

#39.30

8/31/71

First Supplement to Memorandum 71-58

Subject: Study 39.30 - Attachment, Garnishment, Execution (Employees' Earnings Protection Law)

Attached to this memorandum are the comments concerning the wage garnishment recommendation received on or before our August 30th deadline. We will, of course, bring other comments to your attention as they are received. We urge you to read each of the attached letters; however, the specific suggestions made will be analyzed below in connection with the sections to which they refer. In addition to the letters received, the staff has also carefully reviewed the recommendation again, and we have noted below certain problems revealed.

Analysis. The following portion of the memorandum specifically discusses only those sections of the recommendation which have concerned the staff or others. At the September meeting, we plan to thoroughly review the entire recommendation with the hope that, after that meeting, the recommendation can be revised and sent to the printer. We ask, therefore, that you raise any questions you may have in connection with any part of the recommendation at this next meeting.

Civil Code Section 4701. The Office of the City Attorney of Los Angeles (Exhibit VI) expresses concern that this section does not expressly declare that it is applicable to employers who are governmental entities. They suggest adding to Section 4701 a sentence stating that a withholding order for child support issued to enforce this section shall apply to a governmental employer. The staff does not believe that this addition is necessary

and would be undesirable surplusage. Section 4701 simply authorizes a court in the proper circumstances to issue an earnings withholding order for child support. The order itself is issued under Section 723.30 of the Employees' Earnings Protection Law. Section 723.11 makes perfectly clear that that law applies to both private and public employers. Another sentence in Section 4701 restating this point would seem to be redundant. A sentence might be added to the Comment if the Commission is concerned with this suggestion.

The same letter (Exhibit VI) also suggests that the "first sentence [of Section 4701] be reworded to expressly provide that the withholding order be directed to the employer of the parent." Again, such effect and action seems implicit under the general procedure provided in the Code of Civil Procedure. However, the suggestion could be implemented by revising the first sentence of Section 4701 to read as follows:

In any proceeding where the court has ordered a parent to pay any amount for the support, maintenance, or education of a minor child, the court may issue an earnings withholding order under Section 723.30 of the Code of Civil Procedure, directed to the employer of that parent, for the amount so ordered.

Code of Civil Procedure Section 682. Attached to this memorandum (Exhibit XI) is a technical conforming amendment which the staff suggests be added to the recommendation. The exhibit, we believe, is self-explanatory.

Sections 690.5-1/2 and 690.6. Professor Brooks states (Exhibit I):

[T]he proposed Section 690.6 uses the term "earnings," and yet defines it as "earnings" other than those covered elsewhere. This is a source of confusion, and some other term such as "income other than earnings" or "compensation other than earnings" might better serve the purpose intended.

The staff believes that the term "earnings" should be retained here for the time being. Temporary use of the term here permits us to make a

minimum number of revisions in the statutes now relating to "earnings" generally. Under our scheme, Sections 690.5-1/2 and 690.6 completely cover what have been considered earnings in the past. Use of a new term would raise the argument that the scope of Section 690.6 has been expanded or contracted (beyond the elimination of earnings covered under Chapter 2.5). Whether or not Section 690.6 should be so modified is an issue which the Commission has previously deferred for later consideration when time and resources permit a comprehensive study of attachment of and execution upon all types of assets.

Professor Brooks also suggests an exemption for cash similar to that proposed for checking accounts. The staff believes that this would be an added complication that probably would not produce sufficient benefits to be worth adding. We have already been criticized for producing a recommendation that is too long and unclear. See Exhibit VI. We believe that the treatment of cash is as comprehensive as we need.

Sections 690.7 and 690.7-1/2. We will not attempt to deal here with the effect of the Randone decision dealing with the attachment of bank accounts. That will be the subject of a separate memorandum which we will prepare as soon as we have received a copy of the decision. Regardless of what is done concerning attachment, however, there are pertinent comments concerning execution upon bank accounts.

Exhibit IV outlines problems created under both sections by our treatment of a husband and wife as one individual for exemption purposes. Where they are separated pending the final judgment in dissolution or legal separation proceedings, the recommendation at worst may operate unfairly and at best is unclear. The staff suggests that some arbitrary point be selected--

e.g., the date of filing a petition for dissolution or legal separation; the date of rendition of a judgment decreeing legal separation; the date of rendition of an interlocutory judgment of dissolution of a marriage (see Civil Code Section 5119)--beyond which, if the persons are living separate and apart, they will no longer be treated as husband and wife. We have no strong convictions as to the most suitable point to be selected; however, we submit the following as a possible solution. (This sentence could be added at the end of subdivision (a) of both sections.)

A husband and wife shall be treated as separate individuals: (1) after the rendition of a judgment decreeing their legal separation; or (2) if they are living separate and apart, after the rendition of an interlocutory judgment of dissolution of their marriage.

Consistent with dicta in Randone, the staff suggests that it be made clear that the exemptions for wages do not apply to wages traced into a bank account. The Comment to Section 690.7 (page 45) states that it is our intent to make the exemptions provided for bank accounts exclusive and that such tracing should not be permitted. The staff is concerned that this intent is not clearly stated in the proposed statute. We suggest that a subdivision be added which provides:

() The exemptions provided by this section are exclusive. A debtor may claim no greater amount as exempt by showing that such amounts were derived from earnings.

Section 710. The Office of the City Attorney of Los Angeles (Exhibit VI) disapproves of the revisions to this section. Their disapproval is based generally on the belief that our procedures are too cumbersome and that the present abstract procedure available against the public employee-debtor is preferable. The staff sees no reason to treat either the public employee or employer differently from the private employee or employer. We are not persuaded that the ex parte procedure provided can be further streamlined

without losing adequate safeguards against abuse. (Compare Exhibit VIII.) The present abstract procedure is apparently a one-shot, rather than a continuing levy, procedure. If this is the source of the opposition, we can only note again that we see no reason to distinguish between public and private employers and that the advantages of the continuing levy seem to outweigh the disadvantages. In short, in the absence of greater specificity with regard to their objections, we see no reason to change this recommendation.

Section 723.22. It has been suggested that the 120-day withholding period should be extended to 180 days. See Exhibit I. The "gut" reaction of the staff is that the longer period is too long; however, we note the suggestion. Compare the bill passed by the Assembly at the current session which provides a 90-day period.

Section 723.30. Paragraph (4) of subdivision (b) is not perhaps as clearly stated as possible. The staff suggests the following revision for your consideration:

(4) An employer shall withhold earnings of an employee pursuant to both a withholding order for support and another earnings withholding order simultaneously. The amount to be withheld under the withholding order for support shall be deducted first from the earnings of the employee; the amount to be withheld pursuant to the other withholding order shall then be computed based on the earnings remaining after this deduction.

Section 723.50. Surprisingly little comment was engendered concerning the amount to be exempt under this section. One writer apparently would take the position that the amount exempt is too great (Exhibit VII); one suggests that the basic exemption be 40 times, rather than 30 times, the federal minimum hourly wage. See Exhibit VIII. In the absence of further comments, the staff would make no changes in this regard.

As to a state system for withholding of personal income taxes, the staff suggests that we have the recommendation printed as is and, after the bill has been introduced in the Legislature, consider the drafting of a provision to deal with the problem of state taxes.

Section 723.101. The authorization of service by mail has drawn opposition. See Exhibits III and IX. The disadvantages of mail service do not, however, seem to us to nearly equal the advantages, and we recommend no change in this regard.

Sections 723.103, 723.122, 723.123, 723.124. A local legal aid society has suggested in substance that, in addition to serving the notice of application for issuance of an earnings withholding order on the debtor, the debtor also be served with the forms necessary to make a claim for exemption. (See Exhibit VIII; the writer also has attached some sample forms.) An earlier version of this recommendation took the approach suggested, but it was tentatively decided that, if the debtor was given adequate notice of his right to make a claim for exemption (as provided in the forms to be prepared by the Judicial Council), it was not too much of a burden to ask that he himself secure the forms to make the claim from the court clerk. In view of the letter received, do you wish to make any further changes?

Article 6. Administration and Enforcement. Professor Brooks (Exhibit I) suggests that the debtor be afforded civil remedies (against both employer and creditor?) with double or treble damages for abuses of the procedures provided. This general idea was rejected earlier, as we recall, on the grounds that present remedies are generally adequate and that to provide greater rights vis-a-vis employer and employee would be undesirable. The staff still believes that the remedies provided are adequate and we are reluctant to upset whatever balance we have in the recommendation as drafted.

Labor Code Section 300. Professor Brooks (Exhibit I) suggests that it is unwise to permit unlimited wage assignments and would prefer to see wage assignments subject to the same restrictions as earnings withholding orders.

His reasons are clearly explained in his letter. The staff believes that restricting wage assignments to the amounts provided under Section 723.50 would simply encourage creditors to use involuntary procedures, thus increasing the burden on courts and perhaps worsening the impact on the debtor. The staff believes that the decision whether or not to revise Section 300 further depends upon one's basic attitude concerning the extent to which the protections provided should be self-executing--i.e., is the ability to revoke a wage assignment adequate protection for the wage earner? We think that it is. One possible change is the addition of a provision in the statute which requires every wage assignment to recite that it is revocable at will. We do not, however, believe that this is necessary.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

STATE OF CALIFORNIA

FRESNO STATE COLLEGE

FRESNO, CALIFORNIA 93726



August 11, 1971

Mr. Jack I. Horton
Assistant Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, CA 94305

Dear Mr. Horton:

Thank you for sending me the copy of the August revision of the Earnings Protection Law. I have not made a thorough examination yet, but since I am returning the form requesting future materials, I thought I would make some comments to you rather than a formal letter to the Commission.

First, the proposed Section 690.6 uses the term "earnings," and yet defines it as "earnings" other than those covered elsewhere. This is a source of confusion, and some other term such as "income other than earnings" or "compensation other than earnings" might better serve the purpose intended. While I like the general approach being used, it is of necessity complex and terminological confusion should be avoided even at the cost of being more wordy.

Second, while the reason for the 120 day period is stated, a slightly longer period such as 180 days would be better. Since one of the objectives is to reduce levies and their costs, the possible delay of other creditors for another sixty days does not seem too high a price to pay for increasing the chance that each creditor will be paid except for interest and costs which he must re-levy for in any event under the proposal.

Third, since the proposal contains new protection for checking accounts, why not create a similar exemption for cash? The proposal ties the cash exemption to earnings which requires that cash be identified as earnings. It would be simpler to create a minimum dollar amount cash exemption and then permit the debtor to establish an additional amount up to perhaps the exempt earnings for one month, if he can show need. This would also help to solve the problem of trying to trace earnings through time.

Fourth, would it be possible to provide in the statute a course of action for abuse of process with triple or double the amount improperly withheld as damages? The present case law on abuse of process is inadequate. The statute does contain protection for the employer, and administrative and criminal processes against the abusing creditor, but civil relief for the debtor might also serve to reduce abuse.

Mr. Jack I. Horton

Page 2

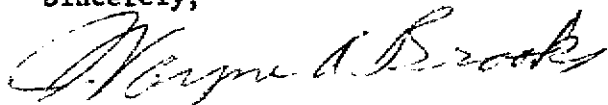
August 11, 1971

Fifth, the revision of Section 300 of the Labor Code involves some rather drastic changes in the law. As I read Section 300, assignments of future earnings are void except to creditors supplying necessities. While this exception covers a lot of ground and "necessities" is a real source of trouble, the proposal would make assignments of future earnings freely available. This has at least two unfortunate possible results. It fails to recognize assignments as a remedy device for the creditor, unprotected by the controls imposed on judicial remedies. It fails to recognize the waiver effect of an assignment unrestricted in amount. The courts have consistently objected to attempted contract waiver of earnings exemptions, but an unrestricted assignment accomplishes the same purpose. The proposal encourages creditors to secure and use assignments. It would be better to make the assignment rules part of the Earnings Protection Law, subject to the same amount, time and priority controls (as well as penalties) as judicial remedies. If a debtor wants to pay a creditor more than the non-exempt portion, he should do so out of what he has been paid. Presumably, that is what the parties intended and expected when the credit was extended. The proposed statute is designed to protect the debtor from creditors who might take away his means of immediate livelihood. Yet the assignment provision permits a creditor who can use his economic leverage to obtain an assignment to do just that. The provision allowing revocation at any time, which apparently is designed to protect the debtor from such a loss, presupposes sufficient knowledge of the law and ability to use it. The objection to the present exemption that debtors do not claim what they are entitled to should cast enough doubt on the effectiveness of the revocation provision as to cause its abandonment in favor of other controls.

Sixth, there does not appear to be any protection against discharge for garnishment. Perhaps I missed it in my preliminary examination, but it is important under the CCPA, although inadequate there. Other states have extended the bar on discharge beyond the one indebtedness rule of the CCPA. The proposed system is designed to reduce the costs to the employer and to simplify his role, and it would seem proper to afford some job protection.

On the whole the proposed law is a definite advance. If somehow, in addition, attachment can be cut back to use only for quasi-in-rem jurisdiction and against fraudulent, concealing or absconding debtors, perhaps some of the present creditors abuses can be curtailed.

Sincerely,



Wayne A. Brooks
Professor of Business Law
Department of Finance &
Industry

WAB:ee
encl.

EXHIBIT II

LAW OFFICES

GOLD, HERSCHER & TABACK

JOSEPH TABACK
DANIEL M. HERSCHER
LESSING E. GOLD
RONALD J. GRUESKIN
DONALD J. GOLD
ALAN S. MARENSTEIN

8500 WILSHIRE BOULEVARD • SUITE 703-05
BEVERLY HILLS, CALIFORNIA 90211
OLYMPIA 2-0490 • OLEANDER 5-5163

IN REPLY PLEASE REFER
TO FILE NUMBER

August 11, 1971

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

Re: Recommendations as to Levy on Bank Accounts
and Savings Accounts.

Gentlemen:

I have read your recommendations with respect to exemptions from attachment and execution on deposits or accounts at financial institutions. I never have understood in the past why savings and loan associations and credit unions would have fixed exemptions other than the fact that some special interest group probably obtained this legislation. And I cannot understand why you choose an exemption of \$1,500.00 as an aggregate exemption from attachment and \$500.00 as an aggregate exemption from execution. I recognize that earnings are often times deposited to checking or savings accounts; but a \$1,500.00 exemption from attachment and a \$500.00 exemption from execution are far too liberal in my opinion. My experience is that wage earners generally have somewhere between zero and \$500.00 in a checking account and perhaps more in a savings account. At any one time I would think that a wage earner would not have checks totaling more than \$500.00 outstanding. I believe that a \$500.00 exemption from attachment is highly adequate. The same rule should apply for executions. It is true that changes in the law must be made because of the abuses of same by certain creditors or agencies. By the same token those creditors dealing in good faith with people such as non-necessary-providing-commercial creditors should also be treated fairly.

Very truly yours,

GOLD, HERSCHER & TABACK

By


RONALD J. GRUESKIN

RJG:lej

California Association of Professional Process Servers

LEGISLATIVE COMMITTEE 848 Sunset Boulevard Los Angeles, California 90012

August 14, 1971

PRESIDENT

CARL STRANG
517 Financial Center Building
Oakland, California 94612

VICE PRESIDENTS

WILLIAM G. CAVE
85 West Santa Clara Street
San Jose, California 95113

HAROLD P. THOMAS
Post Office Box 1513
Santa Ana, California 92702

SECRETARY-TREASURER

MARVIN GIVANT
Post Office Box 9724
North Hollywood, California 91609

BOARD OF DIRECTORS

WILLIAM G. CAVE, Chairman Pro Tempore
85 West Santa Clara Street
San Jose, California 95113

MICHAEL BUEHLER
19933 Armita Street
Canoga Park, California 91306

RICHARD J. GREEN
848 Sunset Boulevard
Los Angeles, California 90012

JOHN F. MITCHELL
Post Office Box 2267
Fresno, California 93721

ROBERT J. O'CONNOR
Post Office Box 1261
Fresno, California 93703

BERT ROSENTHAL

14 Market Street
San Francisco, California 94104

ROBERT J. SCHROEDER
14528 Victory Boulevard
Van Nuys, California 91401

JOHN L. SILVA
222 Avenida del Norte
Redondo Beach, California 90278

ELLIOTT S. WOLFE
Post Office Box 5524
Sherman Oaks, California 91413

ALEX RIFKIN (1930 - 1970)

LEGAL COUNSEL

WISS & BREGMAN
1230 West Olympic Boulevard
Los Angeles, California 90015

LEGISLATIVE ADVOCATE

DARRELL J. McCONNELL
6473 Oakridge Way
Sacramento, California 95831

California Law Revision Commission
School of Law - Stanford University
Stanford, California 93405

Gentlemen:

Our Legislative Committee has reviewed your publication #39.30 as revised in August, 1971, with regard to Attachment, Garnishment and Execution.

We agree that many changes in existing law are necessary with regard to execution and attachment of wages of citizens.

We do, however, disagree with the proposal that notice to an employer by mail is sufficient. Our Association believes that personal service must be made in order to assure that adequate notice is given to the proper person in a corporation.

While your report suggests that mailing a notice to an employer is performing the service in a businesslike manner, we would hasten to point out to you the present poor service being performed by the United States Post Office. Notices to employers could be easily mis-routed from mail rooms, or in the case of a small business, many employers would not understand documents sent to them through the mail, and would probably in many cases deny receiving them.

It is our position that personal service should be effected upon employers, banks, etc. We do not believe, however, that it is necessary for such notice to be served by a Sheriff, Marshal or Constable. Legislation is now pending (Assembly Bill No. 2809) which will provide for the registration and bonding of process servers. We believe that service of Writs, which is now restricted to the Sheriff, Marshal, or Constable, should be expanded to include private process servers.



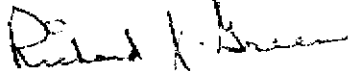
California Law Revision Commission
Page two
August 14, 1971

We would be pleased to have a witness appear before a meeting of your Commission to document many cases of ineffective and improper service of process by mail.

If service by mail is included in the final form of the bill to be presented to the California Legislature, our Association will oppose passage of the bill.

Very truly yours,

CALIFORNIA ASSOCIATION OF
PROFESSIONAL PROCESS SERVERS



Richard J. Green, Chairman
Legislative Committee

RJG:G

cc: Hon. Alfred H. Song
Hon. Carlos J. Moorhead
John N. McLaurin, Esq.
All Officers and Directors, CAPPS

First Supplement to Memorandum 71-58

LAW OFFICES OF
ROY C. ZUKERMAN

EXHIBIT IV

August 19, 1971

P. O. BOX 8306
17181 BROOKHURST STREET
FOUNTAIN VALLEY, CALIFORNIA 92708
[714] 962-4491 & 640-6767

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

Gentlemen:

Re: Tentative Recommendation
Relating to Attachment,
Garnishment and Execution

In a cursory review of the August, 1971, Revised Tentative Recommendation I have noted one area which could create serious problems.

A large portion of my practice is in the fields of insolvency, debtor-creditor rights, and domestic relations. There is substantial overlap in these fields, and it is not uncommon for persons in the very financial situation which will bring proposed §§690.7 and 690.7-1/2 into play, that the husband and wife are living separate and apart, but no final dissolution of marriage has been entered.

Sometimes it is a purely informal separation; sometimes legal proceedings have been initiated but no interlocutory judgment has been entered; and sometimes interlocutory, but no final, judgment has been entered.

In application of the present exemption laws where the wife, but not the husband, files bankruptcy, many problems already arise concerning the title of the trustee.

The potential problems under §§690.7(a) and 690.7-1/2(a), are, of course, identical. Suppose a fact situation in which the husband and wife have separated, dissolution proceedings have been initiated, but no interlocutory judgment has been entered. The wife, through her own earnings after separation, has accumulated a bank account in which \$300.00 is on deposit.

The husband, by his own efforts subsequent to separation, and while fully current in payment of support obligations under an order to show cause order, has also accumulated a \$300.00 bank account. The husband has incurred a debt to a garage for repairs to an automobile after separation. The garage owner sues in Small Claims Court, recovering a judgment of \$250.00 against the husband only.

By treating the husband and wife as one individual, and cumulating the bank account, there is \$100.00 non-exempt and therefore reachable by the husband's creditor.

Another couple has had exactly the same circumstances, except that interlocutory judgment is entered prior to the levy of execution. They are still "husband and wife" and the same result apparently follows, especially as no community-separate distinction is applied to cumulation.

A third couple in the identical circumstances has proceeded to final judgment. They are not husband and wife, the exempt bank accounts are not cumulated, and the husband's account is immune from his creditor.

It may be that litigation would ultimately result in a series of rules defining when, for purposes of the exemption statute, a couple ceased to be "husband and wife". This does not appear to be a feasible approach in my view, since the people directly affected by this procedural problem would in most instances be unable to finance the litigation. Assuming that a public law office did pursue the matter, the creditors involved might well be those unable to finance litigation of their position.

May I respectfully suggest that a further sentence be inserted, fixing a specific statutory line at which a married couple ceased to be "husband and wife" for purposes of the exemption cumulation provisions. Even if the Statute provides that only a final judgment will terminate that status, it would, in my view, be an improvement over the present proposal, as it would flag to domestic relations counsel the necessity of making appropriate provision in marital settlements and judgments.

California Law Revision Commission

August 19, 1971

Also, there is the question under the present proposal whether persons as to whom a final judgment of legal separation (or a pre-Family Law Act judgment of separate maintenance) has been entered. Surely it is not the intent of the Commission to cumulate for exemption purposes the assets of a couple living separate and apart, with Court sanction, for many years prior to the incurring of a debt by one of the parties.

This result would, however, be mandated by the proposed language since the essence of legal separation is retention of the marital knot - a Gordian knot indeed in these circumstances.

Respectfully submitted,


ROY E. ZUKERMAN

RC2:aet/sg

EXHIBIT V
LEAGUE OF CALIFORNIA CITIES

MEMBER NATIONAL LEAGUE OF CITIES
"WESTERN CITY" OFFICIAL PUBLICATION

Sacramento 95814 . . 1108 "O" Street . . 444-5790 . . Area Code 916
Berkeley 94705 . . Hotel Claremont . . 843-3083 . . Area Code 415
Los Angeles 90017 . . 702 Hilton Center . . 624-4934 . . Area Code 213

OFFICERS

President:
CLIFFORD A. LOADER
Mayor, Delano

First Vice President:
RAY C. PRIESTER
Mayor, Fort Huachuca

Second Vice President - Treasurer:
RONALD R. JAMES
Mayor, San Jose

Past President:
EDWARD W. WADE
Mayor, Long Beach

Executive Director and
General Counsel:
RICHARD CARPENTER

DIRECTORS

ALFRED A. AFFINITO
City Councilman, Phoenix

RICHARD COLEMAN
Planning Director, Phoenix

JOE CURRAN
Mayor, San Diego

LEE H. DAVIES
Mayor, Modesto

G. ED GADSBY
Mayor, Salem

ALLEN SHINES
City Attorney, Beverly Hills

FRANK M. HAYES
Mayor, Montclair

JOHN E. MALLESTER
Mayor, San Francisco

JAMES MCCARTY
Director of Public Works, Oakland

MARTIN MCCONNELL
Chief of Police, San Mateo

THOMAS J. MELLON
Chief Administrative Officer,
San Francisco

REGINALD E. MOORE
Fire Chief, Birmingham

MARGARET MOORE
City Clerk, Long Beach

FRANCIS P. PACELLI
Mayor Pro Tem, City City

HELEN PUTNAM
Mayor, Peoria

EDWARD K. RADEMACHER
Mayor, California

JAMES SNAPP
Mayor, El Cajon

HERBERT A. SPURGIN
Mayor, Santa Monica

ALBERT J. TALKIN
City Councilman, Sacramento

JOHN M. VER LEE
Director of Parks & Recreation,
Oakland

H. DOUGLAS WELLER
City Manager, Alameda

HOWARD H. WIEFELS
Mayor, Palm Springs

ROBERT M. WILSON
Mayor, Costa Mesa

SAM YORTY

Sacramento, Ca.

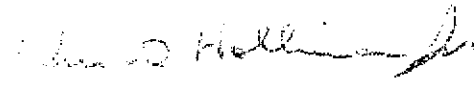
August 23, 1971

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

Dear Mr. DeMouilly:

This will acknowledge receipt of the Tentative Recommendation relating to Attachment, Garnishment, and Execution. We have reviewed the recommendation and approve the proposed legislation.

Sincerely,


William G. Holliman, Jr.
Assistant Legal Counsel

WGH/sjm

EXHIBIT VI
OFFICE OF
CITY ATTORNEY
CITY HALL
LOS ANGELES, CALIFORNIA 90012



ROGER ARNEBERGH
CITY ATTORNEY

August 23, 1971

CALIFORNIA LAW REVISION COMMISSION
School of Law - Stanford University
Stanford, California 94305

Attention: John H. DeMouilly
Executive Secretary

Re: Wage Garnishments -
Proposed Legislation

Gentlemen:

Pursuant to your request, this office has reviewed your proposed legislation in matters pertaining to garnishment of wages in the State of California. Due to having received said proposed legislation in mid-August, and since you request our views thereon not later than August 30, 1971, the review of said legislation has not been as exhaustive as would be desired, except as to your proposals referring to Civil Code Section 4701 and Code of Civil Procedure Section 710.

As to Civil Code Section 4701, this office has encountered a conflict with the local Superior Court on the question as to whether or not said section applies to the City or the County or the State and other municipal and public bodies. Said section appears to be a law of general application. If such is the case, under the law of our state said section would not apply to the aforesaid governmental bodies unless made expressly applicable thereto. The local Superior Court as a result of the questions raised by this office, submitted to its legislative council a proposed amendment to said section expressly declaring said section to be applicable to the above mentioned governmental bodies. This office therefore suggests the addition of a phrase worded in substance, as follows:

CALIFORNIA LAW REVISION COMMISSION

Attention: John H. DeMouilly
Executive Secretary

-2-

"If the employer is the state, any county, city or county, city or municipality, quasi municipality, district or public corporation, the withholding order shall apply to such employer." By such an amendment the question as to whether or not said section applies to said governmental entities will be removed and court actions to clarify said question will not be necessary.

This office further suggests as to said proposed amendment to Civil Code Section 4701 that your first sentence thereof be re-worded to expressly provide that the withholding order be directed to the employer of the parent.

This office disapproves of your proposed amendment to Code of Civil Procedure Section 710, for the reason that the procedures to be followed under your proposal for obtaining monies from the governmental bodies involved, requires following the procedures set forth in Section 690.50. By such amendment you would remove the summary procedure of a judgment creditor filing an Abstract of Judgment with the public body and thereby avoiding the detailed court procedures that will be encountered under your proposed amendment. By virtue of the procedures established by Section 690.50, an extensive amount of paper work, accounting, and time of the court would appear to be required to conform to your suggestions. With our courts presently engulfed by over-crowding and time consuming paper work, and technicalities, it would appear your suggestions would be adding thereto. The present procedure of using the Abstract of Judgment and the governing body computing the amount or amounts to be deducted and submitted to the court, the time required for such procedure is minimal and should be retained.

As to your proposed amendments in general, it is the opinion of this office that it would be far more beneficial that a complete review be made of our garnishment laws and that the content thereof be as brief and concise as possible, but commensurate with the effectiveness thereof. It appears that your proposed amendments contain extensive details as to

CALIFORNIA LAW REVISION COMMISSION

Attention: John H. DeMouilly
Executive Secretary

-3-

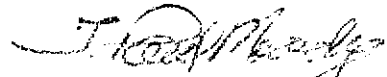
applicability and procedures of said proposed laws that could be condensed and also be made more clear as to their application.

If this office can be of any further assistance in the matter of your proposed legislation, please communicate with us.

Very truly yours,

ROGER ARNEBERGH, City Attorney

By



T. PAUL MOODY
Division Chief
Deputy City Attorney

EXHIBIT VII

SOUTHERN ADJUSTMENT BUREAU Inc.

SUITE 535, SPRECKELS BUILDING
SAN DIEGO, CALIFORNIA - 92101

TELEPHONE 239-0307

Aug 18, 1971

California Law Revision Commission
Stanford University
Stanford, California 94305

Re: Recommendations to the 1972
Legislature concerning wage
garnishment and related matters.

Gentlemen:

I recently received a copy of your proposed recommendations to the 1972 Legislature dealing with wage garnishment and related matters. It is obvious from the bulk of the recommendation that the Commission has spent many hours of work preparing their study, but I believe that their approach may not be for the ultimate benefit of judgment debtors. As a owner of a collection agency I have made the following observations concerning the Legislatures intent and the actual results:

1. Basically the Legislature is trying to protect judgment debtors from unfair collection laws or collection laws that can cause undue hardship. Most judgment debtors that need legislative protection are the ones with low incomes, these people make up the bulk of debtors that are in need of some Protection. The Legislatures' theory seems to be to limit the judgment creditors remedies, therefore protect the low income judgment debtor. This theory backed by anti-collection laws will snow-ball to the point where a judgment creditor cannot collect his judgment by writ of execution. The creditor will therefore absorb the total loss and will counter with extremely ridged credit rules, if not a low income no credit policy. The ultimate end result will be that

Page Two
Aug. 18, 1971

a low income person, whether he be a judgment debtor or not, will be unable to obtain credit under any circumstances. These low income persons are the ones that rely upon and need credit more than any other class; it would be a shame to hinder these peoples betterment due to miss calculated theories of protection.

2. It seems inequitable that a judgment debtor can escape payment of a judgment of any size when the debtors have:
 - a) One piano, one radio, one television receiver, one shotgun and one rifle, (exempt from execution CCP 690.1).
 - b) One motor vehicle valued at less than \$1000.00 but with not more than a \$350.00 equity, (exempt from execution CCP 690.2).
 - c) One house trailer occupied by debtor with an equity of not more than \$5000.00, (exempt from execution CCP 690.3).
 - d) Tools of trade with not more than \$2500.00 in equity, (exempt from execution CCP 690.4).
 - e) \$1000.00 in savings and loan association, (exempt from execution CCP 690.7).
 - f) \$1000.00 in building materials, (exempt from execution CCP 690.17).
 - g) \$20,000.00 equity in real property, (exempt from execution CCP 1260).

There are many other exemptions but these on their face total \$30,500.00. The example may be exaggerated because it is unlikely that any one judgment debtor would have all of the above listed, but there are many professionals that have two or more.
3. A familiar response to a wage garnishment by an employer is "paid in advance" and "debtor owes me money". This problem should be cleared up once and for all by legislation. Should a employer be able

Page Two
Aug. 18, 1971

to advance or loan monies to his employees with preference over other judgment creditors as to repayment? If so it is inequitable to the judgment creditor; he reduced his claim to judgment but yet his judgment is being defeated by the unsecured claim of the employer.

I hope the above will be of some help.

Sincerely,

SOUTHERN ADJUSTMENT BUREAU, INC.

A handwritten signature in dark ink, appearing to be 'Tim Lichty', written over the printed name.

Tim Lichty

TL/lb

First Supplement to Memorandum 71-58

EXHIBIT VIII

**EAST BAYSHORE NEIGHBORHOOD LEGAL CENTER
LEGAL AID SOCIETY OF SAN MATEO COUNTY**

1651 BAY ROAD

EAST PALO ALTO, CALIFORNIA 94303

TELEPHONE: 324-1386

August 26, 1971

John M. DeMouilly
California Law Revision Commission
Stanford Law School
Stanford, California 94305

RE: Employees' Earnings Protection Law

Dear Mr. DeMouilly:

You has asked for comments on your draft of Tentative Recommendation relating to Attachment, Garnishment and Execution - Employees' Earnings Protection Law. I have gone over the draft quickly and have two main comments. I will go over it in more detail at a later time to see if I can provide further comment.

In your introduction you recognize that the present Claim of Exemption procedures are not fully used and that it is essential to make the procedure more simple (See page 14). However, as a consequence you have raised the amount of automatic exemption somewhat but you have made more strict the provision for civil Claims of Exemption.

I am worried first because with the stricter standards on Claims of Exemption the amount of automatic exemption is most important. From my dealings with my clients at Legal Aid, I would say that the amount of protection at the lower end of the wage scale is still too little. I recognize that it is an improvement but would suggest that rather than 30 times the minimum wage - which now is \$48.00 - 40 times the minimum wage should be used. I believe that you realize from numerous studies the tremendous impact of garnishment on families - particularly poor families. (See, e.g., Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev., 1214 1227-38 (1965). Even though the amount of garnishment in cases with lower wages will be small, the impact on the employee's job will still exist - despite the protection of the Consumer Credit Protection Act. Id. at 1229-33. I would therefore strongly urge that the basic automatic exemption be realistic in amount.

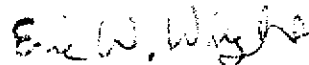
Mr. DeMouilly
August 26, 1971
Page Two.

My second suggestion concerns the Claim of Exemption provision. You recognized at page 14 that the procedure must be simplified and that the availability of this right be made clear to the debtor. However, I do not believe that you have sufficiently done this. You are correct in recognizing that debtors do not presently understand their rights. A study by Western Center showed that only about 5% of those garnished filed Claims of Exemption. Some Stanford undergraduates did a study for me this past year and they found in San Mateo County only about 2% of garnished debtors filed Claims of Exemption. Moreover, the students found that very few debtors understood their exemption rights despite the statutory notice procedure.

I would suggest that you add a notice provision which is understandable to debtors and provide that a Claim of Exemption form be served on the debtor with instructions as to how to use it. I have enclosed a sample (rough) notice and Claim of Exemption form for your review.

Please let me know if you have any questions concerning the above.

Very truly yours,



ERIC W. WRIGHT

EWV:lar
Enclosure

cc: Lucy McCabe
1212 Market Street
San Francisco, CA

NOTICE TO JUDGMENT DEBTOR:

You may be entitled to file a claim exempting (protecting) your wages from being taken if all or part of your earnings are essential for the use of your family. If you wish to protect your wages, you must complete in two copies the form below and return it to:

(name & address of whoever it is to be
sent to)

within 10 days from the date stamped below.

Date of Levy

You may wish to
seek the advise
of an attorney

Plaintiffs herein caused a Writ of Execution to issue and a garnishment to be levied thereunder by the (levying officer) on or about (date of levy). By virtue of said levy there is being withheld from Defendant herein moneys earned by him for personal services rendered within 30 days next preceding said levy.

My net take-home pay per month amounts to \$ _____. The alleged debt was for \$ _____. The following amounts are necessary per month for the support of my family:

Wherefore defendant claims exemption of all earnings.

I declare under penalty of perjury that the foregoing is true and correct.

(Address of Declarant)

First Supplement to Memorandum 71-58

EXHIBIT IX

J. H. PETRY

ATTORNEY AT LAW

374 COURT STREET

SAN BERNARDINO, CALIFORNIA 92401

AREA CODE 714

TURNER 9-9545

August 25, 1971

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

Re: Recommendations re Wage garnishment and Related
Matters

Gentlemen:

With reference to your tentative recommendations relating to attachment, garnishment and execution, I approve in general.

However, I disapprove the provision permitting a levy by mail because there should be something more positive than the levying party's own word that a levy was made.

Very truly yours,


J. H. Petry

JHP:ja

1st Supplement to
Memorandum 71-58



EXHIBIT X

C O U N T Y C O U N S E L

FOURTH FLOOR, ADMINISTRATION BUILDING, 1221 OAK STREET
OAKLAND, CALIFORNIA 94612 . TELEPHONE 835-0700

RICHARD J. MOORE
COUNTY COUNSEL

August 26, 1971

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

Attention: John H. DeMouilly,
Executive Secretary

Gentlemen:

We have reviewed your tentative recommendation dealing with wage garnishment and related matters. We would like to indicate our approval of your tentative recommendation.

Very truly yours,

RICHARD J. MOORE,
County Counsel

By 
PETER H. LACHAPELLE,
Deputy County Counsel

PHL:cs

EXHIBIT XI

CODE OF CIVIL PROCEDURE

§ 682 (technical amendment)

Sec. . Section 682 of the Code of Civil Procedure is amended to read:

682. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court, the county, and in municipal and justice courts, the judicial district, where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 667, the execution must also state the kind of money or currency in which the judgment is payable, and must require the officer to whom it is directed to proceed substantially as follows:

1. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor, or if it is against the earnings of such debtor, ~~only one-half of such earnings of the judgment debtor received for his personal services rendered at any time within 30 days next preceeding such levy shall be subject thereto,~~ such levy shall be in accordance with Sections 690.5-1/2 and 690.6, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon

real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require such officer to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it must require such officer to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 667, it must also require such officer to satisfy the same in the kind of money or currency in which the judgment is made payable, and such officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. Any such officer collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

5. If it be for the delivery of the possession of real or personal property, it must require such officer to deliver the possession of the

same, describing it, to the party entitled thereto, and may at the same time require such officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

Comment. Section 682 is amended to make clear that levy of execution upon earnings is limited in the amounts and in the manner provided by Sections 690.5-1/2 and 690.6. See generally Chapter 2.5 (commencing with Section 723.10).