

#39.30

1/6/75

First Supplement to Memorandum 75-6

Subject: Study 39.30 - Wage Garnishment

Attached are several communications relating to wage garnishment.

Exhibit I. A letter and attached correspondence and materials from David Battin (Staff Attorney - State Bar of California) pointing up the deficiencies in creditor collection pursuant to Code of Civil Procedure Section 710 (garnishment of earnings of public employees). The drafts of legislation attached to Memorandum 75-6 both would correct the deficiencies.

Exhibit II. A letter from Brian W. Newcomb, Attorney, Legal Aid Society of San Mateo County, pointing out that existing Section 690.6 can be construed to preclude granting a hardship exemption for a single debtor. The drafts of legislation attached to Memorandum 75-6 both would take care of Mr. Newcomb's problem. Assembly Bill 90 should be amended to substitute "debtor or his family" for "debtor and his family" so that the hardship exemption will not be construed not to apply to an individual debtor who has no family.

Exhibit III. A letter from Brian Paddock, Directing Attorney, Western Center on Law and Poverty, suggesting a number of matters for consideration in connection with the redrafted wage garnishment procedure statute. We plan to go through these comments individually at the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

THE STATE BAR OF CALIFORNIA



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20 November 1974

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

Re: CCP 710

Dear John:

I am enclosing various correspondence and materials which do indeed point up the deficiencies in creditor collection pursuant to CCP 710. I think it would be of significant aid to passage of your new Employees' Earnings Protection Law to prove that the situation which occurred in the Roos/Atkins case is magnified statewide. Furthermore, it doesn't require an efficiency expert to see that the \$1.50 fee charged for each abstract doesn't cover the clerks' administrative costs.

Cordially,


 David Howard Battin,
 Staff Attorney

DHB:shm

Encs.

ANTHONY FILOSA
IK/ADMINISTRATIVE OFFICER

MUNICIPAL COURT
BEVERLY HILLS JUDICIAL DISTRICT
9355 BURTON WAY
BEVERLY HILLS, CALIFORNIA

278-6522

October 10, 1974

RECEIVED
OCT 11 1974

Judicial Council
Administrative Office of Courts
4200 State Building
San Francisco, California 94102

ADMINISTRATIVE OFFICE
OF THE COURTS

Attn: Forms Management

Dear Sir,

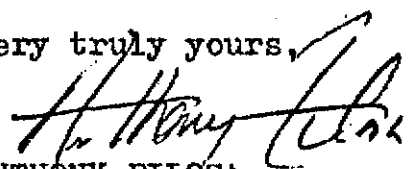
This Court has experienced some problems in regards to the issuance of "Abstracts of Judgment" Re: 710 C.C.P., when the payroll agency where the debtor is employed has deducted more than the necessary funds to satisfy judgment. This of course results in an overage paid out by the court to the judgment creditor.

Although the court should not be responsible for improper accounting it seems particularly unfair to garnish more than necessary because of a payroll departments mistake.

I would propose that the enclosed form be amended so that it reflects any monies previously received and paid out by the court. I have instructed the clerks in my office that upon issuing an abstract that they indicate this information. We would continue of course to issue as many abstracts as requested by plaintiff and would certify the judgment exactly as rendered. However, in the best interests of the defendant and to eliminate the courts responsibility insofar as overpayments are concerned we feel that information on prior payments is vital.

Thank you for your consideration.

Very truly yours,


ANTHONY FILOSA
Clerk/Administrator

AF:ba
enc:
cc: M. Mardesich
Clerk/Adm.
South Bay Jud. District
C. Saito
Clerk/Adm.

NAME OF MUNICIPAL OR JUSTICE COURT DISTRICT OR OF BRANCH COURT, IF ANY		FOR COURT USE ONLY
NAME OF CASE (ABBREVIATED)		
ATTORNEY(S) NAME AND ADDRESS		
ATTORNEY(S) FOR:	TELEPHONE	CASE NUMBER

I certify that the following is a true and correct abstract of the judgment entered in this action:

Judgment Debtor(s):

Amount of Judgment: \$ _____, principal
 \$ _____, attorney fees
 \$ _____, interest
 \$ _____, costs
 \$ _____, Total

Judgment was entered on _____ in the _____ Minute Book _____ of this court,
(Date)
Volume No. _____, Page _____.

- ☐ No lien in favor of a judgment creditor is endorsed on the judgment.
☐ A lien of \$ _____ in favor of _____ judgment creditor(s), is endorsed on the judgment.
☐ A stay of execution until _____ has been ordered by the court.
 Date of issuance of this abstract of judgment: _____
☐ \$ _____ received on prior abstracts and paid to Judgment Creditor on _____, Req. # _____.
 (SEAL) _____, Clerk

By _____, Deputy

IN THE MUNICIPAL COURT OF Beverly Hills JUDICIAL DISTRICT,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Cause No. 85741

PLAINTIFF(S) ROOS/ATKINS, A Calif. corp.	DEFENDANT(S) VIVIAN L. MOSBY, aka VYLAN L. KIMBLE
ATTORNEY(S) Irwin J. Eskanos	ATTORNEY(S) and fictitious names, if any

DATE	NATURE OF ACTION <input checked="" type="checkbox"/> CONTRACT <input type="checkbox"/> TORT	FOR FEE \$ 131.01	ATTY. FEES	PLUS INTEREST AND COSTS
OCT. 10 1973	COMPLAINT FILED—SUMMONS ISSUED		FEE PAID	\$
JAN 14 1974	ACKNOWLEDGMENT OF CREDIT \$10			
JAN 14 1974	Summons filed, Request filed and DEFAULT ENTERED of DEFENDANT(S) AS NAMED HEREIN			
JAN 14 1974	Affidavit and Memorandum of Costs Filed			
JAN 14 1974	AFFIDAVIT RE: 585.5 AND 395 (3) CCP FILED			
JAN 14 1974	MINUTE BOOK		PRINCIPAL	121.01
	PLAINTIFF (AS ABOVE)		ATTY. FEES	35.00
	DEFENDANT(S) AS NAMED HEREIN		INTEREST	17.50
			COSTS	175.51
JAN 28 1974		(2) ABSTRACT ISSUED BY	TOTAL	FEE PAID \$1.50
MAR -6 1974	DEPOSITED BY <u>United Calif. for</u> FOR <u>Cap 710 Fines</u>	REC'D BY C. JOY RECEIPT # 185241		3.11
MAR 28 1974	DEPUTY MARSHAL (W3-95245)	ABSTRACT ISSUED BY C. JOY	FEE PAID	\$1.50
APR 15 1974	Regulation # 162 issued to <u>316</u> payable to <u>Prop/Attorney</u>			5.11
JUN 3 1974	% <u>Irwin J. Eskanos</u>	ABSTRACT ISSUED BY <u>H. HANSEN</u>	FEE PAID	\$1.50
JUN 14 1974	DEPOSITED BY <u>U.C.P. 710</u> FOR <u>C.C.P. 710 Fines</u>	REC'D BY H. HANSEN RECEIPT # 186611		11.98
JUL 2 1974	DEPOSITED BY <u>U.C.P. 710</u> FOR <u>C.C.P. 710 Fines</u>	REC'D BY H. HANSEN RECEIPT # 186621		107.33
JUL 10 1974	Regulation # 166 issued to <u>316</u> payable to <u>Prop/Attorney</u>			11.98
JUL 11 1974	% <u>Irwin J. Eskanos</u>	ABSTRACT ISSUED BY C. JOY	FEE PAID	\$1.50
AUG -5 1974	DEPOSITED BY <u>United Calif. for</u> FOR <u>Cap 710 Abstract</u>	REC'D BY C. JOY RECEIPT # 186650		24.77
AUG 14 1974	ABSTRACT ISSUED BY C. JOY	FEE PAID	\$1.50	
SEP -4 1974	DEPOSITED BY <u>United Calif. for</u> FOR <u>Cap 710</u>	REC'D BY C. JOY RECEIPT # 187181		50.68
SEP 11 1974	ABSTRACT ISSUED BY C. JOY	FEE PAID	\$1.50	
SEP 20 1974	Regulation # 179 issued to <u>316</u> payable to <u>Prop/Attorney</u>			242.23
OCT 15 1974	SATISFACTION OF JUDGMENT FILED			
	<u>No more abstracts to issue</u> <u>see the Bill</u>			

ANTHONY FILOSA
CLERK OF THE COURT

MUNICIPAL COURT
BEVERLY HILLS JUDICIAL DISTRICT
9355 BURTON WAY
BEVERLY HILLS, CALIFORNIA

278-6522

Oct. 4, 1975

University of California, Los Angeles
Accounting Office
Los Angeles, California.

Re: BHM Case No. 86744
Roos-Atkins vs Kimble

Gentlemen:

We are returning herewith your check in the amount of \$73.45 which represents monies withheld from defendant's salary pursuant to section 710 C.C.P.

The total judgment entered on Jan. 14, 1974 is \$175.81. Our records indicate that a total of \$286.04 (exclusive of the enclosed check) has been deducted from defendant's salary and remitted to the Judgment Creditor, which is \$110.23 over and above the amount owing.

We feel that it is incumbent upon you to contact Mr. Eskanos, Attorney for Roos-Atkins, regarding refund of salary attachments in excess of the amount of the Judgment.

Very truly yours,

ANTHONY FILOSA, CLERK

by *[Signature]*
Deputy Clerk

encl. Check No. 4-00573
\$73.45

cc: Mr. Irwin J. Eskanos
Attorney at Law
1404 Franklin St.
Oakland, Calif. 94612

LEGAL AID SOCIETY OF SAN MATEO COUNTY

PETER H. REID
EXECUTIVE DIRECTOR

2221 BROADWAY
REDWOOD CITY, CALIFORNIA 94063
TELEPHONE (415) 365-8411

December 16, 1974

Mr. John H. De Mouilly
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Dear Mr. De Mouilly:

Enclosed is a memorandum concerning the definition of "family" under California Code of Civil Procedure.

The municipal courts have refused to extend the exemption for garnishment of earnings "necessary for the use of the debtor's family" to the individual judgment debtor. While the California Supreme Court in the 1910 case, Lawson v. Lawson, 158 Cal. 446, 111 P. 354, defines "family" as a collection of persons, a liberal construction of C.C.P. § 690.6 in accordance with the policy of the statute would exempt the earnings of an individual debtor. The enclosed memorandum amplifies these points.

Our client community has been adversely affected by the municipal courts' construction of C.C.P. § 690.6. As a result, we are proposing a change in the wording of the statute to expressly extend the exemption to the individual debtor. We have written to Edgar A. Kerry at California Rural Legal Assistance, Brian Paddock at the Western Center on Law and Poverty, and Senator Arlen Gregorio concerning the proposal.

The California Law Revisions proposed legislation (Cal. L. Revision Commission, Recommendation relating to Wage Garnishment, December, 1974) fails to remedy this situation. We would recommend that amended Section 690.6(b) P. 24 be altered as follows:

- (b) The portion of his earnings which the debtor proves is essential for the support of the debtor or the debtor's family is exempt from execution unless the debt is incurred for personal services rendered by any employee or former employee of the debtor. The standard provided by this subdivision recognizes that the exemption provided by subdivision (a) should be adequate, except in rare and unusual cases, to provide the amount essential for the support of the debtor or the debtor's family.
(Amendment underlined).

I would be happy to speak further with you on this matter.

Very truly yours,

GG:bc

Brian W. Newcomb
Brian W. Newcomb, Attorney at Law

WESTERN CENTER ON LAW AND POVERTY

LEGISLATIVE INFORMATION CENTER

Serving Southern California Legal Services Clients

1900 "K" STREET, SUITE 112, SACRAMENTO, CALIFORNIA 95814

Telephone (916) 442-0753

BRIAN PADDOCK
Directing Attorney

ANDREA GEISLER THRONE
Staff Associate

December 13, 1974


Mr. John DeMouilly, Esq.
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Wage Garnishment

Dear John:

I understand from Ed Kerry of CRLA that you will be sending some revised proposals on the above subject. Apropos of reorganizing and amending the bill I am enclosing a copy of a memo prepared by our Consumer Law expert in Los Angeles last year. I did not press these suggestions on the Commission at that time because we were having enough difficulty with legislative acceptance of the bill. However, I think any revised version for 1975 should include these items. Please let me have your thought on this.

Sincerely,



Brian Paddock
Directing Attorney

BP/kj
Encls.

WESTERN CENTER ON LAW AND POVERTY

MEMORANDUM

TO: BRIAN PADDOCK & ANDREA GEISLER

DATE: APRIL 17, 1974

FROM: RICH ALPERT

SUBJECT: COMMENTS ON LEGISLATION

1. A.B. 101 (Warren)

Obviously, I am in favor of the thrust of the bill. However, I do have some comments on additions which can be made to further protect the rights of debtors:

(a) No levy should be allowed except after an opportunity is given for hearing on a claim of exemption. The proposed C.C.P. § 690.50 allows a debtor to seek an exemption within 10 days after the property was levied upon. I see no reason why a delay of 10 days before levy cannot be mandated to allow a debtor to have a hearing on any claim of exemption before such levy.

(b) Section 690.8a exempts from levy of execution earnings retained in the form paid or as cash which are essential to support of the debtor or his family. Does this include savings in a bank? This section should make it clear that money in a savings account is cash and therefore exempt.

(c) There should be a provision prohibiting a levy or attachment for more than the obligation, except where impracticable. The creditor or sheriff must be required to take items or parts thereof which would achieve this result.

(d) The \$1.00 charge for a levy of wages permitted by § 723.024 should be deducted from the money paid to the creditor and not deducted as an additional charge to the debtor.

(e) Exempt earnings, as defined by § 723.050(a), should be greater than 30 times the minimum wage, and/or the withholding of earnings as provided in § 723.050(b) for persons with nonexempt earnings greater than \$20.00 but less than \$30.00 should not be \$10.00 plus 25% inasmuch as a person with nonexempt earnings of \$21.00 must pay \$10.25, whereas a person with nonexempt earnings of \$19.75 pays nothing; and/or some basis of calculation for exempt earnings should be dependent upon the number of dependents of the wage earner.

Memo to Brian and Andrea
April 17, 1974
Page 2

(f) Sections 723.051(a) and 723.105 do not provide any opportunity before the withholding for proving that additional exemptions or exemptions are appropriate.

(g) Section 723.101(c) provides that the costs above and beyond the certified mail if the employer refuses the certified mail are chargeable against the debtor. There is no reason why the debtor should be charged with an act by his employer.

(h) The claim of exemption and the financial statement should be attached to the notice to an employee earnings withholding order. Section 723.122. Such notice should also say that "X" dollars will be withheld by the employer unless the debtor has a hearing.

(i) Section 723.155 is bad. An employer is exonerated from liability for violation of a provision establishing a duty by the employer toward the debtor, but is not exonerated for any violation of a duty established vis-a-vis the creditor. There is no reason why the creditor has more rights than a debtor for violations by the debtor's employer.