#39.70

#39.70 7/10/75

Memorandum 75-53

Subject: Study 39.70 - Prejudgment Attachment (Court Commissioner)

In January, the Commission approved introduction of a bill to designate the judicial duties under the Attachment Law as subordinate judicial duties which could be performed by court commissioners. Assembly Bill 919, as introduced in February, read as follows:

Section 1. Section 482.060 is added to the Code of Civil Procedure, to read:

> 482.060. The judicial duties to be performed under this title are "subordinate judicial duties" within the meaning of Section 22 of Article VI of the California Constitution and may be performed by appointed officers such as court commissioners.

The Legislative Counsel's office questioned the constitutionality of the proposed section when the draft of the bill was delivered. As a result, in March, the Commission requested Assemblyman McAlister to request an opinion on the constitutionality of the proposed Section 482.060.

In April, the Commission decided to delay the effective date of the Attachment Law. Assembly Bill 919 was amended to delete Section 482.060 and substitute the effective date change. (A.B. 919 was passed and signed by the Governor on July 3. Cal. Stats. 1975, Ch. 200.) Despite the change in A.B. 919, the Legislative Counsel's office prepared an opinion on the constitutionality of the use of court commissioners under the Attachment Law. (A copy of the opinion is attached to this memorandum; following the opinion is an outline of judicial duties under the Attachment Law prepared by the staff.)

The Legislative Counsel's opinion concludes that a provision desig-

nating the judicial duties under the Attachment Law as "subordinate judicial duties"

> would be constitutional to the extent it authorized the determination of preliminary matters, even though contested, and a final determination on the merits of an issue in litigation, if uncontested. This general rule is subject to the qualification that the determination of a contested preliminary matter may, depending upon the facts of a particular case, so involve the exercise of due process rights that it would be required to be made by a judge rather than an officer such as a commissioner.
>
> Whether a particular question involved a preliminary matter, with the exception of a recovery for wrongful attachment, which in all cases would be a determination on the merits, would depend upon the circumstances of a given case. [See page 9 of the attached opinion.]

The staff agrees with this conclusion and suggests that it would be inappropriate to attempt, by statute, to designate all judicial duties under the Attachment Law as subordinate judicial duties. The determination of wrongful attachment liability could easily be excluded from the category of subordinate judicial duties, but there would still be circumstances (particularly with regard to exemptions), arising on a case by case basis, where the use of a commissioner might be improper. To eliminate the determination of contested exemptions from the category of subordinate judicial duties would emasculate the original purpose of designating all judicial duties under the Attachment Law as subordinate judicial duties. Accordingly, the staff believes it is best to leave the matter of the use of court commissioners to general provisions (see Code Civ. Proc. §§ 259, 259a) and local court rules.

Respectfully submitted,

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Sacramento, California
June 16, 1975

Honorable Alister McAlister
Assembly Chamber

Courts; Subordinate Judicial Duties;
The Attachment Law - #8659

Dear Mr. McAlister:

You have directed our attention to Assembly Bill No. 919, as introduced,[1] of the 1975-76 Regular Session of the Legislature, and presented the question set forth and considered below.

QUESTION

Would Section 1 of A.B. 919, making judicial duties under The Attachment Law subordinate in nature, if enacted, be constitutional under Section 22 of Article VI of the California Constitution, which authorizes the Legislature to provide for the appointment of court officers who are not judges to perform subordinate judicial duties?

OPINION

Section 1 of A.B. 919 would be constitutional to the extent it authorized the determination of preliminary matters, even though contested, and a final determination on the merits of an issue in litigation, if uncontested. This general rule is subject to the qualification that the determination of a contested preliminary matter may, depending upon the facts of a particular case, so involve the exercise of due process rights that it would be required to be made by a judge rather than an officer such as a commissioner.

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[1] The bill was amended in Assembly on April 16, 1975, to delete the provision which is the subject of this opinion.

Whether a particular question involved a preliminary matter, with the exception of a recovery for wrongful attachment, which in all cases would be a determination on the merits, would depend upon the circumstances of a given case.

ANALYSIS

Section 1 of A.B. 919 would add Section 482.060 to the Code of Civil Procedure as a part of The Attachment Law (Title 6.5 (commencing with Section 481.010), Pt. 2, C.C.P.), to read:

> "482.060. The judicial duties to be performed under this title [The Attachment Law] are 'subordinate judicial duties' within the meaning of Section 22 of Article VI of the California Constitution and may be performed by appointed officers such as court commissioners."

The judicial duties under The Attachment Law include, generally speaking, the issuance of right to attach orders, writs of attachment, additional writs of attachment, and temporary protective orders, the approval of undertakings, the issuance of orders of examination of third persons, the setting aside of right to attach orders and the quashing of writs of attachment, and the determination of the liability of the plaintiff and his sureties for wrongful attachment. Some of the duties may be performed on ex parte application, while others require a noticed hearing. All of them require a factual determination.

Section 22 of Article VI of the Constitution of California provides:

> "Sec. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties."

Since Section 22 provides for the appointment of officers of the court to perform subordinate judicial duties, any discussion of the constitutionality of a statute which permits persons other than judges to conduct hearings involving factual determinations must necessarily construe the phrase 'subordinate judicial duties' to determine whether it encompasses such hearing.

Section 22 was added to the Constitution of California as part of the revision of Article VI which was adopted in 1966. Former Section 14 of Article VI[2], upon which Section 22 is based, provided, in part:

> ". . . The Legislature may also provide for the appointment, by several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the superior courts, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law."

In the "Proposed Revision of the California Constitution," February 1966, the California Constitution Revision Commission commented, at page 99, upon Section 22 as follows:

> "Comment: Reference to commissioners is needed so that the separation of powers doctrine will not be construed to prohibit the Legislature from providing for officers to assist judges. The existing section [former Section 14] raises the problem of defining 'chamber business' since many 'judicial' duties can be performed in chambers. To indicate the subordinate nature of duties that officers such as commissioners should be allowed to perform, the phrase 'subordinate judicial duties' was used. The Commission felt that it should not limit the assistants to commissioners and, therefore, the phrase 'such as commissioners' appears in the proposed section [Section 22].
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> "The commission draft empowers the Legislature to authorize court commissioners and trial courts of record to make appointments once the Legislature has authorized them. The existing provision limits appointment power to superior courts while the proposed section extends the power to municipal courts by use of the phrase 'trial courts of record.'"

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2 Section 14 of Article VI was repealed by the 1966 revision.

From the language of Section 22, we conclude that the duties which an officer of the court who is not a judge may perform actually involves the exercise of judicial power, and nothing in the comment of the commission indicates otherwise. The term "subordinate judicial duties" is not very precise. However, construing "subordinate" to mean "lower or inferior" (See Webster's Third New International Dictionary (1964), at 2277), we think that the Legislature may provide by statute for the appointment of an officer of the court who may perform judicial duties which are of an inferior or lower order in importance than those which would be normally performed by a magistrate.

The Commission's interpretation of Section 22 was affirmed by the California Supreme Court in Rooney v. Vermont Investment Corporation (1973), 10 Cal. 3d 351, 360-364, wherein the court stated:

> "A general revision of Article VI of the California Constitution was ratified at the election of November 8, 1966, after being drafted by the California Constitution Revision Commission and approved by the Legislature.
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> * * *
>
> "A comparison of the revised section with the former provision it replaced demonstrates that the 1966 revision made three substantive changes. . . . The third substantive change was to describe the type of judicial duties which may be assigned to commissioners by incorporating the simple statement that commissioners may be appointed 'to perform subordinate judicial duties.'
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> * * *
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> "The words 'subordinate judicial duties' were intended by the draftsmen as an appropriate constitutional phrase sufficiently broad to permit specific details to be later enacted or adopted by the legislative or rule making agencies.
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> * * *

> "The scope of the subordinate judicial duties which may be constitutionally assigned to court commissioners should be examined in the context of the powers that court commissioners had and were exercising in 1966, when the present constitutional provision was adopted . . . . Under authority of former Article VI, Section 14, the Legislature conferred certain powers on all court commissioners throughout the state (Sec. 259) and, by enacting Section 259a in 1929, conferred these and additional powers on commissioners in counties 'having a population of nine hundred thousand inhabitants or more.'
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> * * *
>
> "Nothing in the history of the drafting and adoption of the constitutional provision indicates that the phrase 'subordinate judicial duties' should be interpreted as foreclosing or limiting court commissioners from exercising the powers which the Legislature had conferred upon them prior to 1966."

The Rooney case allows permissible duties of officers such as commissioners to be determined according to functions being performed prior to 1966 when Section 22 of Article VI of the California Constitution was adopted. It also concluded that "subordinate judicial duties" could be expanded subsequent to 1966 by "specific details to be later enacted or adopted by the legislative or rule making agencies." (Id. at 362)

Although the Legislature may define what is included within the term "subordinate judicial duties" (see Estate of Roberts (1942), 49 Cal. App. 2d 71, 77), there are limits to what it may include within such definition (see West v. U.L.C. Corp. (1965), 232 Cal. App. 2d 85, 91).

In Burns v. Superior Court (1903), 140 Cal. 1, the Supreme Court of California in discussing the imposition of fines by ministerial officers stated, at page 12, et seq.:

> ". . . There are some decisions of this court, and many in other states, indicating that notwithstanding such constitutional limitations the Legislature may vest some powers of a quasi-judicial nature in ministerial officers. The constitution itself authorizes the appointment of court commissioners to perform some of the duties of the judges of the superior courts (Art. VI, Sec. 14), and there will always be some difficulty in determining whether or not in any particular case a power vested by law otherwise than in a court comes within the category of judicial power which is delegated exclusively to the courts. But however this may be in other cases, we are not disposed to give the constitution a construction which will allow ministerial officers to be invested with power to punish individuals by fine and imprisonment. Such power involves the personal liberty of the citizen, and is in its nature a judicial power of the highest degree. It cannot be exercised except after due process of law, and this implies that it must be vested in some court, in all cases except those where the constitution either expressly or by necessary implication vests it elsewhere. . . ."

While the Burns case involved the powers of a ministerial rather than a judicial officer, we think that insofar as that case equates the exercise of due process with a judicial power of the highest degree it suggests the delineation between unrestricted judicial duties and those which the Legislature may properly define as subordinate (see Legislative Counsel's Opinion, 1 Assem. J. 1150-55 (1970) cited with approval in Rooney v. Vermont Investment Corporation, supra, at 366).[3]

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[3] Nothing in this opinion is intended to suggest that due process, in and of itself, prohibits the exercise of judicial functions by judicial officers, otherwise qualified, who are not judges.

We point out, that in Rooney the California Supreme Court expressly recognized the weight that is to be given the Legislature's specification of precisely which judicial duties are subordinate within the meaning of the constitutional provision in question, stating, at pages 365-66:

> "In 1970, the Legislature enacted Government Code Section 72190.1 authorizing municipal court commissioners to conduct arraignments if directed to perform such duties by the presiding or sole judge of the court. The same Legislature provided for the appointment by municipal courts of traffic referees with powers, at the direction of the court, to conduct arraignments, take pleas, grant continuances, and set cases for trial with respect to any misdemeanor violation of the Vehicle Code, and to impose fines or order attendance at traffic school when there has been a plea of guilty or nolo contendere to certain minor traffic violations. (Gov. Code, Sections 72400-72402.) Qualified traffic referees may also serve as court commissioners, and commissioners may act as traffic referees. (Gov. Code, Sections 72403, 72405.) In enacting such legislation in 1970 the Legislature had before it, and presumably relied on, an opinion of the legislative counsel carefully analyzing the constitutionality of such legislation under article VI, section 22, and concluding that the legislation fell within the section's authorization to the Legislature to 'provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.' (1 Assem. J. pp. 1150-1155 (1970)). The Legislature thus must be deemed to have concluded that the constitutional provision empowered it not only to authorize the appointment of traffic referees but to specify as subordinate judicial duties the hearing and determination of particular preliminary or uncontested matters that traffic referees and commissioners could be assigned to perform. This conclusion carries with it 'the strong presumption in favor of the Legislature's interpretation of a provision of the Constitution.'" (Emphasis added.)

The underscored language, in our view, by recognizing a difference between preliminary matters and uncontested matters and stating implicitly that each may be appropriately designated a subordinate judicial duty by the Legislature, clearly indicates that preliminary matters may be subordinate judicial duties within the meaning of Section 22 even though they may be contested. On the other hand, the implication is clear that if a matter involves a final determination of rights of the parties to the litigation such a determination is a permissible subordinate judicial duty only if it is uncontested.

In this connection, traffic referees are expressly authorized, in certain cases, to make such preliminary determinations as fixing bail, granting continuances, arraigning the defendant, taking pleas, and setting cases for trial, any one of which might involve a contested issue (see Sec. 72401, Gov. C.).

In light of the foregoing authorities, it is our view that the proposed statute in question is constitutional to the extent the judicial duties to which it applies involve preliminary determinations or uncontested final determinations. We point out that the determination of a preliminary matter may occasionally effectively grant or deny a party a final right, such as where because of the element of time the issuance or denial of a preliminary injunction renders the final determination of whether a permanent injunction lies moot, but whether such would be the case in a given situation would turn upon the peculiar facts of the particular case, and no generalized rule that might cover such situations can be formulated.

Turning to an application of this rule to the judicial duties that are performed under The Attachment Law, the basic function of that law is to preserve the efficacy of a final judgment on the merits and to that extent all of the duties in question involve preliminary matters with the exception of determining the recovery for a wrongful attachment, which involves a final determination of substantive rights. The latter, in our opinion, would not be a subordinate judicial duty unless the matter were uncontested.

Even with respect to preliminary matters, however, particularly when they may adversely affect a debtor in a substantial manner (see Sniadach v. Family Finance Corp. (1969), 23 L. Ed. 349), certain judicial duties under The Attachment Law may not be "subordinate" within the meaning of Section 22 of Article VI of the California Constitution. We think this would be the case whenever a judicial determination so substantially involved due process rights that it required an "exercise of judicial power of the highest degree" within the meaning of Burns v. Superior Court, supra. One such situation may arise, for example, when a creditor disputes a debtor's claim of exemption of an article of property that is essential to his business.

In light of the foregoing and for the reasons stated, it is our opinion that Section 1 of A.B. 919 would be constitutional to the extent it authorized the determination of preliminary matters, even though contested, and a final determination on the merits of an issue in litigation, if uncontested. This general rule is subject to the qualification that the determination of a contested preliminary matter may, depending upon the facts of a particular case, so involve the exercise of due process rights that it would be required to be made by a judge rather than an officer such as a commissioner.

Whether a particular question involved a preliminary matter, with the exception of a recovery for wrongful attachment, which in all cases would be a determination on the merits, would depend upon the circumstances of a given case.

Very truly yours,

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By
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MAM:nmw

JUDICIAL DUTIES TO BE PERFORMED UNDER THE ATTACHMENT LAW
(TITLE 6.5 OF PART 2 OF THE CODE OF CIVIL PROCEDURE)

A. Right to Attach Orders, Writs of Attachment, and Determination of Exemptions.

1. Noticed hearing procedures and prelevy exemption claims. (Chapter 4)

a. A right to attach order is issued if court finds the following at a noticed hearing: (§ 484.090)

(1) The claim is one upon which attachment may be issued. (See § 483.010 which specifies that the claim must be on a contract, express or implied, for not less than $500 which is unsecured against a defendant who is engaged in a trade, business, or profession; the subject of the contract may not have been used primarily for personal, family, or household purposes.)

(2) The plaintiff has established the probable validity of his claim. (See § 481.190 defining probable validity.)

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

b. A writ of attachment may be issued at the hearing on issuance of the right to attach order which describes property to be levied upon, property which is exempt, and states the amount to be secured by the attachment where: (§ 484.090(b))

(1) The court has made the findings necessary to issue a right to attach order.

(2) The defendant has failed to prove all property sought to be attached is exempt.

(3) The plaintiff has provided the undertaking required by § 489.210 et seq.

c. Additional writs of attachment may be issued on noticed hearing if the court finds the following: (§ 484.370)

(1) A right to attach order has been issued at a noticed hearing (§ 484.090) or the court has determined in a

hearing on a motion to set aside an ex parte right to attach order that the plaintiff is entitled to the order (§§ 485.240, 492.050(d)).

(2) The defendant has failed to prove that all property sought to be attached is exempt.

(3) The plaintiff has provided the undertaking required by § 489.210 et seq.

d. Continuances.

(1) For good cause shown, the court may grant a continuance of the hearing on issuance of the order upon the defendant's or the plaintiff's application. (§ 484.080) If the continuance is granted on the defendant's application, the effective period of any temporary protective order is extended. (§ 484.080(b) and Chapter 6) If the continuance is granted on the plaintiff's application, the effective period of any temporary protective order may be extended. (§ 484.080(a) and Chapter 6)

(2) The court may continue the hearing on issuance of the order and writ for the production of additional evidence upon a showing of good cause. (§ 484.090(d))

2. Ex parte procedures and prelevy determination of exemptions.

(Article 3 of Chapter 4, and Chapter 5)

a. A right to attach order and writ of attachment which describes the property to be levied upon and states the amount to be secured by the attachment may be issued, if the court finds the following at the ex parte hearing: (§ 485.220)

(1) The claim is one upon which attachment may be issued. (See § 483.010.)

(2) The plaintiff has established the probable validity of his claim. (See § 481.190.)

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(4) The plaintiff's affidavit shows that the property sought to be attached, or part of it, is not exempt. (See § 487.020.)

(5) The plaintiff will suffer great or irreparable injury if the order is delayed to be heard on notice. (See § 485.010 which provides that great or irreparable injury is shown where it may be inferred that there is a danger that the property would be concealed, made unavailable to levy, or substantially impaired in value, a bulk sales notice has been recorded and published, a liquor license escrow has been opened, or any other circumstance showing that great or irreparable injury would result to the plaintiff.)

(6) The plaintiff has provided the undertaking required by § 489.210 et seq.

b. The court may deny the application for the ex parte right to attach order and writ of attachment in its discretion and, instead, issue a temporary protective order (§ 486.010 et seq.) and treat the application as an application for a right to attach order at a noticed hearing (§ 484.010 et seq.) if it finds that the requirements for issuance of an ex parte order and writ are satisfied (§ 485.220) but that it would be in the interest of justice and equity to the parties to follow the noticed hearing procedure (§ 486.030).

c. Additional writs of attachment may be issued ex parte if the court finds the following: (§ 485.540)

(1) An ex parte right to attach order and writ of attachment have been issued pursuant to § 485.220.

(2) The plaintiff's affidavit shows that the property sought to be attached, or part of it, is not exempt. (See § 487.020.)

(3) The plaintiff will suffer great or irreparable injury if the writ is delayed to be heard on notice. (See § 485.010.)

(4) The plaintiff has provided the undertaking required by § 489.210 et seq.

d. Additional writs of attachment may be issued ex parte if the court finds the following: (§ 484.520)

(1) A right to attach order has been issued after a noticed hearing (§ 484.090) or the court has determined in a hearing on a motion to set aside an ex parte right to attach order that the plaintiff is entitled to the order (§§ 485.240, 492.030(d)).

(2) The plaintiff's affidavit shows that the property sought to be attached, or part of it, is not exempt. (See § 487.020.)

(3) The plaintiff has provided the undertaking required by § 489.210 et seq.

e. Motion to set aside ex parte right to attach order and writ of attachment may be made by the defendant and is granted if the court determines at the hearing on the motion that the plaintiff is not entitled to the order. (§ 485.240) The hearing on the motion may be continued for production of additional evidence.

f. Disposition of released property. Where property which has been taken into custody is released from attachment on the plaintiff's written request or on court order, it is returned to the person from whom it was taken unless the court orders otherwise. (§ 488.560) (See also § 488.570 providing for release after judgment.)

3. Postlevy determination of exemptions.

a. Exemptions provided by § 487.020 are claimed and determined after levy of an ex parte writ (§ 485.220), an ex parte additional writ (issued after issuance of an ex parte order and writ under § 485.540), or an ex parte additional writ (issued after issuance of a noticed hearing order and writ under § 484.520), as provided in Section 690.50. (§§ 484.530, 485.230)

b. Farm products or inventory levied upon pursuant to Section 488.360 may be claimed as essential for the support of the

defendant and his family. (§ 488.360(b)) Upon the required showing, the court orders removal of the keeper and return of the property essential for support and may make such further order as the court deems appropriate to protect the plaintiff.

4. Ex parte procedures in action against nonresident defendant.

a. A right to attach order and writ of attachment may be issued which states the amount to be secured by the attachment and describes the property to be levied upon if the court finds the following at the ex parte hearing: (§ 492.030)

(1) The claim is one upon which attachment may be issued. (See § 492.010 which permits attachment in an action for the recovery of money against nonresident individuals and foreign corporations and partnerships.)

(2) The plaintiff has established the probable validity of his claim. (See § 481.190.)

(3) The defendant is one described by § 492.010.

(4) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(5) The plaintiff's affidavit shows that the property, or a part of it, is subject to attachment. (See § 492.040 which provides that all property of a nonresident is subject to attachment if a method of levy is provided by § 488.310 et seq.)

(6) The plaintiff has provided the undertaking required by § 489.210 et seq.

b. Additional writs of attachment may be issued ex parte if the court finds the following: (§ 492.090)

(1) A right to attach order has been issued against the nonresident pursuant to § 492.030.

(2) The plaintiff's affidavit shows that the property sought to be attached, or part of it, is subject to attachment. (See § 492.040.)

(3) The plaintiff has provided the undertaking required by § 489.210 et seq.

c. Exempt property (See § 487.020) is released on order of the court when the nonresident defendant files a general appearance in the action. (§ 492.040)

d. A motion to set aside the ex parte right to attach order and writ of attachment may be made by the defendant. (§ 492.050) The court sets aside the right to attach order if the defendant has filed a general appearance in the action and the plaintiff fails to show that the order is authorized by some other provision. If the court finds that the plaintiff is entitled to the right to attach order, it orders the release of property exempt pursuant to § 487.020.

5. Order directing transfer. If a writ of attachment is issued, the court may also issue an order directing the defendant to transfer possession of the property to the levying officer. (§ 482.080)

B. Temporary Protective Order. (Chapter 6.)

1. Issuance of temporary protective order. A temporary protective order may be issued ex parte if the court finds the following: (§ 486.020)

a. The claim is one upon which attachment may be issued. (See § 483.010.)

b. The plaintiff has established the probable validity of his claim. (See § 481.190.)

c. The order is not sought for a purpose other than the recovery upon the claim upon which the application for the attachment is based.

d. The plaintiff will suffer great or irreparable injury if the order is not issued. (See § 485.010.)

e. The plaintiff has provided the undertaking required by § 489.210 et seq.

2. Contents of temporary protective order. The temporary protective order contains such provisions as the court determines are in the interest of equity and justice (§ 486.040) and may restrain the transfer of the defendant's property in the state (§ 486.050(a))

except that the defendant may sell farm products or inventory in the ordinary course of business (§ 486.050(b)) and may write checks for certain purposes (§ 486.060).

3. Duration of temporary protective order.

a. The court may prescribe a date of expiration earlier than 40 days after issuance. (§ 486.090(a))

b. The court may modify or vacate the temporary protective order on the defendant's ex parte application, or after a noticed hearing, if it determines that such action would be in the interest of justice and equity to the parties. (§ 486.100)

C. Third-Party Claims. After levy of a writ of attachment, a third person may make a third-party claim (which eventually may result in a hearing at which the court determines title to the property claimed) in the manner provided for third-party claims after levy of execution. (See §§ 488.090, 689.)

D. Extension of Lien of Attachment. Upon motion of the plaintiff, not less than 10 nor more than 60 days before the expiration of the normal three-year period of the lien of attachment, the court may for good cause extend the duration of the lien for one year from the date the lien would otherwise expire. (§ 488.510) The total of such extensions may not exceed five years.

E. Sale or Care of Attached Property.

1. Upon application of the plaintiff, defendant, or a third person whose interest has been determined, and reasonable notice to other parties, the court may order the sale of attached property or may appoint a receiver or direct the levying officer to take charge of, cultivate, care for, preserve, collect, harvest, pack, or sell attached property where it is shown that the property is perishable or will greatly deteriorate or depreciate in value or that such action will best serve the interests of the parties. (§ 488.530(a))

2. The court fixes the daily fee of the receiver and may order the plaintiff to pay the receiver in advance or may direct that all or part of the receiver's fees and expenses be paid from the proceeds

of any sale. (§ 489.533(c))

F. Undertakings. (Chapter 9.)

1. Approval of undertakings. All undertakings must be approved by the court before filing. (§ 489.060)

2. Determination of objections to undertakings. The court determines objections to undertakings on noticed motion. (§ 489.080) Objections may be made on the grounds that the sureties are insufficient or that the amount of the undertaking is insufficient. (§ 489.070. See §§ 489.220 (increase to amount of probable recovery for wrongful attachment), 489.310 (undertaking to release attachment), 489.320 (undertaking to secure termination of protective order), 489.410 (postjudgment continuance of attachment), 489.420 (undertaking to release attachment on defendant's appeal).) The court may permit witnesses to attend and evidence to be introduced as in a civil case. (§ 489.090(b)) The court may appoint appraisers to ascertain the value of property. (§ 489.090(b)) If the undertaking is determined to be insufficient the court orders a sufficient undertaking to be filed. (§ 489.090(c))

G. Recovery for Wrongful Attachment. (Chapter 10.) A motion for recovery on the plaintiff's undertaking for wrongful attachment may be made within a year after judgment by the defendant (§ 490.030) or a third person whose property is attached (§ 490.050) by the procedure provided in Section 1058a.

H. Examination of Third Person Indebted to Defendant. (Chapter 11.) A person owing debts to the defendant or having in his possession or under his control the defendant's personal property may be required to appear before the court and be examined regarding such property. (§ 491.010) If the person fails to appear he may be brought before the court on a warrant. (§ 491.010(b)) If the person admits the debt or possession of the property, the court may order its attachment. (§ 491.010(c)) Witnesses may be required to appear and testify at the examination. (§ 491.040)