

First Supplement to Memorandum 71-87

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

Attached to this memorandum is a research study and recommendations prepared by two Stanford law students interested in the Commission's work on the Employees' Earnings Protection Law. The staff is generally quite impressed by the effort and thought reflected in these materials and we hope you will read these materials with care. However, as to the three specific recommendations (see pages 10-14), we offer the following comments.

The first recommendation is that discharge from employment due to garnishment be completely prohibited. The staff has previously advocated such a change. However, this rule was proposed by Assemblyman McAlister in the 1971 Legislature and his proposal was defeated. The staff accordingly doubts whether it would be profitable to devote Commission resources to such a proposal in 1972--even assuming that the Commission favored the proposal.

The second recommendation is to increase the basic exemption used in determining the earnings withholding table. With respect to this issue, the staff merely notes that the formula proposed in Section 723.050 is intended to be a compromise between the conflicting interests. Whether the figures should be adjusted upwards or downwards is a question that must ultimately be resolved by the Legislature. For the time being, we are reasonably satisfied with the section as drafted.

The third recommendation is to exempt for a period of time from garnishment all wages of employees who have recently been welfare recipients or prison inmates. Assuming that a reasonable standard exemption is

provided, the staff does not believe the needs of the classes of persons described are so unique or special that they should be accorded an absolute exemption. We believe that the needs and rights of creditors must be considered too and the collection of debts should not be unreasonably deferred.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

November 29, 1971

To: The California Law Revision Commission

For the last three months we have been engaged in an extensive study of existing wage garnishment law and its effects in connection with one of our courses at Stanford Law School. In the course of our study we have become familiar with the work of the Commission and the recommendations it has made for changes in California garnishment law.

At the November Commission meeting it was decided that the Commission would offer one more chance to anyone with suggestions for changes in the Commission's proposals to present them. Although at that time we had not completed enough work to be able to offer constructive suggestions, we have hurriedly completed our study and now are in a position to offer our basic recommendations. Even though the suggestions presented below do not constitute our final decision as to the changes we would like to see in existing California law, we do feel that these suggestions, if adopted by the Commission, will make the Employees' Earnings Protection Law a fairer and more progressive piece of legislation.

Respectfully submitted,

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RECOMMENDED CHANGES IN EMPLOYEE'S EARNINGS PROTECTION LAW

Our interest in wage garnishment was prompted by the changes in California law proposed by the Commission. We felt two concerns in looking at these proposed changes: (1) not enough protection was being afforded the debtor and his family and (2) despite many claims and contentions made by the several interested parties about the effect of garnishment, few people have attempted to gather data in order to analyze the actual effects¹. Consequently, our study has focused on gathering the necessary data in order to give a realistic assessment of the need for change in the garnishment law. Following is a brief description of what we feel are the most important effects of garnishment (as they relate to the proposed changes in the law) and our recommendations for changes in the Commission's proposals.

EFFECTS OF GARNISHMENT ON THE LOW INCOME DEBTOR

A. Discharge

Perhaps the most significant impact of garnishment is its effect on the employer-employee relationship. It does not

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1. The only good, comprehensive statistical studies done thus far are:

G. Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Cal L Rev 1214(1965).

C.K. Grosse and C. Lean, Wage Garnishment in Washington--an Empirical Study, 43 Wash L Rev 743(1968).

The Neumeyer Foundation, Western Center on Law and Poverty, Wage Garnishment: Impact and Extent in Los Angeles County(1968), (hereafter cited as Western Center Study).

take much documentation to show the huge costs to the employer from garnishment². These take the form of paper work and book-keeping costs incurred in the processing of garnishment orders; cost of training replacements for who are discharged or who voluntarily quit due to garnishment and losses in efficiency from workers who are undergoing garnishment.

Given the large costs of garnishment, most employers attempt to remove the burden. The easiest way to do this is by firing the worker whose wages are being garnished. That the threat to a debtor of losing his job if his wages are garnished is a very real threat is shown by a Wisconsin survey of debtors whose wages had been garnished: 41% of the debtors

2. The following figures give a good picture of the burden on employers:

The Seattle operations of the Boeing Company spend approximately \$200,000 per year as a direct result of garnishment. Grosse and Lean, supra, pp. 755-56.

The Cook County Credit Bureau in Chicago surveyed 1100 employers in 1964 and found that the estimated costs of garnishment for these employers totalled \$12 million annually. Wall Street Journal, March 15, 1966, p. 18, col. 2.

Total estimated costs of garnishment to employers in Los Angeles County are \$19.36 per garnishment order processed and \$1.8 million per year. Western Center Study, p. 48.

were threatened with discharge if their wages were garnished again and 11% were fired outright³.

Once he has been fired, a debtor finds that his problems have just begun. Very often he will find it difficult to obtain new employment. In the Western Center Study it was found that 13% of the employers interviewed would automatically eliminate an applicant from consideration if he had previously been discharged due to garnishment. Another 79% said that although the previous discharge would not automatically eliminate the applicant, it would count against him. In addition, 63% of the employers said that if the applicant had an overdue debt or outstanding judgment against him, it would weigh against the

3. J. Jablonski, Wage Garnishment as a Collection Device, 1967 Wis L Rev 759, 766 n. 29.

Also along this line:

67% of the employers interviewed in a San Diego study had a policy of firing a worker for three garnishments or less. Hearings on HR 11601 before the Subcommittee on Consumer Affairs of the Committee on Banking and Currency; 90th Congress, 1st Session (1967), pp. 1020-21 (hereafter cited as Hearings).

In a survey of Seattle employers, it was found that 45% had a definite policy on discharge and garnishment. 19% of these employers would always fire after garnishment; 54% would sometimes fire; and 27% would never fire. Grosse and Lean, supra, p. 757 n.79.

It has been estimated that 7000 workers are discharged each year in Los Angeles County because of garnishment. Western Center Study, p. 48.

In 1967, then Secretary of Labor, Willard Wirtz estimated that between 100,000 and 300,000 workers were discharged annually as a direct result of garnishment. Hearings, p. 739.

applicant⁴. While he is unemployed, the debtor will probably incur more debts in order to support his family. When he does find new employment, he is then liable to be hit by a barrage of additional garnishments which may again result in his getting fired. Thus, very quickly the debtor is caught in a vicious cycle⁵ and the only apparent ways out are personal bankruptcy or welfare⁶.

B. Bankruptcy

Another unfortunate by-product of wage garnishment of low income debtors is a high incidence of consumer bankruptcy.

As one authority has described the problem

Even though an individual may be overloaded with debts he may not be propelled into bankruptcy in the absence of some final triggering cause...To protect his income for the benefit of his family, or to protect his employment, the debtor may feel forced to resort to bankruptcy where he will be shielded from garnishment or suit.

Thus, garnishment provides a dual incentive to bankruptcy for the debtor: (1) to protect his income in order to support his family and (2) to protect his job from discharge due to garnishment, although some authors have claimed that the threat to employment is the main effect of garnishment on

4. Western Center Study, p. 49.

5. Grosse and Lean, supra, p. 765.

6. In a 1967 study of debtors who had been garnished during a two month period, the Santa Clara County Welfare Department found that 18% of the debtors had gone onto welfare. Western Center Study, p. 103.

7. L.K. Twinem, The Bankruptcy Problem and What Can Be Done about It (paper presented before the Credit Management Division of the National Retail Merchants' Association; Miami, Florida; September 24, 1962), p. 8.

bankruptcy⁸. Just how burdensome personal bankruptcies are on society and how great the effect of garnishment is on bankruptcy needs more analysis.

The losses incurred by creditors from accounts wiped out by bankruptcies are staggering. Professor Vern Countryman has estimated that almost \$2 billion of creditors' claims are discharged annually through bankruptcy, and of these bankruptcies, over 90% are personal⁹. Also, in the period 1953-1962, only 13% of the bankruptcies in the United States left any assets to be disposed of among creditors and these creditors were covered for only eight cents of each dollar owed.¹⁰

The effect that garnishment has on the incidence of personal bankruptcies has often been discussed. Many previous studies have attempted to establish a high correlation between the bankruptcy rate in a given state and the strictness of the state's garnishment law¹¹. These "macro" studies leave much to be desired because they fail to isolate factors other than garnishment which affect the rate of bankruptcy. More persuasive of the effect of garnishment on bankruptcy are "micro" studies which have attempted to discern the causes of bankruptcy by focusing on a given sample or samples of bankrupts. In a survey of bankrupts in Flint, Michigan, 75% of those interviewed gave

8. c.f. J. Lee, An Analysis of Kentucky's New Exemption Law, 55 Ky L J 618(1966).

9. Hearings, p. 721.

10. Grosse and Lean, supra, p. 768 n.138.

11. e.g. Brunn, supra, pp. 1234-38.

garnishment or the threat of garnishment as the reason for filing¹². Consequently, it appears that garnishment or the threat of garnishment is a major precipitating cause of bankruptcy.

The significance of these data, i.e., the losses to creditors from bankruptcy and the important influence of garnishment on bankruptcy, is increased when one sees that many of those who filed bankruptcy wanted to pay off their debts and could have paid the debts had they been given time. Dolphin found that 49% of the bankrupts he studied could repaid their debts within three years and still have maintained a "modest but adequate standard of living."¹³

The pattern that seems to develop is that a person over-extends himself and his family with credit because of his lack of sophistication in consumer buying. Once he realizes he is overextended he attempts to pay off all creditors by reducing the payments made to each. Unfortunately, some of his debts have become due, and an impatient creditor or collection

12. R. Dolphin, An Analysis of Economic and Personal Factors Leading to Consumer Bankruptcy (Michigan State University Bureau of Business and Economic Research, Occasional Paper #15; 1965), p.18.

Also:

In a 1968 Ohio study, it was found that 70% of the bankrupts had been threatened with garnishment in the period immediately preceding filing. H.L. Mathews, Causes of Personal Bankruptcies (Ohio State University Bureau of Business Research, Monograph #133; 1967), p. 82.

In an Illinois study of 73 bankrupts, 35 indicated that the threat of garnishment had caused them to file. R. Stabler, The Experience of Bankruptcy (1966), p. 7.

13. Dolphin, *supra*, pp. 98-99. Also c.f. E. Snecedor, Consumer Credit and Bankruptcy, 35 Ref J Vol. 2 37 (1961), p. 38.

agency either garnishes or threatens garnishment. Faced with reduction in income and a very real possible loss of his job, the debtor has little choice. This pattern would describe most debtors whose wages are garnished¹⁴.

The consequence of the problems caused by garnishment and bankruptcy is that the dual incentive to bankruptcy posed by garnishment should be removed. In other words, the exemption (as discussed below) should be greatly increased so that garnishment does not cause such a serious loss of income to the debtor and his family. Also, the threat of garnishment to the debtor's job should be removed.

C. Welfare

Resort to applying for welfare benefits is not only the last resort of the employee discharged because of wage garnishment, but garnished wages appear to be intimately involved with the welfare status of many families. It is part of the cycle which initially drives people onto the welfare rolls, and when again levied for overdue debts on recently terminated welfare cases, it negates the rehabilitative services done by the social workers with the families.¹⁵

A discussion of the effects of garnishment on the low income debtors would not be complete without a mention of the relation between garnishment and welfare. The effects of garnishment on welfare are of two types: (1) garnishment drives formerly self-sufficient families onto the welfare rolls and (2) garnishment raises a severe obstacle to any families trying to leave the welfare rolls.

14. Grosse and Lean, supra, pp. 769-71.

15. Western Center Study, p. 102.

As described above, a debtor who has been discharged because of garnishment often has no alternative other than welfare. With his chances of getting another job diminished by his previous garnishment and discharge and with other debts mounting, the debtor reaches for the only source of income available.

Thus, in a study of 827 applicants for general relief, the Cook County Department of Public Aid found that 9% of the applicants had been fired from their jobs because of garnishment¹⁶.

In a 1967 study by the Santa Clara County Welfare Department, of 231 debtors who had been garnished it was found that 18% of the debtors were receiving welfare at the time they were interviewed.¹⁷

Consequently, not only do a large number of those who are garnished end up on welfare, but also a significant percentage of those who go on welfare do so as a result of garnishment and discharge.

In addition, garnishment makes it difficult for a debtor and his family to become self-sufficient once he comes off the welfare rolls. A study in Milwaukee conducted by the Center for Consumer Affairs of the University of Wisconsin School for Social Affairs examined the plight of 634 families who went off welfare in the period October 1964 to May 1965.. The researchers found that in 23.3% of the families, the

16. Wall Street Journal, March 15, 1966, p. 18, col. 2. (see note 2 above).

17. See note 6, above.

head of the family had had his wages garnished by February 1966. Of these, more than 50% had had their wages garnished within three months after going back to work¹⁸. The disastrous consequences to a family just off welfare of losing a portion of its income while trying to get set up is apparent. Indeed if there is any group that needs special protection from garnishment, it is those who have just come off welfare. If removal of people from welfare is a serious policy of this state, then protection of former welfare recipients from garnishment is indispensable.

D. Summary

In the preceding paragraphs we have analyzed what we feel are three of the most significant effects of garnishment. In so doing we have tried to examine the additional costs imposed on society by use of garnishment: costs to employers; the losses to creditors due to bankruptcy; and the costs to the general public from increases in the welfare rolls. However, little has been said about some other costs-those to the debtor and his family. It is difficult to quantify many of these costs: the economic hardship the family suffers from a decrease in its income while the debtor is still working; further hardship caused if the debtor loses his job; and the distress and psychological pressures that result from living under the uncertain conditions that follow from garnishment and discharge. The fact that these costs are difficult to

18. Hearings, pp. 1033-34.

quantify, though, should not obscure them, and they must be taken into account in any proposed changes in the law.

RECOMMENDATIONS

A. Discharge

We recommend that no employer be allowed to discharge an employee because the employee's wages have been garnished. There should be no limitations on this prohibition based upon either the number of withholding orders served or the number of debts for which withholding orders are served.

The problem in this area is who is to bear the costs incurred by the employer because of garnishment. Because of the countervailing costs (losses to creditors from bankruptcies and the increase in welfare costs) that result from allowing discharge, and also because the employer is in a better position to pass the costs on equally to the public by an increase in the price of his product, we feel the burden should fall on the employer. In short, the burden of garnishment is going to fall ultimately on the public. If discharge is allowed, the burden will be shifted to the public indirectly via increases in the cost of credit (to compensate creditors for losses from bankruptcies) and increased taxes (to provide extra welfare). It would seem to be much more economical and equitable, if we are to continue to maintain the garnishment remedy for the benefit of creditors, to put the burden on employers (where it naturally falls) and allow it to be passed on directly to

the public. Also one should note that prohibiting discharge for garnishment on any one debt has the practical effect of imposing a large portion of the total costs on the employer. By prohibiting discharge entirely, few extra costs are imposed on the employer. Thus even under the Commission's proposal the employer will incur large costs and pass them on to the public. The additional costs imposed by complete prohibition would seem to be far less than the countervailing costs.

One final comment is that it seems paradoxical and extremely illogical to us to stress to debtors that they must pay their debts and then turn around and allow the taking away of the only means the debtor has to pay his debts. This creates what David Caplovitz has often termed "the modern debtor's prison".

B. The Exemption Scedule

The theory underlying the granting of an exemption from garnishment is stated in Perfection Paint Products v. Johnson(1958) 164 Cal App 2d 739,741; 330 P2d 829,830:

The basic theory of... the wage exemption is that a debtor and his family, regardless of the debtor's improvidence, will maintain enough money to retain a basic standard of living in order that the debtor may have a fair chance to remain a productive member of the community.

In revising the garnishment law then, one importnat goal should be to provide the debtor and his family with a basic standard of living. Suggestions for what amount of income a debtor with a family of four needs have ranged from \$3600 per year¹⁹ to

19. D. Karlen, Exemptions from Execution, 22 Bus L 1167(1967), p.1171.

\$15,000 per year²⁰. Some clues to a realistic exemption figure can be found in the government figures relating to poverty. Thus the Social Security Administration has estimated that the "poverty line" for a family of four in 1969 was \$3721 per year. However, this figure has been criticized by many commentators as being an unrealistically low estimate of the needs of such families.²¹

Perhaps a more realistic assessment of the needs of a family of four is the Bureau of Labor Statistics' Lower Budget for a 4 Person Family. In this compilation, the disposable income (income after deductions for taxes, disability insurance, and social security) needed by a family of four in California has been estimated at from \$5855 to \$6445 per year, depending on location in the state²². The Lower Budget includes the costs for what is needed for a modest, but adequate standard of living.

A comparison of these figures with the net take home pay after garnishment at various income levels shows how inadequate the Commission's present exemption schedule is (see Appendix A). Anyone earning less than \$150 gross per week would fail to meet the budget figure under the Commission's exemption schedule. One possible objection to the comparison is that the net take home pay after garnishment is unrealistic in

20. Testimony of Professor Vern Countryman. Hearings, p. 723.

21. e.g. L.A. Ferman et al (eds.), Poverty in America (University of Michigan Press, 1965).

22. Bureau of Labor Statistics, Handbook of Labor Statistics (1970), p. 290, Table 126.

that it assumes garnishment of the debtor's wages every week during the year. However, in a study of garnishment in Los Angeles County in 1967-68, it was found that the average liability claimed in actions involving garnishment was \$437.²³. For a debtor earning \$110 gross per week, money would have to be withheld for more than ten months under the Commission's schedule in order to pay off a debt of this size. Thus it is not too unrealistic to assume that under the Commission's schedule most debtors would be garnished each week during the year.

Therefore, we propose that the exemption be sixty(60) times the minimum wage plus 75% of the excess, using the same method for calculating the amount to be withheld as the Commission has used(i.e. applying the schedule to the income left after deductions have been made for taxes-using a single person claiming one exemption as the basis, social security, and state disability insurance). Under this exemption schedule, debtors earning \$120 gross per week or less would be completely exempt and those earning above this figure would be given enough protection to meet the Lower Budget figure of the Bureau of Labor Statistics(see Appendix B).

C. Welfare Recipient Immunity

As we mentioned before, garnishment often aggravates the problem of welfare by making it difficult for those families just coming off the welfare rolls to get established financially. In order to prevent such families from being driven back on to the welfare rolls because of loss of income or loss of job

23. Western Center Study, p35.

due to garnishment, it is necessary to provide special protection to these families so that they can straighten out their finances and begin to pay their bills. Some states already provide such protection. Thus Minnesota exempts a person from wage garnishment for six months after going back to work; Rhode Island provides a one year exemption.

Consequently, we propose that a former welfare recipient be exempt from garnishment for six months after going back to work. In addition, this protection should be available to any one individual only once every two years; in this way a person can be prevented from manipulating the protection to the detriment of his creditors. We also recommend that such protection be available to former prison inmates since they face problems similar to those of welfare recipients when they go back to work (no liquid assets, quick accumulation of debts, etc).

Such protection would be enforced by requiring the welfare recipient's case worker to give him a certificate of immunity when he goes back to work. The former recipient would present the certificate to his employer, who would then not honor any withholding orders served during the period of immunity. The employer would be under a duty, though, to notify a creditor who serves a withholding order of the immunity.

APPENDIX A

Amount Withheld under the Commission's Schedule at Various Income Levels and Net Take Home Pay

Gross Earnings per year/week	Amount Withheld under Commis- sion's Schedule per week	Disposable Earnings: Single Person per week	Net Take Home Pay: Single Person per year/week	Disposable Earnings: Married + Two Children per week	Net Take Home Pay: Married +Two Children per year/week
\$3120/60	0	51.93	2700/51.93	56.28	2927/56.28
3640/70	3.00	59.25	2925/56.25	65.66	3311/63.66
4160/80	5.00	68.40	3297/63.40	73.64	3570/68.64
4680/90	6.00	73.55	3513/67.55	81.62	3933/75.62
5200/100	8.00	80.65	3778/72.65	89.36	4231/81.36
5720/110	10.00	87.74	4043/77.74	97.04	4536/87.04
6240/120	12.00	94.94	4313/82.94	104.72	4831/92.72
7020/135	14.00	105.49	4758/91.49	116.32	5330/102.32
7800/150	17.00	116.31	5173/99.31	127.80	5823/110.80
8840/170	20.00	129.91	5724/109.91	142.97	6456/122.97
10400/200	25.00	149.94	6506/124.94	164.16	7298/139.16

APPENDIX B

Amount Withheld Under New Schedule At Various Income Levels And Net Take Home Pay

(New Schedule: 60 x minimum wage + 75%)

Gross Earnings per year/week	Amount Withheld under new schedule per week	Disposable Earnings Single Person per week	Net Take Home Pay Single Person per year/week	Disposable Earnings Married + Two Children per week	Net Take Home Pay Married + Two Children per year/week
\$3,120/60	0	51.93	2,700/51.93	56.28	2,927/56.28
3,640/70	0	59.25	3,081/59.25	65.66	3,414/65.66
4,160/80	0	68.40	3,557/68.40	73.64	3,829/73.64
4,680/90	0	73.55	3,825/73.55	81.62	4,244/81.62
5,200/100	0	80.65	4,194/80.65	89.36	4,646/89.36
5,720/110	0	87.74	4,562/87.74	97.04	4,993/97.04
6,240/120	0	94.94	4,937/94.94	104.72	5,392/104.72
7,020/135	2.00	105.49	5,381/103.49	116.32	5,891/114.32
7,800/150	5.00	116.31	5,788/111.31	127.80	6,332/122.80
8,840/170	8.00	129.91	6,339/121.91	142.97	6,965/134.97
10,400/200	13.00	149.94	7,121/136.99	164.16	7,807/151.16