#39.30 9/28/71

Memorandum 71-69

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

Attached to this memorandum are the additional comments concerning the wage garnishment recommendation received to date (our "final" deadline was September 27th). We have not received any comments from the State Bar Committee; however, their Chairman advised us that they would examine the recommendation and send us a report later this fall. Also attached are some miscellaneous materials relating to areas of concern that the staff was directed to investigate further. These materials will be discussed below.

The comments generally. For the most part, the additional comments do not raise any new questions. It is obvious that the collection agencies are quite concerned regarding the partial exemption of bank accounts from levy of execution. See Exhibits III and V. See also Exhibit VI. Exhibit III incorrectly refers to the exemption as being in the amount of $1,500; Exhibit V incorrectly asserts that a business bank account will be exempt from execution. Regardless of these errors, we suspect that the writers would still oppose the basic idea of any bank account exemption. The staff, of course, believes that some bank account exemption is essential; our support of this position is stated in the recommendation.

Exhibit III also criticizes the elimination of the exception for debts incurred for common necessaries from the "essential for support" exemption. Exhibit XI, on the other hand, reports that one municipal court has held unconstitutional the "common necessaries" exception to the present hardship

exemption under Code of Civil Procedure Section 690.6. The staff believes that the stricter standard proposed for the exemption destroys the basis for the exception.

On the other hand, Mr. Woodmansee, Deputy Director of the Orange County Legal Aid Society, has again addressed us regarding his concern over the absence of a pre-levy claim of exemption. The letter is self-explanatory. The pre-levy claim was deleted (1) to help simplify procedures in the average case and (2) to discourage claims of exemption. The staff does not believe that the recommendation should be changed, but we note the letter for your review. See Exhibit VIII.

In short, on these fundamental issues, we do not believe that these comments present any new matter for consideration. There are, however, a few problems still to be discussed.

Section 690.6. We have received a generally complimentary letter from a committee of the Orange County Bar Association. They do, however, express concern with the drafting of Section 690.6(a). That subdivision reads as follows:

> (a) As used in this section, "earnings" do not include compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus or otherwise.

This subdivision is intended merely to exclude "earnings" protected under the Employees' Earnings Protection Law. It is not intended to say what are or are not "earnings." The Comment to Section 690.6, however, says that the type of persons covered by Section 690.6 "can be categorized generally as independent contractors." We think the Comment is accurate; however, perhaps this gratuitous statement can be eliminated and the Comment revised

to say only that the term "earnings" is retained from prior law, that "earnings of employees" are covered elsewhere, and that the question of what are or are not earnings is left to the courts. What is the Commission's desire?

Support orders; attorney's fees. At the last meeting, the staff was directed to determine to what extent, if any, attorney's fees may be recovered under a support order. Subdivision (a) of Section 723.30 provides in part:

> (a) A "withholding order for support" is an earnings withholding order to enforce a court order for the support of any person.

When this provision was drafted, the staff certainly had in mind only orders directly for the support of a spouse or children. However, our research since the last meeting causes us to believe that Section 723.30 as drafted is ambiguous and that it is at least possible that the California courts would construe it as permitting attorney's fees in a dissolution or support proceeding to be treated in the same manner as amounts payable directly as support. See Henry v. Henry, 182 Cal. App.2d 707, 6 Cal. Rptr. 418 (1960)(attached as Exhibit II). The Henry case (pages 711-713) indicates why it at least believed attorney's fees should be treated as "support." And it might be noted that a rule to the contrary could be circumvented in part by simply increasing the amount for "support" by an amount equal to that sought for attorney's fees and then having the attorney collect from the person being supported. In any case, the staff believes that the issue should be clarified either by Comment or in the statute, and we ask for your direction as to the desired rule and the means for implementing it.

Support orders: discharge from garnishment. The staff was further directed to determine what revisions are necessary to insure that service of a support order does not serve as a basis for discharge from employment. The staff

believes that this could be best accomplished by amending Labor Code Section 2929 (assuming that that section is amended in this legislative session by our Senate Bill 594). We suggest that subdivision (b) of Section 2929 be revised as follows and added to our tentative recommendation:

> (b) No employer may discharge any employee by reason of the fact that ~~the garnishment of his wages has been threatened. No employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for one judgment.~~ :
>
> (1) The garnishment of his wages has been threatened;
>
> (2) His wages have been subjected to garnishment pursuant to Section 723.30 of the Code of Civil Procedure; or
>
> (3) His wages have been subjected to garnishment for the payment of one judgment.
>
> A provision of a contract of employment that provides an employee with less protection against discharge by reason of the fact that his wages have been subjected to garnishment than is provided by this subdivision is against public policy and void.

The revisions suggested would, we believe, implement the Commission's decisions at the last meeting. Frankly, we believe that a better approach would be to prohibit discharge from employment for any garnishment of wages. The latter approach would also eliminate the leverage now obtainable by simply threatening an employee with garnishment. We do not know, however, whether the Commission wants to take this step in connection with this recommendation.

Section 723.32. Professor Riesenfeld has very kindly drafted a Comment to this section. The proposed section and Comment are attached as Exhibit X. We hope the Commission will approve these with any necessary revisions.

Labor Code Section 300. Exhibit IV is a letter from Mr. Harvey, a former Assistant Executive Secretary. His comments with respect to the numbering system, while supported by logic, concern a matter with regard to which we are guided by the Legislative Counsel.

His comments with respect to Section 300 are self-explanatory. The staff has some reluctance to tamper with this section any more than is necessary to conform with the Employees' Earnings Protection Law. However, if the Commission desires, paragraph (2) of subdivision (b) could be amended as follows to satisfy some of Mr. Harvey's objections. (You will recall that somewhat similar provisions were incorporated into the bank account exemptions where a husband and wife are treated as one individual.)

(b) No assignment of ~~,-or-order-for~~ wages ~~or-salary~~ , earned or to be earned, ~~shall-be~~ is valid unless all of the following conditions are satisfied :

* * * * *

~~(b)~~ (2) Where ~~such~~ the assignment ~~of,-or-order-for-wages-or-salary~~ is made by a married person, the written consent of the husband or wife of the person making ~~such~~ the assignment ~~or-order~~ is attached to ~~such~~ the assignment ~~or-order,-and~~ . No such consent shall be required of any married persons (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 if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

If this revision were adopted, a reference to paragraph (2) would also have to be added to subdivision (e) and the Comment revised to explain the change.

From the comments received to date, it would seem that the recommendation as sent to the printer is in suitable form to be presented to the Legislature, subject only to the points noted above and any suggestions (when received) of the State Bar Committee.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

EXHIBIT I

§ 4526. Attorney's fees and costs; direct payment; enforcement

When the court orders one of the parties to pay costs and attorneys' fees for the benefit of the other party, such costs and fees may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto. An order of the court providing for payment of such costs and fees may be enforced directly by such attorney in his own name or by the party in whose behalf such order was made, provided that if such attorney has ceased to be such, it shall be a condition of such enforcement, and must appear of record, that such attorney shall have given to his former client or successor counsel 10 days' written notice of his application for such enforcement, and during such period the client may file in such proceeding a motion directed to such former attorney for partial or total reallocation of fees and costs to cover the services and cost of successor counsel, in which event such proceeding shall be stayed until the court has resolved such motion.

Memorandum 71-69

EXHIBIT II

[Civ. No. 24482. Second Dist., Div. Two. July 15, 1960.]

LAURA LEE HENRY, Appellant, v. WILLIAM ADDISON HENRY, Respondent.

[1] **Exemptions—Earnings.**—As against a judgment for alimony, the judgment debtor's earnings are not exempt from execution.

[2] **Divorce—Counsel Fees—Attorney's Interest as Derivative.**—An attorney fee award in a divorce action, though made payable to the wife's attorney, does not alter its character as an award to enable the wife to establish her rights, as to support and otherwise, against the husband. The attorney has no separate equity in such fee; his right thereto is derived from his client, and Civ. Code, § 137.5, relating to counsel fees, does not invest him with any interest therein.

[3] **Id.—Counsel Fees—Nature of Award.**—An award of an attorney fee to the wife in her divorce action is an adjudication of her need of such support in order to litigate with her husband on an equal basis. Without the attorney fee the wife in most cases can obtain no support money or adequate support; the services of the attorney are indispensable.

[4] **Id.—Counsel Fees—Construction of Award.**—Money awarded a wife to pay her attorney fee in a divorce case is as much for her support as money for a doctor's fee or a grocery bill.

[1] See Cal.Jur.2d, Exemptions, § 12; Am.Jur., Exemptions, § 64.

[2] See Cal.Jur.2d, Divorce and Separation, § 191 et seq.

McK. Dig. References: [1] Exemptions, § 17; [2] Divorce, § 191(2); [3, 4] Divorce, § 191; [5] Divorce, § 249.

[5] Id.—Enforcement of Awards—Execution.—Sound public policy demands and the precedents authorize issuance of an execution on an award of attorney fees in a divorce action and collection thereof from the husband's wages without recognition of a claim for exemption under Code Civ. Proc., § 690.11.

APPEAL from an order of the Superior Court of Los Angeles County allowing a husband's claim of exemption of his wages from execution in his wife's divorce action. Evelle J. Younger, Judge. Reversed.

Svenson & Garvin and Harold W. Svenson for Appellant.

No appearance for Respondent.

ASHBURN, J.—Appeal from order allowing defendant-husband's claim of exemption of his wages from an execution based upon allowance of court costs and attorney's fee in his wife's divorce action. By order of September 24, 1956, the court directed defendant to pay $62.50 per week for support of plaintiff and the four children of the marriage; also: "The defendant is ordered to pay direct to attorney for plaintiff the sum of $250 attorney's fees and $50 court costs, payable $30 per month, on the 15th day of each month, first payment October 15, 1956." Execution having issued on September 14, 1959, for an unpaid balance of $186.54 owing upon the attorney fee, defendant filed under section 690.11, Code of Civil Procedure,[1] a claim of exemption of his earnings for personal services rendered within 30 days next preceding levy of said execution. A hearing was had upon said claim and affidavits filed in opposition, resulting in said order allowing the claim of exemption.

Respondent has filed no brief and the cause is submitted pursuant to rule 17(b) of Rules on Appeal.

Appellant's claim is that an award of an attorney's fee in a divorce proceeding partakes of the nature of an alimony award, being for the support of the wife, and is equally im-

[1]Code Civ. Proc., § 690.11: "One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26.

"All of such earnings, if necessary for the use of the debtor's family, residing in this State, and supported in whole or in part by such debtor unless the debts are: (a) incurred by such debtor, his wife or family, for the common necessaries of life; or, (b) incurred for personal services rendered by any employee, or former employee, of such debtor."

pervious to the exemption statute. [1] The settled rule of this state with respect to an alimony award is stated in *Bruton* v. *Tearle*, 7 Cal.2d 48, 57 [59 P.2d 953, 106 A.L.R. 580]: "We have shown that the judgment against defendant is a judgment for alimony. One of the characteristics of such a judgment is that as against said judgment the judgment debtor's earnings are not exempt from execution. (*Willen* v. *Willen*, 121 Cal. App. 351, 354 [8 P.2d 942]; *Winter* v. *Winter*, 95 Neb. 335 [145 N.W. 709, 50 L.R.A. N.S. 697]; *Fanchier* v. *Gammill*, 148 Miss. 723, 738 [114 So. 813]; *Anderson* v. *Norvell-Shapleigh Hardware Co.*, 134 Mo.App. 188 [113 S.W. 733]; 2 Schouler, Marriage, Divorce, Separation and Domestic Relations, 6th ed., pp. 1939, 1940.)" The court immediately added: "Not only are the earnings of the judgment debtor under an alimony judgment liable for the payment thereof, but the means of enforcement of such a judgment are different and more effective than those applicable to the enforcement of an ordinary money judgment. One of such means frequently resorted to by the courts for the enforcement of an alimony judgment, which is not applicable to other judgments, is by proceeding in contempt upon the failure of the judgment debtor to comply with the decree. In the case of *Fanchier* v. *Gammill*, *supra*, the court points out the difference between an ordinary judgment for money or property and a judgment for alimony, and the reasons why more effective means may be resorted to by the courts in the enforcement of the latter class of judgments. In that case the court said: 'A judgment or decree for alimony carries with it a special power and right of enforcement not given in judgments at law. There is a difference between a judgment for money or property and that of a decree for alimony; and the decree for alimony, because of such difference in the character of the obligation, may be enforced by more efficient and effective means than those given to the enforcement of judgments at law.'"

Rankins v. *Rankins*, 52 Cal.App.2d 231 [126 P.2d 125], involved the exemption claim of a defendant-husband who had remarried and claimed his wages were necessary for the support of a new family. Parenthetically, it is to be noted that no such factual situation is presented at bar; it does not appear that defendant has remarried and his claim of exemption says his earnings "are necessary for the use of said defendant's family consisting of said defendant and his four children," apparently the ones embraced in the above men-

tioned support order. In Rankins the Bruton-Tearle rule is recognized and the court, dealing with the problem of two families, says at page 234: "It seems clear, therefore, that under the established decisions of this state defendant is not entitled to the exemption of this statute as against execution in the present proceeding. However, it must be remembered that this policy is established by judicial interpretation and not by specific statutory provision. In the case of *Yager* v. *Yager, supra*, 7 Cal.2d 213, 220 [60 P.2d 422, 106 A.L.R. 664], we find this expression by the Supreme Court, referring to Code of Civil Procedure section 690.11: 'Within the meaning of this provision it may be said that the divorced wife and minor child of the first marriage, for whose support the husband has been ordered to pay a fixed sum, are in a sense members of his family entitled to participate with his second family in his earnings, and that the husband should not be permitted to urge the execution exemption against them. Our decision in *Bruton* v. *Tearle, supra* [7 Cal.2d 48], expressly recognizes that in providing for the collection of the husband's future earnings by a receiver and their application to the delinquent alimony, the court would have power to direct the receiver to pay to the husband an amount necessary for his personal support. In such supplementary proceedings in the divorce action the court should have power to make an equitable division of the husband's earnings between his first wife and the children of that marriage, if any, on the one hand, and himself and his second wife and family on the other.' This would seem to be a necessary limitation upon the policy established by the hereinabove quoted decisions, when the policy of the state as indicated by the exemption statute is considered in conjunction with the equally established policy of requiring support of minors. Obviously the husband cannot be deprived of the means of livelihood, even for the most solemn obligation to others. He cannot earn without eating. Equally, the second family, which is authorized by our laws, is entitled to support. The proper solution of this problem is that given by the Supreme Court in *Yager* v. *Yager, supra*. Unless there has been an abuse of discretion by the trial court in making such equitable division such action may not be disturbed on appeal."

In *Remondino* v. *Remondino*, 41 Cal.App.2d 208 [106 P.2d 437], it is held that an alimony award is not dischargeable in bankruptcy. At page 214: "If, upon a consideration of the entire transaction the court determines that the purpose of the judgment for support money is to guarantee the economic

safety of the wife by the husband, then his discharge in bankruptcy does not affect his liability under the judgment."

[2] The attorney fee award now under discussion was made as a part of the same order which awarded support for the wife and children. Though it runs in favor of the attorney, that fact does not alter its character as an award to enable the wife to establish her rights, as to support and otherwise, against the husband. See *Weil* v. *Superior Court*, 97 Cal.App. 2d 373, 376 [217 P.2d 975]. In *Marshank* v. *Superior Court*, 180 Cal.App.2d 602, 606 [4 Cal.Rptr. 593], we quoted the Weil case as follows: " 'The attorney's right to the amount allowed for counsel fees for his services rendered to a wife is no more proprietary and direct by virtue of section 137.5 of the Civil Code than before its enactment. That section provides that when attorney's fees are allowed they may, in the discretion of the court, be made payable in whole or in part to the attorney. Notwithstanding the fees may be made payable to the attorney, they are granted to the wife for her benefit and are not awarded to her attorney. . . . A wife's attorney has no separate equity in counsel fees awarded to her. His right thereto is derived from his client.' " At page 607: " 'When the court had no option but to order the attorney's fees paid to the wife, should she have failed to pay the money to her attorney after she had received it he would be deprived of his compensation. Section 137.5 corrected this injustice by providing for payment directly to the attorney, but the fee still is allowed to and for the benefit of the wife and the attorney's rights are not enlarged by that section.' (*Weil* v. *Superior Court*, *supra*, pp. 376, 377; see *Di Grandi* v. *Di Grandi*, 102 Cal.App.2d 442, 443 [227 P.2d 841]; *Schwartz* v. *Schwartz*, 173 Cal.App.2d 455, 457 [343 P.2d 299].)"

[3] An award of an attorney fee to a plaintiff-wife is an adjudication of her need of such support in order to litigate with her husband upon an equal basis. Without the attorney fee the wife in most cases can obtain no support money or no adequate support; the services of the attorney are indispensable. Volume 17, American Jurisprudence, section 632, page 707: "Such allowances have their origin in the fact that they are absolutely essential to the proper assertion of the marital rights of the wife which she might otherwise be entitled to but is without the means of enforcing and securing a remedy for their violation. Her right to have suit money allowed for the purpose of enabling her to protect the rights to which she is

entitled as a spouse exists notwithstanding the sum awarded ultimately belongs, not to her, but to her attorney."

An annotation entitled "Exemption—Claim for Alimony" found in 54 A.L.R.2d 1422, 1424, says: "The basis of alimony is usually considered to be the natural obligation of a husband to support his wife and children, and the purpose of the exemption laws is almost universally considered to be to protect the unfortunate debtor and save him a means of supporting his family.

"Applying these broad principles, the courts have generally held that statutes exempting property from legal process in the enforcement of a claim for debt, or debt arising from a contractual relationship, are not applicable against a claim for alimony or support, since such a claim is not a debt and an award of alimony does not create a debtor-creditor relationship between husband and wife."

Concerning the question immediately at hand, it says at pages 1425-1426: "There is a conflict of authority on the question whether an award of attorneys' fees or costs in a divorce action or a similar proceeding constitutes an exception to the exemption statutes in the same manner as an award of alimony or support. According to one line of authorities, such an award may be enforced against the exempt property of the husband. . . .

"On the other hand, there is authority to the effect that attorneys' fees and costs awarded a wife in a divorce action are not on the same footing as an award for support or alimony and cannot be enforced against exempt property."

Cited in support of the last statement is *Lentfochr* v. *Lentfoehr*, 134 Cal.App.2d Supp. 905 [286 P.2d 1019], which does inferentially so hold, but the majority opinion concerns itself with the construction of section 690.11, and its phrase, "common necessaries of life," concluding that an attorney's fee in a divorce suit does not fall in that category. The larger question of public policy which finds expression in *Bruton* v. *Tearle, supra*, 7 Cal.2d 48, and similar cases cited, was not discussed in said prevailing opinion. Judge Swain, dissenting, invokes the doctrine of *Bruton* v. *Tearle, supra*, and says at page 909: "It is true, that case dealt with a judgment for alimony, and we have here a judgment for attorney's fees and costs, and defendant argues that this is not alimony. But it appears to me that the reasons which led to the decision are equally applicable to both sorts of judgments. [4] Money awarded a wife to pay her attorney fee in a divorce case is as

much for her support as money for a doctor's fee or a grocery bill." We are persuaded that this is the sound view.

In re Brennen (D.C.N.Y.), 39 F.Supp. 1022, 1023, considering the dischargeability in bankruptcy of counsel fees such as here considered, says: "It is the contention of the bankrupt that an attorney has no greater rights or privileges than a tradesman or any other creditor so far as the exceptions to dischargeability are concerned. This theory seems untenable. Nothing can be found by either attorney or the Court for authority directly with it.

"Counsel fees granted in a matrimonial matter are not a debt dischargeable in bankruptcy. The New York State Statute, Article 70, Civil Practice Act, Section 1169 (Gilbert and Bliss, Volume 6, page 115), permitting counsel fees to a wife in a matrimonial action, intends that she be properly defended; and for that defense, the statute provides that the husband may be made to pay this fee; and for his failure to do so, he is amenable to a motion to punish him for contempt of Court and jailed. To discharge the debt in bankruptcy would deprive the wife of the benefits of the State statute, and nullify the effect of the statute."

[5] We conclude that sound policy demands and that the precedents authorize issuance of an execution upon an award of attorney fees in a divorce action and collection of same from the husband's wages without recognition of a claim for exemption under section 690.11, Code of Civil Procedure.

Order allowing exemption reversed.

Fox, P. J., and Richards, J. pro tem.,* concurred.

*Assigned by Chairman of Judicial Council.

Memorandum 71-69

EXHIBIT III

KENNETH G. McGILVRAY
E. L. McGILVRAY

LAW OFFICES OF
McGILVRAY AND McGILVRAY
SUITE 714 FORUM BUILDING
1107 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

AREA CODE 916
443-7417

September 16, 1971

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Re: Attachment, garnishment and execution

Dear Mr. DeMoully:

You have solicited comments on the Tentative Recommendation (Revised) of the California Law Revision Commission relating to Attachment, Garnishment, and Execution.

I submit for your consideration and that of the Commission copy of a letter which I have received from the Chairman of the committee designated by the Credit Bureaus of California to study the revised report.

Very truly yours,

McGILVRAY AND McGILVRAY

By K. G. McGilvray
Kenneth G. McGilvray

KGM:mm
Enclosure

CREDIT BUREAUS OF ARCADIA-MONROVIA-COVINA
4125 East Live Oak, (Box 600)
Arcadia, California

August 30, 1971

Kenneth G. McGilvray
McGilvray & McGilvray
Suite 714 Forum Building
1107 Ninth Street
Sacramento, California 95814

Dear Ken:

I have read the California Law Revision Commission Report with recommendations relating to attachment, garnishment and execution (Employees' Earnings Protection Law) and have discussed it with various members of our credit bureaus association.

The Commission Report is interwoven with proposed bills that seem to be fair but are definitely biased on behalf of the debtor, using the thinnest rationale as its purpose. Two examples should make my point.

(a) Proposal: Bank accounts should be exempt for the first $1,500. Reason: "...the increasingly common practice of employers to deposit earnings of an employee directly into the employee's account". Increasingly common practice! Does that mean that 30 rather than 20 companies are doing it, for a 50% increase, or are we really talking about one-fourth to one-half of one percent? (A call to 10 of the biggest companies in our area indicated not one contemplated this action).

(b) Proposal: Substitute the current "common necessities" law with a ruling permitting exemption if the debtor can prove he needs the money as "essential for support".

Reason:

(1) "If the debtor alleges that the debt was incurred for 'common necessities' there follows a process of affidavit, counter-affidavit, hearing and possible appeal; all of which takes time, effort, and some sophistication and still may end with the debtor denied money necessary for his family's support." The underscoring is mine as I believe it reveals the true interest of the law. The law as it now exists is one of the simplest to interpret and the court, the defendant's attorney and the agency generally recognize that a claim of exemption will be upheld if not for food, clothing, shelter or medical services. In 16 years in management neither party has appealed the court's ruling on this point. Of course, there will be some by someone, but are we again talking about one-fourth to one-half of one percent?

(2) To substitute for this the debtor would get an exemption of the amount essential for supporting his family. The

sugar to help this go down would be that "stricter standard" "essential for support" to be provided. So instead of a clearly defined law we will have judges who are up for re-election, subject to pressure from civil rights groups, union groups, opposing polical parties, deciding if the minority (race, sex, religion, etc.) debtor before him needs a full release "essential for support" of his family. I wonder what kind of odds Vegas would give that his request would be denied. It would probably be "off the boards".

The Commission has come up with some good points. I would personally feel the automatic 120 day wage garnishment, with a ten day pause for other creditors, is a good one, though some of our people dissent.

Everyone agrees that service by mail is a practical law. They point out that the current law works a hardship on the debtor as legal costs add up to as much as the bill in many cases. This is what you and others tried to point out to the legislators to no avail.

The group's feeling is that the Commission can achieve their purpose of protecting the consumer public by insisting that all credit grantors honor the current laws before creating new ones. Current issues of Consumers Report and Moneys Worth, as well as recent news items, point to illegal or immoral collection practices by many large credit grantors. They are permitted to commit acts and send notices that would result in our losing our license if we were to do it.

I note that the Small Claims Court has been increased to $500. Does this help the poor or does it increase the amount a corporation (Pacific Telephone for example) can go to court enmasse without using an attorney. A move to return the courts to individuals would be an effective, appreciated act, by ordinary people throughout the state.

As a final thought, I think it would be an excellent idea to invite the members of the Commission to visit either select bureaus or the ones in this area. They could see the calibre of the people at work, the select type of business we accept and that we do not run "legal mills" or harass the poor. I think many bureaus would even show them their P & L so they would be aware that the percentage of profit is small for such a large risk investment.

I recall last year a reknowned congressman stating that credit was a way of life in America and to deprive the poor people of credit was an outrage. How can credit grantors be encouraged

to be more lenient when credit is actually granted on collateral (wages, bank account, etc.) and the trend is to make all collateral exempt? The only recourse is to pass on the cost to the poor people who pay. Some reward!

Respectfully,

Robert Ferrall
CSD Chairman

EXHIBIT IV

JOSEPH B. HARVEY
ATTORNEY AT LAW

55 SOUTH LASSEN STREET
SUSANVILLE, CALIFORNIA 96130

TELEPHONE (916) 257-5551
POST OFFICE BOX 1235

September 20, 1971

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

Dear John,

I have taken a hurried look at your recommendation relating to attachment, garnishment and execution, and the following matters have occurred to me:

1. The decimal numbering system that has been chosen for the statutes seems to me to be inaccurate. Under the system chosen, section 723.101 comes after section 723.51. There is both a section 723.10 and a section 723.100.

Plainly, this is not a decimal system; the decimal merely separates two distinct numbering systems. It seems to me that this will make it awkward to interpolate additional sections if that should become necessary. An accurately used decimal system, however, can readily be used to interpolate additional sections at any time. The problem can be readily solved simply by adding a zero after the decimal point for all of the sections running through article three.

2. Under the existing Labor Code section I have come across a problem from time to time which is not met by the revision. Subdivision (b) (2) provides that the written consent of the spouse of the person making the assignment is necessary where the assignment is made by a married person. I have had occasions where the person seeking to make the assignment has been separated from his spouse. Some times the separation has been for so long that the person seeking to make the assignment no longer has any good idea where the other spouse is. The requirement of the signature of the spouse effectively prevents an assignment of wages under these circumstances.

Divorce can solve the problem, but that frequently involves a long delay while there is a search for the other spouse, publication of summons, and a wait following publication of summons.

In the first place, the other spouse's signature should not be required when the assignment is made in favor of the other spouse.

Second, the other spouse's signature should not be required where there is a judgment of legal separation of the parties.

The foregoing situations are easy, the next is a little more difficult. But as a third exception I would be inclined to permit a spouse to make an assignment without the signature of the other spouse if he signed a declaration that he was permanently separated from the other spouse. Since these assignments are revocable at will, and since the earning spouse is the one with the right to control the earnings, I see little harm that could come to the non-signing spouse in such a situation.

Very truly yours,

JOSEPH B. HARVEY
Attorney at Law

JBH:le

Memorandum 72-69

EXHIBIT V

Central Coast Collections, Inc.

Complete Collection Coverage

222 East Church
Santa Maria, Calif.
Pho WA 2-5759

Mail: P. O. Box 946

September 21, 1971

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

Gentlemen:

I have received through one of your members, Attorney Bruce Gourley, some of your tentative recommendations regarding attachments, garnishments and so forth. In discussing these recommendations with Mr. Gourley there were several areas that I became concerned with and it was his suggestion that I write these concerns to the Board.

First, I would like to point out that all of us in the credit field and in the legislative field lose track of what percentage of the population we are trying to protect with this type of legislation as compared to those who never get involved in defaulting on their obligations and to what affect by over-protecting approximately 2% of the population who do have a credit problem, what problems we then cause the 98% of the consumers who pay their obligations as contracted and the majority of credit grantors themselves.

Regarding the continuous Writ of Execution, I think in most respects that this instrument would be beneficial to both credit grantor and the debtor alike as it would certainly save the debtor considerable marshal expense and court expense if this were to transpire. I am somewhat concerned though on the tentative sliding scale that could be withheld from an individual's paycheck each week. I think that we could all agree that with the cost of operation of most businesses today that to process a $10.00 payment is about as low an amount that is feasible to process without it becoming an expense and I would sincerely hope that the commission would keep this factor in mind, because if the withholding scale becomes so low it still becomes a very unprofitable situation for the credit grantor to try and recover what he has already lost.

Central Coast Collections, Inc.

Complete Collection Coverage

222 East Church
Santa Maria, Calif.
Pho. WA 2-5759

Mail: P. O. Box 946

My main concern, however, is with the tentative proposal to exempt a given amount on a bank account execution on the theory that this money most of the time is transferred wages and therefore would carry the same status as a wage execution. In this particular instance I am concerned as to what type of affect this is going to have on trying to recover uncollected funds from a business firm. I don't believe a business bank account can be construed as wages in any way, shape or form.

I sincerely believe that the over-protection of any segment of our population only leads to less self-restraint by the over-protected segment and a larger burden upon the under-protected segment of our society. I have been in the credit business for some 20 years, working all types of accounts both retail and commercial. It has been my experience for those twenty some odd years that the more laws that have been past to protect that very, very small minority of people who have failed for some reason or another to pay their obligations that with this protection that percentage of people has grown in numbers in retrospect with that protection.

I know that you must have received many letters, possibly pointing out these same positions that I have taken, and I do thank you sincerely for any consideration that you might give regarding the thoughts I have outlined in this correspondence.

Very truly yours,

CENTRAL COAST COLLECTIONS, INC.

W. C. Perry
President

WCP:ck

Memorandum 71-69 EXHIBIT VI

September 21, 1971

Law Revision Commission
Stanford Law School
Stanford University
Palo Alto, California

Re: Garnishment Law Revisions for
State of California

Gentlemen:

Having read some limited information in our Los Angeles Daily Journal, I am concerned about the changes, which seem to only help the deadbeat type of person live better off his cheating ways with his "li'l bit o'larceny' which he seems to have in quite a large amount.

Also, is it possible these changes in law are to benefit the income of the legal profession while he pretends to help the creditor in an injustice already done by being able to charge fees for it? It seems that most laws and revisions are made by attorneys, the Bar Association, etc. who are interested in enriching themselves against their fellow man whom they sit in judgment of with their sneering faces because they have special training in how to read a law book.

It seldom is shown that the attorney class of professionals do much for the good of mankind. Why should this profession have all the say about lawmaking against their fellow man and about whom they may not know very much and who don't care except for fat fees they can collect from them.

This goes allthe way up the line or down the line, whichever, as in the prison system. We must pamper the criminals or they will riot! In California they are the most pampered bunch of people in the nation for their level of ethical conduct. They do better in there than most of them can do outside, and are better treated. I know something about that situation from professional observation.

We must give the Chicanos, Negroes, Cubans, Filipinos, etc. what they want for free or they will riot! It's about time the Irish, English, Canadian, Scotts, Norweigians, Germans, etc. start taking up for themselves, too! Shall we riot? Shall we organize our special association? Yes!!!

These people who have garnishments against them thought they could cheat, which is their way of life, if you study them,

and do it for free without being challenged. Now, the Revision Commission wants to make their sob-story about their poor neglected families acceptable so they can get by with cheating decent working people by not paying their debts, but while they go on with free rent, free clothing, free gasoline bills, free cars, etc. that they know they can't or don't want to pay for. Their liquor bills and vacations, and other pleasures come before their creditors, while their creditors give this to them, but this is proper for the dead beats. They are so mistreated. They must have all their pay check to buy dope, liquor, etc.

I happen to be quite familiar with this deal and the kind who have to have garnishments. Ihappen to have saved all my life, educated myself and my son, and scraped together enough to buy a house with 2 apartments. Perpetually, I am beaten out of rent and these people are working, buying cars, clothes, liquor, having big barbecues, etc. while I do without all these things so I can furnish this apartment for them to tear up, and better yet while they buy dope, but they earn more than I do.

Now, these judges, attorneys, etc. who feel sorry for this deadbeat individual and his family, which he has no business with and didn't have to get, you know, are on the wrong track when they want to make it so a creditor can't collect from these wilfully ignorant ratty deadbeats, and this goes up and down the price income range, too.

Small Claims Court is the recourse that the common person can have against these legalized cheaters.

Anyone with any ethics or intelligence above that of an imbecile knows that to buy more than you can pay for is dishonest, and no other person should be responsible for another's debts, but these people should be made pay them, regardless. This old "family" sob story doesn't impress me and the rest of this population who has to deal with these people at all. That's why these people cheat. Nothing is done about them and they run around and laugh about how they got by without paying rent because the stupid Marshal's office couldn't find them at home and that judge didn't believe the landlord! They laugh and laugh. They continue this on and on until someone lands them in prison, where they riot because they can't cheat for a while!

In the meantime our taxes are raised to pay the various Marshal's Office employees, the judges and their fine retirements, and other officials who uphold these crooked people, often, in their lies, and he who lies does get by, it seems.

Your concern about what business men pay is expected, because they can take it off their tax payments, but they also collect. Don't they want to collect from the <u>nonpayers</u>? Or is that your gimmick?

Yours sincerely,

N. E. White, South Gate, Calif.

Memorandum 71-69

EXHIBIT VII

LAW OFFICES

STANISLAUS COUNTY LEGAL ASSISTANCE, INC.

1024 "J" STREET • MODESTO, CALIFORNIA 95354 • TELEPHONE (209) 524-6212

September 27, 1971

D. M. WASHBURN
DIRECTING ATTORNEY

John H. DeMoully, Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

I late last week received a copy of the Tentative Recommendation Relating to Attachment, Garnishment, and Execution. Over the weekend I read as much of the recommendation as possible, and with hopes that my comments for what they are worth are not too late for the commissions' October meeting, I am sending you this letter.

The tentative recommendation strikes me as an extraordinarily rational approach to the problem. Though I naturally have not studied in detail all the amendments and additions to the codes, I have read with some care the recommendation as set forth on pages 2-28. At least on an initial preview of the recommendations, I find no fault and can offer only praise. I especially commend the proposed continuing levy procedure and service by mail since this procedure would guarantee that a maximum of amounts obtained under levy would go toward reducing the outstanding judgment rather than toward paying fees to sheriffs or constables for the totally unnecessary hand service of levy.

I believe that all the recommendations are worthy, but, since I represent low income clients, I especially approve the proposal for an additional deduction before allowing the 25% withholding. Low income clients need every break they can get in an economy which encourages over consumption and excessive use of credit.

Very truly yours,

Christopher E. Hamilton

CHRISTOPHER E. HAMILTON
Staff Attorney

Memorandum 71-69

EXHIBIT VIII

LEGAL AID SOCIETY OF ORANGE COUNTY

702 S. BROADWAY
SANTA ANA, CALIFORNIA 92701
(714) 547-5365

1112 Homer St.
Anaheim, Ca 92801
Sept. 24, 1971

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

Re: Employees' Earnings Protection Bill

Dear Mr. DeMoully:

I am submitting this letter to request that the Commission consider once again a provision to add to the Employees' Earnings Protection Bill whereby the employee could file a Claim of Exemption prior to any garnishment.

Under such provision the Claim could be filed at any time after the Complaint is filed, but no Claim would be accepted by the Clerk for filing until it is completed as to an itemized statement of monthly expenses and earnings. The creditor's counter-declaration could be filed at any time prior to garnishment.

The creditor would benefit in that he could better evaluate the collectibility of the claim and could better determine the amount of monthly payments that the debtor could afford, based upon the financial statement that would be signed under penalty of perjury. If the Claim were disallowed, there would be no money already secured by garnishment, but the creditor could then proceed with garnishment. The creditor who argues that he would be deprived of collecting any money because the debtor would quit his job in preference to being subjected to garnishment is strongly indicating that his collection process does not tend to seek reasonable monthly payments that the debtor can live with, but tends to force an employee to quit his job and "go on Welfare". I have seen the low-income wage earner give up in despair in many instances when the collector makes excessive demands.

I would expect a decrease of non-meritorious claims because expenses and earnings would have to be itemized, whereas at present the court form does not require such. Furthermore the person who would file a Claim prior to a garnishment would likely be the person to file a Claim after garnishment. In short, a garnishment harms a person's job status, and the provision recommended herein would avoid the garnishment where there is a meritorious Claim.

Yours truly,

Glen Woodmansee

Glen Woodmansee, Deputy Director
Legal Aid Society of Orange County

EXHIBIT IX

ARTHUR M. BRADLEY
ATTORNEY AT LAW
405 FIRST WESTERN BANK BUILDING
106 WEST FOURTH STREET
SANTA ANA, CALIFORNIA 92701
TELEPHONE 543-7463

September 27, 1961

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

Re: Tentative Recommendation relating to
ATTACHMENT, GARNISHMENT, AND EXECUTION
Employee's Earnings Protection Law

Gentlemen:

The committee appointed by the Orange County Bar Association, consisting of Roger Liljestrom, John Trotter, and the writer, approves the proposed legislation as set forth on page 29 of the recommendation shown as Employees' Earnings Protection Law.

We recommend, with the exception of a minor revision for clarity, the entire Employees' Earnings Protection Law, as set forth on page 29 of the Recommendation.

The rules in regard to garnishment are well drafted for simple, inexpensive, equitable enforcement. They are substantially similar to the provisions of Title 15 U.S.Code, Section 1673(a) and should exempt California from the more uncertain provisions of that section.

As to the proposed revision of Section 690.6 by adding a new 690.6(a), we do not believe the new clause (a) achieves its purpose. It is supposed, according to the comment on page 40, to limit the section to persons who can be categorized generally as independent contractors. We do not believe it makes this clear.

The proposed addition of Section 690.7 and 690.7-1/2 in regard to attachment and execution of bank accounts and savings and loan accounts is more equitable than the present exemption of savings and loan and Credit Union accounts.

Yours very truly,

Arthur M. Bradley, Chairman
Orange County Bar Association Committee
aka

EXHIBIT X

§ 723.32. Lien created by service of earnings withholding order

723.32. Service of an earnings withholding order creates a lien upon the earnings required to be withheld pursuant to such order. Such lien shall continue for a period of one year from the date such earnings became payable.

Comment. Section 723.32 is the counterpart of Section 688 of the Code of Civil Procedure. Section 688 provides that the levy of an execution creates a lien on the property levied upon for a period of one year from the date of the issuance of the execution. Service of an earnings withholding order also constitutes a levy (see Section 723.31), but it is not the levy of an execution, and, therefore, a separate provision is required to regulate the existence, commencement, and duration of the lien on each installment.

Provision for a lien is necessary in order to entitle the senior levying creditor to the installments which fell due during the running of the "withholding period" (see Section 723.22) but were not paid because of a dispute about the amount owed or its due date as, e.g., in a case of bonuses. The priority created by the lien will protect the creditor-lienor against (a) a junior creditor whose order would attach on "arrears" where such arrears have not been paid either to the debtor or the senior creditor owing to the dispute; (b) a junior creditor who has garnished the same earnings in another jurisdiction (see Saunders v. Armour Fertilizer Works, 292 U.S. 190 (1934)); and (c) the trustee in an intervening bankruptcy if the lien is more than four months old or the judgment debtor was not

insolvent at the time the levy became effective on the installment. See Section 67(a) of the Bankruptcy Act, 11 U.S.C. § 107(a)(1964).

Although the lien is limited to one year, it will not expire if, before the end of the one-year period, the creditor brings suit against the employer for the settlement of the dispute about the amount or maturity date of the unpaid earnings. See Boyle v. Hawkins, 71 Cal.2d 229, 455 P.2d 97, 78 Cal. Rptr. 161 (1969).

EXHIBIT "E"

Memo 91-69

LEGAL AID SOCIETY OF PASADENA
CITIZENS BANK BUILDING, SUITE 703
16 NORTH MARENGO AVENUE
PASADENA, CALIFORNIA 91101

TELEPHONE
(213) 795-3235

Gentlemen:

The attached Notice of Ruling is self-explanatory. In this case the plaintiff, a Collection Agency, had obtained a judgment by default against the defendant for sundry medical bills.

In filing a Claim of Exemption, notwithstanding that the case fell within the "common necessaries of life" exception to Code of Civil Procedure Section 690.6(c)(1), we raised the contention that such exception denies to a debtor the equal protection of the laws.

The Court went along with our argument and granted total exemption as to all the wages attached and specifically held the "common necessaries of life" exception unconstitutional.

We wish to call this matter to your attention hoping that in cases similar to this one you might be prompted to file Claims of Exemptions which might not otherwise lie.

We would welcome any suggestions or information on this matter as it might very well be expected that this ruling will not be unchallenged, especially if other Legal Aid offices follow suit in raising this claim and are not as lucky as we are in having them sustained.

For any further information call or contact John Trapani or the undersigned.

Very truly yours,

Frederick J. Kamminga
Executive Director

FJK:mcg

Enclosure

FREDERICK J. KAMMINGA, WILFRED W.
STEINER, JOHN TRAPANI & PETER RONAY
16 North Marengo, Suite 703
Pasadena, California 91101
795-3233

Attorneys for Defendant (18371-B)

IN THE MUNICIPAL COURT OF THE PASADENA JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ADJUSTMENT CORPORATION,

Plaintiff,

vs-

JUANITA ELLIS,

Defendant.

NO. CO-40472

NOTICE OF RULING

TO: PLAINTIFF AND THEIR ATTORNEY OF RECORD HEREIN:

Please take notice that on September 7, 1971, this Court, Judge Mortimer G. Franciscus presiding, sustained the Claim of Exemption herein filed by the defendant on the ground that Section 690.6(c)(1)of the Code of Civil Procedure is unconstitutional as an arbitrary and unreasonable distinction, and denies the defendant the equal protection under the law.

DATED: September 7, 1971

KAMMINGA, STEINER, TRAPANI & RONAY

By: John Trapani