

#39.30

2/22/71

Third Supplement to Memorandum 71-9

Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law--Application for Withholding Order Prior to Judgment)

Attached as Exhibit I is a letter from S. E. Macy, Chief Clerk, Civil Division, Municipal Court, San Francisco, suggesting that Section 723.102 (application for withholding order prior to obtaining judgment) be deleted from the proposed statute. He points out the problems he believes would be created by the provision. If the provision is retained, additional language probably should be added to the statute to make clear that the withholding order will be issued only if the default judgment is granted in the exact amount stated in the request to enter the default. This is consistent with the statement in the Comment to Section 723.102.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



JAMES M. CANNON, CLERK

EXHIBIT I

The Municipal Court

San Francisco, Calif. 94102

558-4041

CITY HALL — CIVIC CENTER
CIVIL & SMALL CLAIMS DEPARTMENTS

HALL OF JUSTICE, 850 BRYANT ST.
CRIMINAL & TRAFFIC DEPARTMENTS

February 11, 1971

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

Re: Earnings Protection Law, Sec. 723.102

Dear Sir:

From the Clerk's point of view, may I point out the impracticality of the proposed section providing for an application of an earnings withholding order at the time of making an application for entry of default.

First, the making of an application for the entry of default does not insure its entry; or even if it should be entered, the subsequent judgment. Or should the judgment be entered, there is no guarantee that the amounts comprising the judgment will be the same as submitted.

It is not uncommon practice to request entry of default only shortly after the 31st day of service of process, and wait a considerable length of time before reducing the matter to judgment.

Often in the above situations, and in others, the amount actually prayed and the amount finally awarded varies - due especially to the accrual of interest "through the date of judgment".

Not infrequently the request mailed pursuant to Sec 587 CCP is mailed to the wrong party(s), some who have not been served. These errors are not discovered and corrected until much later.

The new form of Summons has caused many problems, due to the failure of the server to properly fill out the requirements of the fact of service. Particularly, when the "abode type" of service is used.

The requirements of Sec. 396a, CCP are often overlooked by attorneys and also those sections of the Civil Code dealing with the Unruh Act and the Rees-Levering Act, Sec's 1812.10 and 2984.4.

The reduction by the court under the provisions contained in Sec 1031 CCP of the amount of costs claimed is frequent in some Municipal Courts.

Secondly, in view of the foregoing, confusion would exist in the minds of the debtors, and also the clerks, as to the procedure for hearings.

It is suggested that the proposed section be eliminated.

S. E. Macy
S. E. Macy, Chief Clerk
Civil Division