

# What to Do When a Former Spouse Fails to Pay

By K. Dean Kantaras and Derrick Bahadue



K. Dean Kantaras, Esq.

There are circumstances in the context of family law where one spouse owes money to another spouse, such as child support and alimony. But what happens if your former spouse stops making the required payments without notice? Even if you still work a full-time job, sometimes it just isn't possible to make ends meet without some of the financial support you had through your marriage. The costs of housing, groceries, school, cars, gas and insurance continue to rise, while your income may not.

You might do the reasonable thing and reach out to your former spouse to inquire as to what is going on, but to no avail. You, or your attorney, will respond with a court motion for contempt. But if your former spouse skips the proceedings, the judge may rule in your favor and find your former spouse in contempt of the orders that require the payments of child support and alimony. In this scenario, your former spouse is ordered by the judge to resume payments and make up for all the payments they should have been making. However, what do you do if your former spouse continues to ignore the court order?

You file another motion, this time a motion for an income deduction order (IDO) per Florida Statute 61.1301(1)(a). IDO's take the uncertainty of "if" they will be able to pay out of the equation. An IDO is a court order that requires an employer to withhold money from the debtor's income to satisfy outstanding financial obligations. The layman's term

for an IDO is wage garnishment. The Third District Court of Appeals provides a precise rendition of the delineation of when an IDO is appropriate or not.

In the case of *Sonia Diaz v. Juan Diaz*, Sonia was ordered to pay child support and alimony. Sonia fell behind on her payments and Juan had an IDO granted in his favor. The IDO was to pay Juan back for missed child support, alimony, and attorney fees which Juan had incurred through the entirety of his dissolution proceeding. Sonia was appealing the entering of that order by the trial court. The appellate court issued its opinion, interpreting the IDO statute to collect attorney's fees incurred, but only the fees incurred as a result of securing and collecting child support and/or alimony. They further explained that their opinion was not to mean that any time an individual brings an action to secure and collect support or alimony, any and all attorney's fees can be automatically folded

into the income deduction order. The court continued to explain that a portion of the attorney fees did come from securing and collecting support, and that the amount incurred to procure support should be included in the IDO. But any portion of attorney fees incurred for collateral matters, should not.

Ultimately, an IDO is going to be applicable where the money owed to you is from support, whether child support or alimony, and what you incurred to get that support, but only that. This would be easy to delineate in a case where you only retained an attorney's services to get support payments. But where equitable distribution or a parenting plan is involved, it may be more difficult to parse out which fees were incurred where and for what. Proper billing practices should help in determining how much of your attorney's fee was incurred for support, or for other issues in your case. ❖

*EDITOR'S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 30 years and is "AV" rated by Martindale-Hubbell. Derrick Bahadue is an associate attorney at the firm and a graduate of Barry University in Orlando. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000; 1930 East Bay Drive, Largo, 33771; and 111 S. Albany Ave., Suite 200, Tampa, 33606, kantaraslaw.com.*