

First Supplement to Memorandum 79-29

Subject: Study D-300 - Schedule for Project

The staff had originally planned to submit the recommendation relating to enforcement of judgments to the 1980 session of the Legislature. This is not possible for several reasons: (1) We did not receive the study on creditors' rights with respect to property of married persons and will not receive the study on this essential aspect of the enforcement of judgments recommendation until January 1980. (See Memorandum 79-41.) (2) The staff has concluded that the provisions of the enforcement of judgments statute relating to manner of levy do not adequately track with the Commercial Code provisions and substantial revisions are needed. (3) The comments we have received on the tentative recommendation and the staff review of the tentative recommendation indicate that a complete rewriting of the entire statute and preliminary portion of the recommendation will be required, and we cannot complete that task in time to submit the recommendation to the 1980 session. (4) In view of the substantial revisions we expect will be necessary in the tentative draft, we believe that it will be March 1980 before we can approve a recommendation for printing, and this is too late for the 1980 session. (5) We believe interested persons and organizations should have an adequate period to study our printed recommendation before legislation is submitted in 1981 so that we can make necessary revisions in the legislation before it is enacted.

It is with considerable concern that the staff has concluded that we cannot realistically expect to submit the enforcement of judgments recommendation in 1980. We believe that the Legislature has a right to expect a substantial output of high quality legislation from the Commission, and our recommendations to the 1980 session will not be impressive. At the same time, however, we do not believe that we can seriously compromise the quality of our product merely to increase output.

We plan to devote substantially all of the time of our legal staff to completing work on the minor recommendations we plan to submit in 1980 and to the completion of work on our enforcement of judgments recommendation. We have tentatively set March 1980 as the publication

date for our recommendation on the enforcement of judgments recommendation. We would expect to have the recommendation available in printed pamphlet form by August 1980. The staff expects to work above and beyond the normal working hours to the extent necessary to maintain this schedule. We recognize that the subject matter of enforcement of judgments is complex and highly technical, but we hope that the Commission will be willing to devote substantially all of the time at the meetings during the next few months to this subject so that we can meet the new schedule and complete our work on the recommendation. We have reached the point in time on this project where an intensive final push is needed to complete it.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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March 5, 1979

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Proposed Judgment Lien with Resepect
to Inventory, Equipment, Accounts
Receivable and Other Property as to
which the Security Interest may be
Protected by Filing Under the UCC.

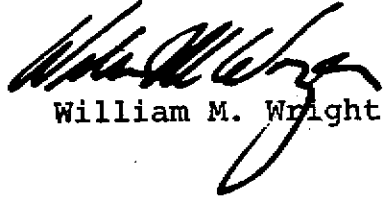
Gentlemen:

As you know, the current attachment law provides for the creation of a lien under a writ of attachment on certain types of property in which a voluntary security interest may perfected by filing under the UCC by filing under the writ of attachment with the Secretary of State in a manner similar to the filing of a UCC-1 Financing Statement. As you are also aware, California has had a long-standing procedure whereby, upon the recordation of an abstract of judgment in a county, a judgment lien attaches to all real property of the judgment debtor within the county not subject to an existing valid declared homestead. Analogizing from the foregoing provisions, it would be possible for the law to provide that an abstract of judgment filed with the Secretary of State shall from its date of filing constitute a lien on all personal property of the judgment debtor in which a lien could be perfected by filing under the UCC; this lien could be given the same priority and duration as a voluntary, non-purchase money, security interest created and perfected as of the date of filing of the abstract with the Secretary of State. I believe this would be a significant improvement over existing law which effect provides that a judgment creditor may acquire a lien on personal property solely through the levy process which requires that the property must be taken into the physical custody of the sheriff by one means or another. Unless a keeper can be used effectively, present law requires the levying creditor to seize assets of the judgment debtor

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thereby closing down his business or other operations in order for the levying creditor to protect his position vis a vis other creditors or voluntary transferees of the judgment debtor's property. Moreover, present law encourages judgment debtors to play hide and seek with the creditor with respect to the judgment debtors' property. The "personal property judgment lien" proposed would remedy both these problems as to the type of personal property covered, at least in the commercial context. Of course, the proposed legislation would not eliminate the need for actual levy in the event the judgment creditor desires to actually liquidate the judgment debtor's property by judicial sale. However, existence of such a lien would encourage the judgment debtor to make voluntary arrangements to pay the debt, thereby eliminating the cost and expense of involvement by levying officers. It is noted that the proposed legislation would have its primary, if not exclusive, effect on the collection of commercial debts rather than debts incurred for personal, family or household purposes.

Sincerely,



William M. Wright

WMW/sw