

Fifth Supplement to Memorandum 79-29

Subject: Study D-300 - Enforcement of Judgments (Chapter 2--Provisions of General Application)

General Comment

This supplement deals with much of Chapter 2 (Provisions of General Application) of the Commission's tentative draft. Some portions of Chapter 2 require further research or are closely related to other portions of the tentative draft still under study by the staff. We did not want to delay sending this supplement to you until we completed the further study so we will deal with these other portions in other supplements which are in preparation. Unless otherwise noted, references to exhibits are to the exhibits attached to Memorandum 79-29.

Technical Revisions

The staff suggests a number of technical revisions in various sections. These are set out in Exhibit 4 to this supplement. You should review these prior to the meeting. We do not plan to discuss them at the meeting unless a member of the Commission wishes to discuss a particular staff-suggested revision.

§ 702.120. Enforcement of money judgment against public entity

The staff has concluded that Section 702.120 is not adequate in its present form. We plan to prepare a separate recommendation on this subject and are working with the Department of Transportation in this connection. We propose to delete Section 702.120 from this draft.

§ 702.140. Stay of enforcement by trial court without undertaking

This section is drawn from existing Code of Civil Procedure Section 681a which reads:

681a. The court, or the judge thereof, may stay the execution of any judgment or order; provided, that no court shall have power, without the consent of the adverse party, to stay the execution of any judgment or order, the execution whereof would be stayed on appeal only by the execution of a stay bond for a longer period than 30 days. If a motion for a new trial or for judgment notwithstanding the verdict is pending, execution may be stayed until 10 days after the determination thereof.

Section 681a covers the same subject matter as later enacted Code of Civil Procedure Section 918 (set out below), which gives the court

broader authority to stay enforcement of a judgment or order. We could revise Section 702.140 (which continues the substance of Section 681a) to duplicate the substance of Section 918 and thus eliminate the inconsistency. However, the staff proposes instead to delete Section 702.140 from the proposed draft and to clarify the application of Section 918 by amending it to read:

918. The trial court may , in its discretion, stay the enforcement of any judgment or order, provided that if the enforcement of such judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have the power, without the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than 10 days beyond the last date on which a notice of appeal could be filed. Unless the order expressly otherwise provides, an order under this section does not prevent the recording of an abstract of judgment to create a judgment lien. This section applies whether or not an appeal will be taken from the judgment or order and whether or not a notice of appeal has been filed.

The first sentence added to Section 918 codifies a case law rule under Section 681a but changes the rule to give the court authority to make an order preventing the filing of an abstract of judgment.

Proposed Section 702.140 of the Commission's tentative draft also would have added provisions relating to the procedure for applying for an order for a stay. We do not believe that such provisions should be added to amended Section 918.

§ 702.150. Contribution among judgment debtors

The staff proposes to delete this section and to add a new article to Title 11 (commencing with Section 875) of Part 2 of the Code of Civil Procedure to read as set out in Exhibit 1 attached to this supplement. This will compile the provisions relating to contribution among joint debtors with the provisions relating to contribution among joint tortfeasors.

§ 702.160. Rules for practice and procedure; forms

The staff recommends that the following sentence be added at the end of subdivision (b):

Any such form prescribed by the Judicial Council is deemed to comply with this title.

This sentence is based on comparable provisions found in other recently enacted statutes. See Code of Civil Procedure Section 723.120 (wage garnishment).

The Commission should be aware that the wage garnishment statute also contains the following additional provision:

The Judicial Council may prescribe forms in languages other than English.

The staff has been advised by the person who is preparing the instructions to the employee under the wage garnishment statute that the Judicial Council has no present plans to provide such instructions in any language other than English so we do not recommend the addition of the above language. The task of developing forms in English is a substantial task that is proving to be beyond the capacity of the resources of the Judicial Council.

§ 702.200. Judgment enforceable upon entry [new section]

In the interest of completeness, the staff suggests that the following section be added to the proposed statute:

702.200. Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

Comment. Section 702.200 continues the substance of a portion of former Section 681.

§ 702.210. Time for enforcement of judgment

There were objections to the new 20-year limitation on enforceability of a judgment. Three writers specifically approve the new concept. See Exhibit 6; p. 1; Exhibit 10, p. 2; Exhibit 13, p. 2.

Mr. Steven Kipperman objected. He appears to suggest (Exhibit 1, p. 1) that the existing 10-year period be retained and that existing law be continued that permits the judgment creditor to bring an action on the judgment within the period of its enforceability and thus obtain a new judgment with a new period of enforceability. He apparently would eliminate the provision of existing law which allows a motion to enforce a judgment after 10 years and gives the judge discretion whether to grant the motion.

Ms. Jane Fennelly approves the 20-year provision, but she also wants to retain the provision of existing law that allows a motion

procedure to enforce a judgment after the 20-year period has expired (Exhibit 19, p. 2).

The Association of Municipal Court Clerks (Exhibit 16) made only two objections to the entire tentative recommendation. One of the objections is:

The first area dealt with a provision to extend enforceability of judgments to twenty years. It was felt this would be of little use. We have yet to have anyone file for an extension of the judgment period beyond the present ten years. An extension to twenty years would require an additional record keeping problem and therefore additional costs.

The staff does not see how the increase in the period of enforceability to a flat 20 years will create additional record-keeping problems. There is presently no limit on the time within which a motion to enforce a judgment may be made; the motion can be made any time after the 10-year period--even more than 20 years after the judgment was entered--so the Commission's proposal will not create a new burden of retaining case files that does not exist under the existing law.

The State Bar Committee on Administration of Justice objected to the proposal to make judgments enforceable for 20 years:

CAJ does not favor the LRC proposal to make judgments enforceable for a flat period of 20 years instead of the 10 plus 10 under the present law. CAJ believes you need to look at the situation sooner than at the expiration of 20 years. CAJ's suggestion: a basic 10 year period with two renewal periods of 10 years each.

An inquiry to the State Bar disclosed that the committee has in mind a procedure that would permit extension of the period of enforceability by merely filing a document with the court clerk (and presumably in any county where an abstract of judgment was filed if the judgment lien is to be extended). The procedure for enforcement of state tax liens is interesting in this connection. Tax liens are enforced, for example, by filing with the county recorder to create a lien on real property. The filing is effective for 10 years and can be extended for additional 10-year periods by additional filings made before the 10-year period expires. This scheme avoids the motion procedure required under existing law to enforce a judgment after 10 years.

The staff recommends no change in Section 702.210. The 20-year period was not picked out of a hat. It is consistent with common law

presumptions, the law of several other states, and the result of cases under Section 685 (motion for issuance of execution after 10 years). See the discussion in the text of the tentative recommendation at 4-8. We also believe the simplicity of the provision is preferable to the existing scheme requiring an action within 10 years or a motion for execution after 10 years in order to extend enforceability. We believe that the refiling suggestion of CAJ will require unnecessary paperwork.

One question that is presented by Section 702.210 is whether a judgment that cannot be enforced after the 20-year period can be offset against a claim of the judgment debtor that arose during the 20-year period but is the subject of an action brought after the 20-year period. Also, could the judgment be offset against a claim of the judgment debtor that arises after the 20-year period of enforceability of the judgment expires? Under present law, this problem is dealt with by making a motion to permit enforceability of the judgment and, if such motion is granted, the judgment can then be offset against the claim asserted by the judgment debtor in the action brought against the judgment creditor. Because this method of dealing with the problem will no longer exist, the staff recommends that Code of Civil Procedure Section 431.70 be amended to permit offset if the claim of the judgment debtor existed during the 20-year period during which the judgment was enforceable but not if the claim arose thereafter. To accomplish this recommendation, Section 431.70 should be amended to read as set out in Exhibit 2, attached to this supplement.

§ 702.220. Time for enforcement of installment judgment

The Commission's tentative draft makes a judgment enforceable after 20 years from entry under some circumstances. Section 702.220 provides that the 20-year limitation on enforcement of an installment judgment runs as to each installment from the time it falls due. A judgment also may be enforced after the expiration of 20 years from entry where enforcement of the judgment was stayed or enjoined, since the time of the stay or the time enforcement was enjoined is not counted in the 20-year limitation period (Section 702.210).

The Sheriffs' Association Committee (Exhibit 8, page 2) suggests that a court clerk may be unwilling to issue a writ after 20 years from entry of judgment unless a court order for the writ is obtained. (The

tentative draft requires a court order for a writ of execution to enforce a support order, whether or not enforcement is sought within the 20-year period.) The question presented is: How do the court clerk and the levying officer know after 20 years from the date of entry of the judgment that the judgment is still enforceable? This information could be ascertained by a search of the court file. However, the staff recommends that the statute include the following provision to deal with the problem:

Where the judgment creditor applies for a writ for the enforcement of a money judgment or a judgment for possession or sale of property and the application is made more than 20 years after the date of entry of the judgment, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts that show that the issuance of the writ sought in the application is not barred by Section 702.210. A copy of the affidavit shall be attached to the writ when issued.

Comment. Section _____ establishes a new requirement designed to provide information to the court clerk and levying officer when a writ is sought more than 20 years after the judgment was entered. An affidavit will satisfy the requirements of this section if it states that the 20-year period of Section 702.210 has been extended because the judgment was stayed or enjoined by court order or by operation of law for a specified period of time. Also, where the judgment is a money judgment payable in installments, the affidavit will be sufficient if it states that the 20-year period has not run as to the installment or installments covered by the application for the writ. Section _____ does not apply to a judgment for child or spousal support; Section 703.120 requires that the creditor obtain a court order for the issuance of the writ where a judgment for support is sought to be enforced by a writ of execution.

The section set out above requires that a copy of the affidavit be attached to the writ so that the levying officer will know that the writ is not issued by mistake. It should be noted that the section does not deal with an application made, for example, one day before the end of the 20-year period of enforceability of the judgment. The clerk may not be willing to issue the writ in such a case because the 20-year period of enforceability will expire before the levy and sale can be made. Does the Commission wish to deal with that problem? We could, for example, require the affidavit where the application is made more than 19 years after the date of entry of judgment. If this affidavit were required, the levying officer could determine from the affidavit when the right to enforce the judgment expired.

§ 702.230. Enforceability of judgment in action upon judgment

As noted under Section 702.210, Mr. Steven Kipperman (Exhibit 1, p. 1) appears to recommend that the existing 10-year period of enforceability be retained and that the existing law be continued that permits the judgment creditor to bring an action on the judgment within the 10-year period and thus obtain a new judgment with a new 10-year period of enforceability.

Ms. Jane Fennelly objects to this section (Exhibit 19, p. 2). She states that a creditor may need time to locate a debtor who has fled California. However, Section 702.230 (precluding an extension of time for enforcement by bringing an action on the judgment in this state) does not limit the bringing of an action on the California judgment in another state during the 20-year period that the judgment is enforceable in California. Section 702.230 merely precludes extending the 20-year period by means of bringing an action on the California judgment. We have clarified Section 702.230 in Exhibit 4 attached to this supplement.

§§ 702.310-702.340. Liens

We will cover these sections in the Seventeenth Supplement to Memorandum 79-29.

§§ 702.410-702.420. Enforcement after death of party

The staff has concluded that these provisions require additional staff study. We are now giving the sections further study and will submit our recommendations for revisions in the Sixteenth Supplement to Memorandum 79-29.

§§ 702.510-702.520. Manner of service

The staff recommends that these two sections be deleted and replaced by a new article, set out as Exhibit 3 to this supplement.

The Sheriffs' Association Committee suggests that a general provision be added to the statute which would permit a party to personally deliver a notice or other paper that would otherwise be mailed or delivered by the levying officer if the party obtains the levying officer's permission. (Exhibit 8, pp. 2-3.) A provision of this nature was added to the Commission's Employees' Earnings Protection Law (Section 723.010 et seq.) by 1979 Cal. Stats. ch. 66. Such a provision

would save both time and expense. We have added Section 702.570 to Exhibit 3 to effectuate this recommendation.

§ 702.530. Entry of costs and interest on writ; additional costs and interest

This provision is replaced by a more detailed set of provisions. See Sixth Supplement to Memorandum 79-29.

§ 702.610. Instructions to levying officer

The staff does not believe that Section 702.610 is drafted with sufficient detail concerning the information that is to go in the instructions and the extent to which the levying officer may rely on the information in the instructions. The staff would add more detail as follows:

702.610. (a) The judgment creditor shall give the levying officer instructions in writing, signed by the judgment creditor or the judgment creditor's attorney, containing the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to an adequate description of any property to be levied on and an indication whether the property is a dwelling and if so whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

Comment. Subdivision (a) of Section 702.610 is based on subdivision (a) of Section 488.010 (attachment) and on parts of subdivisions 2 and 3 of former Section 692 (sale of personal and real property). See also Sections 702.560 (address for notices), 703.140 (writ of execution), 708.130 (writ of possession of personal property), 709.130 (writ of possession of real property), 710.130 (writ of sale).

Subdivisions (b) and (c) are consistent with Sections 262 (signed written instructions as excuse) and 702.640 (liability of levying officer).

§ 702.620. Deposit of costs prior to performance of duty

This section has been revised in response to comments by Mr. Robert Sprague and Lieutenant Bernard Morgan (Exhibit 9, p. 2), and is included among the general costs provisions. See Sixth Supplement to Memorandum 79-29.

§ 702.630. Execution of commercial paper by levying officer

Professor Vern Countryman raises an issue concerning forged endorsements and the liability provision in Section 702.630(b). The staff will revise subdivision (b) to make clear that the endorsement of the levying officer has the same effect as an endorsement by the judgment debtor would have.

Ms. Jane Fennelly (Exhibit 19) asks whether the levying officer is liable under Section 702.650(c) for erroneously endorsing a check that is a release of a claim. The officer would not be protected by Section 702.650 since such an endorsement would not be in conformance with the law. She also asks what use it is to hold the paper under subdivision (c) since the "debtor can merely stop payment." This is not the case; Section 702.630 covers checks and the like payable to the judgment debtor. It would be the maker who would possibly stop payment. The purpose of subdivision (c) is to prevent the money getting into the hands of the judgment debtor and thus puts some pressure on the debtor to arrange payment of the judgment. She suggests that the officer be empowered to endorse the check even if it is offered in satisfaction of a claim and asks if the check held by the levying officer is counted toward the satisfaction of the judgment. The staff believes this is inappropriate since it would force a compromise, and possibly an unfair one, of the judgment debtor's claim. The creditor's remedy is to reach the underlying obligation rather than the offer of compromise. The staff plans to add a provision that the levying officer returns the instrument to the maker after holding it for 30 days. This 30-day period would give the judgment creditor time to reach the underlying obligation.

§ 702.650. Liability of levying officer

The section governing liability of the levying officer requires revision to conform with the provisions relating to instructions upon which the officer may rely. The staff would revise this section as follows:

702.650. (a) The levying officer is not liable for actions taken in conformance with the provisions of this title including actions taken in reliance on any information contained in the written instructions of the judgment creditor except to the extent

the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the judgment creditor may have for incorrect information given in the written instructions.

(b) The levying officer is not liable either to the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in the care or handling of the property.

Comment. Subdivision (a) of Section 702.650 supersedes the second sentence of the sixth paragraph of former Section 689, the fourth sentence of former Section 689b(9), former Section 697, and the second sentence of Section 488.370(b) (attachment of accounts receivable and choses in action) insofar as it was incorporated by former Section 688(b). For other provisions concerning the levying officer's liability, see Sections 703.220(b) (quick sale of perishable property), 703.240(e) (release), 703.370(a) (payment by cash equivalent in keeper levy), 703.650 (sale without notice).

Subdivision (b) is comparable to Section 488.060(b) (attachment).

Respectfully submitted,

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Executive Secretary

EXHIBIT 1

Code of Civil Procedure--heading for Title 11 (commencing with Section 875) (amended)

SEC. . The heading of Title 11 (commencing with Section 875) of Part 2 of the Code of Civil Procedure is amended to read:

TITLE 11. ~~RELEASES FROM AND~~ CONTRIBUTION AMONG JOINT
~~TORTFEASORS~~ JUDGMENT DEBTORS

Code of Civil Procedure--heading for Chapter 1 (commencing with Section 875) of Title 11 (amended)

SEC. . A new heading for Chapter 1 (commencing with Section 875) is added to Title 11 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 1. RELEASES FROM AND CONTRIBUTION AMONG
JOINT TORTFEASORS

09/727

Code of Civil Procedure §§ 881-883 (added)

SEC. . Chapter 2 (commencing with Section 881) is added to Title 11 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 2. CONTRIBUTION AMONG OTHER JUDGMENT DEBTORS

§ 881. Application of chapter

881. This chapter governs contribution among joint judgment debtors other than joint tortfeasors.

Comment. Section 881 clarifies the relationship between this chapter and Chapter 1 (commencing with Section 875) which is applicable to contribution among joint tortfeasors.

09/730

§ 882. Right to contribution

882. If two or more judgment debtors are jointly liable on a money judgment:

(a) A judgment debtor who has satisfied more than his or her due proportion of the judgment, whether voluntarily or through enforcement

procedures, may compel contribution from another judgment debtor who has satisfied less than his or her due proportion of the judgment.

(b) If the judgment is based upon an obligation of one judgment debtor as surety for another and the surety satisfies the judgment or any part thereof, whether voluntarily or through enforcement procedures, the surety may compel repayment from the principal.

Comment. Section 882 continues the substance of the first sentence of former Section 709. This section permits contribution where a joint judgment debtor satisfies a disproportionate share of a money judgment, or satisfies the judgment as a surety, whether by voluntary payment or involuntarily through levy upon and sale of property, wage garnishment, examination proceedings, or some other procedure. This section does not determine the proportionate shares of the obligation on a judgment; the joint judgment debtor's share depends on the circumstances of the case. See, e.g., Section 578; *Tucker v. Nichol森*, 12 Cal.2d 427, 433, 84 P.2d 1045, ____ (1938); *Pacific Freight Lines v. Pioneer Express Co.*, 39 Cal. App.2d 609, 614, 103 P.2d 1056, ____ (1940); *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338, ____ (1948).

09/737

§ 883. Procedure for compelling contribution or repayment

883. (a) A judgment debtor entitled to compel contribution or repayment pursuant to this chapter may apply on noticed motion to the court that entered the judgment for an order determining liability for contribution or repayment. The application shall be made at any time before the judgment is satisfied in full or within 10 days thereafter.

(b) The order determining liability for contribution or repayment entitles the judgment debtor to the benefit of the judgment to enforce the liability, including every remedy that the judgment creditor has against the persons liable, to the extent of the liability.

(c) Nothing in this section limits any other remedy that a judgment debtor entitled to contribution or repayment may have.

Comment. Section 883 supersedes the second sentence of former Section 709. This section codifies the practice under former law of determining the right to contribution only after a hearing on noticed motion. See *Stowers v. Fletcher*, 84 Cal. App.2d Supp. 845, 848, 190 P.2d 338, ____ (1948); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 211, at 3564 (2d ed. 1971).

The language in subdivision (b) relating to the entitlement of the judgment debtor to the remedies of the judgment creditor is drawn from

Civil Code Section 2848 (right of surety against principal). Under subdivision (b), the judgment debtor receives the priority of any liens created by the judgment creditor.

Subdivision (c) makes clear that Section 883 does not prescribe the exclusive procedure for enforcement of the right to contribution. A joint judgment debtor may take an assignment of the judgment or may bring an action to obtain a judgment for contribution. See, e.g., *Painter v. Berglund*, 31 Cal. App.2d 63, 87 P.2d 360 (1939) (assignment); *Tucker v. Nicholson*, 12 Cal.2d 427, 431, 84 P.2d 1045, ____ (1938) (action). See also Section 1059 (surety on appeal substituted to rights of judgment creditor).

EXHIBIT 2

Code of Civil Procedure § 431.70 (amended)

SEC. __. Section 431.70 of the Code of Civil Procedure is amended to read:

431.70. Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Article 2 (commencing with Section 702.210) of Chapter 2 of Title 9.

Comment. Section 431.70 is amended to codify the case law rule which applied the offset principle where one of the claims to be offset is a judgment. See, e.g., *Erlich v. Superior Court*, 63 Cal.2d 551, 555, 407 P.2d 649, 651, 47 Cal. Rptr. 473, 475 (1965); *Harrison v. Adams*, 20 Cal.2d 646, 648-49, 128 P.2d 9, 11-12 (1942); *Machado v. Borges*, 170 Cal. 501, 502-03, 150 P. 351, 352 (1915); *Coonan v. Loewenthal*, 147 Cal. 218, 223 et seq., 81 P. 527, 528 et seq. (1905); *Nash v. Krelig*, 136 Cal. 627, 628, 69 P. 418, 418 (1902). A judgment on which the time limit on enforceability has run (see Section 702.210) is analogous to a claim barred by the statute of limitations. The policy which allows the offsetting of cross-demands that have coexisted at some point in time, notwithstanding that one of the claims is now barred by the statute of limitations (see *Jones v. Mortimer*, 28 Cal.2d 627, 632-33, 170 P.2d 893, 896-97 (1946); *Sunrise Produce Co. v. Malovich*, 101 Cal. App.2d 520, 522-23, 225 P.2d 973, 974-75 (1950)), applies equally to cross-demands

where one of the demands which coexisted is a judgment on which the 20-year limit on enforceability has expired. Section 431.70 as amended allows the offset of a judgment if the claim of the judgment debtor existed during the 20-year period during which the judgment was enforceable. However, where the judgment debtor's claim arises after the 20-year limit has run on the judgment, the judgment cannot be offset against the judgment debtor's claim; in this case, the demands have not "existed between persons at any point in time when neither demand was barred by the statute of limitations."

EXHIBIT 3

Article 5. Manner of Service of Writs,
Notices, and Other Papers

§ 702.510. Service on judgment creditor's or judgment debtor's attorney

702.510. (a) Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1, when a writ, notice, order, or other paper is required to be served under this title:

(1) If the paper is required to be served on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record in the action or proceeding.

(2) If the paper is required to be served on the judgment debtor, it shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if:

(A) The judgment debtor has filed in the action or proceeding and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request; and

(B) Such request has not been revoked by the judgment debtor by filing in the action or proceeding and serving on the judgment creditor a notice revoking the request.

(b) Subdivision (a) does not apply to subpoenas and other process to require the attendance of a party or to papers to bring a party into contempt.

Comment. The introductory clause of subdivision (a) and paragraph (1) of subdivision (a) of Section 702.510 are drawn from the second and third sentences of Section 1015. Paragraph (2) in effect gives the judgment debtor the option either to have papers served on the judgment debtor or on the judgment debtor's attorney. The introductory clause to subdivision (a) recognizes that, if the applicable procedure is followed, an attorney of record referred to in paragraph (1) or an attorney designated in a request filed under paragraph (2) may withdraw from the case, be discharged, or be replaced by another attorney.

Subdivision (b) is drawn from a provision of Section 1015.

§ 702.520. Manner of service on attorney

702.520. When service on an attorney is required under Section 702.510, service on the attorney shall be made in any of the following ways:

(a) By personal delivery to the attorney.

(b) By service in the manner provided in subdivision (1) of Section 1011.

(c) By mail in the manner provided in Section 702.540.

Comment. Subdivisions (a) and (b) are comparable to the relevant portions of Section 1011. Subdivision (c) refers to a provision that is comparable to a portion of the first sentence of subdivision (a) of Section 1013.

§ 702.530. Manner of personal service

702.530. (a) Subject to subdivisions (b) and (c), when a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2.

(b) Where the paper is required to be personally served under this title and service on an attorney is required under Section 702.510, service shall be made on the attorney in the manner provided in Section 702.520.

(c) Where the service is on (1) a financial institution, (2) a title insurance company or underwritten title company (as defined in Section 12402 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch thereof which has actual possession of the property levied upon or at which the deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of such office or branch at the time of service.

Comment. Subdivision (a) of Section 702.520 adopts by reference the manner for service of summons. Subdivision (b) makes clear that when personal service is required on the judgment debtor or judgment

creditor, service on the attorney in the manner provided in Section 702.520 is required in cases where service is required on the attorney instead of on the judgment debtor or judgment creditor (Section 702.510). Subdivision (c) is the same in substance as subdivision (a) of Section 488.040 (attachment).

404/992

§ 702.540. Manner of service by mail; extension of time for exercising right or performing act

702.540. (a) Except as otherwise provided in this title, when a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) Where an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 702.510, to the attorney at the last address as given by the attorney on any document filed in the proceeding and served on the party making the service.

(2) Where any other person is being served, to such person at the person's current mailing address, if known, or otherwise at the address as last given by the person on any document filed in the proceeding and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known residence address, if known, or otherwise at the person's last known business address.

(b) Service by mail is complete at the time of the deposit; but, if within a given number of days after the service a right may be exercised or an act is to be done by the person served, the time within which the right may be exercised or the act may be done is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(c) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

Comment. Section 702.540 is drawn from Section 1013.

404/996

§ 702.550. Personal delivery in lieu of mailing

702.550. Whenever under this title a writ, notice, order, or other paper is required or permitted to be mailed, whether by first-class, certified, or registered mail, it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the paper to be mailed.

Comment. Section 702.550 is new.

405/000

§ 702.560. Name and address supplied by judgment creditor

702.560. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person or give any notice to any person, the judgment creditor shall include in the instructions to the levying officer the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely thereon in serving the writ, order, notice, or other paper on the person or giving the notice to the person.

Comment. Section 702.560 is a specific application of Section 702.610 (instructions to levying officer). The address to be supplied by the judgment creditor varies in particular provisions of this title. See, e.g., Sections 702.540 (address for service), 703.310 (address shown by the records of tax assessor). See also Section 702.650 (liability of levying officer for action taken in reliance on information supplied by judgment creditor).

§ 702.570. Service by person authorized by levying officer to make service

702.570. If a writ, order, notice, or other paper runs in the favor of a particular person and may be served by the levying officer, personal service of the paper may be made by the person or the person's agent if the levying officer's permission is given. The levying officer's permission shall be given by a certificate signed by the levying officer.

Comment. Section 702.570 is derived from a portion of Section 723.101(c) (personal service of notice or document by wage garnishment debtor).

§ 702.580. Proof of giving of notice

702.580. When proof of notice is required in proceedings under this title, proof may be made as follows:

(a) Proof of notice by personal delivery may be made by the affidavit of the person making the delivery, showing the time and place of delivery and the name of the person to whom delivery was made.

(b) Proof of service by mail may be made in the manner prescribed in Section 1013a.

(c) Proof of posting may be made by the affidavit of the person who posted the notice.

(d) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(e) Proof of notice, however given, may be made by testimonial evidence.

Comment. Subdivision (a) of Section 702.580 is drawn from subdivision (a) of Section 417.10. Subdivision (d) is drawn from subdivision (b) of Section 417.10. The remainder of Section 702.580 is consistent with civil practice generally.

EXHIBIT 4

STAFF-RECOMMENDED TECHNICAL REVISIONS

§ 702.110. Provisions for enforcing judgments

The staff recommends a few technical revisions in this section:

(1) The introductory clause should be revised to read: "Except as otherwise provided by statute:"

(2) The phrase "is enforceable" should be substituted for "shall be enforced" in subdivisions (a)-(d).

(3) Language should be added to the Comment to indicate that nothing in the section precludes use of other methods of enforcing the judgment.

§ 702.130. Remedies of state tax agency

To improve the wording and clarity of this section, the staff recommends it be revised to read:

702.130. Where a statute authorizes a state agency to issue a warrant to enforce a lien for the collection of an amount required to be paid to the state and the warrant is directed to a levying officer and is given by the statute the same effect as a writ of execution, the remedies available to judgment creditors under this title are available to the state agency issuing the warrant. Where jurisdiction of a court is required for the enforcement of such remedies, jurisdiction is conferred upon the proper court of the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated or, if the person does not reside in this state, of any county of this state. For the purposes of this section, "proper court" includes the municipal or justice court if the amount sought to be collected does not exceed the jurisdictional amount of such court and the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

§ 702.230. Enforceability of judgment obtained in action on California judgment

The staff recommends that this section be clarified to read:

702.230. The period of enforceability under Section 702.210 of a judgment obtained in an action brought in a court of this state on a judgment entered in a court of this state shall be reduced by the period during which the prior judgment could have been enforced.

§ 702.640. Manner of custody

To improve the wording of this section, the staff recommends that it be revised to read:

702.640. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise required by this title to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.