

#39.100

3/19/76

Memorandum 76-35

Subject: Study 39.100 - Enforcement of Sister State Judgments  
(Recovery of Interest and Filing Fee)

Attached to this memorandum is a staff draft of a recommendation proposing the amendment of the enforcement of sister state judgments law to permit the recovery of interest on the sister state judgment and of the filing fee for entry in California. The draft recommendation implements the Commission's decisions at the March meeting and proposes two additional amendments relating to recovery of the fee for service of the notice of entry of judgment (see Section 1710.30) and entry of a different judgment at a hearing on a motion to vacate (see Section 1710.40). At the April meeting we hope that this recommendation can be approved for printing and submission to the 1977 session of the Legislature. After that meeting we plan to send copies to the State Bar Committee on Debtor-Creditor Relations, to the Judicial Council, and to the State Bar-Judicial Council Committee on Forms. If any of these groups have any problems with the recommendations we will report them to the Commission and postpone printing the recommendation until they can be remedied.

Respectfully submitted,

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Staff Draft

RECOMMENDATION

relating to

INTEREST ON SISTER STATE MONEY JUDGMENTS

In 1974, upon recommendation of the Law Revision Commission, the Legislature enacted an expeditious registration procedure for enforcing sister state money judgments in California.<sup>1</sup> Pursuant to this procedure, a California judgment is entered on the basis of the sister state judgment in the amount stated in the judgment creditor's application.<sup>2</sup> The judgment debtor is afforded 30 days after being served with notice of entry of judgment within which to move to vacate the California judgment.<sup>3</sup> Experience under the 1974 statute has revealed three problems which are discussed in this recommendation.

There is no procedure under the 1974 statute including in the California judgment the amount of interest due on the sister state judgment from the date of its original entry in the sister state until its entry in California.<sup>4</sup> The manner of recovering this interest under the law as it now stands is not clear, but a court hearing surely would be required to determine the applicable rate of interest except where the rate is stated in the sister state judgment. The necessity of a

1. Code Civ. Proc. §§ 1710.10-1710.65. See Recommendation Relating to Enforcement of Sister State Money Judgments, 11 Cal. L. Revision Comm'n Reports 451 (1973).
2. Code Civ. Proc. § 1710.25.
3. Code Civ. Proc. § 1710.40.
4. The general rule is that the rate of interest on the sister state judgment is governed by the law of the sister state. Parnham v. Parnham, 32 Cal. App.2d 93, 89 P.2d 189 (1939); A. Ehrenzweig, Conflict of Laws § 195 (1962); Restatement (Second) of Conflict of Laws § 101 (1971). Of course, after entry in California, the legal rate of interest on judgments in this state (seven percent) is applicable. See Cal. Const., Art. XX, § 22; Code Civ. Proc. § 1710.35 (sister state money judgment entered pursuant to registration provisions has same effect as money judgment of superior court).

court hearing to recover interest is counter to the purpose of the registration procedure which is to facilitate enforcement of sister state money judgments without requiring a court hearing. Accordingly, the Commission recommends that the 1974 statute be amended to provide that the judgment as entered in California shall include the amount of interest accrued thereon at the legal rate of interest applicable in the sister state. The judgment creditor desiring to recover interest should be required to state in his application for entry in California the rate of interest applicable under the law of the sister state to the judgment and the amount of accrued interest at such rate. The amount and the rate should be stated in the notice to the judgment debtor who would then have an opportunity to object by way of a motion to vacate.

The 1974 statute does not specifically provide for recovery of the filing fee for the application for entry of the sister state judgment. Accordingly, the Commission recommends that the judgment as entered in California include the amount of the filing fee.<sup>5</sup>

The 1974 statute does not specifically provide for the recovery of the fee for serving the notice of entry of judgment on the judgment debtor. The Commission recommends that the fee be made recoverable in the same manner as statutory fees for service of a writ of execution under Section 1033.7 of the Code of Civil Procedure.<sup>6</sup>

5. Costs of enforcing the judgment once it is entered, such as fees for issuance and levy of a writ of execution, are recoverable just as if the judgment was initially rendered in California. See Code Civ. Proc. §§ 1033.7 (memorandum of costs), 1710.35 (sister state money judgment entered pursuant to registration provisions has same effect as money judgment of superior court).
6. Certain specified statutory fees incurred after judgment are recoverable under the first paragraph of Section 1033.7 by filing and serving on or mailing to the adverse party a verified memorandum of such costs within six months after they have been incurred. If the adverse party is dissatisfied with the costs as stated in the memorandum, within 10 days after service he may file a motion to tax costs. See Govt. Code § 26721 (basic fee for service of notice).

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The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 1710.15, 1710.25, 1710.30, and 1710.40 of the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

Code of Civil Procedure § 1710.15 (amended). Application for entry of judgment

SECTION 1. Section 1710.15 of the Code of Civil Procedure is amended to read:

1710.15. (a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application with the superior court for the county designated by Section 1710.20.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state.

(3) A statement of the amount remaining unpaid under the sister state judgment , a statement of the amount of interest accrued on the sister state judgment computed at the rate of interest applicable to the judgment under the law of the sister state, a statement of the rate of interest applicable to the judgment under the law of the sister state, and a citation to the law of the sister state establishing such rate of interest .

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on the sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15700 of the Corporations Code designating an agent for service of process. Except for facts which are matters of public record in this state, the statements required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.15 is amended to provide the manner of claiming interest on the sister state judgment. Paragraph (3) of subdivision (b) makes clear that the rate of interest applicable to the sister state judgment upon its entry in California under this chapter is the applicable rate under the law of the sister state. This continues prior law. See Parnham v. Parnham, 32 Cal. App.2d 93, 89 P.2d 189 (1939).

Code of Civil Procedure § 1710.25 (amended). Entry of judgment

SEC. 2. Section 1710.25 of the Code of Civil Procedure is amended to read:

1710.25. Upon the filing of the application, the clerk shall enter a judgment based upon the application for the amount shown therein ~~to be total of the following amounts as shown therein:~~

- (a) The amount remaining unpaid under the sister state judgment.
- (b) The amount of interest accrued on the sister state judgment.
- (c) The amount of the fee for filing the application for entry of the sister state judgment.

Comment. Section 1710.25 is amended to provide that the clerk enters the judgment based on the aggregate of the principal amount of the sister state judgment and the interest which has run thereon under the laws of the sister state as stated in the judgment creditor's application. See Section 1710.15. In addition, the amendment makes clear that the judgment entered in this state includes the fee for filing the application under this chapter.

After entry of the California judgment, interest runs thereon at the legal rate applicable to money judgments initially rendered in California. See Cal. Const., Art. XX, § 22; Section 1710.35 (upon entry judgment has same effect as judgment of superior court). Costs of enforcing the judgment incurred after entry are recoverable in the normal manner. See Section 1033.7 (memorandum of costs).

Code of Civil Procedure § 1710.30 (amended). Notice of entry of judgment; cost of service

SEC. 3. Section 1710.30 of the Code of Civil Procedure is amended to read:

1710.30. (a) Notice of entry of judgment shall be served promptly by the judgment creditor upon the judgment debtor in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Notice shall be in a form prescribed by

the Judicial Council and shall inform the judgment debtor that he has 30 days within which to make a motion to vacate the judgment.

(b) The fee for service of the notice of entry of judgment is an item of costs recoverable in the same manner as costs recoverable without a court order pursuant to Section 1033.7, but such fee may not exceed the amount allowed to a public officer or employee in this state for such service.

Comment. Subdivision (b) is added to Section 1710.30 to provide the manner of recovering the cost of serving the notice of entry of judgment on the judgment debtor. This cost is recovered in the same manner as, for example, the statutory fees for the issuance of a writ of execution under Section 1033.7. See Govt. Code § 26721 (basic fee for service of a notice).

Code of Civil Procedure § 1710.40 (amended). Vacation of judgment

SEC. 4. Section 1710.40 of the Code of Civil Procedure is amended to read:

1710.40. (a) A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment , including the ground that the amount of interest accrued on the sister state judgment and included in the judgment entered pursuant to this chapter is incorrect . Where a judgment is vacated and the court determines that the judgment creditor is entitled to another and different judgment, the court shall order the entry thereof.

(b) Not later than 30 days after service of notice of entry of judgment pursuant to Section 1710.30, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, the judgment debtor, on written notice to the judgment creditor, may make a motion to vacate the judgment under this section.

Comment. Subdivision (a) of Section 1710.40 is amended to make clear that the judgment debtor may seek to have the judgment entered in California vacated on the ground that the amount of interest allowed on the sister state judgment is incorrect. The second sentence is added to subdivision (a) to make clear that the court may enter a different judgment in appropriate cases, e.g., where the principal amount of the judgment or the interest thereon has been incorrectly stated, but it is clear that the judgment creditor is entitled to a judgment in California in a different amount. Compare Section 663.