as you.

❖ Who is required to be included in the household? _____

❖ Under what living situations would you **not** include other people who are living at the same residence? _____

F. Hardships for children from other relationships (item 19c)

Impossible question: What is the amount spent per month and for how many months?

Our ideas:

❖ Amount per month:

1. Divide total from item #13(r) by number of people living in home
2. Calculate exact (diapers + Gymboree + football + ballet + etc.):

❖ For how many months:

1. Ongoing
2. Indefinitely
3. Until age of majority (18)

❖ Do your courts require any proof for hardship children? _____

Notes/Questions:

III. LETTERS ROGATORY

1. What is it?

It is a letter of request from one court to another court for international judicial assistance.

2. What can you ask for? A Judge can ask for help with many things; for example, a Judge can ask the Court to register and enforce an order in a foreign country. It can also be used for the purpose of obtaining evidence. In the scope of our services, we can help draft a letter asking the other country to serve a legal document in their country.

3. Who is involved? Currently involved in the Inter-American Convention of Letters Rogatory and Additional Protocol are the following countries:

- Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, México, Panamá, Perú, United States, Uruguay, and Venezuela.
- Mexico and Venezuela are also members of the Hague Service Convention.
- For countries listed above, use the “Additional Protocol” which is the Letters Rogatory template the listed countries agreed upon.
- For Letters Rogatory sent to other countries, use similar format.

4. What is the General Process?

Superior Court of California, County of Imperial/Letters Rogatory Service in Mexico.

- Request permission from the CA Court to serve in Mexico (use form 1 as an example).
- Wait for approval: from: Clerk- to: Judge- to: CEO
- Send approved form to Secretary of State in Sacramento for Apostille to authenticate the Judge’s and clerk’s signature.
- Forms come back from Sacramento and a translation is required (First translation from English to Spanish and Second translation from Spanish to English).
- Instruct the requesting party to present translated forms to Mexican Judiciary of the Mexican State where the respondent is located.

- Mexican Court serves the party located in Mexico. Proof of service by Mexican Judiciary is generated.
- Certificate of execution (the proof of service) is completed by judicial staff of Mexican Court.
- Translation again from Spanish to English. Both shall be filed with our CA Court.

5. What happens if we don't have an address for the person that needs to be served? Posting or publication can be an option always and when it is properly requested and approved in the CA Court. The posting or publishing must be requested after or at the same time the Request for Letters Rogatory. One can post or publish basing it on the party's last known address; same procedure we follow here in CA, but following the Mexican Judiciary code.



6. How much will it cost for the Letters Rogatory Process? Fee varies depending on amount of pages:

- Judge's signature- \$20
- Apostille -Authentication of documents through the Secretary of State- \$30.00
- First translation- Approximate fee is \$350.00 (depending on number of pages) English to Spanish
- Second translation-Approximate fee is \$350.00 (depending on number of pages) Spanish to English.*
- If posting or publishing is required- \$150.00
- Posting fee for mailing (depending on number of pages).



*According to CRC Rule 3.1110 (g) Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter.

7. What have you accomplished?

Proof that a legal document has been properly served on someone that lives in a foreign country. Proper service is essential or else the judgment is voidable and also unenforceable.

Notes:
