

#39.30

1/26/61

First Supplement to Memorandum 71-9

Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law--Mailing of Order for Withholding of Earnings)

As you know, the Commission has contemplated that the earnings withholding order would be mailed by the judgment creditor to the employer and that the employer would make a return to the judgment creditor upon receipt of the order and would withhold earnings pursuant to the order and send the withheld earnings to the judgment creditor. The only function of the court is that the order is issued by the clerk upon request if the judgment debtor does not demand a hearing; if a hearing is demanded, the court holds the hearing.

Attached as Exhibit I is a letter from Carl M. Olsen of the Office of the Sheriff, San Francisco, suggesting that the act be "revised to allow the levies to be made by sheriffs, marshals and constables as at present." Also, it is suggested that a "more reasonable fee" might be provided. In addition to the fee, mileage is allowed at 70 cents a mile.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



First Supplement to
Memorandum 71-9

OFFICE OF
THE SHERIFF

EXHIBIT I

MATTHEW C. CARBERRY, Sheriff
FRANCIS J. SMITH, Undersheriff

January 21, 1971
Room 333, City Hall
SAN FRANCISCO, 94102
CALIFORNIA

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

Thank you for the opportunity of attending the meeting of the Law Revision Commission in San Francisco.

In connection with the proposed Earnings Execution Act, I feel you may not receive the opposition you expect if the act were revised to allow the levies to be made by sheriffs, marshals and constables as at present. The court could be informed by the officer's return as at present, rather than trusting to the vagaries of the postal system.

In addition, since a new type of court form is embodied, the Government Code sections relating to fees could be amended to provide a more reasonable fee for the one continuing wage levy by adding a section to cover the new court order-form. (Government Code Sec. 26721 - 26746 schedule enclosed.)

Very truly yours,

MATTHEW C. CARBERRY, SHERIFF

Carl M. Olsen
Carl M. Olsen
Chief-Civil Division

CMO:sh
Encl.

Sheriff's New Fee Schedule

San Francisco Sheriff Matthew C. Carberry yesterday released his department's fee schedule affecting sheriffs, constables and marshals. The effective date is Monday, November 10, 1969.

Govt Code Section

26721—Serving or executing any process or notice not otherwise provided for:	\$ 3
26722—Serving or levying a writ of attachment execution, or the delivery of personal property:	\$ 5
26723—Taking any bond or undertaking:	\$ 1
26724—Serving an attachment or execution on any ship, boat or vessel:	\$ 5
26725—Serving or executing a writ of attachment, execution or order on real property:	\$ 3
as to each continuous unbroken parcel AND	\$ 3
for serving a record owner other than the defendant (PLUS County Recording fees)	
26726—Keeper fees: \$25 for any eight hour period or any part thereof.	
26727—Making a copy of any writ, process, paper, order or notice: 90c a page	
26728—Preparing and posting notices of personal property sale: \$2 each, and mileage	
26729—Furnishing a notice for publication:	\$ 1
26730—Conducting (or postponing) sale of real and personal property: \$3 and mileage.	
26731—Advertising and posting notice of sale of real property or of any ship, boat or vessel: \$2 each and mileage, exclusive of costs of publication	
26732—Publishing notice of sale: The reasonable cost of the publication	
26733—Serving a writ of possession or restitution:	\$10
26734—Serving a garnishment or levy on property already in possession of the officer, in the same action:	\$ 5

26735—Estate levy pursuant to Sec. 561 C.C.P.:	\$ 5
for serving the personal representative of the decedent, and \$5 for filing a copy of the writ and notice of attachment with the County Clerk	
26736—Cancellation of the service or execution of any process or notice prior to its completion: \$2 and mileage. No charge when cancellation is requested prior to the time a trip is made in attempting to execute such process or notice.	
26737—Nulla Bona return on writ of execution:	\$ 1
26738—Making a not-found (Unable) return on a summons, affidavit and order, order for appearance, subpoena, writ of attachment, execution, order for delivery of personal property, or other process or notice:	\$ 3
and mileage. Mileage for one trip only shall be allowed.	
26739—Collection fee on attachment or execution: One (1) percent on the first one thousand dollars or less, and one-half of one percent on all sums over one thousand dollars, but not less than One Dollar for any collection.	
26740—Execution and delivery of a deed or certificate of redemption: \$3 (plus \$1.00 notarial acknowledgment fee per Sec. 8211 (f)).	
26741—Executing and delivering a certificate of sale:	\$ 3
26742—Executing and delivering any other instrument:	\$ 2
26743—Subpoenaing witnesses:	each \$ 3
26744—Serving or executing a civil order or warrant of arrest, including warrants arising from Secs. 545, 714, 715 or 717 of the Code of Civil Procedure (except for civil contempt of Court):	\$ 3
and mileage	
26746—Mileage: 70c per mile	
The following deposits shall apply in accordance with this fee schedule:	
Automobile levy	\$ 75 per vehicle
Chain & Delivery	\$ 50 minimum
Keeper levy	\$350
Personal Property Sale	\$ 50 minimum
Real Property Sale	\$100 minimum
Writ of Possession (eviction)	\$250

75.00