January 7, 1971

Time

January 15 - 9:30 a.m. - 5:00 p.m.
January 16 - 9:00 a.m. - 4:00 p.m.

Place

State Bar Building
601 McAllister Street
San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco — January 15-16, 1971

1. Minutes of December 3-5 Meeting (sent 12/18/70)

2. Administrative Matters

Memorandum 71-4 (to be sent)
Memorandum 71-5 (to be sent)

3. Study 39 - Attachment, Garnishment, Execution

Special order of business: 10:00 a.m. on January 15

State Administrator of Earnings Protection Law

First Supplement to Memorandum 71-2 (sent 12/31/70)

Discharge From Employment Because of Garnishment

Memorandum 71-3 (sent 12/18/70)
Tentative Recommendation (attached to Memorandum)

Garnishment of Bank Accounts

Memorandum 71-1 (sent 12/31/70)
Tentative Recommendations (attached to Memorandum)

Earnings Protection Law

Memorandum 71-2 (enclosed)

Taxes, Wage Earner Plans, Support

Second Supplement to Memorandum 71-2 (enclosed)

Restrictions on Amount of Earnings That May Be Withheld

Third Supplement to Memorandum 71-2 (enclosed)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

January 15 and 16, 1971

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on January 15 and 16, 1971.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
G. Bruce Gourley
Noble K. Gregory
Marc W. Sandstrom

Absent: Alfred H. Song, Member of Senate
Carlos J. Moorhead, Member of Assembly
John N. McLaurin
George H. Murphy, ex officio

Messrs. John H. DeMoully, Jack I. Horton, E. Craig Smay, and Nathaniel Sterling, members of the Commission's staff, also were present. Professor William D. Warren, U.C.L.A. School of Law, consultant on the study of attachment, garnishment, and exemptions from execution, was present during a portion of the meeting.

Sitting with the Commission during the consideration of attachment and garnishment were Charles A. Legge, Chairman, Edward N. Jackson, member, Garrett Elmore, counsel, Special State Bar Committee on Attachment and Garnishment.

The following observers also were present during all or a portion of the meeting:

Irving L. Berg, San Francisco Attorney
Gordon H. Bishop, State Department Consumer Affairs
Loren S. Dahl, California Association of Collectors, et al.
Charles E. Iverson, Marshal, Richmond Municipal Court
Emil A. Markovitz, Creditors Service of Los Angeles Collection Agency
Carl M. Olsen, Chief Deputy, San Francisco Sheriff's Department
David L. Price, Assistant Legislative Representative, State Bar of California
Albert J. Reyff, Assistant Labor Commissioner, Division of Labor Law Enforcement, Department of Industrial Relations
Marilyn Shinderman, Division of Labor Law Enforcement, Department of Industrial Relations
Clement Shute, Deputy Attorney General, Attorney General (Tax Section)
Robert M. Stern, Consultant to Assembly Judiciary Committee
Stanley E. Tracy, Municipal Court, San Francisco
Walter E. White, Deputy Attorney General, Attorney General, Consumer Fraud Unit

ADMINISTRATIVE MATTERS

Approval of Minutes of December 3-5, 1970, Meeting. The Minutes of the December 3-5, 1970, meeting were approved as submitted.

Schedule for future meetings. The Commission discussed Memorandum 71-4 in which the staff suggested a revision of the previously set schedule for meetings. After discussion, the Commission decided not to change the schedule but authorized the staff to schedule additional meeting time on the evening of February 19 (the Commission will meet from 7:00 p.m. to 10:00 p.m. on February 19) if necessary.

Schedule for submission of recommendations to Legislature. The Commission discussed the schedule for submission of recommendations to the Legislature set out in Memorandum 71-5. The Commission determined that:

1. Discharge from employment for one garnishment should be submitted for enactment in 1971. The staff is to prepare a recommendation for approval at the February meeting and the recommended legislation should be introduced thereafter.

2. The legislation relating to garnishment of bank accounts should not be submitted in 1971 but should be combined with the recommendation on the earnings protection act and that recommendation should be submitted in 1972.

3. The staff should prepare an amendment to add to its agenda of topics the suggestion of the State Bar that the Commission study "whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised." The amendment should be offered for legislative consideration at the time the legislative committees consider the request for authority to study the parol evidence rule.

Publication of inverse condemnation studies. The Commission approved publication of the inverse condemnation background studies in one soft-cover publication. The publication would have a detailed table of contents, table of cases, and table of statute sections cited.

The pamphlet is to be sold for $7.50 and offered for sale in connection with the CEB program on condemnation to be held in March-April 1971. Of the first 1,000 sold, CEB will receive $2.50 a copy for obtaining orders and mailing out the copies; the Commission will receive $5.00 a copy to cover the cost of publication; the money received from the copies in excess of 1,000 will be split 50-50.

The Executive Secretary was authorized to work out the details of the publication with the Continuing Education of the Bar.

Handbook of procedures. The Commission discussed the procedure set out in the handbook of procedures for contacting individual members of the Legislature. The staff presented a revision designed to effectuate a prior decision on the procedure. The following was approved for inclusion in the handbook of procedures:

CONTACTING INDIVIDUAL MEMBERS OF LEGISLATURE[7]

> The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless he has raised questions about the Commission's bills in committee or otherwise and it seems likely that the member does not fully understand the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Secretary should contact the member to answer such questions as he may have about the bill and otherwise explain it.

7. Minutes, January 1971.

STUDY 39 - ATTACHMENT, GARNISHMENT, EXECUTION

DISCHARGE FROM EMPLOYMENT FOR ONE GARNISHMENT

The Commission considered Memorandum 71-3, relating to discharge from employment because of garnishment, and the attached tentative recommendation. The following decisions were made:

1. The criminal penalty was deleted. The preliminary portion of the recommendation is to be revised to reflect this change and to explain why the omission of a criminal penalty would not preclude exemption from the enforcement of federal garnishment restrictions.

2. The portions of Sections 2922 and 2924 of the Labor Code relating to discharge for garnishment are to be deleted, and this matter is to be covered in a new section added to the Labor Code.

3. In drafting the new section, the following changes should be made in the language in Section 2922 as amended in the tentative recommendation: (1) The words "laid off or" should be omitted (the Comment should indicate a layoff or suspension that amounts to a discharge is a violation of the section); (2) the word "may" was substituted for "shall" in the second to the last sentence of the section, thus conforming the section to Section 2924.

4. The Comment should indicate that the prohibition is intended to conform to the Consumer Credit Protection Act.

5. It should be clear that the rights given by the new section do not affect any other rights the employee may have.

6. The tentative recommendation is to be revised and submitted for approval for printing and submission to the Legislature at the February meeting. The revised recommendation should be sent out for comment so that any comments can be reviewed at the February meeting.

STUDY 39 - ATTACHMENT, GARNISHMENT, EXECUTION

ATTACHMENT OR EXECUTION ON PAID WAGES AND BANK ACCOUNTS

The Commission considered at some length Memorandum 71-1 and the tentative recommendations attached thereto (dated 12/28/70 and 12/30/70). The Commission determined that legislation relating to the attachment of and execution upon paid wages and bank accounts should, if possible, be deferred until such legislation can be included in a comprehensive statute dealing with earnings generally. However, the Commission carefully reviewed the staff-proposed recommendations and made several decisions concerning the direction the staff should take in redrafting the sections dealing with paid wages and bank accounts for the comprehensive statute. These decisions are set forth in these Minutes under the Earnings Protection Law--Draft Statute (see Sections 690.6 and 690.7).

Minutes
January 15 and 16, 1971

STUDY 39 - ATTACHMENT, GARNISHMENT, EXEMPTIONS

EARNINGS PROTECTION LAW

State Administrator of Earnings Protection Law

The Commission considered the First Supplement to Memorandum 71-2 relating to the state administrator of the Earnings Protection Law.

The Commission discussed three agencies that might administer the law providing a modern, economical method of wage withholding in payment of judgments. Representatives of the Attorney General's office, the Division of Labor Law Enforcement of the Department of Industrial Relations, and the Department of Consumer Affairs were present and described the functions of their agencies.

Department of Consumer Affairs. Mr. Gordon H. Bishop, representing the Department of Consumer Affairs, made the following statement to the Commission.

> The Department of Consumer Affairs is pleased to have the opportunity of appearing before the Commission today to discuss contemplated changes in the laws relating to wage garnishments and problems related to the field of creditor remedies. The changing legislative and judicial attitudes toward traditional creditor remedies under law make it appropriate to give this subject both broader and deeper scrutiny than has been given it heretofor.
>
> We suggest that the time has come to set aside piecemeal attacks upon the processes of debt liquidation and come to grips with the ultimate issue whether it is or is not in the public interest to remove from the mainstream of the credit economy that segment of the consuming public which is devoid of assets for credit security other than its earning potential. If this issue were decided openly and forthrightly, it would be greatly preferable to resolving it inadvertently through credit restrictions forced by general erosion of creditor remedies.
>
> In this regard, we suggest that the proposals for changes in the state wage garnishment laws under consideration today are piecemeal measures that should more properly be considered in conjunction with a comprehensive scheme of laws relating to a defined public purpose and intent regarding credit extensions and creditor remedies.

The immediate concern prompting the current proposals appears to be a compulsive desire to conform state and federal statutes relating to this subject. While conformity may have certain aesthetic features, it is hardly a creative or an imaginative approach to resolving some very grave social and economic problems. This eminent Commission may find its talents better applied to the larger question.

As to the proposed enforcement agency, we would prefer to remove the Department of Consumer Affairs from consideration as a prospective administrator of a state garnishment law. Aside from the fact that it is not structured to undertake such an assignment, we do not believe that it is necessary nor advisable to create a new bureaucracy to handle employer-employee matters of this kind when there already exists a state agency which performs a similar service relating to other laws.

The need for the proposed administrator position has been predicated upon two assumptions: First, that its creation is a requisite in securing state exemption from application of Title III of the Federal Consumer Credit Protection Act, and Second, that such an exemption is desirous and worthy of immediate pursuit. Sufficient justification has not been established to support either of these assumptions.

It might be appropriate to take a look at the federal law, which has now been operative for over six months. No new federal bureaucracy has been required to administer it. Enforcement problems relating to both restrictions on amounts garnished and prohibitions against discharges for garnishment have been far less than might have been expected. Fewer than 200 complaints of all kinds have been referred to the Wage and Hour Law Division within this state, and all of them have been satisfactorily resolved. Most problems arose through initial misunderstandings about the law. Perhaps it is not surprising that cities and other governmental units constitute the employing group with the greatest problem of adjusting to the new law. Another source of problems were court orders that were drawn up in conflict with the law. And a lot of confusion continues to exist regarding the provision barring discharge from employment because of garnishment for any one indebtedness. It creates the anomalous situation where an employee may be garnisheed repeatedly on a judgment for a single debt without jeopardy to his job, but he could be discharged at the first garnishment should more than one indebtedness be involved.

Through the cooperation of the Attorney General's office and the area directors of the Wage and Hour Law Division, a very effective enforcement procedure has been developed through the marshals and sheriffs at the time of service of writs of execution. Each employer is served with the writ appropriate information about the law and advising him how to make the computations of exempt wages.

At this point in time, it may be difficult to show what clear and present benefits would accrue to judgment debtors if their rights were to be served by some state enforcement agency in contrast to existing federal enforcement. In any event, the satisfactory existing condition should permit the question to be deliberated at leisure and hopefully in conjunction with the larger policy questions involved.

In the meantime, the state will benefit considerably from the experience gained through federal enforcement and at federal expense. It doesn't seem prudent to rush elaborate state enforcement mechanisms to meet problems that may not exist or problems that will be considerably reduced through experience.

If the Commission desires to consider the broad policy questions that are involved in the administration of garnishment laws, it may well explore the possible adverse effect upon the judgment debtor whom the law is designed to protect. Allow me to recite an example or two:

A typical wage-earner making $4.00 per hour, $160.00 per week. His "disposable income" is $120.00, of which 25%, or $30.00 is subject to garnishment. From that $30.00 is deducted $1.50 for the writ, $10.00 sheriff's charges for service, and $.70 interest, leaving $17.80 for reduction of the judgment principal. If the debtor were to discharge a $500 judgment through a series of such executions, he will have paid out in excess of $800.

So much for the $4.00 per hour man. Perhaps he can afford the premium. But consider the case of the "poor" whom the law is designed to give major relief.

A wage-earner makes $2.00 per hour, $80.00 per week. If his "disposable income" is $64.00, the $16.00 required levy would leave just $3.80 to reduce the judgment principal, assuming the costs in the above example. If the executions were to run for the next 2-1/2 years, the $500 judgment would be paid off at a cost to the debtor in excess of $2000.

The purpose in citing these examples is not to quarrel with the worthy purposes of garnishment legislation to insure that families are not deprived of bread for the benefit of creditors. It is merely to point out that noble purposes by themeselves do not always resolve problems. Frequently the side effects of new miracle drugs are equally as hazardous as the disease that it cures.

We would submit to the Commission that major assistance to the judgment debtor could be obtained through enactment of legislation that would eliminate the burden of execution costs and permit all of the amount of wages levied, at whatever formula desired, to apply directly toward the judgment. The proposal is wage execution by abstract. It

would permit the judgment plaintiff to mail to the employer an abstract of the judgment, an affidavit of the balance owing, a proper demand, and a remittance of $2.50 to compensate the employer for his trouble. The employer would be required to remit to the court the amount allowed by law from any moneys due the debtor within 10 days after receipt.

This proposal was incorporated in A.B. 939 in the 1970 Legislature. The bill had strong endorsement in the Assembly Judiciary Committee and passed the Assembly without opposition. The Senate Judiciary Committee referred the bill to interim study after opposition from marshals' interests was expressed.

There is ample precedent for the abstract proposal. It happens that the statutes presently provide essentially the same procedure for executions upon the salaries of the state's own employees.

While the wage execution by abstract offers an attractive alternative to the existing burdens placed upon judgment debtors, it is not offered here as the panacea for the complex problems of credit extensions and creditor remedies. But it is illustrative of the broader approaches to the problems that the Commission might now be considering, in lieu of generating carbon copies of federal statutes of unproven worth.

Thank you for this opportunity of addressing you.

In the discussion that followed Mr. Bishop's presentation, the Commission noted that it was engaged in a comprehensive study of the entire subject of attachment, garnishment, and exemptions from execution. Specifically, it was noted that the problem of eliminating the burden of execution costs is being dealt with in the new statute on earnings withholding being drafted by the Commission and that the proposal is designed to be a more efficient and economical procedure than the one proposed by Assembly Bill 939 of the 1970 Legislature.

Division of Labor Law Enforcement. The Commission discussed with representatives of the Department of Industrial Relations the present functions of that department with respect to discharge for any one wage garnishment and enforcement of wage claims of employees. The department

representatives also reported that the department works with federal authorities in administering some of its programs.

Attorney General's office. The description of the functions of the Consumer Frauds Unit of the Attorney General's office was discussed.

Department of Industrial Relations selected as State Administrator. After considerable discussion, the Commission determined that the Earnings Protection Law should be administered on the state level by the Department of Industrial Relations.

Draft Statute

The Commission considered Memorandum 71-2, the First, Second, and Third Supplements thereto and a portion of the Staff Draft Statute attached to Memorandum 71-2. The following tentative decisions were made with respect to this statute:

(1) At this point, no attempt should be made to include a statement of policy that the act is intended to achieve an exemption from federal law and should, accordingly, be construed to conform to federal law. (Compare the Ohio statute.)

(2) The staff was directed to consider further the possibility of the creditor furnishing evidence of receipt of payment, perhaps periodically, to the debtor. This would be in addition and prior to complete satisfaction

of the judgment.

(3) The problem of fees generally was deferred and the hope was expressed that perhaps further data concerning the desirability of fees and their amount could be obtained from both creditors and employers as well as the respective people who will be involved in administering the act.

(4) It was agreed that the employer should be permitted an opportunity to correct mistakes made in deducting and paying the amounts required and that he should be permitted to rely upon the directions contained in an order served upon him without liability.

(5) The Commission tentatively decided that the application of the Earnings Protection Law (the wage garnishment provisions) should be restricted to the employer-employee situation. The levy of execution procedure should, therefore, be integrated with the Earnings Protection Law to provide for levy upon assets of employees other than wages in the hands of an employer. Moreover, the staff was directed to attempt to draft standards and procedures which provide protection for the income of persons other than wage earners comparable to that afforded by the Earnings Protection Law to wage earners.

(6) Some maximum limit should be considered upon the exemption of earnings in order that the very wealthy or the large corporation are not too generously protected.

(7) Section 4701 (Civil Code). The policy of conforming and integrating this section with the general earnings withholding scheme was approved. However, the details of drafting the section were deferred. It was suggested that the Comment to this section should make clear the priority, the exception from garnishment exemptions, and the continuing nature of orders issued under this section.

(8) Section 690.6 (Code of Civil Procedure). Subdivision (a) defining "earnings" should be shifted to the end of the section for grammatical consistency. The terms "due and owing" and "identifiable" should be changed to "due or owing" and "identified" respectively. Bank accounts are to be covered without regard to whether these accounts contain deposited "earnings" or "income." The "necessity" exception should exempt simply earnings or income of a debtor "essential for the support of himself or his family." The word "absolutely" and the requirement of "clear and convincing proof" should be deleted.

(9) Section 690.7. The staff was directed to treat separately the problems of attachment of and of execution upon bank accounts. It was tentatively determined that all forms of accounts--bank, savings and loan, and credit union--should be afforded one aggregate, fixed exemption from levy of attachment. For purposes of discussion, the figure of 1500 dollars was adopted as the amount exempt from attachment. A more limited exemption should be provided for these accounts from levy of execution, but a procedure shculd be included which permits the debtor to show a need for a greater amount to be exempt. It should be made clear that there is no additional exemption for these accounts available upon a showing of the deposit of earnings. The basic fixed exemption should be available to each joint holder regardless of whether he is a judgment debtor or named in the levy. However, to claim an exemption, the debtor should be required to file an affidavit stating that his money deposited in other accounts plus the money levied upon does not exceed the statutory exemption as of the date of levy. The staff was also directed to examine the relationship between these exemptions and the "banker's lien."

(10) Section 690.18. This section should provide an exemption for Keogh Act retirement plans which is comparable to that provided for public and other private retirement plans. The other changes indicated in the amended draft were approved.

(11) Section 690.50. No change; however, the Comments to the final statute should make clear throughout which exemptions must be claimed and which ones are automatic.

(12) Section 710. Approved. The scheme provided here for execution upon money, other than wages, owed by the state to a debtor may serve as a useful analogy for the treatment of execution generally upon the income of persons other than wage earners.

(13) Section 723.10. No change.

(14) Section 723.11. This section must be revised to make clear that only the typical employer-employee situation is to be covered under this chapter. Employees should include public employees other than federal employees. It should be made clear that vacation credits or vacation pay should be afforded protection comparable to earnings. The administering agency should be the Department of Industrial Relations.

(15) Section 723.20. This section--subdivision (b)--will have to be revised to take into consideration the provisions applicable to income other than wages. The Comment should make clear that prior private wage assignments (Labor Code Section 300) are to take priority over an earnings withholding order as to earned wages but not as to future wages and assignments of future wages are revocable at any time by the debtor/assignor.

(16) Section 723.21. No substantive change. The staff was directed to review the use of the term "judgment debtor" in this chapter and to substitute therefor the term "employee" where appropriate.

(17) Section 723.22. The requirement of payment "by check" in subdivision (b) should be deleted. Payments to the creditor should be made no later than 30 days after the date when the employee would have been paid. Commissioner Stanton will furnish the staff with the comparable wording used in certain union contracts to limit payment of employer contributions. The statute should make clear that, although the employer has a limited ability to accumulate deductions, these deductions should be taken every pay period; they may not be "saved up" and all taken at one time.

(18) Section 732.23. The four-month continuing levy period was tentatively approved for the working draft. The Commission was advised that the percentages of cases, according to the amount of the judgment, in which garnishment was attempted by California collection agencies were as follows:

Amount of Judgment	Percentage of Cases
less than $100	5%
$100 - 200	20%
200 - 300	30%
300 - 400	20%
400 - 500	20%
over 500	5%

The four-month (or 120-day) period should, perhaps, cover any pay day falling within such period but should not require the employer to make an allocation of earnings earned within the period (at either the beginning or the end of the period).

(19) Section 723.24. The Comment should make clear that termination of an employee does not terminate a withholding order. Hence, if the employee is rehired within the effective period of the order, the order will automatically be reinstated. The reference to a restraining order in subdivision (a)

should be deleted. The restraining order itself should indicate its effect, and the removal of the restraining order should generally have the same effect as a rehiring after termination of an employee. Subdivisions (b) and (c) should be revised to permit the employer to rely on any proper order or certified copy of a satisfaction of judgment received by him.

(20) Section 723.25. The words "when there is no other earnings withholding order in effect for that judgment debtor" was deleted from subdivision (a). The staff was directed to consider further the possibility of requiring payment under more than one order at one time when the debtor's earnings so permit. The statute should, however, make clear that, if a subsequent order is not effective, it is void and, hence, will not furnish a basis for discharge for more than one garnishment.

(21) Section 723.26. This section should be revised to permit a judgment creditor to obtain a new order where the employee has obtained new employment (either a new job or an additional job from a different employer). However, the policy (not the specific language) of making a prior order binding on other creditors to the same extent it is binding on the creditor who applied for it was approved. The words "on the same indebtedness" were deleted from subdivision (a) and paragraph (1) of subdivision (b).

(22) Section 723.27. In view of the possibility of collusion and the ability of the supporting person to obtain thereby a greater exemption from withholding, the staff was directed to determine whether the federal provision (Section 302), which excludes from "disposable earnings" amounts required to be withheld by law, embraces amounts withheld pursuant to a support order. Some sentiment was expressed that amounts paid for support

--whether withheld pursuant to an order or paid over by the supporting person pursuant to an order--should be ignored. Hence, under the present scheme, these amounts would be included in determined "disposable earnings." However, no change in the section as drafted was made.

(23) Section 723.28. The staff was directed to rework this section and the Comment thereto to obtain greater clarity. However, the basic policies, i.e., that a state tax order is subject to the exemption limits but takes priority over other orders (except for taxes and support), which other orders are suspended rather than terminated, was tentatively approved. The Comment should also clarify the impact of an order for federal taxes.

(24) Section 723.29. No change.

(25) Section 723.30. Subdivision (c) should be revised to make clear that the order made pursuant to an agreement must be based upon a bona fide debt and the agreement made in consideration of the debtor's needs.

(26) Section 723.31. The Comment to this section should refer the reader to the Code of Civil Procedure provisions relating to the plaintiff's general duty to furnish a satisfaction of judgment and the creditor's duty under this statute to furnish the debtor with periodic receipts for payment.

(27) Sections 723.32 and 723.33. These sections were deleted as unnecessary.

(28) Section 723.50. The staff was directed to consider relating the minimum exemption to the Consumer Price Index rather than the federal hourly wage. Exemption changes could, perhaps, be made periodically by the administrator of this act. It seemed undesirable to make the act self-executing, i.e., changes in the minimum exemption should only be made pursuant to an administrative order or regulation.

As indicated above, the staff was also directed to consider providing a percentage greater than 25% for withholding from wages in the upper brackets.

(29) Time did not permit consideration of any section beyond Section 723.50. The staff was directed to redraft, where necessary, the remaining sections in accordance with the tentative decisions indicated above. It was decided that it would not be feasible or desirable to present a statute dealing with the areas covered here to the 1971 Legislature. However, an attempt should be made to prepare a tentative recommendation relating to these areas for early distribution and possible presentation to the 1972 Legislature.