

#39.30

12/12/72

Memorandum 73-2

Subject: Study 39.30 - Wage Garnishment and Related Matters

Section 723.101 of the Employees' Earnings Protection Law (wage garnishment procedure) prescribes the manner of service under that law. Section 723.101, revised in accordance with instructions given the staff at the December meeting, is set out in Exhibit I attached. Subdivision (d) is revised to add a sentence requiring that notice of the application under that subdivision be given to the creditor who served the intervening order.

We plan to amend the legislation introduced to effectuate the wage garnishment recommendation to revise subdivision (d). Accordingly, the Commission should approve the exact language it wishes to insert in subdivision (d).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

§ 723.101. Service; recovery of costs

723.101. (a) Service under this chapter shall be by personal delivery or by registered or certified mail, postage prepaid with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by the recipient or his representative.

(b) Notwithstanding Section 1032.6, except as provided in subdivision (c), a judgment creditor is not entitled to the costs of service under this chapter which exceed the cost of service by certified mail with return receipt requested.

(c) If the employer of the judgment debtor refuses to accept service by registered or certified mail, the cost of service by personal delivery may be recovered from the judgment debtor.

(d) Where the employer of the judgment debtor refuses to accept service by mail of an earnings withholding order and the judgment creditor subsequently serves such order by personal delivery and his order is denied effect because an intervening order has been given effect, upon application of the judgment creditor, the court which issued the judgment creditor his original earnings withholding order shall make a special order directed to the employer to cease withholding under the intervening order and to comply with the original order. In these circumstances, for the purposes of Section 723.022, service of the original order shall be deemed complete on the date of service of the special order directing the employer to comply with the original order. At least 10 days before the hearing on the application, the judgment creditor who obtained the original earnings withholding order shall serve on the judgment creditor who served the intervening order a notice of the time and place of the hearing on the application and a copy of the application.