

Memorandum 91-61

Subject: Study D-1001 - Creditors' Remedies Matters (Comments on Tentative Recommendation)

The *Tentative Recommendation Relating to Miscellaneous Creditor's Remedies Matters [September 1991]* was distributed for comment in September, with a comment return date of October 18. A copy of the recommendation in final form, ready to print, is attached to this memorandum.

We received written comments from two persons, both favorable. (See Exhibits.)

Lawrence H. Cassidy, Chairman of the Legislative Council of the California Association of Collectors, finds the proposal to be generally meritorious, but reserves final judgment until the CAC Legislative Council meets. (See Exhibit 1.)

Judge Alan M. Ahart (Central District Bankruptcy Court, Los Angeles) endorses all of the proposed changes. (See Exhibit 2.)

Judge Ahart also questions a statement on the Judicial Council's form for the employer's return to the effect that "failure to complete and return these forms may subject you to payment of attorney fees and other civil penalties." (Judicial Council Form 982.5(4), Jan. 1, 1990.) Judge Ahart points out correctly that there is no explicit authority for this statement in the Wage Garnishment Law. The general provision governing the garnishee's memorandum in Code of Civil Procedure Section 701.030(d) gives the court discretion to assess reasonable attorney's fees incurred by the judgment creditor in proceedings required to obtain the required information. Perhaps the Judicial Council is reading this provision as applying to wage garnishment. The reference to civil penalties is not clear, but may be intended to describe potential liabilities for civil contempt. (See Code Civ. Proc. § 1218.) The staff will discuss this issue with the Judicial Council staff. For now, we are not aware of any problem arising from the inconsistency in treatment of garnishees, and are not

inclined to propose enactment of employer liability for attorney's fees for failure to comply fully with the employer's return requirement.

In response to the solicitation in the tentative recommendation, Judge Ahart also makes several suggestions concerning revisions in the exemptions statutes which will be considered in the course of the Commission's review of this topic in the near future.

The staff recommends approval of the recommendation to print.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

California Association of Collectors, Inc.

Law Revision Commission
RECEIVED

Organized 1917

SEP 23 1991

File: _____
Key: _____

September 20, 1991

Stan Ulrich
California Law Revision Commission
4000 Middlefield Rd, Suite D2
Palo Alto, Ca 94303

Re: Earnings Withholding Orders

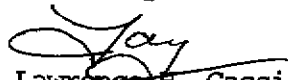
Dear Stan:

I have reviewed the suggestions for revisions in the current EWOs and find merit in many of them.

Our Legislative Council will meet prior to the end of the year to discuss this in detail. After that Ron Sargis will be in touch with you to work out a solution .

Thanks for your excellent reseach and cooperation.

Sincerely



Lawrence W. Cassidy
Legislative Council- Chairman

LHC/c;

cc: Ron Sargis/ Lou Mele/ Bob Wilson



United States Bankruptcy Court
CENTRAL DISTRICT OF CALIFORNIA
312 NORTH SPRING STREET, RM. 906
LOS ANGELES, CALIFORNIA 90012

OCT 11 1991

File: _____
Key: _____

PTS: 798-3745
12131 894-3745

ALAN M. AHART
JUDGE

October 9, 1991

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to
Miscellaneous Creditors' Remedies
(September 1991)

Dear Sirs:

I endorse all of the proposed changes to the Wage Garnishment Law (WGL) set forth in the above-referenced Tentative Recommendation.

Since you propose to amend the WGL, I wish to call your attention to an additional discrepancy. The EMPLOYER'S RETURN (Wage Garnishment), Judicial Council of California Form 982.5(4), contains two separate warnings notifying an employer that if it does not complete and mail the RETURN, the employer may be subject to civil penalties and attorney fees. However, I am not aware of any statutory authority for assessing attorneys fees or civil penalties against an employer for failing to complete and send the RETURN. The WGL sets forth certain remedies for an employer's deferral or acceleration or failure to withhold or pay over earnings, but recovery of attorneys fees is not even authorized in these instances. See CCP § § 706.153 and 706.154. Consequently, I request that you either amend the WGL to provide for attorney fees and civil penalties against an employer that does not timely complete and mail the RETURN, or that you cause to revise the Form to delete the references to attorneys fees and civil penalties. I previously made this latter suggestion directly to the Judicial Council of California, but received no response. Perhaps you will have more success.

With respect to the Commission's review of debtors' exemptions, I have three proposals. First, with regard to the homestead exemption, I believe that the statute should be amended to clearly state that a debtor cannot utilize the declared homestead exemption if the debtor no longer resides at the property named in the Declaration of Homestead. See In Re

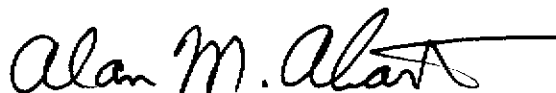
Anderson, 824 F2d 754 (9th Cir. 1987); and In Re Yau, 115 BR 245 (BC CD Cal 1990); but see In Re Figy, 102 BR 75 (BC SD Cal 1989).

Second, I believe that a one-person corporation should not be able to exempt funds held in a pension plan designed and used for retirement purposes without regard to the support limitation that applies to Keogh and other non-corporate pension plans. See In Re Cheng, ___ F2d ___ (9th Cir. 1991), 91 Daily Journal D.A.R. 10668 (September 3, 1991); In Re Bloom, 839 F2d 1376 (9th Cir. 1988). If such a change is not made, there will continue to be an undue incentive for high-income individuals with one-person corporations, such as doctors, lawyers, and dentists, to file bankruptcy and shield hundreds of thousands of dollars from the claims of creditors.

Finally, I believe the amount of the CCP § 703.140(b)(1), (5) "Wild Card" exemption ought to be increased. Currently, a debtor can exempt up to \$7900 in real and personal property by claiming this exemption. A debtor in bankruptcy who elects this exemption is, of course, a debtor that does not own a home. A debtor who owns a residence can now claim as exempt equity of at least \$50,000.00, and as much as \$100,000.00. In 1981 the ceiling for the homestead exemption was only \$45,000.00. If renters are to be treated in a fashion somewhat equivalent to homeowners, the "Wild Card" exemption should be raised substantially to, say, \$15,000.00. Such an increase might also encourage debtors who rent to save more of their disposable income, which would benefit the economy as a whole.

Thank you for your consideration.

Sincerely,



ALAN M. AHART
United States Bankruptcy Judge

AMA:bam

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

**Miscellaneous Creditors'
Remedies Matters**

November 1991

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Miscellaneous Creditors' Remedies Matters*, 21 Cal. L. Revision Comm'n Reports 135 (1991).

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
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November 1, 1991

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation proposes changes in two areas of debtor and creditor law:

(1) The Wage Garnishment Law needs revision to resolve several technical issues arising since the 1989 repeal of the 90-day earnings withholding period. These issues involve procedures for obtaining full satisfaction of judgments, return date for writs of execution, accrual of interest and addition of costs to outstanding earnings withholding orders, limitations on dormancy and suspension of wage garnishments, and satisfaction of final earnings withholding orders for costs and interest.

(2) The procedure for propounding interrogatories to judgment debtors would be revised to make clear that the 35-interrogatory limit in the general civil discovery statute is not cumulative but is applied to each round of interrogatories propounded in post-judgment enforcement proceedings.

This recommendation was prepared pursuant to Resolution Chapter 40 of the Statutes of 1983, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec
Chairperson

MISCELLANEOUS CREDITORS' REMEDIES MATTERS

Interrogatories to Judgment Debtor

The Enforcement of Judgments Law permits a judgment creditor to propound written interrogatories to the judgment debtor.¹ The general discovery statute has been revised to provide a 35-interrogatory limit on specially prepared interrogatories in an action.²

The Commission is informed that this limitation has been applied to limit the cumulative number of judgment creditor interrogatories to judgment debtors. This application of the general discovery statute unduly limits the interrogatory remedy. The interrogatory remedy under the Enforcement of Judgments Law is already limited to one set of interrogatories every 120 days. The Commission recommends an amendment to make clear that the 35-interrogatory limit applies to the set of interrogatories propounded to a judgment debtor in each round and is not applied cumulatively.

Wage Garnishment

Background

The Wage Garnishment Law was enacted on Commission recommendation in 1978.³ As enacted, this statute provided for a continuing levy on a debtor's earnings for a period of 90 days,

1. Code Civ. Proc. § 708.020.

2. Code Civ. Proc. § 2030(c).

3. 1978 Cal. Stat. ch. 1133, § 7 (enacting Code Civ. Proc. § 723.010 *et seq.*); renumbered as Code Civ. Proc. § 706.010 *et seq.*, as part of the Enforcement of Judgments Law, 1982 Cal. Stat. ch. 1364, § 2). For recommendations relating to wage garnishment, see 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601, 1703 (1976); 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1001 (1980); 17 Cal. L. Revision Comm'n Reports 975 (1980).

starting 10 days after service and concluding 100 days after service. The judgment creditor was not permitted to relevel on the debtor's earnings for a 10-day period following the conclusion of the 100-day period.

In 1989 the 90-day withholding period was repealed,⁴ with the result that a wage garnishment may continue as long as the underlying judgment is enforceable.⁵ Repeal of the 90-day withholding period reduced paperwork for levying officers, court clerks, and judgment creditors, and eliminated the expense of obtaining and levying new earnings withholding orders and writs of execution. Tracking a single continuing levy is more convenient for employers than complying with a series of 90-day withholding periods separated by 10-day grace periods. For debtors, the new scheme saves expenses for which they are ultimately liable and perhaps avoids the danger of being fired for repeated wage garnishments.⁶

However, since the 90-day withholding period was part of a detailed statutory scheme, its repeal resulted in a number of gaps and inconsistencies in the Wage Garnishment Law. In this recommendation, the Commission proposes a number of revisions of the Wage Garnishment Law to resolve these technical problems. The Commission has not reexamined the policy behind the 1989 legislation.

Return Procedures

The Enforcement of Judgments Law was drafted on the assumption that wage garnishment activity by a general creditor

4. 1989 Cal. Stat. ch. 263, § 1.

5. 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 Code Civ. Proc. §§ 683.020, 683.110. If a judgment is renewed, existing liens may be extended and existing enforcement proceedings commenced pursuant to a writ or order may be continued. See Code Civ. Proc. §§ 683.190, 683.200.

6. It is illegal to fire an employee for garnishments on one judgment. Lab. Code § 2929(b).

will have concluded by the time the writ of execution needs to be returned to the court. A writ of execution is required to be returned two years after issuance or, if no levy is made within the first 180 days, promptly after 180 days from issuance.⁷ A levy, including service of an earnings withholding order, may be made under a writ only during its first 180 days. These rules are intended 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.

The proposed law would (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 the levying officer to account to the court at least biennially so that court records will be periodically updated.

Costs, Interest, and Fees

The amount of an earnings withholding order is based on the amount of the writ of execution, and includes costs and interest added to the judgment, daily interest between the date of issuance of the writ and the date of issuance of the earnings withholding order, and specified levying officer fees that are controlled by statute.⁸ There is a problem in fully satisfying a judgment by wage garnishment under existing law since costs and interest continue to accrue after issuance of the order. This problem is magnified as the life of the earnings withholding order is extended, for there is no explicit authority to adjust the

7. Code Civ. Proc. § 699.560.

8. See Code Civ. Proc. §§ 706.121(e), 706.125(e); Gov't Code §§ 26746 (levying officer's disbursement fee), 26750 (fee for performing duties under Wage Garnishment Law).

amount stated in an outstanding order to reflect interest, costs, or fees after issuance of the order.⁹

It is in the interest of both debtors and creditors to get a full satisfaction where feasible. The proposed statute provides two methods for obtaining full satisfaction. Both procedures adopt a new rule that cuts off the right to interest and additional costs when the judgment is near full satisfaction. This rule is similar to the general rule that terminates the right to interest on the date of levy where the proceeds of the collection are sufficient to fully satisfy the amount due on that date.¹⁰

First, the levying officer is permitted, in the officer's discretion, to adjust the amount due on the earnings withholding order by deducting partial satisfactions and adding accrued interest, costs added to the judgment, and statutory fees accruing after issuance of the order. The officer would give notice by first-class mail to the employer to withhold the additional amount and, when that amount is paid, the judgment would be satisfied.

Second, where the first earnings withholding order is returned and costs and interest remain due, the judgment creditor would be able to obtain a "final earnings withholding order for costs and interest." If such a final order is satisfied, the judgment would be satisfied.

Dormant and Suspended Earnings Withholding Orders

If an employee whose wages are subject to garnishment leaves employment, the earnings withholding order remains in effect and will reattach to the employee's earnings if the debtor is

9. But see Judicial Council Form for "Earnings Withholding Order" (June 13, 1990), which provides that the "levying officer will notify [the employer] of an assessment you should withhold in addition to the amount due," implementing Gov't Code § 26746 (disbursement fee).

10. See Code Civ. Proc. § 685.030 (cessation of interest).

reemployed during the withholding period.¹¹ A similar difficulty can occur where an earnings withholding order is in effect and another order with priority, such as for support or taxes, is served on the employer. In this situation, the first order waits in line indefinitely until the order with higher priority is satisfied, and then revives.¹²

Dormancy and suspension of general earnings withholding orders did not present any special problems when the withholding period was limited to 90 days. But now that the withholding period runs indefinitely, the reattachment feature can place unrealistic burdens on the filing systems of levying officers and employers.

It is useful to provide a limited period during which an earnings withholding order may lie dormant. The debtor may have been temporarily laid off or may be a seasonal worker. In such situations it is more efficient to keep the existing order on file than return it and incur the delay and expense of obtaining a new writ and order. Similarly, in some cases a supervening order may be satisfied or removed within a short time. For example, if the supervening garnishment is a tax order for a limited amount, it makes sense to suspend 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 proposed statute would terminate an earnings withholding order to collect a general money judgment where no amounts have been withheld under the order for a continuous period of

11. 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 Code Civ. Proc. § 706.030(b)(1).

12. See Code Civ. Proc. § 706.022 & Comment.

180 days.¹³ This limit would apply regardless of the reason for the noncollection, and thus would apply both to dormancy where the debtor has left employment and to subordination to other orders.

Ten-Day Moratorium Between Garnishments

The 10-day moratorium between garnishments by the same creditor¹⁴ has no purpose in a statute permitting unlimited continuing garnishments. Accordingly, the proposed statute eliminates this rule.

13. This time period is approximately half the suspense period applicable to earnings withholding orders for support where the debtor has left employment. See Code Civ. Proc. § 706.030(b)(1). The longer period is appropriate in the case of support orders on the ground of public policy.

14. See Code Civ. Proc. § 706.107. The 10-day delay at the start of withholding is retained, since this delay is needed for the convenience of employers. See Code Civ. Proc. § 706.022(a).

RECOMMENDED LEGISLATION

Outline

CODE OF CIVIL PROCEDURE

- § 685.030 (amended). Cessation of interest
- § 685.050 (amended). Costs and interest under writ
- § 685.090 (amended). Addition of costs to judgment
- § 699.560 (amended). Return of writ of execution
- § 706.022 (amended). Duty to withhold earnings
- § 706.024 (added). Amount required to satisfy earnings withholding order
- § 706.026 (amended). Receipt, account, and disbursement by levying officer
- § 706.028 (repealed). Subsequent earnings withholding order for costs and interest
- § 706.028 (added). Final earnings withholding order for costs and interest
- § 706.030 (technical amendment). Withholding order for support
- § 706.032 (added). Termination of dormant or suspended order
- § 706.033 (added). Supplemental return on writ
- § 706.107 (repealed). Service of additional order by same judgment creditor
- § 706.121 (amended). Application for issuance of earnings withholding order
- § 706.125 (amended). Contents of earnings withholding order
- § 708.020 (amended). Written interrogatories to judgment debtor

Code Civ. Proc. § 685.030 (amended). Cessation of interest

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

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

(2) *If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.*

~~(2)~~ (3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

Comment. Subdivision (a) of Section 685.030 is amended to recognize the special rule applicable to cessation of interest with regard to collections by wage garnishment. See Sections 706.024 (amount required to satisfy earnings withholding order), 706.028 (final earnings withholding order for costs and interest).

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

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 periodically do not fully satisfy the money judgment, the levying officer may, in the officer's discretion, adjust the amount of daily interest to reflect the partial satisfactions, and make later collections 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 permit recomputation of the amount of daily interest accruing on a money judgment in the case of partial satisfactions, in the discretion of the levying officer. See also Sections 685.010 (rate of interest on judgments), 685.030 (cessation of interest). The levying officer may condition recomputation on receiving adequate instructions from the judgment creditor. See Section 687.010. The benefit of recomputing the amount of daily interest is evident 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 recomputation is to permit the full satisfaction of a money judgment during the course of a continuing levy, without the need to seek issuance of a new writ of execution or final earnings withholding order for costs and interest. See Section 685.030(a)(2), (c) (interest ceases to accrue on amount of partial satisfaction when amount received by levying officer); see also Sections 706.024(c) (cessation of interest on earnings withholding order), 706.028 (cessation of interest on final earnings withholding order for costs and interest). Recomputation also avoids the potential of collecting 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

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). The procedure under subdivision (c) may be applied where the writ of execution has been returned pursuant to Section 699.560 and collection continues under the earnings withholding order as permitted by Section 706.022. In this situation, costs may be added to the amount to be collected under the earnings withholding order without the need to obtain another writ of execution.

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

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 officer's 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), and the earnings withholding order remains in effect, 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 to recognize 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

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.

(4) *The date of termination of a dormant or suspended earnings withholding order as determined pursuant to Section 706.032.*

(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) & 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 (4) 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 or (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. See Sections 706.027 (satisfaction of judgment), 706.105(f) (grounds for termination of withholding order in exemption proceeding). The levying officer may also serve a notice of termination where the order has been dormant or suspended for 180 days. See Section 706.032 (termination for dormancy or suspension).

Paragraph (4) recognizes the special rule for termination of earnings withholding orders that have been dormant or suspended for a period of 180 days. See Section 706.032 & Comment.

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 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 Comment to Section 706.020.

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

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.

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

(c) If the full amount required to satisfy the earnings withholding order as stated in the order or in the levying officer's notice under subdivision (b) is withheld from the judgment debtor's earnings, interest ceases to accrue on that amount.

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, full satisfaction of the judgment may not occur unless the total amount due as stated in the order as issued is adjusted as 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), 706.101(c) (notice by first class mail).

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

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) *At least once every two years, the levying officer shall file an account with the court for all amounts collected under the earnings withholding order, including costs and interest added to the amount due.*

Comment. Subdivision (b) is added to Section 706.026 to provide for an accounting to the court of activities under an earnings withholding order. See Section 680.160 ("court" defined). This account 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 earnings 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

~~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 superseded by new Section 706.028 (final earnings withholding order for costs and interest). See new Section 706.028 & Comment.

Code Civ. Proc. § 706.028 (added). Final earnings withholding order for costs and interest

706.028. (a) "Final earnings withholding order for costs and interest" means an earnings withholding order for the collection only of unsatisfied costs and interest, which is issued after an earlier earnings withholding order has been returned satisfied.

(b) After the amount stated as owing in a prior earnings withholding order is paid, the judgment creditor may obtain a final earnings withholding order for costs and interest to collect amounts of costs and interest that were not collected under the prior earnings withholding order.

(c) A final earnings withholding order for costs and interest shall be enforced in the same manner as other earnings withholding orders.

(d) Satisfaction of the amount stated as owing in a final earnings withholding order for costs and interest is equivalent to satisfaction of the money judgment. For this purpose, interest ceases to accrue on the date of issuance of the final earnings withholding order and no additional costs may be added after that date, except for the statutory fee for service of the order and any other statutory fees for performing duties under the order.

Comment. Section 706.028 provides for a final earnings withholding order for costs and interest. This section supersedes former Section 706.028 (subsequent order for costs and interest). The new "final order" differs from the "subsequent order" under former law since it permits a full satisfaction of the money judgment through wage garnishment by stopping the running of interest on the remaining balance due on the judgment (which balance comprises earlier costs and interest). The amount stated as due on a final earnings withholding order may be increased only by statutory costs. See Gov't Code §§ 26746 (disbursement fee), 26750 (fee for service and other duties under earnings withholding order). In other respects, as provided in subdivision (c), a final earnings withholding order is treated the same as any other earnings withholding order.

If the principal amount of the 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). This later earnings withholding order is distinct from a final earnings withholding order for costs and interest provided by this section.

A final earnings withholding order is not available where the full amount due on the judgment has been collected under the initial earnings withholding order pursuant to the optional procedure set forth in Section 706.024.

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

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

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 an earnings withholding order has terminated pursuant to subdivision (a), the employer shall return the order to the levying officer along with a statement of the reasons for returning the order.

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 or assignment for support or 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 employer has a duty under subdivision (b) to determine whether an earnings withholding order has terminated under subdivision (a) and to return the order to the levying officer.

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

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

~~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

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 & Comment.

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

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 & Comment.

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

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).

