

#39

January 25, 1971

First Supplement to Memorandum 71-6

Subject: Study 39 - Attachment, Garnishment, Execution (Earnings Protection Law)

Attached is a letter from the Legal Section of the Department of Human Resources Development. The letter points out the difficulty of computing the amount payable to a creditor when the wages of a state employee are garnished and that creditors often receive nothing if the procedure provided by Section 710 of the Code of Civil Procedure is utilized early in the month, even though the employee receives a substantial salary.

The staff has proposed that Section 710 be amended so that the new Earnings Protection Law procedure would apply to the state as well as other employers. This will avoid the problems that concern the person who wrote the attached letter.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SACRAMENTO 95814



. January 19, 1971

REFER TO:

53:19:jd

California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Attn: John H. DeMouilly, Executive Secretary

Gentlemen:

ATTACHMENT AND GARNISHMENT
PROCEDURES

Your letter, dated November 27, 1970, to persons interested in Law Revision Commission's study relating to attachment and garnishment has come to our attention. There appears to be no discussion of changes needed in Section 710 of the Code of Civil Procedure in the attached materials. CCP 710 provides for the enforcement of judgments against debtors to whom money is owed by the state, county or other public entity. Subsection (a) 1. of CCP 710 includes the enforcement of judgments against the wages payable to employees of the State of California. As a result of Title III of the Consumer Credit Protection Act, Public Law 90-321 (15 USC 1671, et seq.), and the regulations thereunder (Title 29, Code of Federal Regulations, Part 870) the meaning of CCP 710, the language of which was already somewhat obsolete, has become even more unclear. The basic problem in the application of the two provisions together is that under CCP 710 the levy against the wages of a state employee is applied only to those wages due to the employee at the time of the receipt of the attempted attachment and the amount recoverable is limited to approximately half of the employee's salary. Under the Consumer Credit Protection Act, in 15 USC 1673 (a), the attempted levy can reach only

"(1) 25 per centum of his disposable earnings for that week, or

"(2) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage . . . whichever is less."

This federal limitation was, in effect, incorporated into CCP 710 by reference without any other change of wording in that statute (Stats. 1970, Ch. 1523 § 58.5).

This limitation is applicable to "any workweek".

The type of confusion which has already been caused by an attempt to apply these two limitations is illustrated by the revised pages of the State Controller's Payroll Procedures Manual, Revision No. 628, effective July 1, 1970, Section 39, which was intended to incorporate the provisions of the Consumer Credit Protection Act. The calculation procedure is set out in Section 39.6 of the Payroll Procedure Manual, a copy of which is attached. The limitations on the salary which can be reached are set forth in Section 39.4 of the Payroll Procedure Manual which sets out the following commonly used tabulations of the federal limitations:

<u>"MONTHLY PAY PERIOD</u>	
<u>DISPOSABLE EARNINGS</u>	<u>MAXIMUM WITHHOLDING</u>
\$ 1.00 to \$208.00	Nothing
\$208.00 to \$277.33	All over \$208.00
\$277.33 and up	25% of total disposable earnings

<u>SEMI-MONTHLY PAY PERIOD</u>	
<u>DISPOSABLE EARNINGS</u>	<u>MAXIMUM WITHHOLDING</u>
\$ 1.00 to \$208.00	Nothing
\$104.00 to \$138.67	All over \$104.00
\$138.67 and up	25% of total disposable earnings"

The calculation as set out in Section 39.6 applies the \$208.00 limitation applicable to the monthly pay period on the basis that most state employees are paid on a monthly pay period. It will be noted that in item B. of the calculation, the calculation begins with the total amount "earned and owing through the date the Abstract of Judgment was filed." Then the applicable deductions are taken and there is a calculation of "Disposable Earnings". It should be noted at this point that this is a calculation of disposable earnings earned to the date the Abstract of Judgment was filed. The next step set out in item E. provides for a "Maximum withholding per 39.43" which sets out limitations on garnishment for monthly and semi-monthly pay periods. Since most state employees are paid monthly, the tabulation would allow the creditor to receive nothing if the "disposable earnings" were less than \$208.00.

It will be noted that by this procedure the limitation on garnishment applicable to an entire month's wages is applied to the earnings up through the date that the documents are

received by the state. The net result of this is that if a creditor submits his Abstract of Judgment and Affidavit and \$2.50 filing fee to the state sometime early in the month, he will receive nothing, although the state law would give him nearly half the salary and the federal law about 25% or the excess over the federal minimum wage. This result that the creditor receives nothing as a result of a state law which protects one-half the salary and a federal law which protects three-fourths of the salary is certainly an unreasonable result.

While it might theoretically be possible to achieve a more reasonable result under a combined application of the two statutes in question, just how it should be done is difficult to determine from a reading of the two statutes. This does point up a problem which should be corrected to bring CCP 710 in conformity with the federal statute in a simplified and more understandable manner.

Sincerely,

THOMAS M. GRIFFIN, CHIEF, LEGAL SECTION



BY: WILLIAM D. SCOTT, ASSOCIATE TAX COUNSEL

Attachment

cc: Richard L. Braden, Chief
Division of Disbursements
State Controller
1227 "O" Street, Room 600
Sacramento, California 95814

.6 The following schedule outlines the computation of the amount due the Court and the remaining amount due the judgment debtor (employee).

A.	Balance of judgment unpaid and owing per affidavit accompanying abstract.		\$ _____
B.	Total amount earned and owing through the date the Abstract of Judgment was filed.		\$ _____
C.	Less:		
(1)	Withholding taxes on B.	\$ _____	
(2)	Normal Retirement contributions on B	\$ _____	
(3)	Normal OASDI contributions on B.	\$ _____	
(4)	Adjustments, arrears or survivor benefit contributions, and redeposits for a retirement system for the pay period. (Exclude voluntary additional contributions)	\$ _____	
(5)	Sum of amounts owed agency by employee for advances or for any other reason.	\$ _____	
	Total of deductions		\$ _____
D.	Disposable Earnings (B minus C)		\$ _____
E.	(1) Maximum Withholding per 39.43. (show calculation at left).	\$ _____	
	(a) Less previous Code 39 deduction amounts this pay period	\$ _____	
(2)	Amount available for payment of this judgment. (Not to exceed Line A)		\$ _____

F.	Amount earned during the <u>entire</u> pay period.		\$ _____
G.	Less retirement and taxes for the entire pay period, and other deductions, including the amount paid to the Court. (Taxes and retirement in C. were simply for computing the amount available for satisfaction of the judgment.) The deduction for the amount paid to the Court will bear Deduction Code 39.		\$ _____
H.	Net amount payable to the employee (judgment debtor) for the pay period.		\$ _____