

## Memorandum 91-50

Subject: Study D-1001 - Miscellaneous Creditors' Remedies Matters

The Commission has decided to review technical problems in enforcement of judgments statutes. (See Minutes of April 1991 meeting.) Attached to this memorandum is a staff draft of several amendments needed to correct problems arising in the last several years that have been brought to the Commission's attention. Also attached as Exhibit 1 is a letter from Lt. Anthony J. Pisciotta, on behalf of the California State Sheriffs' Association, outlining several wage garnishment problems.

## WAGE GARNISHMENT PROCEDURES

Background

The Wage Garnishment Law (now Code Civ. Proc. §§ 706.010-706.154) was enacted on Commission recommendation in 1978. The statute provided for a continuing levy on a debtor's earnings for a period of 90 days (starting 10 days after service and concluding 100 days after service). The judgment creditor was not permitted to relevy on the debtor's earnings for a 10-day period following the conclusion of the 100-day period. This permitted other general creditors to have a turn at satisfying their judgments.

In preparing the wage garnishment legislation, the Commission was concerned with the then-existing law under which a creditor could garnish earnings for a 90-day period and repeatedly relevy to the exclusion of other creditors:

The major drawback of the continuing levy is that it gives a preferred position to the creditor who first resorts to legal process to enforce his claim. If the levy is given effect indefinitely, the debt is large, and the debtor's earnings modest, subsequent creditors may be postponed for substantial periods of time. Some compromise between multiple levies and an unlimited continuing levy is necessary.

[*Recommendation Relating to Wage Garnishment Procedure*, 13 Cal. L. Revision Comm'n Reports 601, 619-20 (1976).] Consequently, a 120-day levy period was recommended because the Commission was advised that this period "would permit complete satisfaction of the majority of consumer debts." *Id.* at 620 n. 16. It is interesting to note that the 120-day termination period was cut down to 100 days in the Legislature. A limited period reduces the incentive of creditors to resort to wage garnishment. A long withholding period was considered undesirable since it would encourage hasty wage garnishments by creditors seeking to establish a priority.

By 1989, however, the climate in Sacramento had changed and the California Association of Collectors was successful in sponsoring legislation to repeal the 90-day withholding period. See 1989 Cal. Stat. ch. 263. We are informed that the repeal was approved by interested parties since it eliminated a lot of paperwork and expense. For creditors and levying officers, the repeal eliminated the need to get a new earnings withholding order and serve it every 100 days for as long as the judgment remained unsatisfied. Tracking one continuing levy is more convenient for employers than complying with a series of 90-day periods separated by 10-day grace periods. For debtors, elimination of the 90-day period saves expenses for which debtors are ultimately liable and perhaps avoids the danger of being fired for repeated wage garnishments. (Note, however, that it is illegal to fire an employee for garnishments on one judgment. Labor Code § 2929(b).)

On the other hand, the repeal of the 90-day withholding period left a number of related issues unanswered and created some technical problems. How long is an earnings withholding order effective under the new rule? How long does an employer keep the withholding order on file in case an employee who has left employment or been laid off is rehired? How long does an employer keep a withholding order for a general money judgment waiting in line in a situation where a garnishment with a higher priority (support, taxes) is in effect? How are partial satisfactions through wage garnishment to be kept relatively current in the court file? When is the writ of execution, the basis for the earnings withholding order, to be returned? How are costs and interest to be determined and collected in a long-term wage

garnishment? Will exemption determinations become stale during an extended garnishment?

Duration of Earnings Withholding Order

Code of Civil Procedure Section 706.022(a) now provides that the withholding period ends at the earliest of the following times:

- (1) The date the employer has withheld the full amount specified in the order.
- (2) The date of termination specified in a court order served on the employer.
- (3) The date of termination specified in a notice of termination served on the employer by the levying officer.

We are mainly concerned with the first rule.

The levying officer (or registered process server) issues an earnings withholding order on application by the judgment creditor. See Sections 706.102, 706.108. The "full amount specified in the order" is not more than the amount stated in a leviable writ directed to the levying officer, plus daily interest as stated in the writ to the date of issuance of the earnings withholding order and the fee for service of the order. See Section 706.125(e). Section 706.028 authorizes issuance of another earnings withholding order for costs and interest accruing after issuance of an earlier earnings withholding order. (It is apparent that an absolutely complete satisfaction is impossible to achieve in this fashion since interest will always keep accruing after an earnings withholding order is issued. This issue is discussed *infra*.)

As the law now stands, the only definite limitation on the duration of an earnings withholding order is the general limitation on enforceability of a judgment. A money judgment (other than an installment judgment) becomes unenforceable 10 years after entry unless renewed within that time, and all enforcement procedures cease when the judgment becomes unenforceable. See Sections 683.020, 683.110. But if a judgment is renewed, existing liens may be extended as provided in Section 683.190 and existing "enforcement proceedings" commenced pursuant to a writ or order may be continued as provided in Section 683.200. Thus, for example, it appears that an earnings withholding

order served on January 1, 1990, to garnish the earnings of a 20-year old judgment debtor could continue for 45 years, into the year 2035, when our 65-year old judgment debtor retires -- assuming that the creditor has renewed the judgment in a timely fashion and served notice of renewal on the employer.

#### Two-Year Withholding Period?

This discussion considers a better response to the dissatisfaction with the 90-day withholding period than outright repeal of all limits, as was done in the 1989 legislation. The two-year withholding period is offered for discussion, but has not been implemented in the attached staff draft for the simple reason that we understand it would be opposed by the sponsor of the repeal legislation.

Many, if not all, of the objections to the 90-day withholding period could be solved with a longer withholding period, such as a maximum two-year period running consecutively with the life of the writ of execution. This approach would avoid the need to create special accounting, return, and termination rules for the earnings withholding order, such as are proposed *infra*. It would also deal with the objection to paperwork, duplicate accounting problems, and the expense to employers, judgment creditors, and judgment debtors. Elimination of the 90-day withholding period swept away a lot of bureaucratic detail to the benefit of all concerned, but this advantage would not be lost with a withholding period of two years.

A two-year period is, in effect, a set of eight 90-day withholding periods, so the savings in paperwork is substantial. As the withholding period is extended beyond the life of the writ, new bureaucratic troubles and expenses begin to mount. We need to cover separate returns of the writ and of the earnings withholding order, perhaps by way of a supplemental return. Different accounting rules need to be established. Special rules concerning how long an earnings withholding order may remain dormant before it terminates become advisable.

A two-year period, with a 10-day gap before relevy, would also give other creditors a chance to get some satisfaction. As a public policy, it may not be desirable for one creditor to have a 10-year (or

more) lock on the wages of the debtor to the exclusion of all other creditors. On the other hand, if the creditor successfully levies on the debtor's house, the levying creditor is not expected to share the execution sale proceeds with other creditors.

As noted above, the staff is not proposing the two-year withholding period in the attached draft because it would most likely be opposed by the sponsors of the bill repealing the 100-day rule, the California Association of Collectors (CAC). Since they managed to get their bill passed only two years ago, it may be premature to seek revision of that policy. A telephone discussion with a representative of CAC leads us to the conclusion that CAC prefers not to have any particular time limit on the duration of the earnings withholding order. It would also appear that CAC is not impressed with the argument that more than one creditor should get satisfaction from the debtor.

#### Return Procedures

As enacted, the Enforcement of Judgments Law assumes that wage garnishment activity by a general creditor will have concluded by the time the writ of execution needs to be returned to the court. Code of Civil Procedure Section 699.560 provides for return of the writ of execution two years after issuance or, if no levy is made within the first 180 days, promptly after 180 days from issuance. A levy may be made under a writ only during its first 180 days, and this includes wage garnishments. These rules are designed to ensure that enforcement papers are relatively current so that they will reflect the correct amount owing on the judgment, taking into account partial satisfactions as well as costs and interest added to the judgment. With a 90-day withholding period, the garnishment would be over before the writ had to be returned, but this is no longer the case, and levying officers are uncertain how to proceed. Traditionally, levying officers view the writ as providing their authority, and there is some uneasiness in continuing to collect on an outstanding wage garnishment without a writ. In the past, levying officers have organized their accounts based on outstanding writs. This structure has been undermined to some extent because of the open-ended earnings withholding order for

support, which has never been subject to the 90-day limitation. See Section 706.030. We are informed that earnings withholding orders for support are a problem, but since they do not constitute a very significant percentage of wage garnishments, the problem can be dealt with. The problem takes on a greater significance when all wage garnishments are open-ended.

In order to deal with these concerns, in the attached draft the staff proposes the following revisions: (1) Continue the important rule concerning the return of writs of execution, but provide for a "supplemental return" at the time the earnings withholding order terminates, and (2) since the order may terminate long after the writ is returned, require regular accountings by the levying officer to the court, in the manner of a return, so that court records will be kept relatively current. In this manner, the policies supporting the traditional rules for issuance and return of writs will be served.

#### Costs, Interest, and Fees

As noted above, the amount of the earnings withholding order is based on the amount of the writ, which includes costs and interest added to the judgment, daily interest accruing after issuance of the writ until the earnings withholding order is issued, and specified levying officer fees which are controlled by statute. There is a problem in getting a full satisfaction by wage garnishment under existing law, and this problem is magnified as the life of the earnings withholding order is extended since there is no explicit authority for adjusting the amount to reflect interest, costs, or fees after issuance of the order.

It is in the interest of both debtors and creditors to get a full satisfaction where feasible. The staff proposes to permit levying officers to adjust the amount due on the earnings withholding order to (1) deduct partial satisfactions, (2) add daily interest on the amount remaining unsatisfied, taking partial satisfactions into account, (3) add statutory fees accruing after issuance of the order, and (4) costs added to the judgment pursuant to Section 685.090.

#### Ten-Day Moratorium Between Garnishments

The 10-day moratorium between garnishments by the same creditor has no importance in a scheme permitting unlimited continuing levies. Accordingly, the attached draft would eliminate this rule. See Code Civ. Proc. § 706.107. We would not change the 10-day delay at the start of withholding since this delay is needed for the convenience of employers. See Section 706.022(a).

#### One-Year Lien

Code of Civil Procedure Section 706.029 provides that service of an earnings withholding order creates a one-year lien on all of the employer's property in the amount required to be withheld. The lien runs from the date the earnings subject to withholding became payable and is satisfied when the amount required to be withheld is paid over. In effect, the creditor has a series of overlapping liens for the amount that should have been withheld in such cases. This lien provision should work just as well under an extended withholding period and the staff would leave it unchanged.

#### Dormant and Suspended Earnings Withholding Orders

If an employee whose wages are subject to garnishment leaves employment, the order is not terminated, but remains in place and will pick up the employee's earnings if the debtor is reemployed during the withholding period. See Code Civ. Proc. § 706.022 & Comment. An earnings withholding order for support, which otherwise is open-ended, terminates one year after the debtor's employment terminates. See Section 706.030(b)(1).

In addition, if an earnings withholding order is in effect and another order with priority is served, the first order remains in place. If earnings are sufficient (an unlikely situation), both orders may be effective. Normally, however, the general creditor's order is suspended while a supervening wage assignment for support, earnings withholding order for support, or tax withholding order is paid. If the supervening order is satisfied before the withholding period under the first order expires, withholding will resume under the first order. See Section 706.022 & Comment.

Dormancy and suspension did not present much of a problem when withholding lasted only 90 days. But with no practical limit on the duration of an earnings withholding order, it is conceivable that an order could lie dormant in the employer's personnel office for years, to snare the debtor should he or she be reemployed. Endless dormancy creates the potential for a great deal of confusion and burdensome paperwork. It is unrealistic to expect employers to retain orders without end, or to require levying officers to maintain files on inactive collections for year after year.

In the case of suspension by withholding under a supervening order, the situation is similar. The debtor is employed and subject to garnishment under the supervening order. If it is a tax order for a limited amount certain, perhaps it makes sense to hold the first order for a while until the supervening order can be satisfied. But if the supervening order is for a large amount or is for a continuing support obligation that consumes all withholdable earnings, it makes no sense to keep the first order on file indefinitely.

The staff proposes to terminate earnings withholding orders where no amounts are being collected for a continuous period of 180 days. This limit would apply regardless of the reason for the noncollection, and so would apply both to dormancy where the debtor has left employment and to subordination to other orders. The time period is longer than levying officers and employers would like, we can be sure, but shorter than general creditors would prefer. The time period is about half that applicable to earnings withholding orders for support where the debtor has left employment. The staff believes that a longer period is appropriate in the case of support orders on the ground of public policy.

#### INTERROGATORIES TO JUDGMENT DEBTOR

Code of Civil Procedure Section 708.020 in the attached draft would reconcile a conflict between the procedure for propounding interrogatories to the judgment debtor in aid of enforcement and the 35 interrogatory limit in Section 2030 of the general discovery statute.



PROCEDURE FOR REVIEW OF DEBTORS' EXEMPTIONS

Before the next meeting, the staff will prepare an overview of debtor's exemptions. The Commission is mandated by statute to review exempt amounts and report to the Governor and the Legislature every 10 years starting on July 1, 1983. See Code Civ. Proc. § 703.120. As recorded in the April Minutes, we do not anticipate recommending any exemption changes in light of the ongoing legislative involvement in the area. However, it is appropriate to solicit suggestions from interested persons when the tentative recommendation on creditors' remedies matters is circulated for comment.

Respectfully submitted,

Stan Ulrich  
Staff Counsel

STATE BAR OF CALIFORNIA  
JAN 31 1991  
RECEIVED



# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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\* \* \*

**Executive Director**  
**Sue Muncy**

January 30, 1991

Mr. John H. De Moully  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Rd., Suite D2  
Palo Alto, CA 94303-4739

Dear Mr. De Moully,

I write you at the suggestion of Pam Hulse of the Judicial Council, and on behalf of the California States Sheriffs' Association Civil Procedures Subcommittee, to request the review of specific language and procedures of the new wage garnishment law. In discussing the new law with levying officers throughout the State numerous areas of concern were identified with respect to the Civil Code of Procedure laws related to wage garnishments, and the employer's instructions of the Earnings Withholding Order (Wage Garnishment) form.

I will list for you the specific areas of concern.

1. Withholding Period

The following is an excerpt from the employer's instruction:

"Your duty to withhold does not end if the employee no longer works for you, for any reason, if the employee returns to work during the withholding period the withholding must be resumed."

Under the old law, the withholding period was 100 days. Pursuant to the new law effective January 1, 1990 neither the levying officer nor the employer is able to determine the maximum duration of the withholding period. Additionally, the levying officers have no idea as to how long they should keep the writ before returning it to court, when they no longer receive collections from the employer.

2. Interruption of Wage Garnishment by an Order of Higher Priority.

Levying officers have received inquiries from employers who are uncertain as to whether they should eventually resume collection on the first order after the order of higher priority is fully satisfied. Again, the levying officer is placed in a position of not knowing how long they should hold the writ before returning it to court.

3. Writ Return to Court Pursuant to CCP 699.560 and it's impact on an Earnings Withholding Order.

The existing language in CCP 699.560 does not address the procedure of continuous collection under the wage garnishment law. There presently is a contradiction between the procedures set forth by the Judicial Council allowing the continuous collection of a judgment regardless of the time necessary to collect the total amount, and CCP 699.560 which sets two years from date of issuance as the maximum time the levying officer should hold the writ, except for Sub-section (a) and (b). There needs to be an additional sub-section allowing the writ to be held under an earnings withholding order.

4. Full Satisfaction of Judgment by an Earnings Withholding Order.

At the present time the earnings withholding order is designed to collect only the amount of money noted on the order which includes the judgment amount, service fee, levying officer's assessment fee and interest calculated to the date of service.

Under the existing wage garnishment law, a creditor is unable to collect interest beyond the date of service without re-levying at a later time. As a result of this situation, the majority of writs are returned to court partially satisfied, and it appears unlikely that all the interest can ever be fully collected with the present procedures, unless the daily interest on the remaining balance, is collected by the employer.

In closing, I hope that I have sufficiently described the areas that I request review of and in the event you should need additional information, please contact me at my office (415) 554-7231.

Thank you for your time and consideration in this matter.

Very truly,



ANTHONY J. PISCIOTTA, Lieutenant  
Chairman, Civil Procedures Sub-Committee  
Room 333, City Hall  
San Francisco, CA 94102

cc: Civil Committee  
CSSA Office  
Judicial Council of California

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	LEVYING OFFICER (Name and Address):
ATTORNEY FOR (Name):		PLEASE REFER TO THIS NUMBER WHEN CORRESPONDING WITH SHERIFF	
Name of court, judicial district or branch court, if any:		LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER
PLAINTIFF:		<b>EARNINGS WITHHOLDING ORDER (WAGE GARNISHMENT)</b>	
DEFENDANT:			

**TO THE EMPLOYER:** (Name and address of employer)

LEONARD J. ...

Name and address of employee

...

SOCIAL SECURITY NUMBER (IF KNOWN)

**EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.**

**EMPLOYER: Enter the following date to assist your record keeping.**

Date this order was received by employer (specify the date of personal delivery by levying officer or the date mail receipt was signed):

1. A judgement creditor has obtained this order to collect a court judgement against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the levying officer (name and address above).

If the employee works for you now, you must give the employee a copy of this order and the Employee Instructions within 10 days after receiving this order.

Complete both copies of the form Employer's Return and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

**INTEREST CALCULATED TO DATE OF SERVICE, INTEREST AFTER SERVICE UNKNOWN TO EMPLOYER AND NOT COLLECTED**

2. The total amount due is \$ \_\_\_\_\_ Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, do not withhold earnings payable for that pay period. Do not withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the above court on (date): \_\_\_\_\_ The judgment creditor (if different from the plaintiff) is (name): \_\_\_\_\_

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each pay day and answer other questions you may have.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Type or print name) (Signature)

LEVYING OFFICER  REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

**EARNINGS WITHHOLDING ORDERS**

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the withholding period.

The withholding period is the period covered by the Earnings Withholding Order (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus the levying officer assessment, is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the EMPLOYER'S RETURN) is received.

You are entitled to rely on and should obey all written notices signed by the levying officer.

The form Employer's Return describes several situations that could affect the withholding period for this order. If you receive more than one Earnings Withholding Order during a withholding period, review that form (Employer's Return) for instructions.

Your duty to withhold does not end if the employee no longer works for you, for any reason; if the employee returns to work during the withholding period, the withholding must be resumed.

**WHAT TO DO WITH THE MONEY**

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within ten (10) days after the close of the pay period.

Be sure to mark each check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.

**WHAT IF YOU STILL HAVE QUESTIONS?**

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

**THE CHART BELOW AND THESE INSTRUCTIONS DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.**

The chart below shows **HOW MUCH TO WITHHOLD** when the federal minimum wage is \$3.80 per hour. When the **FEDERAL** minimum wage changes on April 1, 1991, the levying officer will provide a chart showing the new withholding rates.

**FEDERAL MINIMUM WAGE: \$3.80 per hour (April 1, 1990-April 1, 1991)**

PAY PERIOD	Daily	Weekly	Every Two Weeks	Twice a Month	Monthly
DISPOSABLE EARNINGS	\$0-\$114.00	\$0-\$114.00	\$0-\$228.00	\$0-\$247.00	\$0-\$494.00
WITHHOLD	None	None	None	None	None
DISPOSABLE EARNINGS	\$114.01-\$152.00	\$114.01-\$152.00	\$228.00-\$304.00	\$247.01-\$329.33	\$494.01-\$658.67
WITHHOLD	Amount above \$114.00	Amount above \$114.00	Amount above \$228.00	Amount above \$247.00	Amount above \$494.00
DISPOSABLE EARNINGS	\$152.01 or More	\$152.01 or More	\$304.01 or More	\$329.34 or More	\$658.68 or More
WITHHOLD	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings	Maximum of 25% of Disposable Earnings

Attach this sheet to form 982.5(2) as revised effective January 1, 1990.

**COMPUTATION INSTRUCTIONS**

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's disposable earnings.

(A) Earnings include any money, (whether called wages, salary, commissions, bonuses or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) Disposable earnings are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's disposable earnings are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of \$400 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or \$100.

The chart below is based on the minimum wage which was effective January 1, 1981. It will change if the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to an Order Assigning Salary or Wages, an order available from family law courts for child support only. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

**—IMPORTANT WARNINGS—**

- IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF EARNINGS WITHHOLDING ORDERS FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment) the employee may not be fired.
  - IT IS ILLEGAL TO AVOID AN EARNINGS WITHHOLDING ORDER BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
  - IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE EARNINGS WITHHOLDING ORDER TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the laws that apply to this case.
- IF YOU VIOLATE ANY OF THESE LAWS, YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!**

#D-1001

su881  
07/16/91

MISCELLANEOUS CREDITORS' REMEDIES REVISIONS

Code Civ. Proc. § 685.050 (amended). Costs and interest under writ

SEC. . Section 685.050 of the Code of Civil Procedure is amended to read:

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

(1) The statutory fee for issuance of the writ.

(2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

(1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ. If amounts collected do not fully satisfy the money judgment, the levying officer shall adjust the amount of daily interest to reflect the partial satisfactions, and make the next collection by reference to the adjusted amount of daily interest.

(3) Determine the collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Subdivision (b) of Section 685.050 is amended to provide for recomputation of the amount of daily interest accruing on a money judgment in the case of partial satisfactions. See also Sections 685.010 (rate of interest on judgments), 685.030 (cessation of

interest). The need to recompute the amount of daily interest is particularly important in the case of a continuing levy under an earnings withholding order. See Section 706.024 (amount required to satisfy earnings withholding order). The purpose of the recomputation requirement is to permit the full satisfaction of a money judgment during the course of a continuing levy. See Section 685.030(a)(2), (c) (interest ceases to accrue on amount of partial satisfaction when amount received by levying officer). Recomputation avoids the potential of withholding an excessive amount, which would occur if the full amount of daily interest noted on the writ of execution were collected without adjustment for partial satisfactions.

Code Civ. Proc. § 685.090 (amended). Addition of costs to judgment

SEC. . Section 685.090 of the Code of Civil Procedure is amended to read:

685.090. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

(c) If a writ or earnings withholding order is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of such costs to the amount to be collected pursuant to the writ or earnings withholding order if the levying officer receives either of the following before the writ or earnings withholding order is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

Comment. Subdivision (c) of Section 685.090 is amended to authorize the addition of costs to a judgment in a case where collection is being made under an earnings withholding order. See Sections 706.010-706.154 (Wage Garnishment Law).

Code Civ. Proc. § 699.560 (amended). Return of writ of execution

SEC. . Section 699.560 of the Code of Civil Procedure is amended to read:

699.560. (a) Except as provided in subdivisions (b) and (c), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officers' actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

- (1) Two years from the date of issuance of the writ.
- (2) Promptly after all of the duties under the writ are performed.
- (3) When return is requested in writing by the judgment creditor.
- (4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.
- (5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

(c) If a levy has been made under Section 4383 of the Civil Code on the judgment debtor's right to the payment of benefits from an employee pension benefit plan, the writ shall be returned within the time prescribed in that section.

(d) If a levy has been made under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010), the writ of execution shall be returned as provided in subdivision (a) and a supplemental return shall be made as provided in Section 706.033.

Comment. Subdivision (d) is added to Section 699.560 as a cross-reference to the special rule concerning returns where an earnings withholding order continues in force after the writ of execution is required to be returned.

Code Civ. Proc. § 706.022 (amended). Duty to withhold earnings

SEC. . Section 706.022 of the Code of Civil Procedure is amended to read:



706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The date the employer has withheld the full amount specified in required to satisfy the order.

(2) The date of termination specified in a court order served on the employer.

(3) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of the employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (2) or (3) of subdivision (a).

Comment. Subdivision (a)(1) of Section 706.022 is amended for conformity with Section 706.024 (amount required to satisfy earnings withholding order).

The remainder of this Comment is drawn from the Comment to Section 706.023 as enacted, with revisions to reflect the amendment of this section in 1989. See 1982 Cal. Stat. ch. 1364, § 2; 1989 Cal. Stat. ch. 263, § 1.

Section 706.022 states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which ends during the "withholding period." The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 706.153.

Under subdivision (a), the withholding period generally commences 10 calendar days (not working or business days) after service of an earnings withholding order is completed. See Section 706.101 (when service completed). For example, if an order is served on Friday, the withholding period would commence on the second following Monday. See Section 12 (computation of time). The 10-day delay affords the employer time to process the order within its organization, i.e., deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on.

The introductory clause to subdivision (b) recognizes certain exceptions to the general rule stated in subdivision (b). An employer is not generally required to withhold pursuant to two orders at the same time, except in special cases involving withholding orders for support or taxes. Thus, an ordinary earnings withholding order served when an earlier order is in place will not be given effect. See Section 706.023 (priority of orders) and Comment. See also Section 706.104(a) (no withholding if debtor not employed and no earnings due).

The withholding period does not end until the first of the events described in paragraphs (1) through (3) of subdivision (a) occurs. The employer has a *continuing* duty to withhold during the withholding period. See also Section 706.032 (termination of dormant or suspended order).

Paragraph (1) requires the employer to stop withholding when the full amount required to be satisfy the earnings withholding order has been withheld. See Section 706.024 (amount required to satisfy order).

Paragraph (2) reflects the fact that the court may order the termination of the earnings withholding order. See Section 706.150(g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified for the remainder of the withholding period.

Paragraph (3) requires the employer to stop withholding when served with a notice of termination. See Section 706.101 (manner of service). A notice of termination is served (1) where the levying officer is notified of the satisfaction of the judgment, (2) where the judgment debtor has claimed an exemption for the entire amount of earnings but the judgment creditor has failed within the time allowed to file with the levying officer a notice of opposition to claim of exemption and a notice of the hearing on the exemption, or (3) where the order has been dormant or suspended for 180 days. See Sections 706.027 (satisfaction of judgment), 706.032 (termination for dormancy or suspension), 706.105(f) (grounds for termination of withholding order in exemption proceeding).

The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section 706.027.

Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 706.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended, the employer must again withhold pursuant to the prior order. See Section 706.032 (termination in case of suspension for 180 days by supervening order).

Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. See also Section 706.032 (termination in case of dormancy for 180 days).

The termination of certain types of orders -- orders for the collection of state taxes and support orders -- is governed by separate rules. See Sections 706.030 (support orders), 706.078 (tax orders).

Sometimes an order will be terminated without the employer's prior knowledge. Subdivision (c) makes clear that an employer will not be

subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written notice of termination of the order. In such a case, the employee must look to the judgment creditor for the recovery of amounts previously paid to the judgment creditor. See Section 706.154 (employer entitled to rely on documents actually served). See also Section 706.105(i) (recovery from levying officer or judgment creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings. See the Comment to Section 706.020.

Code Civ. Proc. § 706.024 (added). Amount required to satisfy earnings withholding order

SEC. . Section 706.024 is added to the Code of Civil Procedure, to read:

706.024. (a) The amount required to satisfy an earnings withholding order is the total amount required to satisfy the writ of execution on the date the order is issued, with the following additions and subtractions:

(1) The addition of the statutory fee for service of the order and any other statutory fees for performing duties under the order.

(2) The addition of costs added to the order pursuant to Section 685.090.

(3) The subtraction of the amount of any partial satisfactions of the order.

(4) The addition of daily interest accruing after issuance of the order, as adjusted for partial satisfactions.

(b) From time to time, the levying officer shall give written notice to the employer of the amount required to satisfy the earnings withholding order and the employer shall determine the amount to withhold based upon the levying officer's notice, notwithstanding a different amount stated in the order originally served on the employer.

Comment. Section 706.024 is new. This section provides for adjustment of the total amount required to satisfy an earnings withholding order. Since an active order continues in force until it is satisfied, it is necessary to recompute the total amount due so that a full satisfaction may be achieved. Thus, the amount stated as owing in the earnings withholding order when it is issued is subject to adjustment by the amounts provided in subdivision (a).

See also Sections 685.030 (accrual of interest and satisfaction), 685.050 (costs and interest under writ), 685.090 (c) (costs added to writ or order after issuance), 695.210 (amount required to satisfy money judgment), 699.520(e) (amount enforceable under writ of execution).

Code Civ. Proc. § 706.026 (amended). Receipt, account, and disbursement by levying officer

SEC. . Section 706.026 of the Code of Civil Procedure is amended to read:

706.026. (a) The levying officer shall receive and account for all amounts ~~received~~ paid by the employer pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

(b) From time to time, but at least once every 180 days, the levying officer shall account to the court for all amounts collected and costs and interest added to the amount due on the earnings withholding order.

Comment. Subdivision (b) is added to Section 706.026 to provide for an accounting to the court of activities under an earnings withholding order. This accounting is in the nature of a return on a writ and is required whether or not the writ has been returned. See Section 699.560 (return of writ of execution). When the earning withholding order terminates, the levying officer is to make a supplemental return on the writ. See Section 706.033 (supplemental return).

The change in subdivision (a) is a technical, nonsubstantive change intended to conform the language of this section to Section 706.025.

Code Civ. Proc. § 706.028 (repealed). Subsequent earnings withholding order for costs and interest

SEC. . Section 706.028 of the Code of Civil Procedure is repealed.

~~706.028. Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.~~

Comment. Section 706.028 is repealed because it is unneeded. Costs added to the judgment and fees and interest accruing after issuance of an earnings withholding order may be added to the amount collectible under the order, without the need for a new order. See Section 706.024. If a judgment is not fully satisfied before an earnings withholding order is terminated, another order may be issued to collect the balance due on the judgment pursuant to this chapter. See Section 706.102 (issuance of earnings withholding order).

Code Civ. Proc. § 706.030 (technical amendment). Withholding order for support

SEC. . Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A "withholding order for support" is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1), (2), or (3), ~~or (4)~~ of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 706.030(b)(1) is amended to correct the cross-reference to Section 706.022 (as amended by 1989 Cal. Stat. ch. 263, § 1). This is a technical, nonsubstantive change.

Code Civ. Proc. § 706.032 (added). Termination of dormant or suspended order

SEC. . Section 706.032 is added to the Code of Civil Procedure, to read:

706.032. (a) Except as otherwise provided by statute, an earnings withholding order terminates at the conclusion of any continuous 180-day period in which no amounts are withheld under the order, whether because the judgment debtor's employment has terminated or

earnings are being withheld under an order or assignment with higher priority, or for any other reason.

(b) If the levying officer has not received any payments from the employer for a 180-day period, the levying officer shall determine whether the earnings withholding order has terminated pursuant to subdivision (a) and serve notice of termination of the order on the employer.

Comment. Section 706.032 provides for the automatic termination of dormant or superseded earnings withholding orders. If the debtor leaves employment after an earnings withholding order has become effective, the duty to withhold continues for 180 days under subdivision (a). If the debtor returns to work during this period, the employer is required to resume withholding pursuant to the order. Similarly, if withholding under a general creditor's earnings withholding order is suspended because of withholding under an earnings withholding order for taxes, the suspended order remains in effect until 180 days have elapsed with no withholding. See Sections 706.030 (support orders), 706.031 (wage assignment for support), 706.078 (tax orders).

The levying officer has a duty under subdivision (b) to determine whether an earnings withholding order has terminated under subdivision (a). The employer is not liable for amounts withheld and paid over to the levying officer until notice is served pursuant to subdivision (b). See Section 706.022(c).

For a special rule concerning termination of earnings withholding orders for support, see Section 706.030(b)(1). If the debtor is not employed and no earnings are due when the withholding period would begin under Section 706.022, the service of the order is ineffective and is not subject to the 180-day rule of this section. See Section 706.104(a).

Code Civ. Proc. § 706.033 (added). Supplemental return on writ

SEC. . Section 706.033 is added to the Code of Civil Procedure, to read:

706.033. If the writ is returned before the earnings withholding order terminates, on termination of the earnings withholding order the levying officer shall make a supplemental return on the writ. The supplemental return shall contain the same information as an original return pursuant to Section 699.560.

Comment. Section 706.033 provides explicit authority for making a supplemental return on a writ where withholding under an earnings withholding order continues after the writ is returned. See also Section 706.026 (account of levying officer for amounts collected).

Code Civ. Proc. § 706.107 (repealed). Service of additional order by same judgment creditor

SEC. . Section 706.107 of the Code of Civil Procedure is repealed.

~~706.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.~~

Comment. Section 706.107 is repealed. The provision for a 10-day grace period before serving another earnings withholding order became obsolete with the deletion of the 100-day provision from Section 706.022(a). See 1989 Cal. Stat. ch. 263, § 1. An overlapping earnings withholding order involving the same parties on the same judgment is ineffective. See Section 706.023(c).

Code Civ. Proc. § 706.121 (amended). Application for issuance of earnings withholding order

SEC. . Section 706.121 of the Code of Civil Procedure is amended to read:

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.

(e) The total amount ~~to be withheld pursuant to~~ required to satisfy the order on the date of issuance (which shall may not exceed the amount required to satisfy the writ of execution on the date of the issuance of the order plus the levying officer's statutory fee for service of the order).

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

Comment. Subdivision (e) of Section 706.121 is amended for consistency with Section 706.024 which governs the amount required to satisfy an earnings withholding order and Section 706.125(e) (contents of earnings withholding order). See Section 706.024 and Comment.

Code Civ. Proc. § 706.125 (amended). Contents of earnings withholding order

SEC. . Section 706.125 of the Code of Civil Procedure is amended to read:

706.125. The "earnings withholding order" shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount ~~that may be withheld pursuant to~~ required to satisfy the order on the date of issuance (which may not exceed the amount required to satisfy the writ of execution on the date of issuance of the order plus the levying officer's statutory fee for service of the order).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order subject to Section 706.024, as the case may be, for the pay periods ending during such the withholding period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return"



and return it by first-class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

Comment. Subdivisions (e) and (f) of Section 706.125 are amended for consistency with Section 706.024 which governs the amount required to satisfy an earnings withholding order. See Section 706.024 and Comment.

Code Civ. Proc. § 708.020 (amended). Written interrogatories to judgment debtor

SEC. . Section 708.020 of the Code of Civil Procedure is amended to read:

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

(d) The limitation provided by Section 2030 on the number of interrogatories that may be propounded applies to each set of interrogatories propounded from time to time pursuant to this section, but does not apply cumulatively to interrogatories propounded by the judgment creditor to the judgment debtor.

Comment. Subdivision (d) is added to Section 708.020 to make clear that the 35 interrogatory limit in Section 2030(c) is not a cumulative limitation on interrogatories to judgment debtors. Thus, for example, a judgment creditor may propound 25 interrogatories to the judgment debtor and then 120 days later propound 30 more interrogatories without running afoul of the limitations in Section 2030. See also Section 2016(c) (discovery article applies in enforcement of judgment as provided in this article).