#D-300 11/10/81

Fourth Supplement to Memorandum 81-71

Subject: Study D-300 - Enforcement of Judgments (AB 707 and 798)

Attached to this supplement as Exhibit 1 (yellow) is a copy of amendments to Assembly Bill 707 (the proposed Enforcement of Judgments Law) proposed by the staff in response to two letters we have recently received. A copy of AB 707 as amended on August 25 is attached to Memorandum 81-71. Additional amendments of a technical nature are included in Exhibit 1 but are not discussed.

§§ 681.030, 693.010-693.060. Forms

Lieutenant R. A. Aguilar suggests that AB 707 be revised to allow for the use of forms to be produced on the San Diego County Marshal's computer. (See Exhibit 2 on pink paper, p. 2.) AB 707 provides six important forms in Sections 693.010-693.060 and also provides that the forms used shall be in "substantially" the form provided. Section 681.030(b) gives the Judicial Council authority to prescribe forms and provides that a Judicial Council form supersedes any corresponding form provided in the Enforcement of Judgments Law. AB 707 thus takes a very flexible approach and should not preclude use of computer generated forms. The concern of the San Diego County Marshal's office is that the Judicial Council will provide mandatory forms and that the computer forms would not be acceptable under the Judicial Council rules. The staff thinks this is a problem that we should not attempt to deal with in AB 707. The problem should be addressed to the Judicial Council or dealt with on a more general basis after some study. There are other statutes where forms are used extensively and where the same problem may exist, such as in attachment (Code Civ. Proc. §§ 481.010-493.060) and claim and delivery (Code Civ. Proc. §§ 511.010-516.050).

§ 685.030. Cessation of interest

Lieutenant Aguilar argues that the rules governing when interest ceases to accrue under Section 685.030 in AB 707 would be unworkable in practice and recommends that the existing rule that interest accrues to the date of levy be retained. (See Exhibit 2, pp. 1-2.) Section 685.030 allows interest until proceeds of sale or collection are actually received

by the levying officer. The existing rule cutting off interest at the time of levy was rejected in the Enforcement of Judgments Law for several reasons. It does not work if the judgment is only partially satisfied by a levy. It is difficult to apply if several levies are made on different dates. It would be unfair to cut off interest at the time of a levy on real property under the Enforcement of Judgments Law since a sale of real property may not take place until 140 days after notice of levy is given the judgment debtor. See Section 701.545 in AB 707. Finally, at least in theory, the judgment creditor should be given interest until actual satisfaction. The staff also discussed this problem with several levying officers, and there appeared to be no consensus on how to handle interest on partial satisfactions. For these and some lesser reasons the interest to date of levy rule was abandoned.

Lieutenant Aguilar's letter does, however, raise some practical problems with applying Section 685.030. He observes that the levying officer will not be able to tell a garnishee what amount to pay at the time of levy because the levying officer will not know when (or if) any amounts will be paid to the levying officer under the levy. Under existing law, if a bank account is levied upon, the bank will be notified to pay a certain amount required to satisfy the judgment which is the sum of the amount due as stated on the writ and daily interest to the date of levy which is known to the levying officer. To deal with this problem, the staff proposes to revise Section 685.030(a) to make clear that interest ceases to accrue at the time of levy if the judgment is satisfied by payment of a lump sum by a garnishee. Note, however, that under this amendment the amount of interest differs depending on the source of a full satisfaction although the amount of the difference would be insignificant.

If the judgment is satisfied in full at an execution sale of property, the rule provided in Section 685.030(a) seems workable since the amount required to satisfy the judgment can be computed at the date of sale. Under this rule the judgment creditor is entitled to interest during the period the sale of real property is delayed. Section 701.590(c) makes clear how this rule is applied in the case of a credit bid at an execution sale.

The second objection raised by Lieutenant Aguilar is that Section 685.030(c) would require the recalculation of the amount to satisfy

every time a partial satisfaction is received and consequently an amended notice of levy. If enforcement is pursuant to a writ, Section 685.030(c) provides that interest on the satisfied part of a judgment ceases to accrue when the money is received by the judgment creditor. The staff believes that these objections could as easily be made to existing law. Whenever a partial satisfaction is made, surely the amount to satisfy changes and the principal upon which interest is allowed also changes. Nor do we find a requirement in AB 707 for service of an amended notice of levy. The staff thinks that Section 685.030(c) is consistent with existing law, although existing law is extremely sketchy. This sort of calculation is made when a writ is issued and must also be made when a partial satisfaction is made after a writ is issued. It would not be acceptable to permit the accrual of interest on a principal amount that has already been satisfied.

The third objection, that the garnishee would not know the amount to pay, should be remedied by the amendment proposed above for cases where the garnishee is willing to pay the full amount.

Finally, it is suggested that the fee for a levy would not begin to cover the cost of the additional work involved in "repeated refiguring of the interest and demand amounts." We do not see that there should be a significant increase in the need to refigure the amount to satisfy than there should be under existing law when there is a partial satisfaction. The Enforcement of Judgments Law does permit collection of amounts that fall due during the execution lien under an obligation levied upon, whereas a levy under existing law appears only to reach amounts due at the time of levy. Hence, if a valuable account receivable is garnished and is being paid to the levying officer as it becomes due, the levying officer will have an additional accounting burden. However, we doubt that there will be many cases where this occurs because the judgment creditor may have the account sold as provided in Section 701.520, and in most cases other complications such as third-party claims by secured parties will interrupt any continuing flow of payments. There should be no problem in figuring interest where the judgment is fully satisfied under the rules provided in Section 685.030(a) as proposed to be amended. With the exception of the possibility of continuing payments under a garnished right to payments, the staff does not feel that Section 685.030 imposes any new significant administrative burdens on levying officers.

Lieutenant Aguilar also raises a policy question concerning whether it is fair to make the judgment debtor liable for interest after the debtor's property has been seized under an execution levy. The Commission has considered this question and adopted the general policy that the judgment creditor should be entitled to interest until the judgment is satisfied. This is also the rule stated in the cases. See the Comment to Section 685.030. In any event, if the debtor has property available to levy and wishes to avoid accruing interest, the debtor should voluntarily apply the property to the satisfaction of the judgment.

§ 704.020. Household furnishings and personal effects exemption

Mr. Rick Schwartz suggests that a monetary limit of $15,000 be placed on the exemption for a family's household furnishings and personal effects. (See Exhibit 3 on blue paper, p. 2.) As an example, he notes the situation where a debtor contemplating bankruptcy will buy for cash an item such as a piano or some other expensive household furnishings. The staff believes that Section 704.020 deals with this problem since it limits the exemption of household furnishings to items that are "ordinarily and reasonably necessary for an average household." As stated in the Comment to Section 704.020, this standard is intended to eliminate the station in life test under which existing law has allowed the exemption of valuable antiques. As for the valuable piano, the staff does not believe that it would be exempt under the standard in Section 704.020, whereas under existing Section 690.1 a piano is specifically made exempt. The staff believes that Section 704.020 should remain as it is.

The Commission once proposed but later rejected placing a value limit on each exempt item of property. This is the approach of the Bankruptcy Code which provides a $200 limit per item. 11 U.S.C. § 522(d)(3). More expensive items can be exempted in bankruptcy by application of the $7,500 floating exemption. 11 U.S.C. § 522(d)(5). The Commission has not seriously considered placing an aggregate value limitation on the exemption because of the difficulty of selecting a sensible limit and of administering such an exemption in the context of enforcing a money judgment. A statutory ceiling may also be an invitation to debtors to acquire sufficient property to qualify for the full exemption. In bankruptcy, an aggregate value limit works better since in general all

of the bankrupt's property is subject to administration. In the process of enforcing a money judgment, however, a specific item of property is levied upon and the court may then be called upon to determine if it is exempt. An aggregate value limitation is very difficult to apply in this situation and the court will be required to value the property levied upon as well as property not levied upon. In view of these problems, the Commission approved the standard provided in Section 704.020.

§ 704.060. Tools of trade exemption

Mr. Schwartz suggests that the exemption for the tools of a trade be limited to the principal trade, business, or profession of the debtor. (See Exhibit 3, p. 2.) The staff recommends this change and proposes Amendments 8-10 to accomplish it. The staff believes that this is the intent of the reference to the debtor's livelihood in Section 704.060 and in existing Code of Civil Procedure Section 690.4.

§ 704.115. Private retirement plan exemption

Mr. Schwartz suggests that a limit be placed on the exemption for private retirement plans. (See Exhibit 3, pp. 1-2.) Under existing Code of Civil Procedure Section 690.18(d), "any private retirement plan" is exempt and "self-employment retirement plans and individual retirement annuities or accounts" are exempt in the amount exempt from federal income taxation. Mr. Schwartz suggests a limit of $4,000 per debtor on such funds and also suggests placing a limit on profit-sharing plans used for retirement purposes. Section 704.115 continues the substance of existing law. The staff opposes changing this section. This is a complicated and controversial area and at this stage AB 707 is not a convenient vehicle to attempt to resolve any problems with this exemption. This problem should be studied and addressed by interested persons in some other bill.

§ 704.730. Amount of homestead exemption

Mr. Schwartz suggests that the amount of the homestead exemption be left at the current amounts--$45,000 for persons 65 years of age and older and for families and $30,000 for others. (See Exhibit 3, p. 2.) The Commission has considered the amount of the homestead exemption many times. At the July 1981 meeting, the Commission reaffirmed the $30,000/$60,000 exemption, but recognized that Assemblyman McAlister should have

authority to agree to a different amount if needed to get the bill enacted. In view of these decisions, the staff recommends no change.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

STAFF DRAFT

AMENDMENTS TO ASSEMBLY BILL NO. 707

Amendment 1

On page 20, of the printed bill, as amended in Assembly August 25, 1981, strike out line 40

Amendment 2

On page 21, strike out line 1, and insert:

accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

Amendment 3

On page 35, line 4, strike out "what" and insert:

that

Amendment 4

On page 36, line 6, after the second "the" insert:

money

Amendment 5

On page 36, strike out lines 15 to 19, inclusive, and insert:

or renewed, and adjusted as follows:

(a) Plus costs added to the judgment pursuant to Section 685.090.

(b) Plus interest added to the judgment as it accrues pursuant to Sections 685.010 to 685.030, inclusive.

(c) Less the amount of any partial satisfactions of the judgment.

(d) Less the amount of any portion of the judgment that is no longer enforceable.

Amendment 6

On page 37, line 2, after the second "the" insert:

money

Amendment 7

On page 49, line 2, after "notice" insert:

and any notice affecting any such notice of judgment lien

Amendment 8

On page 110, line 37, after the second "the" insert:

principal

Amendment 9

On page 111, line 2, after the third "the" insert:

principal

Amendment 10

On page 111, line 8, after "same" insert:

principal

DEPARTMENT OF THE MARSHAL
MUNICIPAL COURT OF CALIFORNIA
County of San Diego
MICHAEL SGOBBA, MARSHAL

October 30, 1981

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: Enforcement of Judgments (Assembly Bills 707 and 798)

Proposed Section 685.030 of the Code of Civil Procedure provides that interest ceases to accrue on a judgment on the date the proceeds of sale or collection are actually received by the levying officer. We believe this section in its practical application would be unworkable for levying officers. We feel further, that although the judgment creditor should be entitled to interest on the judgment, it is unfair to make the judgment creditor liable for interest after the time that person's property has been seized. (Cases where property will be levied upon and sold.)

With regard to the unworkability of the proposed section we find the following problems:

1. 685.030.(a) provides that interest ceases to accrue on the date the proceeds of a "collection are actually received by the levying officer." Without knowing the exact amount of interest on the day of levy, it will be impossible to know the amount of the demand that must be made on a garnishee.

2. 685.030.(c) provides that on the date a judgment is partially satisfied "interest ceases to accrue as to the part satisfied on the date the part is satisfied." In practical application this would mean that the amount to satisfy would change each time a collection is received. This would require an amended notice of levy each time a collection is received.

3. Since the amount to satisfy will be changing on a daily basis, and a garnishee will not know the exact day the payover will be received by the levying officer, that person would have no way of knowing the proper amount to send.

4. Even if these sections were in some way workable, we feel the repeated refiguring of the interest and demand amounts would place an unreasonable burden on the garnishee, who is an innocent third party that receives no compensation for the inconvenience of the levy to begin with, and the levying officer who is ultimately the taxper. The original fee for service would not begin to cover the cost of this additional work.

SAN DIEGO OFFICE
P. O. BOX 81106
220 W. BROADWAY
SAN DIEGO, CA 92138
236-2711

KEARNY MESA OFFICE
8950 CLAIRMONT MESA BLVD.
SAN DIEGO, CA 92123
236-3312

CHULA VISTA OFFICE
430 DAVIDSON STREET
CHULA VISTA, CA 92010
575-4761

EL CAJON OFFICE
110 E. LEXINGTON
EL CAJON, CA 92020
579-4466

ESCONDIDO OFFICE
600 E. VALLEY PARKWAY
ESCONDIDO, CA 92025
741-4411

VISTA OFFICE
325 S. MELROSE
VISTA, CA 92083
758-6561

We would urge you retain the existing rule that interest accrues only to the date of levy.

Proposed secionts 693.010, 693.020, 693.030, 693.040, 693.050 provide the language and format of various forms to be used under the new Title 9 until superseded by forms "prepared" or "prescribed" by the Judicial Council.

We assume that once the Judicial Council has promulgated the new forms the use of those forms will be mandatory. We appreciate the standardization of civil forms inasmuch as it relieves the courts and levying officers of the burden of drafting and formatting their own forms. If our assumption is not correct, then we would recommend that use of the standardized forms be generally required.

We say generally required because of a unique situation we have in San Diego County and suspect other counties either have or will have in the near future.

This department is in the process of acquiring the hardware and programming the software for computerized civil process system. It is an on-line system that will allow us to handle the clerical and bookkeeping duties of a levying officer via our terminals. Through the system's word processing capabilities our clerical personnel will be able to generate entire pre-formatted forms as needed. In this type of system a single printer serves multiple terminals and produces any form needed on continuous feed paper. This eliminates the costly need for a printer at each terminal and the printing and storage of dozens of different forms. The printers provide one type style with formats being determined by preprogrammed instructions. Because of this, exact reproduction of standardized Judicial Council forms would be impossible. Further, when producing a form that would normally be a multi-purpose form (those with various categories and check boxes that don't all apply in each particular case) the system will produce a form containing only the language necessary for each particular situation. In addition to this department, the office of the Clerk/Administrator of the Municipal Court of our North County Judicial District is in the process of developing a word processing system to produce the various forms used by that office.

Because automated systems will mean increased efficiency, with resultant savings to the taxpayer, and a higher level of service to the public, we would ask that you make provision in the law for those levying officers and courts with such systems. Specifically, we request that a section be added to the proposed law that would allow levying officers and courts with computerized systems to produce forms through those systems that are substantially in the same form as those prescribed and mandated by the Judicial Council. Further, in the case of multi-purpose forms (as previously described) that only the language needed for the particular situation at hand need be printed on the forms.

Once again, thank you for the opportunity to contribute to your efforts in this important revision of the law, and for your responsiveness to our earlier comments and suggestions.

Sincerely,

MICHAEL SGOBBA, MARSHAL

By: R. A. Aguilar, Lieutenant

MS:RAA:ab

EXHIBIT 3

BANK OF AMERICA

SOUTHERN CALIFORNIA HEADQUARTERS

November 3, 1981

Please address your reply to
LEGAL DEPARTMENT
Attention to
Rick Schwartz
(213) 683-2522

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

RE: AB 707 and AB 798 as Amended

Dear Mr. DeMoully:

The California Bankers Association has not generated any opinions yet on AB 707 or 798. Therefore, the enclosed comments are solely my comments and do not necessarily reflect the opinion of either the California Bankers Association, Bank of America, or the Debtor-Creditor Relations and Bankruptcy Sub-Committee of the State Bar of California. I am limiting my comments to Article 3 Exempt Property.

In general, I feel that AB 707 as amended is an excellent measure incorporating a number of necessary and proper changes.

However, I believe there is a need to establish a maximum limit for proposed Section 704.115 which is the "private retirement plan" exemption. Under Subsection (a)(3), it appears that individuals could establish IRA or Keough plans and deposit at least $2,000 per year per working spouse in such plans. Proposed Section 704.115 would exempt all such deposits without any dollar limit. I believe there ought to be a dollar limit per debtor for these "private retirement plans" of perhaps $4,000.

Without any limits wealthy debtors could easily protect incredibly large amounts from their creditors. I do not believe it is necessary or desirable as a matter of

public policy to protect over about $4,000 per debtor from the reach of creditors. This is particularly true given the ease with which said funds could be withdrawn prior to retirement under current federal law. Furthermore, some aggregate dollar limits ought to be placed on private profit-sharing plans intended for retirement.

In addition, I feel that the increase of the homestead exemption proposed in Section 704.730 to $60,000 for a family unit is unwarranted at the present time. I would prefer preservation of numbers similar to the presently existing $30,000 for a single person and $45,000 for the equivalent of a "family unit".

Although the first, 1979 draft for exempt household furnishings contained a monetary limit, the present draft of Section 704.020 does not have any monetary limit on household furnishings, appliances, etc. I believe that either an aggregate dollar limit or a per item limit similar to the federal bankruptcy exemptions would be desirable.

Proposed Section 704.020 essentially follows presently existing California law which has no limit on the value of household furnishings, appliances, and wearing apparel that may be claimed exempt. My personal feelings are that a family unit should not be able to claim exempt property exceeding in the aggregate $15,000 in fair market value.

In the past, some debtors have acquired for themselves or a piano-playing member of their family expensive Steinway pianos, claimed them exempt, and later sold them. I have talked to debtor's counsel who have had debtors acquire for cash extremely expensive household furnishings prior to filing a bankruptcy petition. An aggregate limit would prevent wealthy debtors from doing this type of bankruptcy planning.

I urge using the word "principal" before "trade, business, or profession" in Section 704.060(a)(1), (2) and (3) to make clear that the exempt property must relate to the principal occupation of the debtor.

The areas that I have mentioned regarding exempt property, are the areas of prime interest to me at this time. I will examine the other areas shortly and comment if I see any major problem areas.

Very truly yours,

Rick Schwartz

RS:vm

Enclosure