

Creative Remedies: Obtaining Economic Support for Victims in Family Court

Day Two
Session 4A
New Orleans, LA



Introductions


- Aisha Rahman
 - Executive Director, KARAMAH: Muslim Women Lawyers for Human Rights
- Veronica Thronson
 - Clinical Professor of Law, Michigan State University College of Law
- Inspector Antonio Flores
 - Inspector, Special Victims Unit, San Francisco Police Department



Learning Objectives

By the end of this session you will be able to understand:

- Some of the economic barriers immigrant domestic violence survivors face
- The types of economic relief available through family court
- How to creatively use discovery, pleadings, and motions to assist survivors to obtain economic support for your clients



Scenario

Alicia is referred to you by the local DV shelter because she just left her husband and wants to file for divorce. She tells you that they have two children, Betty and Carlos, and that she wants custody of her children, but she is afraid that her husband won't give her any money to help her with the kids. She also tells you that she has a pending green card application that her husband filed for her but her immediate need is to get some money for an apartment



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Immigrant Victims in Family Court

- Immigrant victims are in a unique position because of their immigration status
- What are your client's immediate needs?
 - Safety?
 - Child Support?
 - Custody?
 - Divorce?
 - Orders of Protection?



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What are the Benefits of Obtaining Court Ordered Child Support for Immigrant Survivors As Early As Possible?

- Provides a safe avenue of economic support for survivors
- Court ordered wage withholding
- Creates ongoing obligation to pay child support and accruing debt for unpaid child support
- Provides immigrant victims with evidence of income due that can help in an immigration case
- If child support is not paid, this may put the survivor in a better position in future child custody litigation



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Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on child support guidelines and:
 - Actual earnings, employer's statements
 - Evidence of earning capacity
 - Attributed income (e.g. minimum wage)
- Undocumented workers can and usually pay state and federal taxes on income earned using an IRS issued Tax ID number



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General Income Approach

- Each parent shall provide verification of current income
- Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available



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Proving the Abuser's Income and Ability to Pay

- Lack of immigration status of non-custodial parent is not valid defense
- Employer's Statement and Employer's Affidavit: prima facie evidence of income
- Employer who fails to comply with wage withholding order can be sanctioned under state law




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Immigration Issues Arising in Child Support Cases


- Payment of child support through the court provides a non-citizen parent with a history of child support payments that will be helpful evidence of good moral character for immigration cases
 - Cancellation of removal
 - Naturalization
- Provides a custodial immigrant parent with evidence of child support that can be used as income in lawful permanent residency cases (avoiding public charge)
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies



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Immigration Issues Arising in Child Support Cases


- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related offenses or crimes involving moral turpitude
- Lack of legal work authorization is not a valid defense to non-payment of child support
 - *Asal v. Asal*, 960 P.2d 849, 850 – 851 (Okla. 1998)
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld
 - *State v. Filipino*, Conn. Super. LEXIS 266 (2000)
 - *Belcher v. Terry*, 420 S.E.2d 909 (1992)
 - *Child Support Recovery Svcs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc.*, 7 P3d 63 (Alas. 2000)



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Child Support and Public Assistance

Generally, if a victim goes on cash public assistance, she assigns her rights to receive child support over to the State. This means that while the victim is receiving cash assistance, the child support checks for those months will go to the State, not to her



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Child Support and Public Assistance

- **The victim cannot receive both cash public assistance and child support**
- Any current support not paid during the time the victim is on cash assistance accrues as arrears, and those arrears are due to the State for reimbursement of the cash assistance paid out



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Ex-Parte Orders

Given Alicia's immediate need for support, it may be wise to help her with an Order of Protection to obtain relief without having to wait for the divorce action



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Economic Relief in Protection Orders

- Spousal and child support
- Child care expenses
- Health care insurance
- Exclusive possession of residence or vehicle (for transportation to work)
- Rent and mortgage payments
- Utilities payments
- Vehicle payments




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Affordable Care Act


- Importance of maintaining children and victims on abuser's insurance
- When do victims become eligible for
 - Exchanges
 - Subsidies
- When they are subject to the individual mandate



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Divorce Action


- Use formal discovery and subpoenas
- Obtain credit reports for both parties
- Avoid mediation
- Allocate debt and assets to compensate for abuse
- Provide spousal support to develop economic independence
- Consider the impact of divorce on public benefits



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Motions

- Motion for Interim Spousal Support
- Motion to Maintain the Status Quo
- Motion For Exclusive Use of the Marital Home
- If Ex-Parte Custody Order not granted - Motion for Emergency/Expedited Custody Order



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The Marital Property

- Use the PO or motion to return client home
 - Provision prohibiting abuser from entry
 - Need to work with law enforcement and shelter advocate to ensure safety and to escort client for enforcement of order - may want to have officers personally serve at the same time
 - Discuss safety planning with client - is this safe to go back home? Alternative is to have police escort client to get personal belongings/baby clothes out of home
- Possible Motion for Exclusive Possession
- Lis Pendens



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Spousal Support

- Factors to be considered:
 - length of marriage
 - ability of parties to work
 - source of and amount of property awarded
 - age
 - ability to pay alimony
 - present situation
 - needs



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Additional Issues

- Possible tort action
- Discovery
 - Subpoena wages and 401K information
 - Interrogatories
 - Bank statements
 - Request for admissions
 - Immigration documents
 - Hidden assets



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Affidavit of Support

Almost all U.S. citizens or LPR's who are petitioning for an immigrant relative must submit an "Affidavit of Support"

- A U.S. citizen or LPR accepts responsibility for financially supporting the immigrant relative and commits to preventing the immigrant relative from becoming a "public charge"
- "Public charge" - someone who needs or is likely to need public assistance to survive



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Affidavit of Support

- Promise to support the family member at a 125% of the poverty level
- This responsibility lasts until the non-citizen either:
 - Becomes a U.S. citizen = Naturalizes
 - Credited with forty (40) hours of work under the Social Security Administration - INA §213A
 - Ceases to hold the status of an alien lawfully admitted for permanent residence and departs the U.S.
 - Obtains in removal proceedings a new grant of adjustment of status
 - Dies
- Courts have relied on the Affidavit of Support to set spousal and child support obligations



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Enforceability of the Affidavit Support

- Most courts that have addressed this issue have found the Affidavit of Support enforceable and have ordered support payments to a former spouse
- As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support. 71 F.R. 35732, 35740 (June 21, 2006).



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Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2016
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
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Questions



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Evaluations



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Thank you!

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