

Chapter 17 ENFORCEMENT OF ORDERS

SYNOPSIS

PART I: STRATEGY

§ 17.01 Scope

§ 17.02 Objective and Strategy

PART II: FILING MOTIONS FOR CONTEMPT

§ 17.03 CHECKLIST: Filing Motions for Contempt

§ 17.04 Assessing the Statutory and Practice Book Requirements for Contempt Motions

§ 17.05 Basing a Finding of Contempt on the Evidence

§ 17.06 Requiring a Clear and Unambiguous Order Prior to Finding a Litigant in Contempt

§ 17.07 Assessing Prior Private Modification Agreements in a Subsequent Contempt

§ 17.08 Failing to Follow an Order with Which a Party Disagrees

§ 17.09 Hearing a Motion for Contempt When There Is a Pending Motion for Modification

§ 17.10 Hearing a Motion for Contempt When There Is a Pending Appeal

PART III: ASSERTING DEFENSES TO A MOTION FOR CONTEMPT

§ 17.11 CHECKLIST: Asserting Defenses to a Motion for Contempt

§ 17.12 Asserting Defenses to a Motion for Contempt—In General

§ 17.13 Defending a Contempt Motion Based upon an Inability to Pay

§ 17.14 Defending a Motion for Contempt Based upon Laches and Equitable Estoppel

§ 17.15 Asserting Waiver as a Defense

§ 17.16 Seeking a Discharge of Obligations Through Bankruptcy

§ 17.17 Claiming an Entitlement to a Credit for an Overpayment

§ 17.18 Claiming an Impossibility to Perform

PART IV: DETERMINING GENERAL RELIEF THAT MAY BE SOUGHT IN A MOTION FOR CONTEMPT

§ 17.19 CHECKLIST: Determining General Relief That May Be Sought in a Motion for Contempt

§ 17.20 Seeking an Award of Counsel Fees

§ 17.21 Incarcerating the Party Held in Contempt

§ 17.22 Assessing Interest

§ 17.23 Enforcing a Judgment Through a Separate Civil Action

PART V: CRAFTING ORDERS TO ENFORCE ALIMONY AND CHILD SUPPORT

§ 17.24 CHECKLIST: Crafting Orders to Enforce Alimony and Child Support

§ 17.25 Enforcing Orders Unchanged by a Subsequent Modification

§ 17.26 Enforcing Alimony Orders

§ 17.27 Calculating Arrearages

[1] Calculating Arrearages Under the Child Support Guidelines

[2] Calculating Arrearages After a Retroactive Modification

§ 17.28 Enforcing Child Support Arrearages Through the Family Support Magistrate

§ 17.29 Collecting Child Support Arrearages After the Child Attains the Age of Majority

§ 17.30 Obtaining Wage Executions

§ 17.31 Paying a Child Support Arrearage from a Tax Refund

§ 17.32 Ordering the Payment of an Arrearage by a QDRO

§ 17.33 Enforcing Life Insurance Orders

§ 17.34 Levying a Writ of Execution

PART VI: CRAFTING ORDERS TO ENFORCE A PROPERTY DIVISION

§ 17.35 CHECKLIST: Crafting Orders to Enforce a Property Division

§ 17.36 Fashioning Orders on Equitable Principles

§ 17.37 Effectuating, Not Modifying, the Court's Order

§ 17.38 Conveying Property Through the Court

§ 17.39 Ordering the Sale of an Asset

§ 17.40 Enforcing Orders Regarding Retirement Plans

PART VII: CRAFTING ORDERS TO ENFORCE CUSTODY AND VISITATION

§ 17.41 CHECKLIST: Crafting Orders to Enforce Custody and Visitation

§ 17.42 Claiming an Inability to Force a Child to Attend a Visitation

§ 17.43 Creating Barriers to Custody and Visitation

PART I: STRATEGY

ENFORCEMENT OF ORDERS

§ 17.01 Scope

This chapter covers:

- Filing a motion for contempt.
- The necessity for evidence to find a party in contempt.
- Defenses to a motion for contempt.
- General relief that may be sought in a motion for contempt.
- Relief that may be sought in alimony, child support, property division, and custody and visitation cases.

§ 17.02 Objective and Strategy

This chapter discusses the manner by which court orders regarding alimony, custody, child support and property division may be enforced. The chapter begins with the requirements for filing a motion for contempt. The defenses to a motion for contempt are analyzed in this chapter. Finally, the chapter concludes with the remedies that may be sought when a party has breached the orders of the court.

PART II: FILING MOTIONS FOR CONTEMPT

ENFORCEMENT OF ORDERS

§ 17.03 CHECKLIST: Filing Motions for Contempt

17.03.1 Filing Motions for Contempt

- Assessing the statutory and practice book requirements for contempt motions:
 - Court orders which have been violated are subject to a contempt motion.
 - The motion for contempt must:
 - Recite the court order that has been violated.
 - Set forth the acts constituting the contempt.
 - State the relief requested.

- Indicate if it is a *pendente lite* or post judgment motion.
- A contempt motion for financial orders should include the date on which payment was due and calculate the arrearage owed.
- A contempt motion for visitation and custody orders should delineate the actions constituting the contempt. **Authority:** Conn. Gen. Stat. §§ 46b-84 and 46b-87; *O'Connell v. O'Connell*, 101 Conn. App. 516 (2007), *Gil v. Gil*, 94 Conn. App. 306 (2006), and *Esposito v. Esposito*, 71 Conn. App. 744 (2002); P.B. § 25-27. **Discussion:** See § 17.04, *below*. See also Chapter 2, §§ 2.10–2.15, *above*. **Forms:** JD-FM-162—Order to Attend Hearing and Notice to Respondent, see Chapter 20, § 20.13, *below*. JD-FM-173—Motion for Contempt/Contempt Citation, see Chapter 20, § 20.18, *below*.
- Basing a finding of contempt on the evidence:
 - A direct contempt occurs in the presence of the court while an indirect contempt occurs outside of the court's presence.
 - The court must be presented with competent evidence to justify an indirect contempt.
 - A finding of willfulness will be based upon the circumstances surrounding the reasons why the contempt motion was filed.
 - The party filing the motion for contempt bears the burden of proof to show the court order and the manner in which it was violated. **Authority:** *Bryant v. Bryant*, 228 Conn. 630 (1994), *Mekrut v. Suits*, 147 Conn. App. 794 (2014), *Oldani v. Oldani*, 132 Conn. App. 609 (2011), *Kennedy v. Kennedy*, 114 Conn. App. 143 (2009), *Detels v. Detels*, 79 Conn. App. 467 (2003), *Burrier v. Burrier*, 59 Conn. App. 593 (2000), *Sgarellino v. Hightower*, 13 Conn. App. 591 (1988), and *Marcil v. Marcil*, 4 Conn. App. 403 (1985). **Discussion:** See § 17.05, *below*.
- Requiring a clear and unambiguous order prior to finding a litigant in contempt:
 - Unless the agreement is clear, it will not support a contempt finding.
 - A violation of the intent of a court order may result in a finding of contempt.
 - If there is a question as to whether an order is self-executing or not, such order should be clarified by the court.
 - The mere claim that an order is ambiguous will not preclude a finding of contempt. **Authority:** *Gabriel v. Gabriel*, 324 Conn. 324 (2016), *Parisi v. Parisi*, 315 Conn. 370 (2015), *Brody v. Brody*, 315 Conn. 300 (2015), *Sablosky v. Sablosky*, 258 Conn. 713 (2001), *Eldridge v. Eldridge*, 244 Conn. 523 (1998), *Simpson v. Simpson*, 222 Conn. App. 466 (2023), *Becue v. Becue*, 185 Conn. App. 812 (2018), *Hall v. Hall*, 182 Conn. App. 736, cert. granted 330 Conn. 911 (2018), *Lawrence v. Cords*, 159 Conn. App. 194 (2015), *Fox v. Fox*, 152 Conn. App. 611 (2014), *Lehan v. Lehan*, 118 Conn. App. 685 (2010), *Medvey v. Medvey*, 83 Conn. App. 567 (2004), *Hansen v. Hansen*, 80 Conn. App. 609 (2003), *Behrns v. Behrns*, 80 Conn. App. 286 (2003), *Page v. Page*, 77 Conn. App. 748 (2003), and *Bowers v. Bowers*, 61 Conn. App. 75 (2000). **Discussion:** See § 17.06, *below*.
- Assessing prior private modification agreements in a subsequent contempt:
 - A court order must be obeyed until modified and the court need not enforce a private agreement between the parties. **Authority:** *Ford v. Ford*, 72 Conn. App. 137 (2002) and *Ginsburg v. Ginsburg*, 1991 Conn. Super. LEXIS 591 (1991). **Discussion:** See § 17.07, *below*.

- Failing to follow an order with which a party disagrees:
 - A party's disagreement with a court order will not relieve that party of being held in contempt for violation of the court order.
 - A party disagreeing with the court order may appeal the order.
- Authority:** *O'Connell v. O'Connell*, 101 Conn. App. 516 (2007) and *Tufano v. Tufano*, 18 Conn. App. 119 (1989). **Discussion:** See § 17.08, below.
- Hearing a motion for contempt when there is a pending motion for modification:
 - The court may, but is not compelled to, hear a contempt motion with a pending motion for modification. **Authority:** Conn. Gen. Stat. § 46b-8; *Bieluch v. Bieluch*, 199 Conn. 550 (1986); P.B. § 25-26(a). **Discussion:** See § 17.09, below.
- Hearing a motion for contempt when there is a pending appeal:
 - The pendency of an appeal permits the court to enforce any order which is not stayed pending the outcome of the appeal. **Authority:** *Mulholland v. Mulholland*, 31 Conn. App. 214 (1993). **Discussion:** See § 17.10, below.

§ 17.04 Assessing the Statutory and Practice Book Requirements for Contempt Motions

Once court orders have entered, a party violating the court order may be subject to a contempt proceeding. Conn. Gen. Stat. § 46b-87. This includes orders pertaining to custody and visitation, alimony, property division, and counsel fees. Conn. Gen. Stat. § 46b-87. While the contempt statute does not include orders made under Conn. Gen. Stat. § 46b-84 for child support, the court has awarded counsel fees where there is a contempt on the payment of child support. *Esposito v. Esposito*, 71 Conn. App. 744 (2002).

A motion for contempt must contain:

1. A recitation of the specific order from which there is a claimed violation and the date of that order.
2. The acts that constitute the contempt, including any claimed arrearage for non-payment, and the date through which the arrearage is calculated.
3. The relief requested from the court.
4. The caption of the motion must indicate if the motion is *pendente lite* or post judgment.

P.B. § 25-27.

#Comment Begins

Strategic Point: The motion for contempt should quote verbatim the specific order violated. An attempt to paraphrase the order may result in a court failing to find a contempt because the paraphrasing was inaccurate or did not fully set forth the court order.

#Comment Ends

The factual recitation in a motion for contempt will differ based upon the underlying order. If the order being violated is a financial order, such as an alimony or support order, the factual recitation should include the date on which the obligor failed to completely fulfill his or her obligations. The motion should calculate the amount of the claimed arrearage through the date the motion is filed. So as not to hamper the ability to collect arrearages accruing after the motion is filed, it is wise to include a paragraph in the motion for contempt stating that it is believed the obligor will engage in a continuous course of violating the agreement until the hearing on the motion for contempt occurs. *Gil v. Gil*, 94 Conn. App. 306 (2006).

#Comment Begins

Strategic Point: The court and opposing counsel may successfully interject a due process argument if the motion for contempt does not contain language regarding the belief of a continuing contempt and the continuing accrual of arrearage. Without such language a party can argue that he or she was not fairly apprised that there would be claims of a continued arrearage after the date of the motion.

#Comment Ends

A motion claiming a violation of custody or visitation orders should set forth specifically those actions constituting the violation. The motion must be specific enough to satisfy due process requirements to put a party on notice as to the claims being made which constitute the contempt. *O'Connell v. O'Connell*, 101 Conn. App. 516 (2007). A vague motion may not satisfy the requisite due process requirements of providing notice to the opposing party of the subject matter of the motion.

If the contempt motion is filed *pendente lite*, it need only be mailed to opposing counsel. However, if the motion is filed post judgment, it should be served by order to show cause to compel the obligator's appearance. For a more thorough discussion on service of process, see Chapter 2, §§ 2.10–2.15, *above*.

#Comment Begins

Forms: JD-FM-162—Order to Attend Hearing and Notice to Respondent, see Chapter 20, § 20.13, *below*. JD-FM-173—Motion for Contempt/Contempt Citation, see Chapter 20, § 20.18, *below*.

#Comment Ends

§ 17.05 Basing a Finding of Contempt on the Evidence

There are two types of contempt, a direct contempt and an indirect contempt. A direct contempt occurs in the presence of the court, whereas an indirect contempt is outside the presence of the court. *Sgarellino v. Hightower*, 13 Conn. App. 591 (1988). An indirect contempt is predicated upon proof that there is a valid court order and that the court order has been willfully violated. *Detels v. Detels*, 79 Conn. App. 467 (2003). For the court to make a finding on an indirect contempt, it must be presented with competent evidence demonstrating the contempt. *Sgarellino*, 13 Conn. App. at 595–596. An evidentiary hearing conducted *after* a finding of contempt is not sufficient, as the hearing must precede the contempt finding. *Mekrut v. Suits*, 147 Conn. App. 794 (2014). Argument of counsel will not support a finding of contempt, since such argument is not evidence. *Burrier v. Burrier*, 59 Conn. App. 593 (2000).

The proof of the contempt may come through testimony or documentary evidence and

must demonstrate that the court order has been willfully violated. However, in assessing willfulness, the court must look at the circumstances surrounding the subject of the contempt motion. *Kennedy v. Kennedy*, 114 Conn. App. 143 (2009). Accordingly, a party cannot be held in contempt for failing to advise the other party of a circumstance or event when there is a restraining order in place restricting contact between the two parties. *Kennedy*, 114 Conn. App. at 149.

The burden of proof is on the party filing the motion for contempt to demonstrate the valid court order and how it was violated. *Oldani v. Oldani*, 132 Conn. App. 609 (2011). A contempt will not necessarily be successful just by proving failure to comply with the court order, as the responding party may have a defense to the contempt. *Marcil v. Marcil*, 4 Conn. App. 403 (1985). The party against whom the contempt is filed must be given the opportunity to provide evidence of his or her defense. *Bryant v. Bryant*, 228 Conn. 630 (1994).

§ 17.06 Requiring a Clear and Unambiguous Order Prior to Finding a Litigant in Contempt

To make a contempt finding there must be a clear court order. *Eldridge v. Eldridge*, 244 Conn. 523 (1998). The contempt must be proven by clear and convincing evidence. *Brody v. Brody*, 315 Conn. 300 (2015). An agreement which is not clear will not support a contempt finding. *Lehan v. Lehan*, 118 Conn. App. 685 (2010). A court which does not specify, but rather implies, that the husband is to pay the mortgage, is unclear for a contempt finding in failing to pay the mortgage. *Lawrence v. Cords*, 159 Conn. App. 194 (2015). If there is a good faith dispute as to the meaning of the court order, a finding of willfulness may not be made. *Eldridge*, 244 Conn. at 529. Failing to set forth how a lump sum payment is to be made can be deemed ambiguous especially when the agreement was signed one week prior to the financial affidavits being exchanged, which affidavit demonstrated the means by which the payment would be made. *Parisi v. Parisi*, 315 Conn. 370 (2015). Further, courts will not rewrite a clear and unambiguous agreement. Thus, where the parties agreed to cap the payor's income at \$700,000 per year for the payment of alimony, the court could not rewrite the agreement to state that the cap applied to his income in excess of salary instead of his total income. *Simpson v. Simpson*, 222 Conn. App. 466 (2023).

#Comment Begins

Strategic Point: When preparing a separation agreement, think through how the terms of the separation agreement will be fulfilled or carried out. Think about what may not be clear in wording or execution and spell it out clearly, it will save the clients from court appearances in the future.

#Comment Ends

In many instances prior to 2019, unallocated alimony and support orders enter at the time of the original dissolution. It has become more common to see a change in custody post judgment. Given the length of time to hear a modification of the unallocated alimony and support order, it is not uncommon to find payors exercising self-help and unilaterally reducing his or her obligation, pending formal resolution of the modified amount of the unallocated alimony and support. In such cases, a motion for contempt would be an appropriate response by the payee. However, the payor may not be held in contempt because the child support portion of an unallocated order is no longer due and payable as a result of the change in custody, but it is unknown what amount of the unallocated order is for child support. Thus, the original unallocated alimony order is not clear and unambiguous and thus precludes a finding of contempt. *Gabriel v.*

Gabriel, 324 Conn. 324 (2016).

#Comment Begins

Warning: The *Gabriel* case should not be read so broadly as to allow any unallocated alimony and support obligor to cease making payments upon a transfer of custody. In this case, the amount by which the payor reduced the support happened to be the amount to which the trial court modified his obligation. A contempt finding might be avoided if a good faith amount of support to be paid is made and the withholding of support is not used to bludgeon the other side into a resolution.

#Comment Ends

The court may find willfulness where there is a violation of the intent of a court order, even though the exact language may not be violated. A party whose support obligations were suspended until he or she found a job, or received unemployment compensation or disability, and who then disclaimed an inheritance, was found in contempt. *Bowers v. Bowers*, 61 Conn. App. 75 (2000). The purpose of the suspension of the support obligation was to give the obligor the chance to receive funds from which the obligation could be paid; yet the obligor improperly diverted funds that could have been used for support, justifying the contempt finding. *Bowers*, 61 Conn. App. at 80. A party may not try to reclassify and divert his or her income to escape paying a support obligation and can be held in contempt for doing so. *Medvey v. Medvey*, 83 Conn. App. 567 (2004). Attempting to split up payments of income to avoid a threshold amount of earnings before payments would begin will not allow the obligor to escape a contempt finding, because the intent of the order, not necessarily the actual wording of the order, was violated. *Fox v. Fox*, 152 Conn. App. 611 (2014).

#Comment Begins

Strategic Point: Clients should be advised that attempts to play games when the court has provided flexibility in complying with a court order will likely be dealt with harshly. A litigant who may be held in contempt should do everything possible to comply with court orders, even if only partially. A court is more likely to be lenient when parties make attempts to fulfill court orders, even if only partially.

#Comment Ends

Questions frequently arise as to whether an agreement is self-executing, such that there will be an automatic change upon the occurrence of an event. If there is any question as to whether the agreement is self-executing, a clarification must be sought or a party may be found in contempt. *Behrns v. Behrns*, 80 Conn. App. 286 (2003). Likewise, whenever there is a real or perceived ambiguity in the order, it must be resolved by the court. *Page v. Page*, 77 Conn. App. 748 (2003). Taking a position contrary to the order as clarified may result in a contempt finding. *Hansen v. Hansen*, 80 Conn. App. 609 (2003).

A party claiming an ambiguity or uncertainty in the order may not be able to escape a finding of willfulness. *Sablosky v. Sablosky*, 258 Conn. 713 (2001). In such an instance, the party claiming the ambiguity has a burden to seek a clarification of that order in lieu of invoking self-help. *Sablosky*, 258 Conn. at 720. A party will not be able to claim that an order is unclear where there have been prior proceedings with respect to that court order and the court has explained how compliance with that order will be effectuated. *Eldridge*, 244 Conn. at 529–530. A party may not stand behind his reliance on a certified divorce financial planner, who calculated the child support

owed pursuant to the separation agreement, which was found to be inconsistent with the plain unambiguous language of the agreement. *Becue v. Becue*, 185 Conn. App. 812 (2018). Likewise, a party may not state that he consulted with “a” lawyer when he violated a court order. *Hall v. Hall*, 182 Conn. App. 736, cert. granted 330 Conn. 911 (2018).

#Comment Begins

Strategic Point: If the parties view the same provision in a court order differently, it is likely that this dispute will be first discussed between the parties. Clients should be advised in those circumstances to immediately seek a clarification from the court so that the order is clear. Failure to do so and to resort to self-help, when there is a known dispute on the issue, will be used against him or her in a contempt proceeding.

#Comment Ends

§ 17.07 Assessing Prior Private Modification Agreements in a Subsequent Contempt

There are times when the parties, after the court orders enter, privately agree to change those orders. Problems arise in enforcing such agreements, which have not been approved by the court. Until the court modifies an order, that order must be obeyed. *Ford v. Ford*, 72 Conn. App. 137 (2002). If the court does not approve the modification, it will not be enforceable in a contempt action, absent an equitable remedy. *Ginsburg v. Ginsburg*, 1991 Conn. Super. LEXIS 591 (1991).

#Comment Begins

Strategic Point: Most separation agreements provide that any modification of the provisions will not be valid unless approved by a court. This provision should be carefully explained to the client when reviewing the agreement, so he or she understands that all private agreements should be approved by the court.

#Comment Ends

§ 17.08 Failing to Follow an Order with Which a Party Disagrees

It is not unusual for a particularly difficult litigant to violate a court order with which he or she disagrees. A party’s disagreement with a court order will not justify the failure of that party to abide by the order. *O’Connell v. O’Connell*, 101 Conn. App. 516 (2007). A party cannot refuse to abide by a child visitation order based upon his or her unilateral belief that the order is invalid. *Tufano v. Tufano*, 18 Conn. App. 119 (1989). The sole remedy available to a litigant who disagrees with a ruling by a court is to appeal the decision.

#Comment Begins

Strategic Point: All clients, but most especially difficult ones, must be advised that by submitting a dispute to a judge, they will be required, absent a successful appeal, to abide by that court order. Some clients erroneously believe that the judge’s orders are a “recommendation.”

#Comment Ends

§ 17.09 Hearing a Motion for Contempt When There Is a Pending Motion for Modification

When a party against whom a motion for contempt has been ~~filed~~, filed files a motion for modification, both motions should be heard together. Conn. Gen. Stat. § 46b-8. Although they should be heard together, the court is not required to hear both motions together. *Bieluch v. Bieluch*, 199 Conn. 550 (1986). If the party who has filed the motion for modification is in arrears, the court shall determine ~~whether or not~~ whether the arrears accrued with sufficient excuse and may determine whether a modification shall be ordered prior to paying the arrearage. P.B. § 25-26(a).

#Comment Begins

Strategic Point: If the opposing party is engaging in self-help with no real excuse and files a motion for modification, the provisions of P.B. § 25-26(a) should be proactively invoked. An order consistent with this Practice Book section may serve as a deterrent against future self-help.

#Comment Ends

§ 17.10 Hearing a Motion for Contempt When There Is a Pending Appeal

Since alimony and child support orders are not stayed pending appeal, the court has the ability to enforce its orders through the pendency of the appeal. *Mulholland v. Mulholland*, 31 Conn. App. 214 (1993).

PART III: ASSERTING DEFENSES TO A MOTION FOR CONTEMPT

ENFORCEMENT OF ORDERS

§ 17.11 CHECKLIST: Asserting Defenses to a Motion for Contempt

17.11.1 Asserting Defenses to a Motion for Contempt

- Asserting defenses to a motion for contempt:
 - When the moving party has satisfied his or her burden of proof for a contempt, the burden shifts to the responding party to show why he or she should not be held in contempt.
 - The responding party may defend the motion for contempt by using defenses, such as laches, estoppel and waiver.
 - Engaging in self-help may not rise to a good faith belief of not owing alimony.
 - Such defenses should be raised in a pleading. **Authority:** *Birkhold v. Birhold*, 343 Conn. 786 (2022), *Scalora v. Scalora*, 189 Conn. App. 703 (2019), *Wolyniec v. Wolyniec*, 188 Conn. App. 53 (2019), *Fromm v. Fromm*, 108 Conn. App. 376 (2008), *LaBow v. LaBow*, 85 Conn. App. 746 (2004), and *Windels v. Windels*, 2010 Conn. Super. LEXIS 2371 (2010); P.B. § 10-50. **Discussion:** See § 17.12, *below*.
- Defending a contempt motion based upon an inability to pay:
 - A valid defense to a contempt motion is that the obligor did not have

the ability to pay the court order.

- A party with funds who chooses not to pay the court order will be found in willful contempt.

- A party may not create circumstances that prevent him or her from receiving funds and then base a defense of inability to pay on the failure to receive such funds. **Authority:** *Casiraghi v. Casiraghi*, 200 Conn. App. 771 (2020), *Mekrut v. Suits*, 147 Conn. App. 794 (2014), *Mallory v. Mallory*, 207 Conn. 48 (1988), *Turgeon v. Turgeon*, 190 Conn. 269 (1983), *Grasso v. Grasso*, 153 Conn. App. 252 (2014), *LaMacchia v. Chilinsky*, 85 Conn. App. 1 (2004), *Bunche v. Bunche*, 36 Conn. App. 322 (1994), *Zivic v. Zivic*, 26 Conn. App. 5 (1991), and *Pascal v. Pascal*, 2 Conn. App. 472 (1984). **Discussion:** See § 17.13, *below*.

□ Defending a motion for contempt based upon laches and equitable estoppel:

- Laches requires an inexcusable delay in seeking enforcement of the order, which delay had a prejudicial effect on the obligor.

- The obligor must change his or her position based on the delay in seeking enforcement of the court order.

- Prejudice may be demonstrated by showing that due to the time elapsed, evidence is no longer available to show compliance with the order or an inability to pay.

- Equitable estoppel requires a party to induce the other, through words or actions, to believe in the existence of certain facts that lead the other party to detrimentally change his or her position.

- The burden of proof is on the party alleging the defense. **Authority:** *W. v. W.*, 256 Conn. 657 (2001), *Papcun v. Papcun*, 181 Conn. 618 (1980), *Carpender v. Sigel*, 142 Conn. App. 379 (2013), *Kasowitz v. Kasowitz*, 140 Conn. App. 507 (2013), *Fromm v. Fromm*, 108 Conn. App. 376 (2008), *Burrier v. Burrier*, 59 Conn. App. 593 (2000), *Brock v. Cavanaugh*, 1 Conn. App. 138 (1984), and *Kellogg v. Kellogg*, 1991 Conn. Super. LEXIS 2823 (1991).

Discussion: See § 17.14, *below*.

□ Asserting waiver as a defense:

- Waiver is the voluntary abandonment of a known right.

- Waiver does not require a showing of prejudice or detriment.

Authority: *Sablosky v. Sablosky*, 72 Conn. App. 408 (2002), *Ford v. Ford*, 72 Conn. App. 137 (2002), *Rostad v. Hirsch*, 2009 Conn. Super. LEXIS 219 (2009), and *LaPorte v. LaPorte*, 2003 Conn. Super. LEXIS 3423 (2003). **Discussion:** See § 17.15, *below*.

□ Seeking a discharge of obligations through bankruptcy:

- A bankruptcy debtor may not discharge obligations that are in the nature of alimony and child support.

- The purpose and not the label on the order controls whether it is support or property division.

- Debts incurred for the support of children may be in the nature of support and not dischargeable in bankruptcy.

- An indemnification on a debt may be dischargeable as being a property division. **Authority:** 11 U.S.C. § 523(a)(5); Conn. Gen. Stat. § 46b-62; *Lewis v. Lewis*, 35 Conn. App. 622 (1994), *Andreucci v. Andreucci*, 2000 Conn. Super. LEXIS 2228 (2000), *Donovan v. Donovan*, 1996 Conn. Super. LEXIS 1365 (1996), *Solustri v. Solustri*, 1991 Conn. Super. LEXIS 3151 (1991), and *Taylor v. Flocke*, 1991 Conn. Super. LEXIS 1240 (1991). **Discussion:** See § 17.16,

below.

- Claiming entitlement to a credit for overpayment:
 - Typically, overpayments of support obligations will be viewed as voluntary payments or gifts and may not be used to defend a motion for contempt. **Authority:** *Baker v. Baker*, 95 Conn. App. 826 (2006) and *Lawrence v. Lawrence*, 92 Conn. App. 212 (2005). **Discussion:** See § 17.17, *below*.
- Claiming an impossibility to perform:
 - Impossibility to perform may serve as a defense to a contempt. **Authority:** *Hirschfeld v. Machinist*, 181 Conn. App. 309 (2018) and *Watkins v. Demos*, 172 Conn. App. 730 (2017). **Discussion:** See § 17.18, *below*.

§ 17.12 Asserting Defenses to a Motion for Contempt—In General

Once the moving party has demonstrated a valid court order and a violation of that court order, the burden of proof shifts to the responding party to justify why the court order was not followed. *Windels v. Windels*, 2010 Conn. Super. LEXIS 2371 (2010). The justification may be one of several defenses, including the inability to pay, equitable estoppel, laches, and waiver. Such defenses, being special defenses, should be specifically pled. *Fromm v. Fromm*, 108 Conn. App. 376 (2008) and P.B. § 10-50. Raising these defenses in a pleading provides the requisite notice to the opposition of the claim being made. *LaBow v. LaBow*, 85 Conn. App. 746 (2004).
#Comment Begins

Warning: In *Wolyniec v. Wolyniec*, 188 Conn. App. 53 (2019), the husband attempted to argue laches without pleading the same. The trial court and the appellate court permitted it in both instances, likely because he was pro se. This should not be used a precedent that no special defenses need to be pled.

Where a separation agreement contains a non-waiver clause, a party is precluded from asserting the defenses of laches, estoppel and waiver when a motion for contempt is filed by the other party. *Scalora v. Scalora*, 189 Conn. App. 703 (2019).

#Comment Ends#Comment Begins

Warning: *Scalora* took a non-waiver clause and extended a defense preclusion to laches and waiver without even reviewing the requirements for these defenses. Such a broad sweeping statement is dangerous and likely to be attacked in other cases.

#Comment Ends

A party who faces a motion for contempt should be careful in engaging in self-helpself-help and attempting to escape a finding of contempt based upon a good faith belief that no funds were due and owing. A husband who failed to pay anything above a negotiated amount when he was unemployed, and never changed that payment upon gaining employment was found to be in contempt despite an ambiguity in the definition of income for alimony purposes. *Birkhold v. Birkhold*, 343 Conn. 786 (2022).
#Comment Begins

Strategic Point: The alimony obligor in *Birkhold* attempt to assert a good faith defense while not acting in good faith precluded him from prevailing on a motion for contempt. Clients would be well advised to err on the side of caution in making payments or increasing payments depending upon changes in circumstances while the motion is pending. It is better in these

instances to ask for permission and not ~~foregiveness~~forgiveness.

#Comment Ends

§ 17.13 Defending a Contempt Motion Based upon an Inability to Pay

One defense to a motion for contempt is an inability to pay or comply with the order of the court. *Mallory v. Mallory*, 207 Conn. 48 (1988). The burden of proof is on the party against whom the contempt is sought to prove that they did not have the ability to comply with a court order. *Zivic v. Zivic*, 26 Conn. App. 5 (1991). A party who clearly has funds to pay his or her obligation, but chooses not to, will be found in willful contempt. *Turgeon v. Turgeon*, 190 Conn. 269 (1983) and *Pascal v. Pascal*, 2 Conn. App. 472 (1984). If there is no explanation made for failing to comply with the court order, the conclusion may be drawn that the responding party could have paid or complied. *Bunche v. Bunche*, 36 Conn. App. 322 (1994). Conversely, if the obligor clearly cannot pay, such as when the alimony obligation exceeds his or her income, this defense would apply. *Grasso v. Grasso*, 153 Conn. App. 252 (2014). Moreover, if a party has nonmodifiable alimony, except for catastrophic medical event, and suffers from a non-catastrophic medical condition which impacts his income, the court failing to take into account the payors ability to pay, by not even making a determination of his net income, when entering remedial orders will not withstand an appeal. *Casiraghi v. Casiraghi*, 200 Conn. App. 771 (2020). In that case, the court found that husband in contempt, ordered him to pay \$5000 per month until the arrearage was paid in full, legal fees of \$2500 per month, and stay current on the alimony which was \$200,000 per year, all while showing a gross income of \$180,000.

#Comment Begins

Strategic Point: In a contempt proceeding, the defense that there was no proof demonstrating the obligor had the ability to pay and thus the court must find that he or she did not have the ability to pay, will not work. It is clearly the burden of the obligor to demonstrate an inability to pay. Such a finding will only be made through competent evidence.

#Comment Ends#Comment Begins

Warning: The *Casiraghi* decision shows the caution that needs to be taken in drafting nonmodifiable language regarding alimony. While the husband made good money at the time of the dissolution, you cannot assume that will continue to happen in perpetuity. There was also no recognition that other factors could contribute to decreases in income unexpectedly, other than a catastrophic medical event.

#Comment Ends

The defense of an inability to pay will not succeed if the party creates the circumstances rendering him or her unable to pay the obligation. Accordingly, a party who returns funds to which he or she is entitled will be unsuccessful in claiming an inability to pay because the funds were not received. *LaMacchia v. Chilinsky*, 85 Conn. App. 1 (2004).

One issue that frequently arises is the extent to which the receipt of severance can or should be used to continue to make alimony payments. The fact that severance payments are not included in the definition of income for alimony purposes will not automatically preclude a finding of contempt for non-payment of alimony and support as the severance may be viewed as available funds with which to pay the alimony. *Mekrut v. Suits*, 147 Conn. App. 794 (2014).

§ 17.14 Defending a Motion for Contempt Based upon Laches and Equitable Estoppel

A party who cannot defend against a contempt claim based upon an inability to pay, will try to employ other defenses, ~~included~~including laches and equitable estoppel. To assert a laches defense, it must be shown that there was an inexcusable delay and that the delay had a prejudicial effect on the party seeking to be held in contempt. *Carpender v. Sigel*, 142 Conn. App. 379 (2013), and *Papcun v. Papcun*, 181 Conn. 618 (1980). A person must change his or her actions or behavior solely due to the delay in seeking to enforce the order. Where a person has engaged in a course of conduct, but would have done so irrespective of the delay, a laches defense will not prevail. *Papcun*, 181 Conn. at 621. A ten-year delay in seeking an arrearage was reasonable where the wife was raising the parties' six children and putting them through school with no help from the husband. *Kasowitz v. Kasowitz*, 140 Conn. App. 507 (2013). The respondent may also demonstrate prejudice, due to the time that has elapsed in seeking to enforce the order, by being unable to produce evidence to either demonstrate his or her compliance with the order or inability to comply with the order. *Burrier v. Burrier*, 59 Conn. App. 593 (2000).

One manner in which a laches defense may be employed is when the obligor claims he or she does not know where the obligee is and therefore, cannot comply with the court order. An alimony and support obligor, whose child was hidden by the obligee, will prevail on a laches defense when he or she made significant efforts to be found by and to find the obligee. *Fromm v. Fromm*, 108 Conn. App. 376 (2008). A laches defense will be unsuccessful when the child-support obligor, not knowing where the child-support obligee lives, takes very limited steps to determine the obligee's residence. *Brock v. Cavanaugh*, 1 Conn. App. 138 (1984).

~~In order to~~To assert a defense of equitable estoppel, one party must induce the other by his or her action or words, to believe certain facts exist, and the other in reliance, detrimentally change his or her position. *Papcun*, 181 Conn. at 622. An oral agreement not to seek child support when custody changed to the obligor may constitute equitable estoppel, due to the obligor undertaking the support of the child without seeking a modification. *Kellogg v. Kellogg*, 1991 Conn. Super. LEXIS 2823 (1991). Equitable estoppel will also arise in cases where a non-biological parental figure persuades the biological mother to forego a paternity determination and seek child support from the biological father. *W. v. W.*, 256 Conn. 657 (2001). By doing so, the non-biological "father" has created an emotional and financial tie between him and the child, which is sufficient for a finding of detriment for equitable estoppel purposes. *W.*, 256 Conn. at 662.

When asserting a defense of laches or equitable estoppel, the burden is on the party alleging the defense to establish it. *Burrier*, 59 Conn. App. at 596.

§ 17.15 Asserting Waiver as a Defense

Another defense is waiver, which is a voluntary abandonment of a known right. *Ford v. Ford*, 72 Conn. App. 137 (2002). Unlike laches or equitable estoppel, waiver does not require a showing of prejudice or detriment. *LaPorte v. LaPorte*, 2003 Conn. Super. LEXIS 3423 (2003). A waiver may be proven by words or actions from which the inference of waiver may be drawn. *Sablosky v. Sablosky*, 72 Conn. App. 408 (2002). A waiver cannot be used to defeat a parent's statutory right to receive child support from the child's father. *Rostad v. Hirsch*, 2009 Conn. Super. LEXIS 219 (2009). To constitute a waiver of past due alimony, more must be shown than just a delay of twelve years to assert that right. *Ford*, 72 Conn. App. at 142.

#Comment Begins

Strategic Point: In many separation agreements, the boilerplate language provides that a waiver of enforcement of one of the terms in the agreement does not waive the right to enforce the other agreement provisions. It is beneficial to include this in an agreement so that a waiver of a small item, which may not be worth pursuing in court, is not later considered a waiver to enforce other separation agreement provisions.

#Comment Ends

§ 17.16 Seeking a Discharge of Obligations Through Bankruptcy

Another means by which a party may defend a motion for contempt on a debt or property division is claiming a discharge in bankruptcy. In a bankruptcy, the debtor may not discharge obligations which are in the nature of alimony and child support. 11 U.S.C. § 523(a)(5). However, it is not the label of the payment that controls, but the underlying nature and purpose of the order. *Lewis v. Lewis*, 35 Conn. App. 622 (1994). An order, although not labeled as alimony in the agreement but referred to as alimony in the canvas at the time of the dissolution, may be deemed in the nature of alimony and non-dischargeable in bankruptcy, where there is no property to divide. *Lewis*, 35 Conn. App. at 630–631.

In determining whether an order may be discharged in bankruptcy, the issue is whether it comes under the purview of alimony and support. Clearly, the orders relating to alimony and child support will be non-dischargeable. However, there are other orders which are not so clearly labeled or delineated, but which are awarded after considering the alimony statutory criteria. Debts incurred for the support of the children may be considered in the nature of child support and not dischargeable in bankruptcy. *Solustri v. Solustri*, 1991 Conn. Super. LEXIS 3151 (1991). The court may view attorney fees paid pursuant to Conn. Gen. Stat. § 46b-62 to be in the nature of support and non-dischargeable in bankruptcy since the factors to assess the award of such counsel fees isare grounded in the alimony statute. *Taylor v. Flocke*, 1991 Conn. Super. LEXIS 1240 (1991).

#Comment Begins

Strategic Point: If representing a child as a guardian *ad litem* or attorney for the minor child, request that the court order any counsel fees to be in the nature of support and not dischargeable in bankruptcy.

#Comment Ends

Debts clearly in the nature of a property division will be dischargeable in bankruptcy. Typically, in an agreement, there will be a provision that a party assuming a liability will indemnify and hold harmless the other party regarding that debt. Such indemnification is in the nature of property division and dischargeable in bankruptcy. *Donovan v. Donovan*, 1996 Conn. Super. LEXIS 1365 (1996). A lump sum property order to be paid from a property that was foreclosed was properly discharged in a subsequent bankruptcy as it was a property division. *Andreucci v. Andreucci*, 2000 Conn. Super. LEXIS 2228 (2000).

#Comment Begins

Strategic Point: When delaying a property division, the amount owed to the recipient-spouse should be secured in some fashion. That will give the recipient-spouse a more preferential claim than being a general unsecured creditor.

#Comment Ends

§ 17.17 Claiming an Entitlement to a Credit for an Overpayment

One reason given for non-payment is the obligor's claim that he or she has overpaid. An alimony or support obligor who claims a credit on his or her obligation may still be held in contempt where he or she ceases paying based upon the claimed credit. *Baker v. Baker*, 95 Conn. App. 826 (2006). Additionally, an obligor may not seek to use a voluntary overpayment of a support obligation as a credit against what he or she should have paid. *Lawrence v. Lawrence*, 92 Conn. App. 212 (2005).

#Comment Begins

Strategic Point: Many times a prior overpayment will not be used to defer subsequent underpayments. The overpayment will be viewed as a voluntary payment or gift to which no credit will be given.

#Comment Ends

§ 17.18 Claiming an Impossibility to Perform

Prior to committing a client to an obligation in a separation agreement, counsel should ensure that the obligation can actually be carried out. In *Watkins v. Demos*, 172 Conn. App. 730 (2017), the husband obligated himself to withdraw a previously filed 1099, when in fact the IRS did not permit such action to be taken. His only remedy was to file an amended 1099 form. Because of the impossibility of performance, the husband was not found in contempt. Similarly, the inability to transfer passive investments will not result in a contempt finding. *Hirschfeld v. Machinist*, 181 Conn. App. 309 (2018).

PART IV: DETERMINING GENERAL RELIEF THAT MAY BE SOUGHT IN A MOTION FOR CONTEMPT

ENFORCEMENT OF ORDERS

§ 17.19 CHECKLIST: Determining General Relief That May Be Sought in a Motion for Contempt

17.19.1 Determining General Relief That May Be Sought in a Motion for Contempt

- Seeking an award of counsel fees:
 - One remedy for a contempt motion is to seek an order of counsel fees.
 - The responding party may seek counsel fees if the moving party is unsuccessful in the motion for counsel fees.
 - The award of counsel fees is punitive and not compensatory.
 - The award must be based upon the amount incurred for the contempt.

Authority: Conn. Gen. Stat. § 46b-87; *Eldridge v. Eldridge*, 244 Conn. 523 (1998), *Dobozy v. Dobozy*, 241 Conn. 490 (1997), *Y.H. v. J.B.*, 234 Conn. App. 793 (2024), *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016), *Rostad v. Hirsch*,

148 Conn. App. 441 (2014), and *Medvey v. Medvey*, 98 Conn. App. 278 (2006).

Discussion: See § 17.20, *below*. See also Chapter 15, §§ 15.11–15.12, *above*.

□ Incarcerating the party held in contempt:

- The purpose of incarceration is to coerce compliance.
- A purge order to allow release from incarceration that cannot be met by the obligor is punitive and not coercive.
- A party threatened with the sanction of incarceration has the right to be represented by counsel. **Authority:** *Mays v. Mays*, 193 Conn. 261 (1984), *Connolly v. Connolly*, 191 Conn. 468 (1983), and *Dupe v. Lopes*, 40 Conn. Supp. 111 (1984). **Discussion:** See § 17.21, *below*.

□ Assessing interest:

- A court may award interest on money that is wrongfully detained past its due date at a rate not to exceed ten percent per annum.
- Wrongfulness, not bad faith, must be shown to award interest.
- If there was a good faith reason for the money being withheld, it may not be wrongful.
- Interest will run from the date the funds were to have been paid until the date they are actually paid. **Authority:** Conn. Gen. Stat. § 37-3a; *Sosin v. Sosin*, 300 Conn. 205 (2011), *Bruno v. Bruno*, 177 Conn. App. 599 (2017), *Rostad v. Hirsch*, 148 Conn. App. 441 (2014), *Dougan v. Dougan*, 114 Conn. App. 379 (2009), *Picton v. Picton*, 111 Conn. App. 143 (2008), *Sosin v. Sosin*, 109 Conn. App. 691 (2008), *LaBow v. LaBow*, 13 Conn. App. 330 (1988), and *Waldschmidt v. Waldschmidt*, 2006 Conn. Super. LEXIS 1504 (2006). **Discussion:** See § 17.22, *below*.

□ Enforcing a judgment through a separate civil action:

- A judgment may be enforced against property owned by a debtor in a separate civil action.
- A family support judgment is one for alimony and support and one against which interest may not be imposed.
- A money judgment is one that is not related to alimony and support.
 - Interest may be awarded on a money judgment.
 - A money judgment may be enforced against property that is not considered exempt. **Authority:** Conn. Gen. Stat. §§ 52-350a(7), 52-350a(13), 52-350f and 52-380a; *Chepovsky v. Chepovsky*, 1995 Conn. Super. LEXIS 1549 (1995) and *Fowler v. Fowler*, 1994 Conn. Super. LEXIS 23 (1994). **Discussion:** See § 17.23, *below*.

§ 17.20 Seeking an Award of Counsel Fees

In the event a party is found to be in contempt of a court order, he or she may be ordered to pay the reasonable counsel fees of the other party. Conn. Gen. Stat. § 46b-87. The fees must be directly related to the contempt motion and not other matters before the court. *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016). The court must set forth the evidence supporting the amount of fees awarded which pertains to the contempt; failure to do so will result in the award being overturned. *Y.H. v. J.B.*, 234 Conn. App. 793 (2024). The touchstone is that the fees must be reasonable and the mere fact that they may be higher than those awarded in any similar action is not a sufficient basis for denying an award of counsel fees. *Rostad v. Hirsch*, 148 Conn. App. 441 (2014). In addition, if a contempt is not found, the prevailing party may seek counsel fees from the moving party. Conn. Gen. Stat. § 46b-87. Such an award of counsel fees is punitive and not compensatory, allowing the court to consider the behavior of the parties in making its award.

Medvey v. Medvey, 98 Conn. App. 278 (2006).

However, the party seeking counsel fees must come to the court with clean hands. *Eldridge v. Eldridge*, 244 Conn. 523 (1998). A party whose actions contributed to the contempt is not before the court with clean hands and would not be entitled to a receiving of significant counsel fees. *Eldridge*, 244 Conn. at 537–538.

If a party is not held in contempt, any counsel fees to be sought must be done pursuant to Conn. Gen. Stat. § 46b-62, which requires the court to consider the financial abilities to pay the counsel fees. *Dobozy v. Dobozy*, 241 Conn. 490 (1997).

#Comment Begins

Strategic Point: In defending against a motion for contempt where the client has defenses or a reason why he or she should not be held in contempt, an objection or affirmative pleading should be filed claiming counsel fees under Conn. Gen. Stat. § 46b-87.

#Comment Ends

For a more thorough discussion of the procedural and evidentiary requirements for counsel fees on a motion for contempt, see Chapter 15, §§ 15.11–15.12, *above*.

§ 17.21 Incarcerating the Party Held in Contempt

In general, the purpose of any remedy in a contempt is to coerce compliance with the court order. *Connolly v. Connolly*, 191 Conn. 468 (1983). If a contemnor is to be incarcerated, the purge order must be on terms with which he or she is able to comply. *Mays v. Mays*, 193 Conn. 261 (1984). If he or she is unable to fulfill the purge order, the punishment then turns from being coercive to punitive which is improper. *Mays*, 193 Conn. at 267.

Quite often, motions for contempt will seek to have the contemnor incarcerated. In such instances, if counsel does not represent the party for whom incarceration is sought, he or she must be given the opportunity to be represented by counsel, including having counsel appointed to represent him or her. *Dupe v. Lopes*, 40 Conn. Supp. 111 (1984).

§ 17.22 Assessing Interest

Another remedy with a financial order is to seek interest on the unpaid amounts. Where money is wrongfully detained past the date on which it is payable, the court may award interest at a rate not to exceed ten percent per annum, on the amount wrongfully detained. Conn. Gen. Stat. § 37-3a. Typically, ~~in order to~~ obtain an award of interest, it must be shown that the retention of the funds was wrongful. *LaBow v. LaBow*, 13 Conn. App. 330 (1988). Wrongful, in the context of awarding interest, means that a party did not have the right to withhold the money and does not implicate bad faith on the party withholding the funds. *Sosin v. Sosin*, 300 Conn. 205, 229–230 (2011). A withholding of money cannot be wrongful if there was a good faith reason for it not being paid. However, the determination of whether there is a good faith belief is in the court's discretion. *Sosin*, 300 Conn. at 229–230. The purpose of awarding interest is not for punishment, but to compensate the party who did not have use of the funds. *Sosin*, 300 Conn. at 230, and *Rostad v. Hirsch*, 148 Conn. App. 441 (2014). If it is determined that the funds were wrongfully withheld, interest will run from the date the funds were due until the date the funds are paid. *Sosin v. Sosin*, 109 Conn. App. 691 (2008). The award of interest is not mandatory, but is discretionary. *Sosin*, 300 Conn. at 228.

Pursuant to [Conn. Gen. Stat. § 37-3a](#), the court has the ability to award interest up to 10% per annum. That does not mean the interest must be 10%. Rather, it should reasonably compensate the one who was to receive the funds. [Bruno v. Bruno](#), 177 Conn. App. 599 (2017).

#Comment Begins

Strategic Point: Since the purpose of interest is to compensate and not to punish, the interest rate chosen should reflect that purpose. In determining the rate, the prevailing interest rates, treasury rates, and even the actual return on the funds wrongfully retained should be considered.

#Comment Ends

The interest must commence when the payment was due, not on the date of the judgment. [Picton v. Picton](#), 111 Conn. App. 143 (2008). When awarding interest on unpaid alimony, the interest is calculated commencing on the last day of the month in which it was due. [Waldschmidt v. Waldschmidt](#), 2006 Conn. Super. LEXIS 1504 (2006). However, courts have calculated interest on an arrearage accumulated over time, starting interest payments occurring well after the initial due date. [Bruno v. Bruno](#), 177 Conn. App. 599 (2017). Interest cannot be properly awarded on the payments due from a retroactive modification on alimony as the funds were not wrongfully withheld. [Crowley v. Crowley](#), 46 Conn. App. 87 (1997).

The separation agreement may also provide for an award of interest as long as the interest provision is found to be fair and equitable by the court and the parties entered into the agreement after significant negotiations. [Dougan v. Dougan](#), 114 Conn. App. 379 (2009).

#Comment Begins

Strategic Point: The interest amount being sought on a contempt should be calculated and presented to the court. A court is more likely to order interest if presented with the calculations that if it has to make the calculations itself.

#Comment Ends#Comment Begins

Warning: In general, a provision of interest on an unpaid amount may be viewed as a violation against public policy. Balancing against that is the policy of encouraging private settlements of dissolution cases. The inclusion of an interest provision must be done very carefully, and a record should be made at the time of the uncontested hearing as to why the provision is included and the parties' clear understanding of the implications of the provision.

#Comment Ends

Interest may be ordered when an asset has not been timely transferred pursuant to the judgment. [Bruno v. Bruno](#), 177 Conn. App. 599 (2017).

#Comment Begins

Strategic Point: In *Bruno*, the court awarded interest on the distribution of a Charles Schwab account. However, the interest began accruing six years after the dissolution because that is the date the court ascertained the value of the account. However, given that it was a brokerage account, the value should have been determined as of the date of dissolution.

#Comment Ends

§ 17.23 Enforcing a Judgment Through a Separate Civil Action

A possible remedy for non-compliance with court orders is to seek payment from an asset held by the obligor through a civil action. Where an asset is not secured for a property division, a separate civil enforcement proceeding may be brought. The remedy available will depend upon whether or not the obligation is a family support judgment.

A family support judgment is one for alimony and child support. [Conn. Gen. Stat. § 52-350a\(7\)](#). Interest is not payable on a family support judgment. *Fowler v. Fowler*, 1994 Conn. Super. LEXIS 23 (1994). Such judgments may not be enforced against property of the debtor. *Chepovsky v. Chepovsky*, 1995 Conn. Super. LEXIS 1549 (1995).

If the order seeking to be enforced is not alimony or support related, then it will be enforced as a money judgment. [Conn. Gen. Stat. § 52-350a\(13\)](#). A money judgment may be enforced against property that is not exempt. [Conn. Gen. Stat. § 52-350f](#). Property that is generally exempted includes tools of the debtor's trade, equity in a car of less than \$3,500, and a homestead exemption up to \$75,000. [Conn. Gen. Stat. § 52-352b](#). A lien may be obtained against property owned by the debtor to protect the amount owed. [Conn. Gen. Stat. § 52-350f](#). The judgment lien may then be foreclosed, and the payment of the lien amount, interest, and attorney fees may be paid to the obligee. [Conn. Gen. Stat. §§ 520-350f and 52-380a](#).

PART V: CRAFTING ORDERS TO ENFORCE ALIMONY AND CHILD SUPPORT

ENFORCEMENT OF ORDERS

§ 17.24 CHECKLIST: Crafting Orders to Enforce Alimony and Child Support

17.24.1 Crafting Orders to Enforce Alimony and Child Support

- Enforcing orders unchanged by a subsequent modification:
 - Orders that have remained unchanged in a subsequent modification will remain in effect. **Authority:** *Brochard v. Brochard*, 185 Conn. App. 204 (2018) and *Hammond v. Hammond*, 145 Conn. App. 607 (2013). **Discussion:** See § 17.25, below.
- Enforcing Alimony Orders:
 - The court must look at the alimony orders compared to income using the same income calculations to determine if there is a contempt.
 - The court may not conflate the terms of the original orders with the modified orders. The newest orders prevail.
 - Authority:** *Graham v. Graham*, 222 Conn. App. 560 (2023), *Wolyniec v. Wolyniec*, 188 Conn. App. 53 (2019) and *Marshall v. Marshall*, 151 Conn. App. 638 (2014). **Discussion:** See § 17.26, below.
- Calculating arrearages:
 - A child support arrearage will be payable at the lesser rate of 20% of the current child support order or 55% of the obligor's net income, unless the obligor is a low income obligor or if there is no current support order.
 - A low income obligor will pay the greater of 10% of the current or \$1.

- Where there is no current support order for the child the arrearage payment shall be 20% of an imputed obligation if there is a duty to support the child or 100% of the imputed obligation if there is no duty to support the child.

- Any deviation from the amount under the guidelines must satisfy the deviation criteria.

- The arrearage calculation, where there is a retroactive modification, must take into account the modified amount. **Authority:** Conn. Gen. Stat. § 52-50; *Mason v. Ford*, 176 Conn. App. 658 (2017), *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016), *Nuzzi v. Nuzzi*, 164 Conn. App. 751 (2016), *Brent v. Lebowitz*, 67 Conn. App. 527 (2002) and Regs. Conn. State Agencies §§ 46b-215a-3a(b), 46b-215a-3a(c), and 46b-215a-3a(d). **Discussion:** See § 17.27, *below*.

- Enforcing child support arrearages through the family support magistrate:

- It may be beneficial to seek enforcement of child support through the family support magistrate, especially where the obligor resides out of state.

- Authority:** Conn. Gen. Stat. § 52-362d(a). **Discussion:** See § 17.28, *below*. See also Chapter 7, §§ 7.04–7.13, *above*.

- Collecting child support arrearages after the child attains the age of majority:

- Child support may be collected even after the child reaches the age of majority. **Authority:** *Baio v. Baio*, 2017 Conn. Super. LEXIS 4294 (Super. Ct. Aug. 29, 2017) and *Arnold v. Arnold*, 35 Conn. Supp. 244 (1979). **Discussion:** See § 17.29, *below*.

- Obtaining a wage execution:

- The recipient of alimony or support may have the payments made by mandatory wage execution.

- If a contingent wage execution enters, it may be converted to a mandatory wage execution at any time. **Authority:** Conn. Gen. Stat. §§ 52-362 and 52-362(c)(2). **Discussion:** See § 17.30, *below*.

- Paying a child support arrearage from a tax refund:

- A child support obligor's state tax refund may be used to pay a child support arrearage.

- The threshold arrearage amount to take a tax refund from an IV-D obligor is \$150 and from a non IV-D obligor is \$500. **Authority:** Conn. Gen. Stat. § 52-362e(c) and Regs. Conn. State Agencies § 52-362e-3(1). **Discussion:** See § 17.31, *below*.

- Ordering the payment of an arrearage from a Quality Domestic Relations Order (hereinafter "QDRO"):

- Since a QDRO can be used to pay child support, it can also be used to pay a child support arrearage. **Authority:** 29 U.S.C. § 1056(d)(3)(B)(ii) and *Ianotti v. Ianotti*, 1997 Conn. Super. LEXIS 146 (1997). **Discussion:** See § 17.32, *below*.

- Enforcing life insurance orders:

- Life insurance provisions may be asserted as a contempt or in a separate civil action. **Authority:** *Torla v. Torla*, 152 Conn. App. 241 (2014). **Discussion:** See § 17.33, *below*.

- Levying a writ of execution:

- A writ of execution on property may be used to secure child support.

- Authority:** Conn. Gen. Stat. §§ 46b-84 and 52-350a; *Rheume v. Rheume*, 156 Conn. App. 766 (2015), *Kupersmith v. Kupersmith*, 146 Conn. App. 79 (2013).

Discussion: See § 17.33, below.

§ 17.25 Enforcing Orders Unchanged by a Subsequent Modification

In general, court orders that are subsequently modified will supersede the prior court order. However, when only a portion of a prior court order is modified, the question arises as to whether or not the prior court orders, which are not directly impacted by the modification, remain in full force and effect. Generally, where orders are not affected by a subsequent modification, they are in effect and subject to the contempt power of the court. *Hammond v. Hammond*, 145 Conn. App. 607 (2013).

#Comment Begins

Strategic Point: If only a portion of the judgment or separation agreement is to be modified, for the sake of clarity it may be handled in one of two ways: (1) the entire agreement can be restated as modified, or (2) language may be included stating that to the extent a provision in the agreement or judgment is not affected by the new stipulation, it shall remain in full force and effect.

A party who does not follow the protocol established by the court order to seek reimbursement for children's expenses cannot succeed on a motion for contempt when the expenses are not paid. *Brochard v. Brochard*, 185 Conn. App. 204 (2018).

#Comment Ends

§ 17.26 Enforcing Alimony Orders

Generally, alimony orders are straightforward so that the enforcement should not be difficult; an order is in place and either payment was or was not made. Difficulty arises when an alimony payor's income is more complicated than just W-2 earnings. An alimony order based upon the payor's reasonable compensation (as a business owner) instead of his actual earnings requires the court to look at the reasonable compensation and not just the W-2 income in a motion for contempt. *Marshall v. Marshall*, 151 Conn. App. 638 (2014). Similarly, to the extent that certain benefits were considered a component of alimony, these benefits must be included in determining the arrearage. *Marshall*, 151 Conn. App. at 645.

Courts have the ability of entering orders to keep the purpose of the judgment intact. An alimony order which was tied to the recipient being permitted to remain in a residence was properly extended by the court when the obligor stopped paying and the recipient had no other means of securing housing for herself and two children. *Wolyniec v. Wolyniec*, 188 Conn. App. 53 (2019).

A litigant is not permitted to conflate the original terms of an alimony order with a subsequent modification or buy out of the alimony. *Graham v. Graham*, 222 Conn. App. 560 (2023). In *Graham*, the alimony would terminate upon the remarriage of the payee. Prior to the termination of alimony and in response to the payee's motion for contempt, the parties agreed to a lump sum as final settlement of all alimony owed by the obligor, which lump sum were to be paid in two installments. Prior to the second installment being due, the payee remarried. As justification for failing to pay the second installment, the payor claimed that under the original order, alimony terminated upon the remarriage of the payee. The court found that the original limitations for the payment of alimony terminated with the subsequent order for a lump sum payment and that the payor could not prevail.

Courts are required to enforce the terms of the judgment or agreement as it is written, not as a party in hindsight would like it written. Thus, when the plain language of the parties' separation agreement provided that the alimony payable was capped such that she could not receive alimony on his income in excess of \$700,000 per year, the court could not rewrite the agreement to state that it was \$700,000 in excess of his base salary. *Simpson v. Simpson*, 222 Conn. App. 466 (2023).

§ 17.27 Calculating Arrearages

[1] Calculating Arrearages Under the Child Support Guidelines

When there is a finding of an arrearage of child support, pursuant to the child support guidelines, the weekly arrearage payment will be the lesser of 20% of the current child support order or 55% of the obligor's net income as reduced by the amount of child support being paid. *Regs. Conn. State Agencies § 46b-215a-3a(b)*. For low income obligors the arrearage payment is the greater of 10% of the support order or \$1 per week. *Regs. Conn. State Agencies, § 46b-215a-3a(c)*. If there is an arrearage owed, and no support order in effect, the arrearage amount is based upon whether there is a present duty to support the child. If there is a present duty to support the child, the arrearage amount is 20% of the imputed support obligation; if there is no duty to support the child the arrearage amount is 100% of the imputed support obligation. *Regs. Conn. State Agencies, § 46b-215a-3a(d)*. In the event the amount being paid on the arrearage deviates from the child support guidelines, the court must state the reasons for such deviation. *Brent v. Lebowitz*, 67 Conn. App. 527 (2002).

#Comment Begins

Strategic Point: Because the child support guidelines contain arrearage guidelines, they should be completed and handed into the court at the time of a contempt hearing.

#Comment Ends

Proof should be provided as to when the child support payments ceased to be made consistent with the court order to provide the court with the proper date from which to calculate the arrearage. See *Mason v. Ford*, 176 Conn. App. 658 (2017).

[2] Calculating Arrearages After a Retroactive Modification

Frequently, a motion for contempt for the non-payment of alimony or support is quickly followed by a motion for modification. Provided the motion for modification is properly served on the opposing party pursuant to *Conn. Gen. Stat. § 52-50*, the party seeking the modification may request retroactivity to the date served. If the court grants such a modification, the arrearage calculation must take into account the order as modified and not rely solely upon the original order. *Malpeso v. Malpeso*, 165 Conn. App. 151 (2016). Likewise, where there is a *de novo* review of the alimony order, the court must consider the alimony order as modified in calculating the arrearages. *Nuzzi v. Nuzzi*, 164 Conn. App. 751 (2016).

§ 17.28 Enforcing Child Support Arrearages Through the Family Support Magistrate

Where there is a recalcitrant child support obligor, instead of using the contempt remedies through the superior court, it may be advisable for the obligee to seek enforcement through the family support magistrate. This will be helpful especially with an out-of-state obligor as the family support magistrate may have the foreign court make orders against such out-of-state

obligor under the Uniform Interstate Family Support Act (hereafter “UIFSA”). For a more thorough discussion of UIFSA, see [Chapter 7, §§ 7.04–7.13, above](#).

In addition to ordering arrearage payments, the family support magistrate may lien property of an obligor who is more than \$500 in arrears on child support. [Conn. Gen. Stat. § 52-362d\(a\)](#).

#Comment Begins

Strategic Point: Another benefit to the family support magistrate division is that it often requires an obligor who is claiming to be unemployed to conduct and document a certain number of job searches in a given time frame. The superior court is unlikely to make such orders.

#Comment Ends

§ 17.29 Collecting Child Support Arrearages After the Child Attains the Age of Majority

A party is not prevented from seeking a child support arrearage after the child has attained the age of majority. [Arnold v. Arnold, 35 Conn. Supp. 244 \(1979\)](#). However, failure to terminate a wage withholding order when the child support should terminate can preclude the obligor from recouping such payments under the theory that it is a gift. [Baio v. Baio, 2017 Conn. Super. LEXIS 4294 \(Super. Ct. Aug. 29, 2017\)](#).

§ 17.30 Obtaining Wage Executions

At the time of the dissolution entering final orders with a child support petition, the court may order the payments to be made by a mandatory wage execution. [Conn. Gen. Stat. § 52-362](#).

Many times a contingent wage execution enters at the time of the dissolution. At any time thereafter, the obligee may have the contingent wage execution converted to a mandatory wage execution, even if the obligor is not in arrears. [Conn. Gen. Stat. § 52-362\(c\)\(2\)](#).

#Comment Begins

Strategic Point: A wage execution should be obtained with an obligor who is not punctual in making his or her payments. It takes the control away from him or her as to when the payments will be made.

#Comment Ends

§ 17.31 Paying a Child Support Arrearage from a Tax Refund

If a child support obligor is in arrears by \$150 or more in an IV-D case or \$500 or more in a non-IV-D case, the family support magistrate may make orders that such arrears be satisfied out of the obligor’s tax refunds. [Conn. Gen. Stat. § 52-362e\(c\)](#). The obligor must have notice of the intent to take his or her tax refund and the opportunity for a hearing. [Regs. Conn. State Agencies, § 52-362e-3\(1\)](#).

§ 17.32 Ordering the Payment of an Arrearage by a QDRO

Another manner by which a child support arrearage may be satisfied is through a QDRO on an obligor’s retirement plan. [Ianotti v. Ianotti, 1997 Conn. Super. LEXIS 146 \(1997\)](#). A QDRO may be used for the payment of child support. [29 U.S.C. § 1056\(d\)\(3\)\(B\)\(ii\)](#). Provided all

of the requirements for a QDRO are satisfied, it may be used for paying the arrearage. *Iannotti*, 1997 Conn. Super. LEXIS 146, at *9.

#Comment Begins

Strategic Point: If seeking to enforce a child support arrearage from a QDRO, make sure the amount being sought is enough to cover the taxes which will be owed upon liquidation. If the amount from the QDRO is the exact amount of the arrearage owed, it will actually be less due to the taxes, and the obligee will not be made whole.

#Comment Ends

§ 17.33 Enforcing Life Insurance Orders

Life insurance is typically used as security for alimony, child support, and college educational expenses. If the life insurance beneficiaries are changed post judgment, and not known until after the death of the obligor, the obligee may have a suit, either as a separate civil action or a contempt. *Torla v. Torla*, 152 Conn. App. 241 (2014).

#Comment Begins

Strategic Point: At the time the order for life insurance enters, there should be a provision that allows the obligee to receive periodic updates on the status of the life insurance, including any change in beneficiary status. This will allow for an enforcement action to be taken at or near the time of the change, instead of waiting until the obligor has passed away.

#Comment Ends

§ 17.34 Levying a Writ of Execution

Property executions are permitted to secure money judgments, but not family support judgments, which, by definition, include alimony and child support arrearages. *Conn. Gen. Stat. § 52-350a*. Conversely, the domestic relations statutes permit post-judgment execution procedures, which would include *Conn. Gen. Stat. § 52-350a*, as a means of securing child support. *Conn. Gen. Stat. § 46b-84*. This would seemingly place these two statutes at odds. In resolving this contradiction, the Appellate Court found that the amendment to the domestic relations statute was intended to encompass a property execution and must prevail over the language expressed in *Conn. Gen. Stat. § 52-350a*, so as to permit a writ of execution to secure child support. *Kupersmith v. Kupersmith*, 146 Conn. App. 79 (2013). A party may not claim that a bank execution was improper when the process and notification to that party was completed according to statute. *Rheume v. Rheume*, 156 Conn. App. 766 (2015). However, the court declined to rule on whether the party levying the bank execution could recover the 15% sheriff fee from the party owing the money.

#Comment Begins

Strategic Point: Although the court in *Rheume* did not rule on the ability of collecting the sheriff fee from the party whose account was levied, it is unlikely that such a recovery would be permitted. The party owing the funds could claim that the appropriate vehicle for seeking the funds was through a contempt proceeding, which would not result in any fee to levy an account. Additionally, it may be argued that, absent a contempt finding, the recovery of the sheriff fee is an impermissible modification of the property division.

#Comment Ends

PART VI: CRAFTING ORDERS TO ENFORCE A PROPERTY DIVISION

ENFORCEMENT OF ORDERS

§ 17.35 CHECKLIST: Crafting Orders to Enforce a Property Division

17.35.1 Crafting Orders to Enforce a Property Division

- Fashioning orders on equitable principles:
 - When dealing with recalcitrant litigants, the court may craft orders to enforce the judgment dependent upon the particular circumstances.
 - This will typically occur when attempting to sell real property post judgment. **Authority:** *Young v. Young*, 137 Conn. App. 635 (2012), *Rathblott v. Rathblott*, 79 Conn. App. 812 (2003), *Roberts v. Roberts*, 32 Conn. App. 465 (1993), and *Niles v. Niles*, 9 Conn. App. 240 (1986). **Discussion:** See § 17.36, below.
- Effectuating not modifying the court's order:
 - A court may not modify a property division as that would be considered an alteration of the original order.
 - The court may issue orders to effectuate the intent of the judgment.
 - If there is an ambiguity, the court may clarify the order and effectuate the order as clarified. **Authority:** Conn. Gen. Stat. § 46b-82; *Sousa v. Sousa*, 322 Conn. 757 (2017), *Amodio v. Amodio*, 247 Conn. 724 (1999), *Lawrence v. Cords*, 165 Conn. App. 473 (2016), *Forgione v. Forgione*, 162 Conn. App. 1 (2015), *Hirschfeld v. Machinist*, 151 Conn. App. 414 (2014), *Aliano v. Aliano*, 148 Conn. App. 267 (2014), *Allen v. Allen*, 134 Conn. App. 486 (2012), *Budrawich v. Budrawich*, 132 Conn. App. 291 (2011), *Stechel v. Foster*, 125 Conn. App. 441 (2010), *Woodward v. Woodward*, 44 Conn. App. 99 (1997), and *Ammirata v. Ammirata*, 5 Conn. App. 198 (1985). **Discussion:** See § 17.37, below.
- Conveying property through the court:
 - Real property owned in Connecticut may be judicially transferred by recording the judgment on the land records. **Authority:** Conn. Gen. Stat. § 46b-66a. **Discussion:** See § 17.38, below.
- Ordering the sale of an asset:
 - The court may make orders on how a sale of real property is to occur.
 - An asset may be ordered sold to pay an arrearage.
 - An asset ordered sold may not be transferred to the sole owner of the property. **Authority:** Conn. Gen. Stat. § 46b-82; *Perry v. Perry*, 156 Conn. App. 587 (2015), *O'Halpin v. O'Halpin*, 144 Conn. App. 671 (2013), *Santoro v. Santoro*, 70 Conn. App. 212 (2002) and *Roberts v. Roberts*, 32 Conn. App. 465 (1993). **Discussion:** See § 17.39, below.
- Enforcing orders regarding retirement plans:
 - Retirement plans are transferred by way of QDRO.
 - A party should not be denied his or her share of a retirement plan because the administrator did not effectuate the QDRO.
 - A judgment which did not include gains and losses cannot be modified to provide for gains and losses on the retirement plan until divided by a QDRO. **Authority:** *Cifaldi v. Cifaldi*, 118 Conn. App. 325 (2009) and

Kremenitzer v. Kremenitzer, 81 Conn. App. 135 (2004). **Discussion:** See § 17.40, *below*.

§ 17.36 Fashioning Orders on Equitable Principles

There may be occasions where the actions of a recalcitrant party make adhering to the structures of the court order impossible. In such cases, courts may craft orders to maintain the integrity of the judgment. The area in which this most often occurs is when the parties are ordered to sell a property. The court may craft its enforcement orders in different ways. If a party refuses to reduce the listing price of the home, which results in the property failing to sell, the court may order the home to be sold by auction. *Roberts v. Roberts*, 32 Conn. App. 465 (1993). However, if the court does not retain jurisdiction to divide property after the dissolution, the court is without power to enter orders regarding that property, including that it be sold at auction. *Rathblott v. Rathblott*, 79 Conn. App. 812 (2003). However, if the judgment specifies the property is to be sold, it cannot modify the judgment to provide it to be sold to one party for a sum certain. *Young v. Young*, 137 Conn. App. 635 (2012). Based upon equitable principles, the court may divide the proceeds based upon the sale proceeds and not the value at the time it should have sold. *Niles v. Niles*, 9 Conn. App. 240 (1986).

§ 17.37 Effectuating, Not Modifying, the Court's Order

Problems frequently arise when there are issues in effectuating a property division. Courts are not permitted to modify property divisions. Conn. Gen. Stat. § 46b-82 and *Ammirata v. Ammirata*, 5 Conn. App. 198 (1985).

The court will distinguish between a modification and an effectuation of the court's order. An order will be deemed a modification if it alters the original order. *Stechel v. Foster*, 125 Conn. App. 441 (2010). Accordingly, if the judgment calls for the transfer of an asset, it would be improper in a subsequent proceeding to convert that order into a sum certain. *Stechel*, 125 Conn. App. at 448–449. Likewise, where the original order called for the transfer of stock, it cannot be later converted to a sum certain. *Budrawich v. Budrawich*, 132 Conn. App. 291 (2011). An agreement by the parties modifying a property division may later be collaterally attacked by the party receiving the benefit on the basis that the court did not have subject matter jurisdiction to enter the order, provided that it is entirely obvious that the court did not have subject matter jurisdiction when rendering the original order. *Sousa v. Sousa*, 322 Conn. 757 (2017). The Supreme Court favored finality of judgments in rendering its decision, noting that there is a split of authority as to whether such action implicates subject matter jurisdiction or the courts authority to act. See, *Lawrence v. Cords*, 165 Conn. App. 473 (2016), *Forgione v. Forgione*, 162 Conn. App. 1 (2015), and *Amodio v. Amodio*, 247 Conn. 724 (1999). “[T]o be ‘entirely obvious’ and sustain a collateral attack on a judgment ... a jurisdictional deficiency must amount to a ‘fundamental mistake’ that is ‘so plainly beyond the court’s jurisdiction that is entertaining the action as a manifest abuse of authority.’ ” *Sousa*, 322 Conn. at 773.

#Comment Begins

Strategic Point: The *Sousa* case involved the wife relinquishing claims to a pension plan in exchange for a continuation of alimony payments, despite her cohabitation which was a terminating event for alimony. The parties executed an agreement to this effect which was approved by the court. After the wife received the benefit of the agreement, she filed a motion to open and vacate. The Supreme court decision hinged on the seeming collateral attack on a judgment for which the wife had received the benefit of the bargain she made. The court was mindful that this issue could have been litigated at the time the stipulation was entered as a court order.

#Comment Ends

Although the court's order included the allocation of debt between the parties which was to be paid out of the proceeds from the sale of real estate, the husband was unable to recover costs and fees associated with a bank refinance of the debt as there was no provision in the agreement to permit this. *Hirschfeld v. Machinist*, 151 Conn. App. 414 (2014).

#Comment Begins

Strategic Point: The *Hirschfeld* dissent would have invoked an implied covenant of good faith and fair dealing regarding the separation agreement which is a contract remedy. However, it may be wise practice to include a provision in a separation agreement to allow the court to fashion remedies in the event a party interferes with the disposition of an asset to the detriment of the other party.

#Comment Ends

However, where there is an ambiguity in an agreement or court order, the court may resolve the ambiguity and thereupon make orders effectuating the judgment. *Allen v. Allen*, 134 Conn. App. 486 (2012).

At times, provisions are made in the judgment regarding future actions to be taken for the disposition of real property. Such provisions may include a buyout based upon appraised values, a requirement that the property be refinanced or sold if the refinance may not be obtained, or the future sale of the property. If the judgment specifies the mechanism for the disposition of real property, it is proper for the trial court to effectuate that mechanism. *Woodward v. Woodward*, 44 Conn. App. 99 (1997).

Where there is an impossibility formed by the wording of the final judgment, a contempt finding may not be sustainable. *Aliano v. Aliano*, 148 Conn. App. 267 (2014). In *Aliano*, the judgment provided that the husband would pay to the wife \$100,000 within 30 days of his receiving his inheritance as long as it was worth more than \$250,000. What the husband received was an interest in a company worth in excess of \$250,000, but not cash with which to pay the wife. This was not a modification, as the amount to be paid was not changed.

§ 17.38 Conveying Property Through the Court

If the court has awarded real property located in Connecticut to one party and the other refuses to sign a deed transferring title, the judgment may be recorded on the land records and it will serve as the conveyance of that property. Conn. Gen. Stat. § 46b-66a. This does not apply to property outside Connecticut.

§ 17.39 Ordering the Sale of an Asset

While the court is precluded from modifying orders regarding a property division, it may make orders which effectuate the judgment. Conn. Gen. Stat. § 46b-82 and *Roberts v. Roberts*, 32 Conn. App. 465 (1993). Accordingly, where it has been ordered that a property be sold and one party is impeding the sale, the court can make an order as to how that property will be sold in order to effectuate the judgment. *Roberts*, 32 Conn. App. at 472. Provided that any such order effectuating the judgment does not change the ultimate amount to be received by either party, such an order will stand. *Roberts*, 32 Conn. App. at 472.

The court may also set the terms of the listing and sale of an asset, which will not be deemed to be a modification, especially where the court reserved jurisdiction over the sale of the property. *O'Halpin v. O'Halpin*, 144 Conn. App. 671 (2013). An order in the judgment to sell the property does not permit the sole homeowner to force the “sale” of the property to himself. *Perry v. Perry*, 156 Conn. App. 587 (2015).

#Comment Begins

Strategic Point: Especially in cases where there are recalcitrant litigants, a separation agreement or judgment should set forth that the court retains jurisdiction regarding the terms and conditions of the sale of a particular asset. Failure to do so could lead a court to believe its hands are tied, leaving it unable to make certain orders that are necessary to ensure the sale of the asset.

#Comment Ends

Likewise, a party who has an interest in an asset that has not yet been distributed may be ordered to turn over the asset to the other party to satisfy the arrearage. *Santoro v. Santoro*, 70 Conn. App. 212 (2002). Such an order is not a modification of the property division. *Santoro*, 70 Conn. App. at 218.

§ 17.40 Enforcing Orders Regarding Retirement Plans

The only manner by which pension and other retirement plans may be divided is by a QDRO. The QDRO is an administrative vehicle by which the pension is transferred, not the actual order for a property division. *Cifaldi v. Cifaldi*, 118 Conn. App. 325 (2009). Accordingly, it would be error for a court to deny a party the pension assets which he or she was awarded simply because the pension administrator failed to effectuate the QDRO. *Cifaldi*, 118 Conn. App. at 333.

A judgment which provides for a transfer of a portion of a pension plan, valued as of the date of dissolution, cannot be found to include gains and losses since the date of the dissolution. *Kremenitzer v. Kremenitzer*, 81 Conn. App. 135 (2004).

#Comment Begins

Strategic Point: When crafting language in a separation agreement or proposed orders for submission to the court, make sure that the provisions regarding the retirement plan division include gains and losses from the time of the dissolution until the effectuation of the QDRO.

#Comment Ends

PART VII: CRAFTING ORDERS TO ENFORCE CUSTODY AND VISITATION

ENFORCEMENT OF ORDERS

§ 17.41 CHECKLIST: Crafting Orders to Enforce Custody and Visitation

17.41.1 Crafting Orders to Enforce Custody and Visitation

- Claiming an inability to force a child to attend visitation:
 - A parent claiming that the child refuses to go on a visitation may be held in contempt.
 - A parent who refuses to allow visitation may be held in contempt when the concerns leading to the refusal are not borne out. **Authority:** *Medeiros v. Medeiros*, 175 Conn. App. 174 (2017), *Martocchio v. Savoir*, 130 Conn. App. 626 (2011) and *Johnson v. Johnson*, 111 Conn. App. 413 (2008). **Discussion:** See § 17.42, below.
- Creating barriers to visitation and custody:
 - A party creating barriers to visitation and custody may be held in contempt.
 - A parent may not withhold visitation believing the court order to be inadequate to protect the child. **Authority:** *Hibbard v. Hibbard*, 139 Conn. App. 10 (2012), *Gina M. G. v. William C.*, 77 Conn. App. 582 (2003), and *Berglass v. Berglass*, 71 Conn. App. 771 (2002). **Discussion:** See § 17.43, below.

§ 17.42 Claiming an Inability to Force a Child to Attend a Visitation

When a child has a difficult relationship with a parent, forcing the child to attend a visitation with that parent will be difficult. However, a parent who manipulates or encourages the child to ignore the visitation schedule may be held in contempt. *Johnson v. Johnson*, 111 Conn. App. 413 (2008). If parenta parent refuses to allow a visitation to occur based upon reasons that are not borne out, that parent may be found in contempt. *Martocchio v. Savoir*, 130 Conn. App. 626 (2011). Such remedies for the refusal of parenting time can include incarceration. *Medeiros v. Medeiros*, 175 Conn. App. 174 (2017).

#Comment Begins

Strategic Point: If there are issues of custody or visitation that are pressing, it is advisable to bring an *ex parte* motion for modification rather than resort to self-help. Any and all actions which may be taken to alleviate self-help should be done, as it will demonstrate the issue is real and not an attempt to “get back at” the other parent.

#Comment Ends#Comment Begins

Strategic Point: In *Medeiros*, the court used the sanction of incarceration, but stayed the enforcement of the sanction pending compliance with the court order. Such an order was a permissible sanction because the contemnor held the keys to his jail cell by complying with the court order. Seeking such an order where a party has denied parenting time can be a very effective tool for compliance.

#Comment Ends

§ 17.43 Creating Barriers to Custody and Visitation

A party who creates barriers to prohibit a court order from being effectuated may be held in contempt. A parent who refuses to allow a child to attend visitation or adds requirements, such as a specific supervisor, may be held in contempt. *Gina M. G. v. William C.*, 77 Conn. App. 582 (2003). A parent may not withhold visitation because he or she thinks that the court-ordered testing of the other parent is insufficient. *Berglass v. Berglass*, 71 Conn. App. 771 (2002).

Allegations of sexual abuse, where previously made and unsubstantiated, will not support the unilateral denial of visitation. *Hibbard v. Hibbard*, 139 Conn. App. 10 (2012).