

#D-300

1/28/80

First Supplement to Memorandum 80-5

Subject: Study D-300 - Creditors' Remedies (Interrogatories and Examinations)

A letter from Edward N. Jackson (attached as Exhibit 1) favors the proposed legislation attached to Memorandum 80-5.

On page 2 of Mr. Jackson's letter, he suggests a revision of the proposed legislation. The staff recommends that the Commission approve this revision.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

LAW OFFICES

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January 15, 1980

Mr. John H. DeMouilly,
Executive Secretary,
California Law Revision Commission,
School of Law,
Stanford, CA 94305

Re: Enforcement of Judgments
(Interrogatories and Examinations)

Dear Mr. DeMouilly:

I have just finished reading the material under Memorandum 80-5, dated January 10, 1980, and I would like to go on record as being in favor of the proposed legislation.

It has long been my personal opinion that an order of examination was a useful collection tool only where the judgment debtor failed to appear. The judgment debtor who appears in court in response to the order usually has no assets of any kind and is completely judgment proof. On the other hand, when the judgment debtor fails to appear, contempt proceedings usually prove effective.

It is my opinion that the same judgment debtor who would not appear in response to the order will not answer the interrogatories. If he does answer the interrogatories, the judgment creditor can expect little by way of disclosure of assets.

I am curious as to why proposed §708.110 (e) uses the following language:

"....and you may be required to pay the reasonable attorneys' fees incurred by the judgment creditor...."

Why the plural "attorneys' fees"?

§1717 Civil Code refers to "attorney's fees."
§1021 C.C.P. refers to "Attorney's fees" but §1021.5
uses "award of attorneys' fees" and yet
§1021.6 returns to "award attorney's fees."

Edward N. Jackson

John H. DeMouilly

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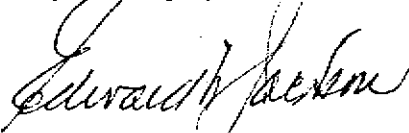
I would like to suggest a revision of subdivision (e) of §708.110 (also §708.120 (e) (1) :

NOTICE OF JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be punished for contempt of court and ~~you may be-~~ ~~required~~ the court may make an order requiring you to pay the reasonable ~~attorneys'~~ attorney's ~~fees~~ fee incurred by the judgment creditor in this ~~examination~~ proceeding.

If I have failed to comment on other material that you have been kind enough to send to me, it was only because I really had no comment.

I appreciate your keeping me on the mailing list.

Very truly yours,


EDWARD N. JACKSON

ENJ/h