#39.30 9/3/71

Third Supplement to Memorandum 71-58

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

Summary

This is yet another memorandum on the case of Randone v. Superior Court, declaring a portion of California's attachment statute unconstitutional. The purpose of this memorandum is to provide a close analysis of the holding and its possible impact on present practice. In this connection, the recently announced limitations on attachments in Los Angeles are compared with the Randone holding (see Exhibit I attached). The memorandum concludes that the decision, while limited in holding to one portion of California's attachment law, nontheless applies to the remainder of the law. Attachments made in Los Angeles under these other portions of the attachment law are, therefore, probably illegal. Any attachment practice, if it is to be revived, must (we believe) be done pursuant to yet unenacted narrowly drawn statutes that conform with the requirements of due process.

Holding of Randone

The language used throughout Randone is sufficiently broad, if read technically, to give rise to several possible interpretations of the holding. However, the dominant thrust of the decision is clear to the staff and may be outlined as follows.

First, and most generally, due process of law requires that an individual must be afforded notice and an opportunity to be heard before he is deprived of any significant property interest.

Second, this general principle is subject to certain limited exceptions that can be justified by "extraordinary circumstances" only. The court does

not attempt to indicate what such extraordinary circumstances might be other than to state that, in the past, situations of extreme and urgent public need with built-in governmental protections have justified summary seizure, as have situations where attachment was used to obtain "quasi in rem" jurisdiction over nonresidents. In addition, the situation of a fraudulent or absconding debtor might be appropriate if the creditor were able to demonstrate such facts to a magistrate.

The court points out, however, that the statute under consideration, subdivision (1) of Section 537 of the Code of Civil Procedure, is not narrowly drawn to specify these extraordinary circumstances but allows attachment generally absent notice and hearing and is, thus, unconstitutional.

The third aspect of the decision is that due process requires that a person may never have his "necessities of life" attached prior to notice and hearing on the validity of a creditor's claim even under extraordinary circumstances. This appears to be an absolute prohibition although there is some language in the case to indicate that summary seizure even of "necessities" may be allowed in cases of dire public need. While it is not clear what sort of hearing on "validity" is required, the opinion evidently does not intend to limit it to a full determination and judgment on the merits.

Because subdivision (1) of Section 537 is not narrowly drawn to make clear that necessities are exempt from all attachment absent notice and hearing on validity, it is unconstitutional on this ground.

In summary, the thrust of Randone is that, for attachment to be allowed, there must be notice and opportunity for hearing in all but the most extraordinary cases. A statute authorizing attachment without indicating these limitations is overbroad and unconstitutional. The Supreme Court refused to "redraft" the attachment statutes for the Legislature, evidently meaning that

it will not construe an overbroad statute to contain narrow limitations. Legislation must indicate the rights of debtors.

Impact on Present Practice

The impact of Randone on present practice should be apparent. An examination of the other subdivisions of Code of Civil Procedure Section 537 (attached as Exhibit II) indicates that they are overbroad in that they do not attempt to indicate an exemption of the "necessities of life" from attachment prior to hearing on validity. They appear to be unconstitutional on this ground alone under the Randone rationale. Thus, all attachment, not just attachment in unsecured contract cases, appears to be wiped out by Randone.

It is possible, by a strained reading of Code of Civil Procedure Section 540, to interpret these subdivisions as in fact exempting necessities. Section 540 provides that a writ of attachment must be directed to the sheriff requiring him to attach property of the defendant "not exempt from attachment." Since the Supreme Court has declared necessities exempt from attachment absent a hearing, Sections 537, 540, and Randone could be read together to mean that only nonnecessities are authorized to be attached without prior notice and hearing by the Code of Civil Procedure. Such an interpretation would, however, be contrary to the court's expressed statement that it will not construe overbroad statutes in this area narrowly, but will require the statutes themselves to be constitutional on their face.

It appears, then, that the "necessities" aspect of Randone in effect destroys the whole of California's attachment practice by undermining the statutes upon which it is based.

Response to Randone in Los Angeles

Following the Randone decision, the Los Angeles County Counsel announced (Exhibit I, attached) that attachments would continue to be levied under subdivisions (2), (3), (5), and (6) of Code of Civil Procedure Section 537, which appear to the staff to be unconstitutional under the foregoing analysis. It is possible that the County Counsel finds the construction that the reference to exempt property in Section 540 sufficiently compelling to render those subdivisions constitutional under the "necessities" test.

If that is in fact the case, the subdivisions must also meet the more general test announced in Randone that no attachment prior to notice and hearing will be allowed except in "extraordinary circumstances." It is evidently the opinion of the County Counsel that those subdivisions do in fact encompass extraordinary circumstances enabling attachment without prior hearing.

Subdivisions (2) and (3) of Section 537 authorize attachment in tort and contract actions where the defendant is not a resident of the state or has departed from the state or, after due diligence, cannot be found within the state or conceals himself to avoid service of summons. Are these situations ones that amount to "extraordinary circumstances" that would justify attachment without notice and opportunity to be heard?

Certainly, the case of the nonresident defendant is mentioned in Randone as one which in the past has been held to be such a situation. However, the court cast doubt on the continued validity of this exception, indicating that "quasi in rem" jurisdiction was formerly justified "under notions of jurisdictional authority controlling at the time." The court noted, however, California Code of Civil Procedure Section 410.10, authorizing California courts to assume jurisdiction wherever constitutionally permissible. If, in

fact, the need for "quasi in rem" jursidiction by attachment has disappeared, then nonresident attachment is no longer an extraordinary circumstance that will permit such attachment absent notice and hearing. The Commission has a thoughtful study on this point by its consultant, Professor Riesenfeld, Background Study Relating to Attachment and Garnishment, 7-11 (revised Oct. 22, 1970). The study concludes that, despite greatly expanded notions of jurisdiction, there will still be some cases where there is a need for "quasi in rem" jurisdiction and for attachment based on jurisdictional needs. These cases are ones in which the out-of-state defendant has no other contacts with the state. Since subdivisions (2) and (3) are not narrowly drawn to describe this situation, they appear to be overbroad and unconstitutional in their general allowance of summary attachment in all nonresident cases.

The other grounds of subdivisions (2) and (3)--relating to a person within the state who cannot be served or to a person resident of the state but not presently there--must, of course, fall; for jurisdiction may be obtained under California statutes in these cases without the need for attachment.

Subdivision (5) of Section 537 authorizes attachment without prior hearing by public entities for tax collection or other obligations imposed by law. Evidently, the County Counsel justifies this procedure under the extraordinary circumstance of public necessity. However, the nature of the necessity in this situation, as propounded by Randone, is of a much greater magnitude than ordinary debt collection. It involves situations of extreme public urgency coupled with built-in governmental protections. The instances cited in Randone involved seizure of bank assets in case of national financial emergency and seizure of misbranded drugs that would endanger public health. In these cases, there were a number of factors combined that rendered summary seizure constitutional. These factors, according to Randone, are:

(1) Public rather than private benefit from the seizure.

(2) Authorized official charged with public responsibility and serving general welfare initiated the seizure.

(3) Risks were such as to require immediate action.

(4) Property taken threatened no one's life or livelihood.

Attachment for purposes of public debt collection can hardly be said to constitute such an extraordinary situation.

The final situation in which the Los Angeles County Counsel has authorized attachment without prior hearing is where police investigators have paid over funds in the process of narcotics investigation. Subdivision (6) of Section 537 authorizes summary attachment to recover these funds. This situation does not seem much different from collection of public debts generally at least in the policy considerations that would bear upon whether it is an extraordinary situation. It also appears to be unconstitutional.

Conclusion

Randone appears to have completely wiped out California's attachment statutes and practice, both because the statutes allow seizure of necessities of life without a hearing on the validity of the creditor's claim and because they allow seizure of assets generally rather than in extraordinary circumstances. It appears that the statutes cannot be construed to be constitutional and that, if attachment is to be used, it may occur only under a substantially revised statutory scheme. Attachments purported to be made under Code of Civil Procedure Section 537, pursuant to the Los Angeles County Counsel's ruling, would appear to be illegal.

Respectfully submitted,

Nathaniel Sterling
Legal Counsel

EXHIBIT I

Attachment Procedure Changes Told by County

The office of County Counsel John D. Maharg Tuesday made the following announcement:

RE: **Randone v. The Appellate Department of the Superior Court of Sacramento County**
California Supreme Court No. SAC 7885

The recent case of **Randone v. The Appellate Department of the Superior Court of Sacramento County**, California Supreme Court No. SAC 7885, which held certain portions of the attachment law Code of Civil Procedure Section 537 unconstitutional has necessitated the following changes in procedures by the offices of the Los Angeles County Marshal, the Los Angeles County Sheriff's Civil Division, the Clerk of the Los Angeles County Superior Court, and the Clerk of the Los Angeles Municipal Court.

1. Both clerk's offices will no longer issue attachments under the provisions of Code of Civil Procedure Section 537, subsections 1 and 4. Attachments will continue to be issued, upon proper showing, under subsections 2, 3, 5, and 6 of Section 537.

2. Effective immediately, the sheriff and the marshal will require that the instructions to them concerning serving attachments show the subsection of Section 537 under which the attachment issued.

3. All unserved attachments now in the hands of the sheriff and the marshal will be returned to the attorney for the creditor for the endorsement on the instructions as to which subsection of Section 537 the attachment was issued under.

4. There will be no general release of existing attachments. The parties must make an appropriate motion to the court in order to gain the release of any such attachments.

Third Supplement to Memorandum 71-58

EXHIBIT II

CODE OF CIVIL PROCEDURE § 537

§ 537. Actions in which authorized; time

The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, except earnings of the defendant as provided in Section 690.6, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, in the following cases:

1. Unsecured contract; support actions.

1. In an action upon a contract, express or implied, for the direct payment of money, (a) where the contract is made or is payable in this state; or (b) where the contract is made outside this state and is not payable in this state and the amount of the claim based upon such contract exceeds five thousand dollars ($5,000); and where the contract described in either (a) or (b) is not secured by any mortgage, deed of trust, or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless. An action upon any liability, existing under the laws of this state, of a spouse, relative, or kindred, for the support, maintenance, care, or necessaries furnished to the other spouse, or other relatives or kindred, shall be deemed to be an action upon an implied contract within the term as used throughout all subdivisions of this section. An action brought pursuant to Section 1692 of the Civil Code shall be deemed an action upon an implied contract within the meaning of that term as used in this section.

2. Contracts of nonresidents and absentees.

2. In an action upon a contract, express or implied, against a defendant not residing in this state, or who has departed from the state, or who cannot after due diligence be found within the state, or who conceals himself to avoid service of summons.

3. Damages for injuries by nonresidents or absentees.

3. In an action against a defendant, not residing in this state, or who has departed from the state, or who cannot after due diligence be found within the state, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to or death of a person, or damage to property in this state, in consequence of negligence, fraud, or other wrongful act.

4. Unlawful detainer; unsecured rent.

4. In an action in unlawful detainer where it appears from the verified complaint on file therein that rent is actually due and payable from the defendant to the plaintiff for the premises sought to be recovered in said action; provided, the payment of such rent is not secured by any mortgage or lien upon real or personal property, or pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff or the person to whom the security was given, become valueless.

5. Actions by state or political subdivisions for taxes or on obligations.

5. In an action by the State of California or any political subdivision thereof, for the collection of taxes due said state or political subdivision, or for the collection of any moneys due upon any obligation or penalty imposed by law.

6. Actions for recovery of funds expended in narcotics investigations.

6. In any action by the State of California, or any political subdivision thereof, for the recovery of funds pursuant to Section 11580.5 of the Health and Safety Code. In such cases, funds on the defendant's person at the time of his arrest which are retained in official custody shall also be subject to attachment.

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

HWB: lm

Claims & Judgments
Section

United States Department of Justice

UNITED STATES ATTORNEY
CENTRAL DISTRICT OF CALIFORNIA
U. S. COURT HOUSE
312 NO. SPRING STREET
LOS ANGELES, CALIFORNIA 90012

September 2, 1971

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

Dear Sir:

The following comments on your tentative recommendations relating to attachment, garnishment, and execution are submitted.

In my work capacity as an Assistant U. S. Attorney in the United States Attorney's office, Central District of California, I have had much occasion in the last several years to enforce judgments and claims in behalf of the Federal Government. I heartily endorse all the tentative recommendations made by your Commission with one exception. I believe that the continuing levy procedure, service by mail, and other suggestions made are long overdue.

However, I must indicate my disapproval with your proposed recommendation concerning the $500 exemption from execution on checking accounts. As you know, prejudgment attachment of a bank account has now been held unconstitutional by the California Supreme Court. Thus, we are presently concerned only with post-judgment execution. In my experience, relatively few debtors of the wage-earner type have bank accounts beyond a very few dollars, and I see very little reason for allowing such accounts to be sheltered. There seems to be no provision against permitting a debtor from accumulating $500 shelters in a number of financial institutions and thus be immune from attempt by creditors to collect monies owed them.

California Law Revision Commission September 2, 1971
Stanford, California 94305

The rationale which cites the present code sections providing fixed exemptions for accounts in savings and loan associations and credit unions is a poor one, as that exemption makes very little sense and has been criticized by some commentators.

In summary, the $500 shelter would not protect the average poor wage-earner, but would help to make immune a well-to-do debtor by allowing him to build innumerable $500 shelters in a number of financial institutions and carry on his business without making any attempt to pay his bills.

I should emphasize, that these are my own personal views and do not necessarily reflect the views of the United States Attorney and/or the Department of Justice.

I am a member of the California Bar Association and would appreciate being placed on your mailing list. Thank you.

Very truly yours,

HUGH W. BLANCHARD
Assistant U. S. Attorney

COMMENT ON RECOMMENDATIONS OF CALIFORNIA LAW REVISION COMMISSION

By MAX FERBER

"The California Law Revision Commission plans to submit a comprehensive recommendation to the 1972 Legislature dealing with wage garnishment and related matters . . . This is a *tentative recommendation* . . . The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature."

The operation of the Commission is possibly one of the most truly democratic processes functioning in California in matters pertaining to legislation. It picks a subject. This time — "Attachment, Garnishment, and Execution" — under a heading of "Employees' Earnings Protection Law." It holds a long series of meetings. It publicizes these meetings as much as possible. Everyone interested is invited to attend and be heard. CAC has been represented at each meeting.

Its "Tentative Recommendation" has now been distributed to all interested parties on its mailing list, naturally including CAC through Loren Dahl, Howard Nicola, the Public Relations Committee, and other members, with a request for comment from ALL interested CAC members (and who is not interested?). The recommendation consists of 134 pages. Our Counsel and Legislative Committee are pouring through the pages with a fine tooth comb. However, some initial comment in the "INK" would seem to be proper.

There is good and bad. Just because there is change should not produce an instant negative reaction. For instance, the following on wage garnishment process seems good.

> "In New York and other states, a court order to an employer to pay over the debtor's earnings constitutes a continuing levy and is effective until the debt is paid or the debtor is no longer employed . . . The major drawback . . . is that it gives a preferred position to the creditor who first resorts to legal process to enforce his claims . . .
>
> "The Commission accordingly recommends that an order generally be in effect for no longer than 120 days, at the end of which time the creditor who secured such order would be precluded for a short period (10 days) from serving on the same employer another order based on the same debt.
>
> "This moratorium period would permit another creditor to intervene with an order based on his debt, which would then continue in effect for a 120-day period."

There is something further in this area along the line that was the special baby of Emil Markowitz:

> "The use of the sheriff or marshal as a high-priced messenger when a creditor is attempting to reach an asset like earnings is an extravagant waste of time and money. . . . The Commission accordingly recommends that service by mail of the various applications, notices, and orders required for this process be authorized. . . ."

The Commision devotes several pages to a clarification of what they would recommend as wages subject to execution. They discuss Federal and State obligations; pension deductions, etc. The final wind-up is to draw up a table based on gross pay and giving a figure of an amount available for execution.

> "A creditor serving an earnings withholding order should be required to accompany the order with a copy of these tables."

Whether the table is equitable to all concerned, taken into connection with the continuous levy, is a question that the Legislative Committee will dig into. It is a bit too complicated for a running comment.

Now we come to a big problem, and as far as I am concerned, to a big gripe — the exemption of bank accounts.

> "The Commission accordingly recommends that (CCP) Sections 690.7 and (FIN.C— 15406 referred to above be repealed and that a 1,500-dollar aggregate exemption from *attachment* and a 500-dollar aggregate exemption from *execution* be provided for deposits or accounts of a debtor in any financial institution."

In actual practice this would mean that a man who transfers his earnings to a bank account is exempt from ALL garnishment. This entire section is a gratuitious gesture to the banks. We know that the banks are promoting the idea that businesses shall deposit their entire payroll to a particular bank, so that the wage-earner never sees the money. Automatically, it becomes exempt from garnishment.

We are concerned with the delinquent-debtor. Why should he require this protection. Furthermore, what about the con-artist, the professional delinquent-debtor. If a debtor is not delinquent, then he has no concern about his bank accounts. A deliquent-debtor does have and should have. To put it bluntly, he is not entitled to a bank account — the desire of banks notwithstanding.

Go into any drug store or market where they sell money orders, and you will see persons getting money orders with which to pay their bills. There is, of course, these days the concern that delinquent-debtors should be protected from any inconvenience. Why is that? It is no fun to be poor, but that is not to say that a poor person has to be guaranteed his convenience. A poor person does not drive a Cadillac; nor does he take a trip to Hawaii. He is deprived of many things. What he does have a right to expect is the opportunity to work; a place to live at an expense he can afford; and enough money to put food on the table. His children should have the right to a proper education.

Let the legislators address themselves to these problems. If they can solve them, they won't have the other problems. Instead, we have all this emphasis on interest calculations, on credit histories, on billing procedures — on everything except the fundamental problems. And all the things that the legislators do in these areas result in increased bureaucracy and increased expense for the taxpayer.

There is a lot of discussion that if the bank account is vulnerable, a person may be put out of business. Is there any reason why a man should be permitted to continue in business at the expense of his creditors?

A bank account is a fluid asset. At the slightest indication of trouble, the account can be liquidated or moved by the delinquent-debtor, and you pay the devil trying to locate the funds.

The whole subject has its origin in the exemption of money in a savings and loan account (even from bankruptcy). That has a crazy history. Originally, savings and loans were small operations called Building and Loan Associations.

Individuals put in their money so that money could be loaned to individuals who wanted to buy or build a home. If several depositors had their money in the Association garnisheed, it could bankrupt the Building and Loan company and affect the entire community, or equally as bad, the depositor would not have the money to make progress payments to the builder of his home, which deposit was in most cases borrowed money. Look at savings and loan companies now. Is that protection stall necessary for the delinquent-debtor? Will the savings and loan go broke?

"Business" is now the target for legislative hay-making. The reasoning is that business can always afford to have something taken away from it. It won't be missed. Don't you believe it. If business is restricted, then employment goes down, and up goes welfare and unemployment. In 1970, 194,339 families went bankrupt. This cost American business 500 million dollars. The goose does not lay golden eggs. It labors mightily for the eggs it lays — and if business is put on an austerity diet, then you can expect a decline in the production of eggs.

The job of the legislators is to get down to basics and stop frittering its time and spending taxpayers money on the periphery. Bank accounts are not a basic.

Again, the California Law Revision Commission is to be commended for the depth of its inquiries, for the integrity with which it performs its function, and for the democratic manner in which it operates. But it depends for its thinking on the contributions that are made by the interested segments of the public. Our running comment touches only on the high-lights. An in depth analysis requires the probing by a professional staff. This is being done by the expert, knowledgeable staff of Loren S. Dahl, CAC counsel, and by the ACA Legislative Committee.

Your ideas should be directed to:

Loren S. Dahl, Attorney
Dahl, Hefner, Stark, Marois & James
555 Capitol Mall
Fourteenth Floor
Sacramento, Ca. 95814

If you or your attorney want a copy of the 134 page "Tentative Recommendation" then write to:

John D. Demoully
Executive Secretary
California Law Revision Committee
Stanford School of Law
Stanford, Ca. 94305

The Commission requests that they would like the comments to be in their hands by August 30, 1971. However, they give a final dead-line of September 27, 1971. The Commission is a prestigious body. The Legislature leans heavily on it. It is up to all of us to give them the benefit of our considered thinking.

Volume 6 • Number 34 AUGUST 25, 1971

appraisal briefs

WEEKLY NEWSLETTER OF THE SOCIETY OF REAL ESTATE APPRAISERS

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News Briefs

Use of New Arbitration Law Would Be Encouraged by Bill

A new California law providing for arbitration of just compensation probably has not been used in any great number of cases, according to one of its authors, but new legislation is being studied that may make it more attractive.

Senate Bill 1024 would require the court in an eminent domain action brought by a public entity to award appraiser's fees, attorney's fees and other costs if it finds that the condemnor refused to enter into an agreement to arbitrate a dispute over compensation, and the amount of compensation finally determined exceeds by 5% the written offer of the public entity or the amount deposited as security, whichever is less.

After a hearing before the California Senate's Judiciary Committee, the bill was referred to the Senate Rules Committee with a recommendation for interim study, research that would probably investigate the extent to which arbitration is actually being used, according to John H. DeMoully, Executive Secretary of the California Law Revision Commission. The Commission, (now engaged in an overall study of eminent domain law) originally recommended and drafted an arbitration bill similar to the law enacted in 1970.

First in a Series

Reform of Garnishment Laws Asked By State Law Revision Commission

By Bill Mayer

SAN FRANCISCO — Among the inequities in the federal garnishment law is one permitting somebody with a small family to pay less on his debts than somebody with a large family.

And a single man is likely to get the biggest break.

Anybody can do himself some good. For, as the California Law Revision Commission points out, there's a way even for a man with a large family to keep a bigger chunk of his earnings. It's only a matter of knowing how.

The Law Revision Commission gives all these helpful hints, with the best intentions of course, in a package of new legal measures aimed at reform and headed for the California Legislature next year.

Here's the way you can beat the system:

Title III of the Federal Consumer Credit Act of 1968 — in effect now — bases the amount that may be garnished on what it calls "disposable earnings." Withholding taxes are not disposable. A man with a large family normally will claim several withholding tax exemptions — one for himself and one for every dependent. A single man will claim only himself.

The more exemptions you claim, of course, the less the federal government grabs from your take-home pay. So the man with a big family, having a larger percentage of his earnings in his pay check, gets hit with a thougher garnishment.

The way out of this is to claim fewer exemptions. There is nothing in the law that says you must write the true number of your dependents on your W-2 form.

So, if you have, say, 10 dependents and claim one, your employer takes more money out of your check for withholding taxes. It costs you nothing. You get a refund for any income tax over-payment. But your creditors will have to wait.

Under present law the wait might be a long one. Because, basically, all that can come through garnishment is 25 per cent of disposable earnings.

Not only are federal withholding taxes ahead of private debts, but so are federal social security, state disability, and the first $48 of earnings beyond those amounts. And maybe more.

"Less clear," says the Law Revision Commission, "is the treatment of wage assignments and contributions to public retirement funds. These ambiguities impose a difficult burden on the employer who must determine what part of his employe's earnings are subject to garnishment."

Title III, being federal law, applies to everybody in the United States. But changes are possible without going to Washington.

Congress foresaw that the states might want to do things their own way, and the law sets up no obstacles in that direction. In fact, it encourages the do-it-yourself method.

The federal Consumer Credit Protection Act," says the Law Revision Commission, "invites each state to enact its own restrictions on...garnishment..and to undertake its own enforcement of these provisions. The advantages of exemption seem apparent. Nothing is gained by having two separate garnishment restriction laws, one state and one federal.

"An exemption from federal restrictions would permit California debtors, creditors, and employers to refer to only one body of law to determine the extent to which earnings are subject to garnishment."

To do it, the state must meet some important conditions. It must cover all the ground in the federal act—"every case of garnishment," in the legal phrase — and its provisions for the debtor must be "at least as protective."

Also, it must find an agency to become a liaison between Sacramento and Washington, and it must find one to administer the program. For both jobs the commission recommends California's Department of Industrial Relations.

With that, the commission believes, it meets all tests. Its measures would make it possible for California to run its own show not only in garnishment of wages but also in property attachment.

The rest would be up to the Secretary of Labor. He decides whether the state law does what it has to do.

Finally, to pull the practical aspects together, the commission would have the State Judicial Council work up the forms needed under the new regulations.

The proposed changes in California law are imposing. They are presented and discussed in a document running 134 pages. It covers everything from ways of making garnishment easier and cheaper to ideas for protecting a debtor's bank account.

Those bank account proposals, incidentally, show the commission's alertness and wisdom. They were

being worked on long before the California Supreme Court's recent decision in **Randone**, which made it much harder to get at a debtor's property.

Not that the commission tried to anticipate everything. The ideas in its document are only, as the title describes it, a "Tentative Recommendation relating to Attachment, Garnishment, and Execution of Employes' Earnings Protection Law."

But it was a monumental job.

Title III's encouragement to the states to write their own rules is one reason for all this work. Inequities are another. Changing conditions and new laws are important, too. The courts have been busy in Washington and here, and so has Congress.

But with all that going on, garnishment and attachment procedures in California are largely the same as they were years ago. And that is what the commission's report is all about.

Problems began to show up when the state tried to do some patchwork. The Legislature came up with laws which, like those passed in Washington, were aimed at fixing limits on what could be taken out of somebody's pay.

It was like trying to repair some floor boards when the whole building was ready to fall apart.

"Serious procedural defects have become more apparent," is the way the commission phrases it.

It cites, for example, "California's archaic multiple-levy wage garnishment procedure." Multiple-levy is right. What it means is that the sheriff or marshal has to go the debtor's employer every payday. If payday is every week, he has to go back every week.

Then, for each of these visits the employer has to make a new bookkeeping computation. And since a writ of execution is good for only 60 days, the creditor has to return to the court clerk every two months and get a new one.

Consider what this means in fees alone. The sheriff or marshal gets one every time he makes a trip for service, and there's another every time a new writ is issued.

Pondering these "procedural defects" at thier home base at Stanford University, the members of the Law Revision Commission decided that has to be a better way. So, they drew up the Tentative Recommendation.

That, says Executive Secretary John H. McMoully, is the first step.

(Next - The Hidden Costs)

Second in a Series:

Present Garnishment Law Said Unfair and Expensive

By Bill Mayer

SAN FRANCISCO — California's wage garnishment system is so expensive to use that it ought to be a bonanza for somebody.

But for most people it's more like a disaster.

The California Law Revision Commission, in its "Tentative Recommendation on Attachment, Garnishment and Execution," says that in 1968 Los Angeles County employers alone spent nearly $2 million handling claims.

"Present law," the commission reports, "provides virtually no relief to the employer from this burden." Nor, apparently, to anybody else.

After you deduct the cost of the writ, the fees for the sheriff or marshal, and the interest on the debt, more than half of a $25 collection is gone.

A typical worker, earning $160 a week, with $30 left for garnishment, finds himself paying more than $800 on a $500 judgment.

That's on a $4-an-hour salary. The unskilled worker making $2 an hour — $80 a week — and losing $16 to garnishment from his $64 pay check, would be socked that for two-and-a-half years. By then his $500 judgment would have taken more than $2,000.

All right, you say, but what about the fees charged by the sheriff or marshal every time they go out to make a levy? The county must be raking in plenty of money out of those. That must be a real break for the taxpayers.

But it's not. Any county, and certainly Los Angeles County, would save a lot of money if there were no wage garnishments. Studies prove that.

"It has been estimated," the commission's report says, "that the county — its taxpayers — pays 30 to 50 per cent of the expenses of collection."

That's how it's done in California. In other states they do things differently. In New York, for instance, a court order to an employer to make payments out of a debtor's earnings is a continuing thing. It goes on until the debt is paid or the employe has stopped working at that place.

There are disadvantages to this method, too. If you have two or more creditors, the first to move gets a break over the others, and if his claim is large, the others may have a long wait.

"Some compromise between the two extremes is necessary," says the commission.

So it proposes that generally an order should last up to 120 days. Then there would be a ten-day gap. That would give somebody else a chance to collect for four months. Also, this method would reduce costs, because a court order good for 120 days cuts down on the number of writs.

But the commission has bigger ideas for slimming expenses.

"The use of the sheriff or marshal as a high-priced messenger," says the report, "is an extravagant waste of time and money. The U.S. Post Office can perform the same task for a few cents."

Changes are urged in the law so the mail can be used for all "the applications, notices, and orders required."

And while the employer would also save expenses through a levy good for 120 days, the commission thinks he ought to get something more than that. So it would allow a service charge. The boss could take one dollar out of a debtor's salary and keep it every time money had to be withheld for a creditor.

All this, of course, can happen only if there is a judgment. In 1969 the U.S. Supreme Court ruled that taking any money out of an employe's pay to cover a debt is unconstitutional unless there has been a hearing (Sniadach v. Family Finance).

There are some other restrictions in the Consumer Credit Act itself. For instance, a worker earning $48 a week or less simply is not a candidate for garnishment. And only 25 per cent of anything he earns over $64 a week can be taken from his pay to satisfy a debt.

Even so, the Law Revision Commission is uneasy. This is California. Living costs here are high.

"Where debtors in low income brackets are concerned," the report says, "the protection afforded by the federal law seems inadequate to permit even a subsistence level of existence."

So the commission offers what it believes to be a wiser and more humane formula. First, it would plug up the inequities in the withholding tax system. No longer would a man with a family find himself discharging a debt faster than a single man because more W-2 exemptions mean more take-home pay.

Why not a tax table giving everybody the same treatment? Nobody would have to do any arithmetic. For purposes of collecting a debt, the law would assume that everybody's withholding taxes were what would be taken out for a single man.

Then, leave a man enough money to live on. Not so much that he could turn away all his creditors, the commission suggests, but enough at least for "maintaining . . . an austere life style."

That is the essense of the whole proposal.