#39.20 2/16/71

First Supplement to Memorandum 71-8

Subject: Study 39.20 - Attachment, Garnishment, Execution (Discharge From Employment)

We sent the tentative recommendation on discharge from employment out for comment on January 21 to approximately 150 persons and organizations who have indicated their interest in the attachment-garnishment study. We asked for comments by February 1.

Attached are four letters we received as of February 16. The following is an analysis of the comments made.

General reaction

The reaction of all persons who commented is favorable. The tentative recommendation is objectionable to some persons only because it does not bar completely discharge for garnishment. See Exhibit IV.

Clarifying change

Exhibit I is concerned that the recommendation may not be clear as far as the right of the employee to file his own civil suit for the civil penalty of not to exceed 30-days wages. The Commission intended that the acceptance of assignments of the penalty wage claim by the Labor Commissioner be discretionary and also that the employee have the option whether to assign the penalty wage claim to the Labor Commissioner or to bring his own civil action. The staff suggests that the following clarifying sentence be added to subdivision (d) on page 8 of the Tentative Recommendation (attached to Memorandum 71-8):

Nothing in this section requires that the discharged employee assign his wage claim to the Labor Commissioner or precludes the employee from bringing a civil action to enforce his wage claim under this section.

Time limits for assertion of claim

Exhibit I sees no purpose in the short time period provided in subdivision (c) of Section 2929 (page 8 of Tentative Recommendation) for assertion of the wage claim. This subdivision merely continues the time limits now provided in Sections 2922 and 2924.

Discharge upon receipt of the notice of intention to garnishee

Assemblywoman Brathwaite notes in Exhibit III that "it has been called to my attention that some employers are discharging employees based upon receipt of the notice of the intention to garnishee." She hopes that the proposed legislation will not preclude action by an employee who is discharged because of the receipt of one of these notices.

The language of the federal statute--"subjected to garnishment"--has been interpreted by the federal authorities to mean that the employer is bound to withhold earnings and would be liable to the judgment creditor if he disregards the court order. See Comment on bottom on page 10 of Tentative Recommendation. We believe that it would be best to leave the statutory language in conformity with the federal language and to rely upon the federal interpretation to preclude discharge upon the basis of anything less than the employer being actually obligated to withhold earnings. We can consider this matter again when we have drafted our Earnings Protection Law and are considering conforming amendments in existing statutes.

Unrelated matter

Exhibit II approves the tentative recommendation but suggests that remedial action is needed with respect to the three-year limit on attachment of personal property other than wages. The staff suggests that this letter be forwarded to Professor Riesenfeld with the request that he take it into consideration when he prepares his report on technical changes needed in attachment-garnishment-execution law.

Respectfully submitted,

John H. DeMoully
Executive Secretary

First Supplement to Memorandum 71-8 EXHIBIT I

LAW OFFICES
LEGAL AID SOCIETY OF SANTA CRUZ COUNTY
421 LETTUNICH BLDG.
MAIN & THIRD STREETS
WATSONVILLE, CALIFORNIA 95076

TELEPHONE
(408) 724-2253

January 29, 1971

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Attachment, Garnishment, and
Exemptions from Execution - Discharge
from Employment

Gentlemen:

On behalf of this office, I have reviewed the text and comments amending Labor Code sections 96, 2922, 2924 and adding section 2929. I strongly concur with the thrust of the recommendations, because they bring California law into conformity with federal provisions and offer a civil remedy as an alternative to the criminal prosecution contemplated in the federal law.

I would offer the following specific objections, however, to the provisions of section 2929(c). This provision, requiring the filing of a wage claim with the Labor Commissioner, would appear to exclude, or at least discourage, civil suit. It is our feeling that the employee should have the same option he has on a claim for a penalty wages following willful refusal to pay wages due on termination of employment. (See Labor Code section 203). He ought to be able to choose between filing a wage claim or a civil suit.

Secondly, we see no purpose in foreclosing the penalty claim if the employee has not notified the employer within 30 days and filed a wage claim within 60 days. Normally, a demand on the employer would be made within this period and some action instituted. However, such a short period is a penalty to the employee who learns of his right only after the running of the applicable periods. The time allowed for making such a claim ought to be the same as that under section 203: any time before the running of the applicable statute of limitations on an action for wages.

Very truly yours,

H. ERNEST FOX
Attorney at Law

First Supplement to Memorandum 71-8 EXHIBIT II

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IN REPLY PLEASE REFER TO FILE NUMBER 1082.20

February 1, 1971

California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Attention: John H. DeMoully
Executive Secretary

Gentlemen:

I have been reading with interest the material submitted with respect to attachments. I concur with the recommendations with respect to discharge from employment.

I have one additional suggestion on a related subject which, I believe, requires remedial action. I assume that attachment on property other than wages will be retained. I noted that in some of the material I have read that perhaps a preattachment procedure would be required. I totally disagree with that concept. I believe it would be unworkable because of the vast amount of attachments required and would be extremely expensive. Our office customarily represents a number of different commercial enterprises which have collection problems. We often attach commercial debtors. If we did not, in many cases, there would probably be no assets at all to reach. It is also well known that because of Court delay, that the person files an answer to the lawsuit and can find some issue of fact to prevent Summary Judgment, he can delay an action from coming to trial for a long time. Thus, were attachments not permitted in other areas, commercial debtors could delay payment of their bills for more than three years. If commercial attachments are prevented or hindered, other than wages, or, if further attempts to prevent them are made, I for one, will raise great opposition to it. The problem which I believe which deserves remedial action at this time is that of the three year limit of an attachment. As to real property, the attachment, by order of Court, can be extended. There is no such provision as to personal property. There is a case where one, whose three year limit was running out, attempted to reattach the account and was denied that right on appeal. I believe it would be a simple matter to

bring the real property and personal property attachment statutes into line in this regard. In Los Angeles County, I have a number of attachments issued out of the Superior Court, which I fear I will lose because even though diligent, I will not get to trial within the prescribed time of time limit.

I would appreciate it if you would bring this to the attention of the Law Review Commission.

Very truly yours,

GOLD, HERSCHER & TABACK

By Ronald J. Grueskin
Ronald J. Grueskin

RJG/ns

First Supplement to
Memorandum 71-8

EXHIBIT III

REPLY TO:
☐ STATE CAPITOL
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☐ DISTRICT OFFICE
4036 BUCKINGHAM ROAD
LOS ANGELES, CALIF. 90008
PHONE: 295-5424

COMMITTEES
FINANCE AND INSURANCE
HEALTH AND WELFARE
LOCAL GOVERNMENT

Assembly
California Legislature

YVONNE W. BRATHWAITE
MEMBER OF THE ASSEMBLY, SIXTY-THIRD DISTRICT
LOS ANGELES

January 28, 1971

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Sirs:

Thank you very much for providing me with the recommendations relating to Attachment and Garnishment.

I agree completely with your proposal; however, it has been called to my attention that some employers are discharging employees based upon receipt of the notice of the intention to garnishee.

I hope that the proposal will not preclude an action by an employee that is discharged because of the receipt of one of these notices.

Very truly yours,

YVONNE W. BRATHWAITE

YWB/ls

First Supplement to Memorandum 71-8 EXHIBIT IV

WESTERN CENTER ON LAW AND POVERTY

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LOYOLA UNIVERSITY
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1440 West 9th Street
Los Angeles, Calif. 90015
(213) 776-4870

February 1, 1971

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Recommendation relating to Attachment, Garnishment, and Exemptions from Execution--Discharge from Employment.

Dear Sirs:

I am writing this letter in response to your request for comments on the above-stated recommendation.

I strongly urge the Law Revision Commission to recommend a flat prohibition against the firing of an employee for garnishments. My reasons for this are as follows:

1. The basic policy reasons for the prohibition against firing for one garnishment are equally, if not more, applicable to the firing for several garnishments.

It is clear that it is the "firing" that is considered undesireable by those who would impose a prohibition. Such a "firing" is being authorized by your tentative bill. Please consider the following undesireable results of such a firing.

The employee will suffer a serious drop in income, thus imposing real suffering on him and his family; I think that studies would show that the person subject to a firing for garnishments would have little or no alternate source of income. I ask each member of the Commission to imagine themselves in this position.

The employee fired for garnishments would, I presume, be considered to have been discharged for misconduct under the unemployment laws. If so, he

and his family would most likely be compelled to look to Welfare for sustenance. Even if not treated as misconduct, there would be a great likelihood that he ultimately would be compelled to receive Welfare. Further, having been fired for garnishments, he will find it more difficult to get another job. Thus, a cumulative effect results from the firing, tending to insure dependence on Welfare. This, needless to say, results in shifting with a vengeance the employer's minor cost of handling garnishments to the public. The public must support the man's family. Further, it is a fact that the man's self-esteem is likely to be severely damaged and the well-documented Welfare family dissolution is likely to begin to take place.

Finally, such a firing insures that the employee's financial troubles will be increased. This means greater loss to the creditors than they were suffering. It also means that when he gets back to work, if he does, the likelihood of increased garnishments is substantial, which then authorizes a further firing and further assures dependence on Welfare.

2. The one garnishment rule is essentially irrational.

The one garnishment rule prohibits firing an employee for garnishments on one debt. It thus would protect the employee who had forty levies from one creditor and not protect the employee who had two levies from two creditors; although the irrationality of this would be somewhat diminished under Prof. Warren's continuing levy plan, it certainly would not be abolished.

3. The argument that the employer who wishes to fire an employee for valid reasons would be "hamstrung" if a flat prohibition were enacted is groundless.

On page 64 of the minutes of the November 20, 1970, meeting several participants state this fear. They first indicate that a person who has several debt problems is likely to become a poor employee due to these problems. It seems to me that if this is so, then these things should be sufficient to establish a proper basis for firing.

The way the law is presently written, an employer must justify a firing after one garnishment, at least if challenged on this point. I do not see how he is further hamstrung after a dozen garnishments; aren't we, in fact, saying now that he will hamstring him for one garnishment, but then allow him to be unstrung on two and fire the person for a reason which we consider to be socially undesireable? If the reason is socially undesireable initially, it remains such.

In summary, it seems to me that the state should take the lead in outlawing this very undesireable practice which in essence hurts all of society.

If you would like amplification of these comments, I would be happy to oblige the Commission.

Yours truly,

Peter D. Roos
Attorney at Law