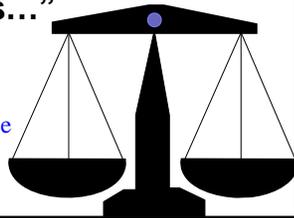


Enforcement & Agreements

Or – “Promises, Promises...”

Mark E. Sullivan
2008 NC State Bar LAMP CLE Conference



Promises, promises...



Sources of **BINDING** Obligations:

- Court Orders (by consent or after trial)
- Agreements
 - ☞ Premarital (UPAA)
 - ☞ Separation agreement

Separation Agreements in NC

FULL & FINAL PROMISES

- Signed before a notary
- Don't sign before separation
- No requirement for incorporation or registration
- Child-related items can always be “modified” by the court

Separation Agreements in NC

FULL & FINAL PROMISES

- Can bar alimony, E/D if it says so
- Can waive E/D even if silent!!
 - ☞ (gen'l release clause)
- "Silence is golden?" ... OR -- "Silence is **dangerous** !!"
- Alimony waiver must be "express" – Napier case, 10/99, NC App

Special Topics – INCORPORATION

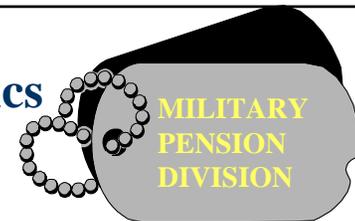
- Read Walters and Henderson cases, NC Supreme Court 1/83
- Enforced by contempt, garnishment, etc.
- Makes executory promises modifiable if change of circumstances!

Special Topics –

NON-MODIFIABLE PROMISES?

- Can't do for child-related provisions
- **CAN DO** for alimony, property division
 - ☞ Unincorporated S/A, or
 - ☞ Integrated promises

Special Topics



- Special wording required
- Can't do this with unincorporated S/A – must be "decree of divorce or court order"

Special Topics –

- Attorney's fees clause if breach
- "Don't construe against drafter" clause
- College clause



Special Topics –

- Allocation of dependency exemption [and new tax credit] –conditioned on compliance by payor!
- Securing promises of payments against death ...
 - ☞ SGLI? Ridgway decision
 - ☞ Private life insurance: transfer ownership!

Getting Court-Ordered Support

- Voluntary Support Agreement
- Confession of Judgment
- [see Co-Counsel Bulletin]



Enforcement of Court Orders –

- Contempt
- Garnishment, Involuntary Allotment
- Seizure of Property
- License Revocation
- Collateral Consequence: Atty's Fees

Defending a Contempt Case –

WHAT ARE ELEMENTS OF CONTEMPT? [Ch. 5A]

- 1. Valid court order
- 2. Requiring specified action
- 3. Defendant refuses to comply
- 4. Without justification
- 5. And has ability to comply [past & present] or take reas. steps to do so

Basis for Defense

- Justification [good faith belief] – visitation case
- Lack of ability – child support case
 - ☞ What about arrears?
 - ☞ Vested when due, cannot retroactively reduce



Advising the client – motions to modify custody, support, visitation

“I’m a Travelin’ Man”



- Supt is governed by UIFSA
- Custody – by PKPA and UCCJEA [Art. 2, Chapter 50A]

Enforcement Tips

“Time for Arrest”

- Payment through centralized collection
- Use of CSEO [*pro*'s, *con*'s], Parent Locator Svc, tax refund intercept
- *“It is well known that a defendant can get more money in an hour in the jailhouse than he can in a month of working on the job.”*

Enforcement Tips:

ATTORNEY'S FEES

- For **c/s** cases – good faith, interested party, in need of AF, refusal to pay adequate supt at time claim filed
- For **cust** or **c/s & cust** cases – above less “refusal”
- PSS, alimony: success on PSS claim
- E/D: only for enforcement of judgment

THE END

Enforcement & Agreements