

May 19, 1971

Time

May 28 - 10:00 a.m. - 5:00 p.m.
May 29 - 9:00 a.m. - 12:00 noon

Place

Santa Barbara Biltmore Hotel
1260 Channel Drive
Santa Barbara, CA. 93103

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Santa Barbara

May 28-29, 1971

1. Minutes of April 29-May 1 Meeting (sent 5/11/71)

2. Administrative Matters

Research Contracts

Memorandum 71-26 (enclosed)

3. Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law)

General Approach

Memorandum 71-37 (enclosed)

Draft Statute

Memorandum 71-32 (enclosed)

Revised Draft Statute (attached to Memorandum)

Tax Warrants and Orders

First Supplement to Memorandum 71-32 (sent 5/11/71)

Bank Accounts

Second Supplement to Memorandum 71-32 (to be sent)

Retirement Funds

Third Supplement to Memorandum 71-32 (to be sent)

4. Study 39.10 - Attachment, Garnishment, Execution Generally (Conference of State Bar Delegates Resolutions)

Memorandum 71-38 (enclosed)

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5. Study 30 - Child Custody

Memorandum 71-24 (enclosed)

6. Study 36.41 - Condemnation (Protective Condemnation)

Memorandum 71-13 (sent 4/19/71)

7. Study 36.43 - Condemnation (Open Space Acquisition)

Memorandum 71-27 (sent 4/21/71)

First Supplement to Memorandum 71-27 (sent 4/21/71)

8. Study 36.35 - Condemnation (Possession Prior to Final Judgment)

Memorandum 71-25 (sent 4/27/71)

Comprehensive Statute (you were sent this for prior meetings)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MAY 28 AND 29, 1971

Santa Barbara

A meeting of the California Law Revision Commission was held in Santa Barbara on May 28 and 29, 1971.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
Noble K. Gregory
John N. McLaurin
Marc W. Sandstrom

Absent: Alfred H. Song, Member of Senate
Carlos J. Moorhead, Member of Assembly
G. Bruce Gourley
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, E. Craig Smay, and Nathaniel Sterling, members of the Commission's staff, and Professors Riesenfeld and Warren, the Commission's consultants on attachment, garnishment, and execution, also were present.

The following observers were present for the portions of the meeting indicated:

Friday, May 28

C. William Altman, Assistant City Attorney, Santa Barbara
John Bessey, Attorney for California Association of Collectors
Paul F. Dauer, Assistant City Attorney, Santa Barbara
Ray Edwards, Representing California Association of Collectors,
Santa Barbara
Lloyd Hinkelman, Office of the Attorney General
George P. Kading, County Counsel, Santa Barbara
John MacIntyre, Marshal, Marshal's Association of California--President
James T. Markle, Department of Water Resources
Emil A. Markovitz, Creditors Service of Los Angeles
Herbert Nobriga, Assembly Judiciary Committee
David L. Price, Assistant Legislative Representative, State Bar
Gerald J. Thompson, Santa Clara County Counsel
Melbourne B. Weddle, Deputy County Counsel, Santa Barbara

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Saturday, May 29

Lloyd Hinkelman, Office of Attorney General
John MacIntyre, Marshal, Marshal's Association of California--President
James T. Markle, Department of Water Resources
Charles Spencer, Department of Public Works, Los Angeles
Gerald J. Thompson, Santa Clara County Counsel

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ADMINISTRATIVE MATTERS

Correction and Approval of Minutes of April 29, 30, and May 1, 1971, Meeting

Commissioner Miller asked that the Minutes of the April 29, 30, and May 1, 1971, meeting be corrected to show that he voted "no" on two matters --the matters listed on pages 8 and 10. As thus corrected, the Minutes of the April 29, 30, and May 1, 1971, meeting were approved.

Revision in Meeting Schedule.

The schedule for future meetings was revised as follows:

June

June 11 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
June 12	9:00 a.m. - 4:00 p.m.	Los Angeles

July

July 15 (evening)	7:00 p.m. - 10:00 p.m.	San Francisco
July 16	9:00 a.m. - 5:00 p.m.	
July 17	9:00 a.m. - 1:00 p.m.	

Meeting With State Bar Committee on Administration of Justice

The Commission determined that it would be most convenient for representatives of the Commission to meet with the State Bar C.A.J. at 10:00 a.m. on June 19. Commissioners Stanton, Miller, and McLaurin and the Executive Secretary indicated that they would be able to attend the meeting.

Research Contracts

The Commission considered Memorandum 71-26, relating to research contracts. The Executive Secretary reported that the available funds, even after budget transfers, will permit making research contracts only for the

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topics that are of the highest priority. After discussion, the Commission approved the following contracts, the contracts to be made in order of the priority listed to the extent funds can be made available.

Attachment, Garnishment, Exemptions From Execution. A motion was made and adopted that contracts be made with Professor Riesenfeld of Boalt Hall Law School and with Professor Warren to prepare a series of background studies on attachment, garnishment, exemptions from execution. The studies should cover an examination of court and sheriff records in Alameda County, Los Angeles County, and San Francisco County, and also problems in need of immediate attention and studies on various problem areas in the existing law. In addition, Professors Riesenfeld and Warren are to serve as expert consultants on the overall revision of the law relating to attachment. The compensation for the two contracts is to be \$5,000, plus \$1,000 for travel expenses. The contracts are to be in the usual form of Commission research contracts. The Executive Secretary is to work out the details of the contracts. It was suggested that the contracts might provide for a schedule for delivery of portions of the study. The Executive Secretary is to discuss the terms of the contracts with the Chairman before the Executive Secretary executes them on behalf of the Commission.

The Executive Secretary was directed to execute the contracts on behalf of the Law Revision Commission.

Condemnation. A motion was made and adopted that the existing contract with Fadem and Kanner for consultation services on the condemnation study be continued. This contract calls for reimbursement for travel expenses

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at the same rate as members of the Law Revision Commission and per diem compensation of \$20 for each day attending Commission meetings. The new contract is to be for \$750. The Executive Secretary was directed to execute the contract on behalf of the Commission.

Inverse Condemnation. A motion was made and adopted that a contract be made with Professor Van Alstyne for a study covering various aspects of inverse condemnation liability. Specially, the following matters should be covered by the study:

- (1) Rules on when interest accrues on inverse condemnation liability.
- (2) Statute of limitations.
- (3) Claims statute.
- (4) Rules for offsetting benefits.
- (5) Nonmonetary remedies as an alternative to payment of damages.
- (6) Any other means of reducing the amount of damages in inverse cases.

The compensation for the study is to be \$3,000, plus \$200 for travel expenses. The study is to be completed by January 1, 1973. The Executive Secretary was directed to execute the contract on behalf of the Commission.

Rights when lease terminated. A motion was made and adopted that a contract be made with Professor Friedenthal of the Stanford Law School to prepare a background study on the property rights upon abandonment or termination of a lease. Professor Friedenthal was selected after a number of research consultants had been contacted. The compensation is to be \$3,500 for the study, plus \$150 for travel expenses. The Executive Secretary was directed to execute the contract on behalf of the Commission.

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If legislation is enacted that makes the study unnecessary, the contract will be terminated.

Apportionment of the award in condemnation actions. A motion was made and adopted that Joseph B. Harvey, former Assistant Executive Secretary of the Law Revision Commission, be retained to prepare a background study on the problems that arise because of divided interests in property to be acquired by eminent domain. The problem is primarily one of the unit rule and apportionment of the award. The problem of when a lease should be terminated by a condemnation should also be considered. The compensation for the study would be \$2,500, plus \$500 for travel expenses. The Executive Secretary was directed to execute the contract on behalf of the Commission.

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STUDY 39.30 - ATTACHMENT, GARNISHMENT, EXECUTION
(EARNINGS PROTECTION LAW)

The Commission considered Memoranda 71-32, 71-37, 71-38, the First Supplement to Memorandum 71-32 (State Taxes), and the Draft Statute attached to Memorandum 71-32.

General approach. The staff was directed to revise the draft statute: (1) to permit a creditor to obtain an earnings withholding order effective without delay on an ex parte application; (2) to afford a debtor a prompt hearing and a refund where the creditor had no right to garnish at all, e.g., where the debt has been discharged in bankruptcy; and (3) to eliminate the provisions dealing with voluntary creditor/debtor agreements.

State taxes. The staff was directed to revise the draft statute in accordance with the following principles:

(1) State taxing authorities should be permitted to prepare their own earnings withholding orders without application to the court in cases where a warrant or withholding order is now issued. Such earnings withholding orders would be subject to the limitations of Section 723.50, but the taxpayer would not be permitted to claim a greater amount as exempt under Section 723.51 (essential for support).

(2) If the taxpayer has had a prior opportunity to challenge the tax liability involved, state taxing authorities should be permitted to obtain an earnings withholding order from the court to withhold all earnings of the taxpayer for such liability other than that amount which the taxpayer proves is essential for the support of himself or his family. The only issue heard upon this application would be what amount is essential for support; the

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determination of the amount of the tax liability could not be reviewed. The Comment should suggest that the authority provided should be used sparingly, especially where the taxpayer has a real need for the money which would be exempt under Section 723.50. This provision should not be construed as a directive to be used in every case.

(3) Where the tax liability has been reduced to a judgment, the state taxing authority should, of course, be permitted to obtain an earnings withholding order, but such order should not be subject to the limitation provided in Section 723.51 (essential for support).

(4) The orders obtained by state taxing authorities should continue to be effective until paid and should have priority over all other withholding orders except orders for support.

Bank accounts. See Minutes relating to Study 39.40.

Retirement funds. See Minutes relating to Study 39.60.

The following decisions were made pursuant to a section-by-section analysis of the draft statute:

Civil Code

Section 4701. Approved without change. The Comment to this section should indicate that the continuing effectiveness of an order issued under this section under existing law is preserved by the revised section.

Code of Civil Procedure

Section 688. The staff was directed to consider the need for technical conforming changes in this section.

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Section 690.6. Subdivision (a) was revised to provide:

(a) As used in this section, "earnings" means earnings other than compensation payable by an employer to an employee for services performed by such employee for such employer.

Section 690.6a. This section should be renumbered and placed before Section 690.6 in the code. The captions to both sections should emphasize the coverage of earnings for personal services.

Subdivision (a) was revised to provide:

(a) As used in this section, "earnings" means compensation paid or payable by an employer to an employee for services performed by such employee for such employer whether denominated as wages, salary, commission, bonus, or otherwise.

Subdivision (d) was revised to provide:

(d) All earnings of the debtor which are due or owing to him are exempt from levy except in the manner and to the extent provided in Chapter 2.5 (commencing with Section 723.10).

The phrase "from garnishment" was deleted from subdivisions (e) and (f).

Sections 690.7 (repealed), 690.7 (added), 690.7a. See Minutes relating to Study 39.40.

Section 690.18. See Minutes relating to Study 39.60.

Section 690.50. Approved without change.

Section 710. Approved without change.

Earnings Protection Law

Section 723.10. The title of this chapter was changed to "Employees' Earnings Protection Law."

Section 723.11. A definition of "person" should be added to make clear that public entities are included as employers and judgment creditors under this chapter.

Section 723.20. Approved without change.

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Section 723.21. Approved without change.

Section 723.22. Subdivision (b) was revised to provide:

(b) Service of an earnings withholding order creates a lien upon the earnings required to be withheld pursuant to such order. Such lien shall continue for a period of one year from the date such earnings become payable.

The Commission requested Professor Riesenfeld to prepare a Comment to this section explaining the purpose and effect of subdivision (b).

Section 723.23. The staff was directed to attempt to redraft this section to provide: (1) an appropriate definition of "pay period"; (2) that the duty of the employer to withhold commences five calendar days after an order is served upon him--if an employee's pay period ends within those five days, nothing would be withheld from his earnings for that period; if an employee's pay period ends after the five-day period, the employee's earnings for that entire pay period would be subject to withholding pursuant to the order; (3) that the employer's duty to withhold continues for four months (or 120 days) following the five-day period and the employer is required to withhold from any complete pay period falling within such four months--the employer is not required to prorate his withholding at either the beginning or end of the four-month period.

Section 723.24. Approved without change.

Section 723.25. The staff was directed to make clear somewhere in this chapter that the employer has no responsibility for determining whether a creditor has improperly served an order within the 10-day moratorium period imposed upon him.

Subdivision (b) was deleted. The Comment to this section should note the employer's duty to make an Employer's Return.

Subdivision (c) was revised to provide in substance:

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(c) For the purposes of this section, an earnings withholding order is received on the day it is received at the branch or office where the employee works or from which he is paid.

Section 723.26. Approved without change.

Section 723.27. Discussed above under "State Taxes."

Section 723.28. Approved without change.

Section 723.29. Deleted.

Section 723.30. Approved without change.

Section 723.31. Approved without change.

Section 723.32. Approved without change.

Section 723.33. Approved without change.

Section 723.34. The staff was directed to make clear than an employer is not required to determine whether a creditor has violated the 10-day moratorium on service of a second earnings withholding order.

Section 723.50. Paragraph (3) of subdivision (a) should be revised to refer to a representative figure to be selected by the State Administrator. Paragraph (1) of subdivision (b) and subdivision (c) were deleted. Adjustments should be made to avoid violation of Title III of the federal act in the lowest income brackets. The phrase "which amounts shall be within two percent of the amounts computed under subdivision (d) or (e)" was deleted from subdivision (f).

Section 723.51. The substance of the last sentence of the first paragraph of the Comment should be substituted for the last sentence of the section itself. The discussion of the former "common necessities" exception to this exemption should be revised and shortened.

Section 723.100. Approved without change.

Section 723.101. Approved without change.

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Section 723.102. Revisions in accordance with the decision to provide an ex parte application must be made.

Section 723.103. Deleted.

Section 723.104. Revisions in accordance with the decision to provide an ex parte application must be made.

Section 723.105. Revisions in accordance with the decision to provide an ex parte application must be made.

Section 723.106. The word "only" was deleted from subdivision (b). The Comment should include a discussion of the situation arising when a second creditor serves the second employer and the employee is already subject to maximum withholding under an order served by a prior creditor.

Section 723.107. Revisions in accordance with the decision to provide an ex parte application must be made.

Section 723.108. Approved without change.

Section 723.109. Approved without change.

Section 723.110. Revisions in accordance with the decision to provide an ex parte application must be made. Paragraph (2) of subdivision (a) should be revised to refer in general terms to a material change in circumstances-- both income and needs.

Section 723.111. The phrase "based on the same judgment" was deleted. Professor Warren was asked to give further thought to possible ways to avoid having one creditor, i.e., one collection agency, monopolize the recovery from a single employee through multiple judgments and multiple related agencies.

Section 723.120. This section was revised to provide in substance:

723.120. The Judicial Council shall prescribe the form of the applications, notices, orders, and other documents as required by this chapter and only such forms may be used to implement this chapter.

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- Section 723.121. The first sentence of the Comment was deleted.
- Section 723.122. The first sentence of the Comment was deleted. This section must be reviewed in consideration of the decision to provide an ex parte application.
- Section 723.123. The first sentence of the Comment was deleted.
- Section 723.124. This Comment should be revised to make clear that an oath is not required in California.
- Section 723.125. A reference to the expiration date should be added to subdivision (d).
- Section 723.126. The words "by rule" were deleted from the second sentence of this section.
- Section 723.127. Approved without change.
- Section 723.128. The phrase "or rules regulating the withholding of earnings" was added to subdivision (a). The staff was directed to consider the necessity for an employee's pamphlet to explain his rights and duties under this chapter.
- Section 723.150. This section was revised to provide:
- 723.150. Except for those duties required of the Judicial Council, the State Administrator shall administer and enforce this chapter.
- Sections 723.151 through 723.160. Approved without change.
- Section 723.161. The second sentence of the Comment was deleted. This Comment should be revised to make clear the effect of this section on other remedies of the judgment creditor and the employee.
- Section 723.162. Approved without change.

Financial Code

- Section 15406. Approved without change.

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Labor Code

Section 300. Approved without change.

Unemployment Insurance Code

Section 1342. Approved without change.

Operative Date

Approved without change.

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STUDY 39.40 - ATTACHMENT, GARNISHMENT, EXECUTION
(BANK ACCOUNTS)

The Commission considered the Second Supplement to Memorandum 71-32. The staff was directed to define more generally the accounts covered here and to draft an exemption for such accounts which would require a debtor to list and accumulate for the purposes of an exemption all accounts under his control. For the purposes of this exemption only, all amounts in all accounts standing in the name of a debtor either alone or with others would be presumed to be owned by the debtor. This would be a rebuttable presumption.

A husband and wife should be treated as one unit or person for exemption purposes. The "hardship" exemption should apply to all amounts held in an account and any person should be able to claim such exemption. The basic exemption should be \$1,500 under levy of attachment and \$500 under levy of execution per debtor. If possible, some attempt should be made to control relieving* upon an account.

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STUDY 39.60 - ATTACHMENT, GARNISHMENT, EXECUTION
(RETIREMENT FUNDS)

The Commission considered the Third Supplement to Memorandum 71-32 and the exhibits attached thereto.

The staff was directed to attempt to secure a consultant to review the problems of providing proper exemptions from attachment and execution for assets both held and distributed for retirement purposes.

It was noted that the latest staff revision of Section 690.18 (Exhibit II) probably failed to exclude from exemption certain deferred compensation plans which the Commission believed should be excluded. As a stopgap measure necessary to secure federal approval of the Earnings Protection Law, the staff was directed to draft a section providing in substance:

Any periodic payments out of a pension or retirement that are not otherwise exempt by law, are subject to the limitations of the Earnings Protection Law.