

#39.30

8/31/71

Second Supplement to Memorandum 71-58

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

In the First Supplement to Memorandum 71-58, we deferred the problem of what to do with bank accounts generally until we had had an opportunity to read and distribute the Randone decision. A copy of that decision is attached to Memorandum 71-66, and we urge you to read it with care. Having read the decision, however, we are still in a quandary as to how best to proceed with respect to bank accounts. The possibilities seem to be as follows:

(1) Delete any reference to bank accounts from this recommendation and defer dealing with this asset to a later time. This course seems satisfactory only if the Commission decides to devote substantially full time to the general area of attachment and execution with a view towards producing a comprehensive revision of this area of the law at the earliest possible time.

(2) Retain the recommended exemption from execution of bank accounts, but either (a) delete any reference to attachment of bank accounts; or (b) provide a complete exemption from attachment for bank accounts; or (c) retain the recommended exemption from attachment. The staff believes that it is desirable to retain the recommended exemption from execution in order to protect wages and other earnings deposited in a bank account. Regardless of what, if anything, is done with respect to attachment, we believe that a judgment debtor should have some protection from execution for his bank account.

With respect to attachment, we could simply note the Randone case and await further developments. If we choose instead to recommend legislation,

we are faced with the problem of what is required or desirable. It is not really clear whether bank accounts are considered "necessities" by the Supreme Court. If they are, a complete exemption would be in order. However, it does not seem reasonable to exempt completely a large account. If only a partial exemption is needed, our present recommendation may offer a desirable approach to exemption if and when an adequate procedure for notice and hearing is devised or when proper limitations on the use of attachment are provided. As indicated above, the staff has no strong suggestion as to how to proceed, and we ask for the Commission's directions in this regard.

Respectfully submitted,

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