

#39.120

1/22/75

First Supplement to Memorandum 75-7

Subject: Study 39.120 - Enforcement of Judgments

Attached as Exhibit I are comments and background material provided by Professor Riesenfeld, our consultant, on various sections of the draft statute attached to Memorandum 75-7.

Respectfully submitted,

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January 14, 1975

To: Members of Law Revision Commission
and Staff of Law Revision Commission

From: Stefan A. Riesenfeld

Subject: Memorandum 75-7 (Enforcement of Judgments)

Gentlemen,

This is a memo dealing with §§ 701.070, 701.080, 701.110, 703.020, 704.050 and 704.090.

1. The provisions for the enforcement of money judgments apply to judgments entered in courts of this state either either under C.C.P. §§ 664 and 1710.25 and not to judgments of federal courts in this state. I would state this in § 701.020 by adding after judgment "entered in a court of this state".

2. § 701.080(b)

I do not understand the reference to "minutes".
Should this not be left to the Judicial Council?

3. § 704.050

704.050 (Manner of Levy) requires further study. The last sentence puzzles me. Under present law certain personal property can only be reached by supplementary proceedings. The staff proposal recognizes this by new Articles 3 and 8.

The last sentence was inserted to bridge the gap between the limited levy under the attachment statute and the broader scope of leviable property required under execution. As a temporary measure the statute retained the state of the law as applied in *Meacham v. Meacham*, 262 C.A.2d 248. In my opinion certain types of assets which are not readily marketable should not be reached by levy and sale at all. Therefore I recommend a re-study and change of 704.050 as proposed.

4. Property subject to execution (§ 704.050)

§ 704.050 does not properly replace §§ 688 and 684.2.

§ 688 determined what property was subject to execution. It consisted basically of three classes:

- a) property owned by the debtor at the time of the execution levy,
- b) property not owned by the debtor at the time of the execution levy, but subjected to a judgment lien when it was owned by the debtor,
- c) property not owned by the debtor at the time of the execution levy, but subjected to attachment when it was so owned.

The writ (§ 703.020) refers now only to class a) and b) and omits class c).

Moreover, there is no proper harmonization between § 684.2 and the new proposals.

5. § 704.070

Caption should read Levy on property in the possession of or debts owing by third parties.

6. Life of writ of execution (§ 704.090)

I recommend a change in § 704.090.

The law relating to return and re-issue is very antiquated. It dates from the days when the sheriff himself searched for leviable property and when a return was necessary to proceed by creditors' bill.

Since a levy under a writ, if validly made before return day, is good for one year after issuance of the writ, I see no reason why the writ should be returned before that time, if the execution is not completed before that time.

The law in other jurisdictions varies greatly (see appendix). I suggest a system requiring the writ to be returned

- a) within 5 days after a sale has been made thereunder;
- b) after the expiration of one year from issuance;
- c) if the creditor so requests, whichever is the earliest date.

Synopsis of return days
for writs of execution

	Jurisdiction & Source	Standard Period	Extensions etc.
1)	<u>Alabama</u> Code, Tit. 7 §526	Within 90 days from date of writ	
2)	<u>Alaska</u> Official Form 131 Stat. §09.35.100	No fixed period Return day specified in writ	-
3)	<u>Arkansas</u> Code, Tit. 7 §344	Within 90 days from date of execution	
4)	<u>Arizona</u> Stat. §12-1555	Not less than 10 and not more than 90 days from receipt	
5)	<u>Colorado</u> Code §77-1-12	Within 90 days from date of issue	Unless sale pend- ing on levy within return period
6)	<u>Connecticut</u> Stat. §52-345	Sixty days after issuance	
7)	<u>Delaware</u> Code §5041	Specified in writ	
8)	<u>Florida</u> R.C.P. Form 1.914, Rule 1.550	No return period during life of judgment	Return when satisfied
9)	<u>Georgia</u> Code, §39-125	Returnable to next term	
10)	<u>Hawaii</u> Stat. §651-34	60 days from issuance	

	Jurisdiction & Source	Standard Period	Extensions etc.
11)	<u>Idaho</u> Code §11-103	Not less than 10 days and not more than 60 days from receipt	
12)	<u>Illinois</u> Stat. c.77 §8	Ninety days after date of issuance	Execution and venditioni expo.
13)	<u>Indiana</u> Code §34-1-34-8	90 days from date un- less creditor seeks shorter time	
14)	<u>Iowa</u> Code § 626.16	70 days from date of issuance	Not applicable to garnishment 626.27
15)	<u>Kansas</u> Stat. §60-2401	60 days from issuance	
16)	<u>Kentucky</u> Rev. Stat. §426.040	30-70 days from issuance on fixed return day for writs	
17)	<u>Louisiana</u> Code of Civ. Proc. §2294	One year after issuance	
18)	<u>Maine</u> Rev. Stat. §4651	Three months after issuance	
19)	<u>Maryland</u> Stat. Art. 82 §42	Next term of court	
20)	<u>Massachusetts</u> Gen. Stat. §235-23	Twenty years from issuance	
21)	<u>Michigan</u> Stat. Ann. §600.6002	20-90 days after received	May complete pro- cess if levy with- in that time

	Jurisdiction & Source	Standard Period	Extension etc.
22)	<u>Minnesota</u> Stat. §660.05	60 days after receipt	May return after completion if levied within that period
23)	<u>Mississippi</u> Stat. § 13	First day of next term, even if no time to sell	
24)	<u>Missouri</u> R.C.P. 76-04	30-90 days from date of issuance	
25)	<u>Montana</u> Stat. §95-5804	10-60 days after receipt	
26)	<u>Nebraska</u> Rev. Stat. §25-1543	Within 60 days from issuance	
27)	<u>Nevada</u> Rev. Stat. §21.040	10-60 days after receipt	
28)	<u>New Hampshire</u> Rev. Stat. §528:02	Next term if within 6 months, otherwise 6 months from date	
29)	<u>New Jersey</u> Rule 4.59-1.	3 months after issuance or 30 days after sale	
30)	<u>New Mexico</u> Rev. Stat. §§26-1-16, 24-1-9	Within 60 days from delivery to sheriff	
31)	<u>New York</u> C.P.L.R. §5230c	60 days after issuance, unless income execution	May be extended by creditor's attorney for another 60 days, subject to fur- ther extensions if no other credi- tor delivers writ

	Jurisdiction & Source	Standard Period	Extensions etc.
32)	<u>North Carolina</u> Rev. Stat. §1-310	Within 90 days from issuance	
33)	<u>North Dakota</u> Cent. Code, §§28-21-07	Within 60 days after receipt	May complete sale after return
34)	<u>Ohio</u> Rev.Stat. §2329.53	Within 60 days from date	Mandatory - See Johnson v. Graham Lighter Corp. 83 Oh. App. 489, 80 N.E.2d 690
35)	<u>Oklahoma</u> Rev.Stat. §12-802	Within 60 days from date	
36)	<u>Oregon</u> Rev.Stat. §23.060	Within 60 days from receipt	
37)	<u>Pennsylvania</u> Rules, 3106, 3120, 3139	No levy after 90 days from issuance, but levy remains valid for 6 months. If no sale within that time levy is abandoned and writ returnable	May be reissued
38)	<u>Rhode Island</u> Rev.Stat. §9-25-20	Six months from date of issuance	
39)	<u>South Carolina</u> Rev.Stat. §§10-1703, 10-1714	No return until ten years, but sheriff must report at each term	
40)	<u>South Dakota</u> Code, §§15-18-41, 15-18-37, 15-18-42	Within 60 days after receipt	Extended by levy for another 60 days and after each further levy or unsuccessful sale

Jurisdiction & Source	Standard Period	Extensions etc.
41) <u>Tennessee</u> Code, §26-126	First Monday after expiration of 60 days from issuance	
42) <u>Texas</u> R. 621, 654	30, 60, or 90 days from issuance as requested	
43) <u>Utah</u> R. 69c	At any time within 2 months after receipt	
44) <u>Vermont</u> Stat. §§2681, 2683	60 days after issue	
45) <u>Virginia</u> Code, §§ 8-44, 8-418	As fixed by statute or court rule (formerly 90 days)	Venditioni exponas extends time for sale
46) <u>Washington</u> Stat. §6.04.050	60 days after issue	
47) <u>West Virginia</u> Code, §§ 38-4-16, 38-4-18, R.C.P. Rule 69(a)	Returnable not less than 30 days and no more than 60 days after issuance as directed by creditor	Venditioni exponas if unsold. Sub- ject to extension Rule 6(b)
48) <u>Wisconsin</u> Stat. §§ 272.06, 272.38(2)	Within 60 days after receipt	Until sale if levied within 60 days
49) <u>Wyoming</u> §1-403	Within 60 days from issuance	