

First Supplement to Memorandum 91-61

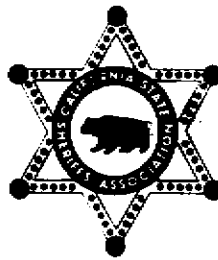
Subject: Study D-1001 - Creditors' Remedies Matters (Comments of Sheriffs' Association on TR)

Attached to this supplement is a letter from Anthony J. Pisciotta, Chairman of the Civil Procedures Subcommittee of the California State Sheriffs' Association, concerning the *Tentative Recommendation Relating to Miscellaneous Creditors' Remedies Matters [September 1991]*. The Sheriffs' Association supports the proposal and urges the Commission to recommend it as an urgency bill. The Association's position is that the technical problems under the 1990 revision of the Wage Garnishment Law are reaching a critical stage because two-year writs are beginning to expire, raising serious questions about the validity of open-ended wage garnishments.

The staff agrees that this remedial legislation is appropriate for urgency treatment. The only drawback would be that a two-thirds vote is required, but for this sort of technical bill that should not present a problem. The staff suggests that the Commission approve this recommendation as an urgency measure.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



OCT 25 1991

File: _____
Key: _____

California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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* * *

Executive Director
Sue Muncy

October 22, 1991

Mr. Stan Ulrich
Staff Counsel
California Law Revisions Commission
400 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Ulrich,

I write to you regarding the Law Revision Commission's Tentative Recommendation relating to Miscellaneous Creditors Remedies matters. The recommended legislation of the wage garnishment law as outlined will remedy many of the technical problems arising since the 1989 repeal of the 90-day earnings withholding period.

I would like to address two of the more serious technical problems the levying officer is faced with.

1. It has been nearly two years since the repeal of the 90-day withholding period (January, 1992). The problem centers on a conflict of procedures. The present procedure of the wage garnishment law allows the continuous withholding of wages until the judgment is satisfied. That procedure will begin to conflict with the statute requirement of CCP 699.560 which reads as follows:

(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.


At the present time the levying officer retains the writ of execution while a levy is active, and returns it to court pursuant to CCP 699.560, which means it must be returned at least two years from the date of issuance, except for subsections (b) and (c). If a withholding order continues past the two years, which will be the case on a large enforcement of judgment, the levying officer is faced with making a decision to either retain the writ to keep the withholding order in effect and disregard the requirement of CCP 699.560, or return the writ to court and no longer have statutory authority to continue to accept withheld wages.

2. This technical problem involves the withholding period, as defined in the Recommended Legislation by adding Section CCP 706.032 Termination of dormant or suspended order. This additional section is urgently needed because there is no specific withholding period for a dormant or suspended order. This causes a serious problem for both the employer and the levying officer as there is no termination point for the withholding order.

Based on the urgency of correcting the two technical problems I have described and the need to eliminate the other gaps and inconsistencies that exist at this time, the Civil Procedures Subcommittee wishes to request that the Law Revisions Commission consider the Recommended Legislation be introduced as an emergency legislative bill.

If you should have any questions or if the Subcommittee can be of assistance to you please give me a call.

Sincerely,


ANTHONY J. PISANO, Lieutenant
Chairman, Civil Procedures Subcommittee
California State Sheriffs' Association
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San Francisco, CA 94102
(415) 554-7231

cc: Sheriff Charles C. Plummer
Sue Muncy, Executive Director, CSSA
Civil Procedures Subcommittee