#D-300 8/27/80

Memorandum 80-74

Subject: Study D-300 - Enforcement of Judgments (Comments on Draft Statute)

Attached to this memorandum are three letters we have received commenting on aspects of the enforcement of judgments draft. Exhibit 1 is a letter from Brian W. Newcomb of San Mateo County Legal Aid Society; Exhibit 2 is a letter from Seymour J. Abrahams, a bankruptcy judge; Exhibit 3 is a letter from Edward N. Jackson, an attorney specializing in creditor-debtor law. The Commission should consider the comments before taking action on the draft. The comments are analyzed below.

Renewal of Judgment (Memorandum 80-55)

Mr. Newcomb argues for the retention of a diligence standard for enforcement of a judgment after 10 years, such as required pursuant to Section 685 of existing law. The proposed law permits renewal by filing a notice of renewal during the 10-year period of enforceability or a subsequent renewal period. See Section 683.110. The proposed law represents a compromise that has benefits for both debtors and creditors. If the 10 years has expired, no renewal is permissable and the judgment is unenforceable, whereas under Section 685 motions to enforce judgments have successfully been made more than 20 years after entry. Hence, many debts will be discharged where no renewal takes place within 10 years. It should also be remembered that an action may be brought on a judgment under existing law and no showing of diligence is required.

Rate of Interest on Judgment (Memorandum 80-55)

Mr. Newcomb objects to increasing the interest rate on judgments from 7% to 10%. Section 685.010 in the proposed law is a placeholder because it appears that another bill that would raise the rate to 10% (unless an appeal brief is filed) is near passage. Nevertheless, the Commission has previously recommended increasing the rate to 10%. In answer to the objection, the staff notes that the judgment debtor may be relieved from whatever burden the 10% rate represents by paying the judgment. We do not find the argument convincing that holds that interest should be low to encourage judgment creditors to collect judgments.

If the judgment can be collected, it obviously can be paid voluntarily. We think it makes much more sense to set interest rates at a reasonable level so that judgment debtors will find it in their interest to pay.

Exemptions (Memorandum 80-64)

Mr. Newcomb approves a number of changes proposed for the exemption laws that would improve the status of the judgment debtor. There are several exemption changes that he disagrees with, however.

§ 703.130. Continuing review of exemptions. The draft provides for a continuing review of exemptions at five-year intervals by the Commission. This provides an institutional mechanism for modernization of the exemptions. Mr. Newcomb proposes instead that exemptions be tied to the Consumer Price Index, thereby providing automatic increases. The Commission originally considered such a scheme but decided that it would not be politically feasible. The Legislature desires to retain control over exemptions and exempt amounts.

§ 704.720. Homestead exemption. The Commission's homestead exemption scheme is to increase the amount of the exemption to $100,000 so long as the debtor resides in the house, but to decrease the exemption of proceeds to $7,500 when the debtor moves or sells the house or when the house is forcibly sold on execution if the debtor's equity exceeds $100,000. The purpose of this scheme is to protect the debtor from forced expulsion from the homestead until the equity becomes so large it is only fair to subject it to the claims of creditors. Mr. Newcomb supports the increase of the exemption to $100,000 but is strongly opposed to the decrease of the proceeds exemption to $7,500. He believes the proceeds exemption should be larger (existing law provides an exemption up to $45,000) to enable a debtor to purchase replacement housing or to rent housing for longer than a brief period.

Judge Abrahams points out a significant defect in the notion of increasing the homestead exemption to $100,000 and deferring creditors. A judgment debtor whose equity is less than $100,000 could declare bankruptcy, discharge the judgments against him or her, and keep a substantial equity in the house. Judge Abrahams also believes that the high amount of the exemption and low amount of proceeds exemption will

deter a judgment debtor from voluntarily selling the homestead and moving to more modest accommodations in order to help pay the judgment.

The staff recognizes the force of these arguments. However, there is considerable tension in the homestead exemption, which is probably the most significant exemption in California law. As a practical matter, if the Commission proposes an increase in the exemption for debtors, the Commission must offset the increase with a benefit for creditors; the exemption of homestead proceeds is the logical place to achieve this offset. The alternatives appear to be either not to change existing law (which provides $30,000 for a single person and $45,000 for a married person or head of household) or to change existing law in some way that will balance benefits to debtors against benefits to creditors. Perhaps a smaller differential would work better--$75,000 homestead exemption and $15,000 proceeds exemption, or $60,000 homestead exemption and $25,000 proceeds exemption. In this connection, it should be noted that the Commission's proposed $7,500 proceeds exemption is drawn from the $7,500 bankruptcy homestead exemption. This is a policy matter the Commission must decide.

§ 704.730. Proceeds of sale. As drafted, the proceeds exemption is free of all liens, voluntary and involuntary. Mr. Newcomb believes that the exemption for homestead proceeds should be subject to security interests of subordinate lienholders. He feels that this provision will dry up one source of credit available to debtors--equity financing. Judge Abrahams makes the same point. This matter is discussed in Memorandum 80-64.

§ 704.780. Hearing. Existing law provides a dual homestead procedure--the debtor may record a homestead declaration and absent a recorded declaration may claim the exemption in enforcement proceedings. The Commission's draft provides a single procedure based on the existing claimed exemption. Mr. Newcomb believes the declared homestead procedure should be retained so that a person can simply record a declaration and rest assured of the exemption without having to respond to legal process.

Mr. Newcomb's belief is unsound--the Commission abandoned the declared homestead procedure because of the problems it causes for

debtors. First, the absolute protection is illusory--a creditor can reach property on which a homestead has been declared by showing that it was not properly declared or by showing that its value exceeds the homestead exemption; a debtor who believes that once the homestead is declared it achieves absolute immunity will ignore legal process to his or her detriment. Second, the declared homestead precludes a judgment lien from attaching to the property, thereby forcing a creditor to levy immediately on the property in order to obtain priority; the declared scheme is thus inimical to the relatively benign judgment lien permitted under the Commission's draft.

§ 704.770. Notice of hearing. Section 704.770 requires at least 10 days' notice of hearing on a homestead exemption to the judgment debtor. This is modeled after the general exemption hearing procedures. Mr. Newcomb suggests that for a right as important as the homestead exemption, the debtor should be given more time to prepare; he suggests 45 days' notice. The staff thinks this is a good idea. It will not delay the sale if the homestead turns out to be nonexempt since other provisions of the draft require a 120-day delay of sale of all real property.

Welf. & Inst. Code § 17409. Where county welfare payments have been made to an aid recipient who has since acquired property, reimbursement may be sought by the county from the property. Welfare and Institutions Code Section 17409 provides that certain minimal amounts of property are exempt, such as $50 cash, $500 of personal effects and household furniture, one interment space, $500 in a burial expense trust fund, $500 actual cash surrender value in an insurance policy.

An argument can be made for replacing this exemption scheme with the more liberal exemptions available to debtors generally, on both policy and constitutional grounds. In fact, the Commission proposed to do so in its tentative recommendation. Mr. Newcomb supports repeal of Welfare and Institutions Code Section 17409. The staff has given this matter further consideration, however, and now believes it would be inadvisable to tamper with the welfare provisions, which are an extremely touchy subject in the Legislature.

Examination Proceedings (Memorandum 80-62)

Mr. Newcomb suggests that the judgment creditor's affidavit filed as a basis for an order of examination of the judgment debtor be served on the judgment debtor so that the debtor will be able to evaluate whether there are grounds for abuse of process action. The staff sees no objection to serving a copy of the affidavit at the time the order to appear and be examined is served. If this is done, a third person to be examined should also be served with a copy of the affidavit pursuant to Section 708.120.

Mr. Newcomb objects to Section 708.130 which provides that the spousal privilege not to testify does not apply in examination proceedings. He suggests that elimination of the privilege will be used as a club to threaten the debtor to pay the debt out of possibly exempt property. The proposed law would eliminate the spousal privilege to prevent its use as a collusive device for the concealment of assets liable for the satisfaction of the judgment. Even if the spouse is not a judgment debtor, the spouse may have the power to dispose of property that is liable for satisfaction of the judgment and the spouse's interest in community property is probably subject to enforcement.

Mr. Newcomb objects to the provision in Section 708.180 permitting the adjudication of a third party's adverse claim in an examination proceeding. The Commission has considered this matter fully in the process of developing the proposed provision. The staff thinks that Section 708.180 provides adequate protection to the third person. The court is empowered to continue the hearing or to order that the matter be determined in a creditor's suit. The staff does not believe that there is any magical distinction between special proceedings to examine a third person and creditor's suits. The third person should not be able to stall the proceedings by taking advantage of a technical rule with no substantive effect.

Assignment of Judgments (Memorandum 80-57)

Mr. Jackson does not see the necessity for the proposed provisions on assignment of judgments and, if they are retained, suggests several revisions in the proposed statute.

Mr. Jackson first says that a judgment, like any chose in action, may be assigned and cites Troy v. Troy, a 1932 Court of Appeal decision in support of that position. The staff agrees that a judgment may be assigned, but it appears that the law as to when the assignee can enforce the judgment is unclear. In the Troy case, the court held that a motion for execution can be made in the name of the assignor and that adding the names of the assignees to the motion did not void the granting of the motion. The case does not indicate when the assignee alone can enforce the judgment. We are advised that the existing practice in San Francisco is to preclude the assignee from enforcing the judgment unless the assignee has been made an assignee of record, but the procedure for becoming an assignee of record is not provided by statute. Two law students and a member of the staff have been unable to find anything in the statutes dealing with the rights of the assignee and the procedure for becoming an assignee of record. Accordingly, we believe that it would be useful to provide a procedure in the comprehensive enforcement of judgments statute. The procedure would not affect the rights obtained by an assignee under an assignment except to the extent that the judgment debtor pays the judgment to the judgment creditor without notice of the assignment.

Mr. Jackson also makes a number of suggestions for revision of the statute:

(1) He suggests that we merely refer to "assignment of judgment" rather than to assignment "of a right represented by a judgment." A judgment may determine rights to property and also require the payment of money to the plaintiff. Any judgment requiring the payment of costs is a money judgment in that respect, even though the action in which the judgment is obtained seeks other relief (such as possession of property). Accordingly, the term as used is accurate. We should use a consistent term in the comprehensive statute, and we may make the substitution he suggests after reviewing the entire statute and the terminology used in other sections.

(2) He suggests that the statute recognize that there can be an equitable assignment of a judgment and an assignment by way of subrogation and that some thought be given to substitution of the assignee for

the judgment creditor by ex parte application. This is something we need to add to the statute. We suggest adding a provision that the court, on ex parte application or noticed motion if the court or court rules so require, may order the substitution for the judgment creditor of an assignee or other person who is entitled to the rights obtained under the judgment. This would permit a voluntary assignment to be recorded (as proposed in the staff draft) without the need for court approval and would provide a procedure for making an assignee by operation of law an assignee of record where necessary in order to enforce the judgment.

(3) He objects to the requirement that an assignment of judgment be "acknowledged" in order to make the assignee an assignee of record without the need for a court order making the assignee an assignee of record. We believe that the acknowledgment is desirable. The notary will help ensure that the person making the assignment is the judgment creditor (or prior assignee of record). Absent such a determination, how can one be sure that the assignment is actually made by that person. The requirement of an "acknowledgment" is consistent with the requirement that a satisfaction of judgment be "acknowledged." It does not effect the validity of an assignment. Absent the acknowledgment, the assignee will need to make a court motion for an order substituting the assignee for the assignor as of record.

Respectfully submitted,

Legal Staff

EXHIBIT 1

LEGAL AID SOCIETY OF SAN MATEO COUNTY

PETER H. REID
EXECUTIVE DIRECTOR

2221 BROADWAY
REDWOOD CITY, CALIFORNIA 94063
TELEPHONE (415) 365-8411

August 8, 1980

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: Proposed Amendments to Execution and Exemption Statutes

Dear Sir/Madam:

On behalf of this office's indigent clients who are often judgment debtors due to their limited or non-existent financial resources, I have set out hereinafter some comments regarding the proposed amendments to the California execution and exemption statutes which are to be considered at your meeting of September 5-6, 1980. Most of the proposed changes are commendable; however, I am of the opinion certain amendments do not preserve necessary protections for the improvident debtor.

Enforcement of Judgments

I am not opposed to the retention of a mechanism for renewal of a judgment after ten (10) years and support the proposed filing of an application with the court where the judgment was entered to renew the judgment. However, I am distressed to see the proposed statutory scheme deletes a requirement that the judgment creditor demonstrate diligence in enforcing the judgment during the previous ten (10) years. Proposed section C.C.P. §683.110 should be amended to require the judgment creditor to demonstrate due diligence. This showing could be made by way of affidavits. The law should not reward a creditor who sat on his or her rights to enforce a judgment; for example, while the creditor fails to enforce the judgment interest accrues. Assuming the present interest rate on a judgment (7%) is increased to ten percent (10%) as proposed by the Commission (§685.010), the debtor could be saddled with a tremendous debt in interest only. Accordingly, the creditor should bear the burden to demonstrate reasonable diligence and the debtor should be able to move to vacate the renewal of a judgment on the ground that the creditor has not exercised reasonable diligence in attempting to enforce the judgment. Proposed section 683.170 should be amended to recite that lack of due diligence in enforcing a judgment is a ground to vacate a renewal.

The undersigned also opposes proposed §685.010 which increases the rate of interest on a judgment to 10%. At present, a person does not receive 10% interest on a passbook account. Investors do not even obtain 10% interest on most money market accounts

as of this date. Thus it seems inappropriate to enact a statute giving a judgment creditor 10% interest. Moreover, the retention of a 7% rate may assist in motivating judgment creditors to collect their judgments in a timely fashion rather than waiting for interest to accrue.

Miscellaneous Creditors' Remedies

The Commission's proposal (§708.180) to relax the rule that a court may not adjudicate the ownership of property or a disputed debt in an examination proceeding is too broad in the opinion of the undersigned. If the third person being examined is unsophisticated and has not foreseen the potential importance of the examination in the event he or she claims owership in the property or denies the debt, the third person's property may be taken without the benefit of adequate representation. I thus urge the retention of the present statutory scheme, C.C.P. § 719, whereby the third person is entitled to defend his or her position in an independent action.

The undersigned also urges the retention of C.C.P. §717 which grants a privilege to the spouse of the judgment debtor to refuse to be examined as a debtor of the judgment debtor. The potential for marital strife in the event this privilege is deleted outweighs the speculative assertion that the privilege may be used as a collusive device to secrete assets from the creditor. The creditor need only examine the debtor if the creditor believes assets are being secreted; the creditor should not be given the club of threatening the debtor's spouse with an examination to force the debtor to pay a debt out of possibly exempt property.

The undersigned also proposes an addition to proposed section C.C.P. §708.110. Subsection c of said section should provide that the judgment creditor's affidavit submitted to show good cause shall be served upon the debtor. The debtor should be advised of the grounds in order to evaluate whether he or she may have grounds for abuse of process. See, Czap v. Credit Bureau of Santa Clara (1970) 7 Cal. App. 3d 1, 86 Cal. Rptr. 417.

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

The proposals to increase the motor vehicle exemption to $1,000 (§704.010); to extend the tools of trade exemption to include materials and exempting $2,500.00 of the proceeds of the sale of tools or indemnification for loss or damage (§704.060); and to expand the health aid exemption (§704.050)

are commendable. I urge the adoption of these proposed sections as well as the proposals to exempt certain wrongful death awards (§704.150), strike benefits (§704.120), payments from charitable organizations (§704.170), and materials for repair or improvement of a dwelling (§704.030).

However, some of the commission's proposals regarding the existing homestead exemptions do not adequately protect the debtor's home and family. A major concern of the drafters of the California Constitution was the preservation of the family's home. I support the increase of the homestead exemption level to $100,000.00 (§704.720(c)) so the ordinary debtor cannot be ousted from his/her house due to the effects of inflation. However I strongly oppose the change whereby in the event of a sale, the debtor is only given the small sum of $7,500.00 which is inadequate to acquire replacement housing. (§704.730) The sum of $7,500.00 would be consumed in rental payments by the average family in approximately twelve (12) months.

The proposal whereby the debtor and his/her spouse would receive $7,500.00 even though the holder of a second deed of trust would not be paid in full would surely prevent many homeowners from securing loans which have historically been used to consolidate debts, rehabilitate houses which are in a deteriorated condition, meet medical expenses and voluntarily discharge judgments. It is surely not in the interest of the creditors of this state that such a source of funds be eliminated through a statutory scheme which impairs the security interest of subordinate lienholders.

The undersigned also submits that the assertion that the present exemption of $45,000.00 is inadequate to purchase a replacement home is both fallacious and provincial. Such a sum may not purchase a home in Palo Alto, Atherton or Menlo Park; however, said sum will definitely purchase a home in rural areas of the San Joaquin Valley.

The undersigned strongly opposes the Commission's proposal to delete the declared homestead procedure. The prophylactic filing of a homestead declaration is preferable to waiting until the debt is incurred or execution commenced. Based on my meager seven (7) years of experience as a practicing lawyer, I can assure you many members of the public do not claim their exemptions in a timely fashion. It is irresponsible to promulgate a statutory scheme designed to protect a home, usually the debtor's most valuable resource, which omits the prophylactic filing of a homestead declaration. One need only read the statistics on the number of debt collection cases which result in default judgments, approximately

90%, [1/] to know that many people do not respond to legal proceedings in a timely fashion.

I also suggest that proposed section 704.770 be amended to provide that the hearing on the Order to Show Cause why an order for sale should not be made can only be set forty-five days after the judgment creditor has personally served the debtor with notice of the hearing. Given the importance of the hearing, the debtor must be given ample time to retain counsel and prepare for the hearing. For example, the debtor may need to have an appraisal done prior to the hearing.

I do support the proposal to declare the exemption in effect at the time the property claimed to be exempt is levied on is to be applied in determining whether the subject property is exempt. (§§703.060 and 703.050) I concur in the Commission's analysis that such a principle furthers the policy of the exemption laws. I also support the deletion of CCP §690.19 and Welf. & Inst. Code §17409 which limits the set of exemptions which a debtor may assert against a claim by a county for reimbursement for county aid.

Proposed section 703.130 which provides a periodic and continuing review of the exemptions and exempt amounts every five years should be amended to provide for automatic increases tied to inflation. The monetary amounts of the exemptions could be tied to the Consumer Price Index thereby avoiding the unnecessary consumption of the Commission and Legislature's time in enacting increases to reflect current values.

Satisfaction of Judgment

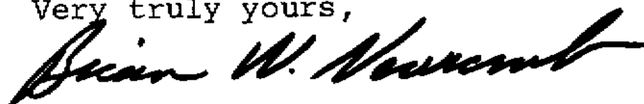
The Commission's proposal to require judgment creditors to file and deliver the acknowledgment of satisfaction immediately upon satisfaction rather than within 30 days is commendable. The undersigned also supports the proposal which adds a new section providing for acknowledgment of partial satisfaction of a judgment. This will assist in reducing the disputes and confusion which periodically arise between the debtor and creditor as to what sum remains unpaid. The filing of a partial satisfaction will also avoid the erroneous addition of interest to the judgment balance.

1/ Barquis v. Merchants Collection Ass'n (1972) 7 Cal. 3d, 94, 109, 101 Cal. Rptr. 745.

CONCLUSION

Thank you for the opportunity to comment upon the Commission's proposals. On behalf of this office's indigent clients, I request that the above comments be considered prior to the adoption of the proposals and submission to the Legislature.

Very truly yours,



BRIAN W. NEWCOMB
Attorney at Law

BWN:jr

EXHIBIT 2

United States Bankruptcy Court
NORTHERN DISTRICT OF CALIFORNIA
209 POST OFFICE BUILDING - ST. JAMES PARK STATION
SAN JOSE, CALIFORNIA 95113

WARREN C. MOORE
SEYMOUR J. ABRAHAMS
BANKRUPTCY JUDGES

PHONE: AREA CODE 408
292-2102

August 14, 1980

California Law Revision Commission
4000 Middlefield Rd., Room D-2
Palo Alto, Ca. 94306

RE: Homestead Exemption - Your Study D300, Memorandum 80-64

Gentlemen:

My apologies for the delay in commenting on the proposed revisions of the homestead exemptions. I hope that at this late date my comments may still be of some value.

My first concern with the revisions relates to their potential impact on bankruptcy cases. Proposed §704.720 provides that the amount of the dwelling exemption is $100,000, subject to proposed §704.730, which states that if a homestead is sold, either voluntarily or involuntarily, the exemption is reduced to $7,500 of the sale proceeds. From this, it seems to me that the debtor who files a bankruptcy petition should therefore be entitled to retain the dwelling if the equity is less than $100,000 when the bankruptcy is filed. Under Bankruptcy Code §522(c), the exempted home will then be insulated from future levies for all pre-petition debts except spousal and child support and certain taxes. Thus, by filing bankruptcy, a debtor could protect an equity of up to $100,000, regardless of the $7,500 limit on protection in the event of a sale. If this is correct, debtors will frequently file bankruptcy to avoid the forfeiture effect of increasing equity or sales.

It can be argued that a post-bankruptcy sale or increase in equity to more than $100,000 would - at the time of the sale or increase - reduce the exemption to $7,500 so that the trustee could then take the excess portion of the proceeds. But loss of the post-petition appreciation of a debtor's home would seem to interfere with a "fresh start" - especially to the extent the appreciation resulted from improvements made by the debtor after the bankruptcy. In addition, this argument runs counter to the policy of §522(f), voiding judicial liens.

Aside from the legal questions concerned in this approach, significant practical difficulties arise in implementing such a construction of the proposed provisions. Whenever there is post-bankruptcy judgment, there will be a question as to how much of the sale proceeds should be reserved for the bankruptcy estate if the proceeds are insufficient to pay both the post-bankruptcy creditors and the estate in full. Perhaps the bankruptcy estate could be deemed to have a lien as of the date of filing the bankruptcy petition and therefore have priority as of that date. If so, what would be the extent of the lien? Should it be the

total of the claims filed in the case? In no asset cases, claims may not have been filed (See Bankruptcy Rule 203(b)), and - if the sale is more than a few months after the bankruptcy petition - creditors may have destroyed their records so they cannot now file claims. This differs greatly from the usual situation as to abstracts of judgment, where there is a judgment in a court's file that shows the principal amount due at the time of entry of judgment. In most bankruptcy cases, the amount due each creditor will never have been fixed. Determination of the validity and extent of the claims could be time consuming - particularly if the sale were long after the bankruptcy. Obviously, because of the "forteiture" on sales, debtors will seek to delay making sales.

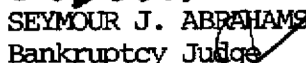
The proposed legislation may be counter-productive. Debtors may be encouraged to keep their homes rather than moving to more modest houses because they (1) do not wish to lose their equity and (2) they cannot afford down payments on new homes from the $7500 exemption. Instead of selling their current homes and realizing money with which to pay some of their debts, after making a down payment on a more modest home, debtors will retain their current homes so as not to lose their equity to creditors.

If the homestead takes priority over deeds of trust, debtors will have great difficulty borrowing against their property to pay debts - particularly if the amount of the exemption may be raised retroactively.

At page 14 of Memorandum 80-64, the author states that a debtor ordinarily could not purchase replacement housing with the $45,000 possible under the latest homestead increase because of inability to obtain credit. Perhaps this is based on matters with which I am not familiar. With $45,000 cash, however, I believe the debtor may not need to obtain credit in the traditional sense. The debtor can buy a home, if there is an existing loan that cannot be accelerated on the transfer, by paying cash to the seller for the seller's equity and then making the payments on the existing loan. Although a recorded abstract of judgment might otherwise prevent the debtor from obtaining marketable title to the new home, if the debtor had been discharged in bankruptcy the debt would have been extinguished and the lien could be removed.

If there must be a reduction in the exemption upon sale of the home, consideration should be given to having a smaller reduction whenever proceeds are to be reinvested in another home. Thus, there could be a provision for exempting, say, $45,000 of the proceeds to be held in a designated account by an escrow company, bank, etc., for reinvestment within a specified period. In this regard, I would suggest at least twelve months because of the delays that are inherent in finding a new home, curing defects in the premises, and arranging financing.

Very truly yours,



SEYMOUR J. ABRAHAMS
Bankruptcy Judge

SJA/oll

Memorandum 80-74

EXHIBIT 3

#D-300

LAW OFFICES

Edward N. Jackson

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August 26, 1980

John H. DeMoully, Esq.,
Executive Secretary,
California Law Revision Commission,
4000 Middlefield Road, Room D-2,
Palo Alto, CA 94306

Re: Study D-300 - Creditors' Remedies
(Assignment of Judgment)

Dear Mr. DeMoully:

I would like to make a few comments.

Your staff is doing a fine job, but in this instance, I think it has over-trained.

I see no necessity for the proposed legislation!

California courts have recognized assignment of judgments (see, Troy v. Troy (1932) 127 CA 489, 493; 16 P2d 290). Likewise, a judgment is nothing more than a chose in action (see cases referred to in McKinneys Calif Digest Vol 14A, §482) and may be assigned as any other chose in action. Why not let well enough alone?

However, if the staff is determined to have a statute covering the assignment of judgments, I think some consideration should be given to:

1. Eliminating any reference to assignment "of a right represented by a judgment" and simply refer to "assignment of judgment"

2. Recognize that there can be equitable assignment of a judgment, and assignment by way of subrogation.

3. Delete any requirement that the assignment be

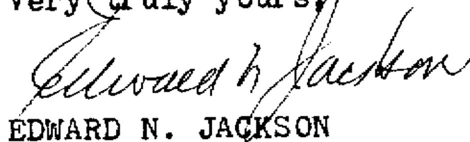
LAW OFFICES

Edward N. Jackson

"acknowledged." It adds nothing to the effect of the assignment, puts the assignor to the trouble of going to a Notary, and incurs that expense.

4. Some thought should be given to substitution of the assignee for the judgment creditor, by ex parte application.

Very truly yours,



EDWARD N. JACKSON

ENJ/h