

Memorandum 81-42

Subject: Study D-300 - Enforcement of Judgments (AB 707--Authority of Registered Process Servers)

At the July meeting, Mr. James Hughes representing the California Association of Professional Process Servers (hereinafter referred to as CAPPS) urged the Commission to revise AB 707 to further expand the authority of registered process servers to levy on property in place of levying officers. After the meeting, the staff received a more detailed proposal from Mr. Hughes which is attached hereto as Exhibit 1.

Existing Law

By way of background, registered process servers have been authorized by statute to perform some levies since 1979. Code of Civil Procedure Section 687(b) permits such levies where "execution is sought against property of a judgment debtor in the possession of another and the levy of execution does not require the person serving the writ to sell, deliver, or take custody of such property." The Commission's Tentative Recommendation Proposing the Enforcement of Judgments Law interprets this provision to mean that a registered process server may levy on intangible personal property where the method of levy is by service on a third person and the property may be applied to the satisfaction of the judgment by collection of amounts due and owing rather than by sale of the property (as in the case of accounts receivable, deposit accounts, general intangibles, and final money judgments). Section 687(c) requires the levying officer to perform all duties other than the actual service of the writ upon payment of the usual fee (\$11 now). A person involved in the passage of this legislation said in a conversation with the staff in 1979 that its main purpose was to authorize bank account levies and this appears to be its effect. Existing law does not make clear whether or to what extent the fee of the process server is a recoverable cost of collection.

Registered process servers are also authorized by Code of Civil Procedure Section 723.101(e) to serve earnings withholding orders. The fee for such a service is limited to \$1.50.

Assembly Bill 707

Section 699.080 in AB 707 as recommended by the Commission expands the authority of registered process servers to permit them to levy on real property, growing crops, timber to be cut, minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, or personal property used as a dwelling where the method of levy is by service on an occupant. Section 699.080(a) specifically continues their authority to levy on deposit accounts and makes clear that they may levy on accounts receivable, general intangibles, and money judgments. Section 706.101(e) in AB 707 continues the authority to serve earnings withholding orders provided in existing Section 723.101(e).

Section 699.080 also clarifies the particular duties of the registered process server, making clear that the process server is to fully comply with applicable levy, posting, and service provisions, deliver any undertaking required where a joint deposit account is levied upon, and request the garnishee to give a garnishee's memorandum to the levying officer. The process server is required to file the appropriate papers with the levying officer promptly after levy. Upon receipt of the \$11 fee, the levying officer is then required to perform all other duties under the writ such as selling property, receiving garnished payments, processing third-party claims and exemption claims, distributing the proceeds, and making a return on the writ.

Unlike existing law, Section 699.080(e) in AB 707 provides that recovery of the fee of the registered process server is governed by Section 1032b which allows recovery of the fee charged by public officers for the same duties (\$11 in this case) or a larger fee in the case of an unusually difficult service.

Proposal to Expand Process Servers' Authority to Levy

In his presentation at the July meeting and in his letter attached as Exhibit 1, Mr. Hughes urges the Commission to authorize levy by registered process servers on all property except tangible personal property in the possession of a judgment debtor (Section 700.030) and tangible personal property of a going business (Section 700.070). The rationale for using a registered process server is to achieve a quicker levy and thereby tie up the debtor's property before it can be removed or dissipated and perhaps to obtain a priority over other creditors. From recent telephone conversations with several levying officers, it

appears that the use of registered process servers to levy is infrequent except in counties where there is a significant backlog. The Los Angeles County Marshal's office reports that the Los Angeles Division served over 13,000 garnishments last year and that registered process servers delivered only six.

After considering the CAPPS proposal set forth on pages 1 and 2 of Exhibit 1, the staff recommends adding three methods of levy to the list in Section 699.080(a): personal property already in custody of a levying officer, safe deposit boxes, and the interest of a judgment debtor in personal property in the estate of a decedent. The staff does not recommend permitting process servers to levy where there is a possibility of gaining immediate custody of the property from a third person. A draft of the staff proposal is attached hereto as Exhibit 3.

The following is a point-by-point discussion of the CAPPS proposal to revise Section 699.080(a) as set forth on pages 1 and 2 of Exhibit 1:

(1) Service of writ and notice of levy on judgment debtor, pursuant to Section 700.010. This is not a method of levy. Notice of levy is served on the judgment debtor under Section 700.010 in every case where there is a levy regardless of the manner of levy. This service is required to be made under Section 699.080(b)(1).

(2) Real property, pursuant to Section 700.015. This is covered by Section 699.080(a)(1).

(3) Growing crops, timber to be cut, minerals to be extracted, pursuant to Section 700.020. This is covered by Section 699.080(a)(2). The CAPPS proposal apparently inadvertantly omits the authority to levy on accounts receivable resulting from the sale of mineral or oil rights at the wellhead or minehead.

(4) Tangible personal property in possession of third person pursuant to Section 700.040. This would be a new provision. Section 700.040 provides for levy by service of a copy of the writ of execution and a notice of levy on the third person. This section applies where there is not another method of levy applicable to a particular type of tangible personal property, such as a negotiable document, chattel paper, or mobilehome. The levy by service creates a lien, thereby establishing the judgment creditor's priority, and also makes the third person potentially liable. It should be remembered, however, that as a general rule if the third person transfers the property for fair consideration to a person without knowledge of the lien, the lien does not continue

on the property. See Section 697.740(a). A registered process server could be empowered to serve the writ and notice on the third person in this type of case, but a problem arises under Section 701.010(b) which requires the third person to deliver possession of the property to the levying officer. The third person should be able to give up possession at the time of levy; however, if the levy is by a registered process server, the third person would have to await the involvement of the levying officer since the process server is not able to take possession. This problem is a major impediment to extending the authority of process servers to levy upon tangible personal property. What happens if the property is perishable? Who has the risk of loss during the interval between levy by service and the taking of possession by the levying officer? What arrangements for the costs of storing or maintaining the property during the interval would have to be made? While these problems may not be insurmountable, solving them would make the statute even more complex than it already is. Accordingly, the staff recommends against extending the authority of registered process servers to levy on tangible personal property in the possession of third persons. If the Commission decides to extend process servers' authority to cover this case, it would be possible to require the levying officer to take possession of the property upon receipt of the third person's memorandum if the memorandum does not assert an adverse claim. If the memorandum claims the right to possession, the levying officer would not need to attempt to gain possession. If no memorandum is received, it would be up to the judgment creditor to examine the third person or bring a creditor's suit. It is possible that levies would be somewhat less effective in obtaining possession without the active participation of the uniformed levying officer.

(5) Personal property in custody of levying officer, pursuant to Section 700.050. This method of levy should be added to the list in Section 699.080(a). In this situation the property is already in custody of the levying officer so that the problems just discussed are not present. We have revised Section 699.080(a) in Exhibit 3 to provide this authority.

(6) Bailed goods not covered by negotiable document of title, pursuant to Section 700.060. This method of levy is a special case of item (4) supra. Because of its more restricted nature, it does not

involve as many risks. A bailee would usually be under a prior duty to keep the property safe, particularly if the bailed goods are subject to a security interest. There are still procedural problems such as determining when the levying officer should or may take possession. The staff recommends against extending the process servers' authority to cover this case. However, we do not feel as strongly about it as item (4).

(7) Personal property used as a dwelling, pursuant to Section 700.080. Section 699.080(a)(3) in AB 707 permits a process server levy on a personal property dwelling if the selected method of levy is by service and posting. However, the process server should not be permitted to take custody as is authorized by Section 700.080(b). We assume that the failure in the CAPPS proposal to restrict this authority to levy under Section 700.080 to the method of levy provided by subdivision (a) was an oversight. The staff recommends no change.

(8) Vehicle, boat, mobilehome, or commercial coach for which certificate of ownership is issued, pursuant to Section 700.090. This is not a method of levy. Section 700.090 provides for the determination of the name of a legal owner and for service of notice of levy on the legal owner. If the authority of process servers is extended to cover levy on such property, the statute should be amended to make clear that the process server would have a duty to serve notice on the legal owner.

(9) Chattel paper, pursuant to Section 700.100. Chattel paper is tangible personal property. See Section 680.370 ("tangible personal property" defined). The objections stated in the discussion of item (4) supra apply to the proposal to allow process servers to levy on chattel paper in the possession of third persons. A process server should not be permitted to levy on chattel paper in the possession of the judgment debtor as provided by Section 700.100(a)(1). The staff opposes this proposal. In no event should the process server be permitted to take possession of chattel paper.

(10) Instruments, pursuant to Section 700.100. The staff opposes this proposal for the reasons stated in item (9).

(11) Negotiable documents of title, pursuant to Section 700.120. The staff opposes this proposal for the reasons stated in item (9).

(12) Securities, pursuant to Section 700.130. Section 700.130 incorporates the provisions of Commercial Code Section 8317 which requires seizure of a security unless the security is held in escrow pursuant to the Corporate Securities Law or has been surrendered to the issuer in

which case garnishment is appropriate. The process server should not be allowed to seize securities. In the limited garnishment situations, the problems of possession arise as discussed in item (4). The staff opposes this proposal.

(13) Deposit accounts, pursuant to Section 700.140. This is covered by Section 699.080(a)(4) in AB 707.

(14) Safe deposit boxes, pursuant to Section 700.150. A safe deposit box levy requires the bank to prevent removal of the contents of the box. The judgment debtor is given an opportunity to open the box to avoid the expense of drilling it open. If not opened voluntarily, the costs of forcing the box open are advanced to the bank. Since the garnishee bank is not required or able to turn the contents over, the initial service under this type of levy could be accomplished by a process server. The staff does not oppose this proposal. We have included this authority in the revised Section 699.080 attached as Exhibit 3, even though it does not appear to be a very significant area.

(15) Deposit accounts and safe deposit boxes not exclusively in the name of judgment debtor, pursuant to Section 700.160. Joint deposit accounts are included in Section 699.080(a)(4) in AB 707. Joint safe deposit boxes are included in the revised section attached as Exhibit 3, consistent with the discussion of item (14).

(16) Accounts receivable and general intangibles, pursuant to Section 700.170. This is covered by Section 699.080(a)(5) in AB 707.

(17) Levy on property that is subject to pending action or proceeding, pursuant to Section 700.180. This is not a levy provision. Section 700.180 governs the effect of a levy made under some other section in a situation where the property is the subject of a pending action. There is no point in mentioning this provision in Section 699.080.

(18) Final money judgment, pursuant to Section 700.190. This is covered by Section 699.080(a)(6) in AB 707.

(19) Interest in personal property of estate of decedent, pursuant to Section 700.200. This method of levy involves service of the writ and notice on the personal representative of the decedent. The property is available to the levying officer only when the decree distributing the property is final. Accordingly, there is no impediment to including this method of levy in Section 699.080. The staff recommends the inclusion of this method of levy as provided in the revised section attached as Exhibit 3.

Recovery of Fee of Process Server

As indicated above, existing law is unclear concerning whether the fee of the registered process server for a levy under Section 687 is a recoverable cost of collection. Section 723.101(e) makes clear in the case of earnings withholding orders that the process server's recoverable fee may not exceed \$1.50. Section 699.080(e) in AB 707 would permit the registered process server to charge a recoverable fee of \$11 or even more in the case of an unusually difficult service. This fee is in addition to the recoverable \$11 fee that must be paid to the levying officer to process the levy, and any third-party claims, exemption claims, or garnishees' memorandums, and to make a return.

After reconsidering this provision, the staff concludes that the fees of the registered process server in making a levy should not be a recoverable cost of collection. We can think of no sufficient justification for charging the judgment debtor an extra \$11 or more because the judgment creditor has opted for a process server levy. The law may permit judgment creditors to employ process servers to levy in certain cases as a matter of convenience and in recognition of the desire to obtain an execution lien at the earliest possible moment, but it does not follow that the financial burden of this convenience should be borne by the judgment debtor. If the fee were significantly larger and paid the actual costs incurred by the levying officer, it would make theoretical sense to split the fee between the levying officer and the process server depending upon how much work was saved the levying officer. However, the \$11 fee is not worth splitting and, we are told, on the average does not pay the full administrative cost. This is a different situation from that apparently envisioned by Code of Civil Procedure Section 1032b which directs the court to allow as a recoverable cost for service of process by a person other than a public officer or employee "such sum as it deems proper . . . , but not exceeding the amount allowed to a public officer or employee in this state for such service." This section originally was designed to cover cases where the process server is used instead of a sheriff, such as for service of summons. In 1976, it was amended to apply to "process," which read broadly can include writs of execution. See, e.g., Code Civ. Proc. § 17, subd. 6 ("process" signifies "a writ or summons issued in the course of judicial proceedings"). It is not clear whether Section 1032b should apply to process server levies under Section 687 and interpretations vary. A person in the

office of Senator Song who sponsored the amendment of Section 687 in 1978 told the staff that he did not think the costs of levy by the process server would be recoverable. As indicated in the note on page 2 of Exhibit 2, the Los Angeles County Marshal's office does not add a second fee for the process server in the amount due on the writ. On the other hand, we are informed that in Alameda County and Santa Clara County, the sheriff adds to the amount due under the writ a standard fee for himself and another for the registered process server. The staff proposes to revise Section 699.080 in AB 707 to make clear that the judgment debtor may not be charged a second fee. See subdivision (e) as revised in Exhibit 3. We would leave undisturbed the additional \$1.50 fee for registered process servers under Section 706.101(e) in AB 707.

Relationship Between Levying Officers and Registered Process Servers

Mr. Hughes states on page 4 of Exhibit 1 that in 26 out of 28 counties polled, registered process servers are required to process their papers through the levying officer prior to service. (For an example of levying officers' regulations, see Exhibit 2.) Mr. Hughes suggests that one reason for this is that the papers need a levying officer's file number so that the levying officer can keep track of payments and other papers relevant to the file. CAPPS proposes mandating a file number system, but the staff recommends against this proposal. We do not have the experience or sufficient information to mandate a file number. We think that a problem of such a detailed nature would better be handled by a bill sponsored by CAPPS. This is not a problem caused by AB 707; if anything, AB 707 improves the situation by providing much more detail concerning the respective duties of registered process servers and levying officers. Lest it be thought that levying officers' behavior in this matter is arbitrary, it should be noted that the Los Angeles County Marshal has 30 branch offices; if a garnishee is to know where to pay the money, the process server will have to consult with the marshal's office prior to levy.

Delivery of Papers to Levying Officer

One problem under existing law identified by the levying officers is that the process servers do not file the writ and necessary information with the levying officer soon enough after levy. Delays of over three weeks have been reported to the staff. In some counties, money received by the levying officer has had to be returned to the garnishee because

there was no writ on file. Mr. Hughes suggests on page 4 of Exhibit 1 that Section 699.080(c) be revised to require the process server to file papers with the levying officer within five days rather than "promptly" after levy. The staff recommends this change. See Exhibit 3.

Authority of Process Server to File Judgment Lien With Secretary of State

There is no need to provide authority for the registered process server to file a notice of judgment lien on personal property with the Secretary of State as suggested by CAPPS on pages 2-3. (See Section 697.510 et seq. in AB 707.) Under this procedure, the judgment creditor files the notice of judgment lien without the involvement of a levying officer. The statute has no bearing on who may act as an agent of the judgment creditor.

Comment to Section 699.080

Mr. Hughes suggests a revision of the Comment to Section 699.080 on page 3 of Exhibit 1. The portion of the Comment referred to is a statement of the substance of existing law and is not in need of revision. However, if the Section 699.080 as set out in AB 707 is amended, we will prepare a revised Comment as needed.

Authority of Registered Process Servers Under the Attachment Law

Mr. Hughes suggests that certain revisions be made in the Attachment Law to permit registered process servers to serve writs of attachment in situations analogous to those where they would be permitted to levy under writs of execution. See Exhibit 1, p. 3. In Memorandum 81-45 concerning attachment revisions, the staff recommends that registered process servers be given authority to levy under writs of attachment to the same extent as permitted under writs of execution by Section 699.080.

Authority to Execute Other Writs

In a letter handed out at the July meeting, Mr. Hughes suggests that registered process servers should have authority to serve other types of writs under AB 707. The staff opposes this suggestion. A registered process server should not be able to take possession of property and so would provide no useful service in connection with a writ of possession of personal property. In unlawful detainer cases, enforceable by a writ of possession of real property, we do not think it is appropriate to permit an agent of the landlord to attempt to dispossess the tenant. In the case of a writ of sale used to enforce a judgment

foreclosing a lien on real or personal property, there is no need for especially prompt service because the judgment creditor already has a lien on the property, all that remains is to enforce it by a sale.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

HUGHES

ATTORNEY SERVICE

July 11, 1981

John E. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Rd., Room D-2
Palo Alto, CA 94306

RE: AB 707, AB 798 and CONFORMING AMENDMENTS TO
CCP TITLE 6.5 (ATTACHMENTS)

Dear John,

Pursuant to today's hearing on CAPPS proposed amendments to AB 707 and AB 798, I submit the following for your consideration. I have prepared 699.080 the way CAPPS would like to see it consistent with the Commission's preferences discussed today. I trust the revisions you select will be included in the fall printing of AB 707 and AB 798.

699.080 - Levy by registered process server.

699.080 (a) - A registered process server may levy under a writ of execution on the following types of property:

- (1) Service of writ and notice of levy on judgment debtor, pursuant to Section 700.010.
- (2) Real, property, pursuant to Section 700.015.
- (3) Growing crops, timber to be cut, minerals to be extracted, pursuant to Section 700.020.
- (4) Tangible personal property in possession of third person, pursuant to Section 700.040.
- (5) Personal property in custody of levying officer, pursuant to Section 700.050.

- (6) Bailed goods not covered by negotiable document of title, pursuant to Section 700.060.
- (7) Personal property used as a dwelling, pursuant to Section 700.080.
- (8) Vehicle, boat, mobilehome, or commercial coach for which certificate of ownership is issued, pursuant to Section 700.090.
- (9) Chattel paper, pursuant to Section 700.100.
- (10) Instruments, pursuant to Section 700.110.
- (11) Negotiable documents of title, pursuant to Section 700.120.
- (12) Securities, pursuant to Section 700.130.
- (13) Deposit accounts, pursuant to Section 700.140.
- (14) Safe deposit boxes, pursuant to Section 700.150.
- (15) Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor, pursuant to Section 700.160.
- (16) Accounts receivable and general intangibles, pursuant to Section 700.170.
- (17) Levy on property that is subject to pending action or proceeding, pursuant to Section 700.180.
- (18) Final money judgment, pursuant to Section 700.190.
- (19) Interest in personal property of estate of decedent, pursuant to Section 700.200.

699.080 (b) through (e) would remain as is. You mentioned the addition of the word 'filing' to reflect the filing with the Secretary of State but I don't believe this is necessary. 699.080 (b) (1) states: "Comply with the applicable levy...". In each of the 19 cases I enumerated "applicable levy" is either the recording or the filing and each

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method of levy spells out which procedure creates the levy. If you believe it is better to spell it out, may I recommend the following:

699.080 (b) (1) - Comply with the applicable levy by recording with the county recorder or filing a financing statement with the Secretary of State, posting and service provisions of Article 4 (commencing with Section 700.010).

I'd like to recommend that the notes following 699.080 be amended as follows.

PARAGRAPH TWO

"Subdivision (a) of Section 699.080 continues the principle of former law that a registered process server may levy where the property levied upon is not in the possession of the judgment debtor and is not to be sold by, delivered to or taken into custody by the person serving the writ."

My recommendation is because the test is not whether the judgment debtor possesses the property but whether the levy is accomplished by a seizure or a paper process. In the case of 700.010, 700.015, 700.020, 700.080, 700.170, 700.180 and 700.200, it is conceivable we would be levying upon property in the possession of the judgment debtor. Our levy is by a paper process but I hope it proves the point I am trying to establish.

From my conversations with you and Stan, I am led to believe that whatever revisions are decided upon in title 9, you would be amending other titles to conform with your revision. In the case of the registered process server serving writs, title 6.5 (attachment) would need to be conformed. My review of the applicable statutes leads me to believe a code section similar to 699.080 would need to be included in section 488. Such inclusion should include the authority to serve writs of attachment under Sections 488.310, 488.330, 488.340, 488.350, 488.360, 488.370, 488.380, 488.390, 488.400, 488.410, 488.420 and 488.430.

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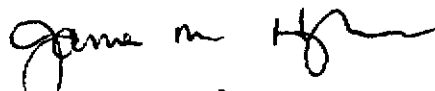
The remaining objective CAPPS has with this legislation is to eliminate the need to go to the levying officer prior to serving a writ. There isn't a code section requiring the processing of writs through the levying officer prior to service but our poll in 28 counties (based upon actual experience) reveals that except in San Mateo and Santa Clara Counties, we are required by the levying officer to process the paperwork with them prior to service if we want them to recognize and follow through on our levy!

The levying officer has justified his position on two reasons, one of which has been addressed by your legislation, adopted forms. The remaining reason is the levying officer's invoice or internal file number. Even though a department the size of the Los Angeles County Marshal could make a good case for this reason, the size and inefficiency of the levying officer's department should not get in the way of the service of valid court documents.

I proposed to the commission the adoption of the DMV court identification numbers as a more refined method of positive identification of a return of garnishment or other papers or property to the levying officer. Possibly it would be more acceptable to the levying officer if under Section 600.080 (c) rather than the word "promptly" it was spelled out that the registered process server has "5 days" following the levy to file everything with the levying officer? If you wish, I can discuss this with Captain LeFevre and try to work out an acceptable solution to this.

Thank you for your fine work on this bill and I trust you will forward to me your revisions as soon as they have been formulated. If I can be of any help, please feel free to call on me.

Very truly yours,




James M. Hughes

Legislative Sub-Committee Chairman
on Writs

California Association of Professional
Process Servers

EXHIBIT 2

MARSHAL OF MUNICIPAL COURTS
LOS ANGELES COUNTYGENERAL ORDER # M - 19

DATE: December 13, 1978
TO: All Personnel
FROM: JOHN F. MAHON, JR., Marshal 
SUBJECT: Procedure for Handling Garnishments
To Be Served by a Registered Process Server

Senate Bill 1564 which becomes effective January 1, 1979, provides for the service of Writs of Execution by registered process servers "...where execution is sought against property of a judgment debtor in the possession of another and the levy...does not require the person serving the writ to sell, deliver, or take custody of such property." This bill further provides for the sheriff, constable or marshal to "perform all other duties...except for the actual service of the writ, as if...[he] had served the writ himself, and process the return...upon receipt of the fee specified in Section 26725 of the Government Code." (\$8.50.)

In order to implement the requirements of this bill, Writs of Execution which are to be served by a registered process server shall be processed as follows:

A. Receiving Process:

1. Instructions to the Marshal must be signed by the attorney of record or litigant if he has no attorney, direct the Marshal to levy the writ, giving the name and address of the garnishee, specify that service is to be made by a registered process server, and state if garnishment process will be picked up by the process server, or, if it is to be mailed to him, the name and address of the process server for the purposes of mailing.
2. A fee deposit of \$8.50.
3. The original Writ of Execution plus sufficient copies for service.

B. Make-Up Procedure:

Upon receipt of the writ, instructions and fees, the Notice of Garnishment shall be prepared in the manner set forth in § 303, Manual of Rules and Regulations, governed by the following exceptions:

1. Omit date of service on Notice of Garnishment. (This information to be filled in by the registered process server at the time of service.)
2. Modify Answers of Garnishee by deleting words "By the Marshal of Municipal Courts, County of Los Angeles, State of California" following date of garnishment.
3. Follow normal assembly of process procedures except that original service ticket, Garnishment Return and Notice to the Judgment Debtor are not stapled to the Notice of Garnishment. File these documents in case folder.
4. Attach "Instructions to Registered Process Server" (Form No. 03/014) and Forwarding Service Ticket to Notice of Garnishment.

5. Deliver Notice of Garnishment with attached writ to process server for service in accordance with instructions to Marshal.

NOTE: The amount to satisfy entered on the Notice of Garnishment shall be figured in the normal manner including the Marshal's fee of \$8.50. Since the fee charged to the plaintiff by the registered process server is not a fee incurred by the Marshal, his fee shall neither be included in the amount to satisfy on the Notice of Garnishment, nor on our Return of Attachment-Execution to court.

C. Return of Service:

1. Clock in registered process server's returns.
2. Pull case folder file, including service ticket unit.
3. Enter date of levy from registered process server's return on the Notice to the Judgment Debtor and mail the Notice and attached copy of writ to the judgment debtor.
4. Record fact and date of mailing of Notice to Judgment Debtor on original service ticket.
5. Enter date of service as shown on registered process server's return on the service ticket and sign service ticket.
6. Attach original registered process server's return of service to original writ in file, staple copy of process server's return and Marshal's Garnishment Return (Form 76N597B) inside folder. (The Marshal's Garnishment Return Form 76N597B is not part of the return to court where service is made by a registered process server, and is retained in the file as evidence of what information was typed on the Notice of Garnishment prior to its delivery to the process server.)
7. Process service ticket through E.D.P.
 - a. Where a writ is received by the Marshal for service by a registered process server, the service ticket shall be processed as a garnishment "served," using for the date of service either the date served, or the date of Not Found or No Service by the registered process server as shown on his return.
 - b. Where no return of service is received from the registered process server, the service ticket shall be processed when the writ is returned to court, using the date of return to court as the date of service on the service ticket. Enter notation on face of service ticket: "Processed writ for service by registered process server, no return of service received."

D. Returning Writ to Court:

1. Fill out Return on Attachment-Execution, summarizing all collections and costs per Manual of Returns § 125.
2. Attach Return on Attachment-Execution along with the registered process server's return to the original Writ of Execution, and return the writ to court.
3. If no return was received from the registered process server, enter on the Return on Attachment-Execution, in the space provided for the description of the property levied upon, the statement: "Processed writ for service by a registered process server, no return of service received."

MARSHAL OF MUNICIPAL COURTS
LOS ANGELES COUNTY

GENERAL ORDER # M - 28

DATE: April 22, 1980
TO: All Personnel
FROM: JOHN F. MAHON, JR., MARSHAL *gjm*
SUBJECT: Procedure for Handling Earnings Withholding Orders
To Be Served by a Registered Process Server

Assembly Bill 2034, which became effective March 7, 1980, provides for the service of Earnings Withholding Orders by registered process servers.

"...An earnings withholding order also may be served by any person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code. When an earnings withholding order is served by a process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order."

In order to implement the requirements of this bill, Earnings Withholding Orders which are to be served by a registered process server shall be processed as follows:

A. Receiving the Process.

1. Instructions to the Marshal must be signed by the attorney of record or litigant if he has no attorney, specifying that service is to be made by a registered process server, and state if the Earnings Withholding Order will be picked up by the process server, or, if it is to be mailed to him, the name and address of the process server for the purposes of mailing.
2. A fee deposit of \$8.50.
3. The original Writ of Execution and an Application for Earnings Withholding Order.

B. Make-Up Procedure.

1. Upon receipt of the Writ, instructions and fees, the make-up clerk shall prepare, in addition to the service ticket, the following documents:
 - a. An original and a copy of an Earnings Withholding Order.
 - b. Two copies of an Employer's Return.
 - c. An Execution Return-Earnings Withholding Order.
 - d. Employee Instructions.
2. Follow normal assembly of process procedures except that the original service ticket and the Execution Return-Earnings Withholding Order are not attached to the process, but are retained in the case folder.
3. Attach the "Instructions to Registered Process Server" (Form No. 03/014 4/80) and the Forwarding Service Ticket to the process.
4. Deliver the documents to the process server for service in accordance with instructions to the Marshal.

NOTE: The amount to satisfy entered on the Earnings Withholding Order shall be figured in the normal manner including the Marshal's fee of \$8.50. Since the fee charged to the plaintiff by the registered process server is not a fee incurred by the Marshal, his fee shall neither be included in the amount to satisfy on the Earnings Withholding Order, nor on the Execution Return.

C. Return of Service.

1. Clock in the registered process server's return.
2. Pull the case folder file, including the service ticket unit.
3. Enter the date of levy from the registered process server's return on the service ticket and sign the service ticket.
4. Attach the original registered process server's return of service to the original writ in file, and retain a copy of the process server's return in the folder.

5. Process the service ticket through E.D.P.

- a. Where a writ is received by the Marshal for service by a registered process server, the service ticket shall be processed as an Earnings Withholding Order "served," using for the date of service either the date served, or the date of Not Found or No Service by the registered process server as shown on his return.
- b. Where no return of service is received from the registered process server, the service ticket shall be processed when the writ is returned to court, using the date of return to court as the date of service on the service ticket. Enter the notation on the face of the service ticket: "Processed writ for service by registered process server, no return of service received."

D. Returning the Writ to Court.

1. On the Execution Return-Earnings Withholding Order, check the box on the line that states: I received the annexed writ on the date endorsed thereon by me, and complete the sentence by adding: "See attached return."
2. Summarize all collections and costs.
3. Attach the Execution Return-Earnings Withholding Order, along with the registered process server's return, to the original Writ of Execution, and return the writ to court.
4. If no return was received from the registered process server, check the box on the Execution Return-Earnings Withholding Order on the line beginning with: "I received the annexed writ...." and add the following: "Processed writ for service by a registered process server, no return of service received."

MARSHAL OF MUNICIPAL COURTS, LOS ANGELES COUNTY
INSTRUCTIONS TO REGISTERED PROCESS SERVER

The Marshal's division listed below has received a Writ of Execution, Application for Earnings Withholding Order, if applicable, and instructions from the litigant/attorney directing that the Earnings Withholding Order/Garnishment be served by you pursuant to Code of Civil Procedure §§ 723.101/687(b). You are instructed to proceed as follows:

☐ Earnings Withholding Order

Serve the original and a copy of the Earnings Withholding Order, two copies of the Employer's Return and a copy of the Employee Instructions at the address designated on the forwarding service ticket. (Note: You should not make any entries on the Forwarding Service Ticket.)

☐ Garnishment

1. Serve the Notice of Garnishment with the annexed copy of the Writ of Execution on the garnishee at the address designated on the Forwarding Service Ticket. (Note: You should not make any entries on the Forwarding Service Ticket.)
2. At the time service is made by you, insert the date on the Notice of Garnishment in the space provided on the form.

No later than the second court day after service of the Earnings Withholding Order/Garnishment, deliver your return in duplicate together with the Forwarding Service Ticket to the Marshal's division listed below. Your return should be typed and include the following:

1. Case title and number;
2. What process was served or, if unable to serve, the fact that the process was not served and the reason it was not served;
3. Name of garnishee and address where served;
4. Name and capacity of person served on behalf of garnishee;
5. Date and time of service.

Address all communications to:

JOHN F. MAHON, JR.
MARSHAL

EXHIBIT 3

Amended

STAFF DRAFT

of

REVISED SECTION 699.080 IN AB 707

\$ 699.080. Levy by registered process server

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

(1) Real property, pursuant to Section 700.015.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.

(3) Personal property in the custody of a levying officer, pursuant to Section 700.050.

~~(3)~~ (4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

~~(4)~~ (5) Deposit accounts, pursuant to Section 700.140 or 700.160.

(6) Property in a safe deposit box, pursuant to Section 700.150 or 700.160.

~~(5)~~ (7) Accounts receivable or general intangibles, pursuant to Section 700.170.

~~(6)~~ (8) Final money judgments, pursuant to Section 700.190.

(9) Interest of an heir, devisee, or legatee in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Delivery any undertaking required by Section 700.160.

(3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(4) Instructions in writing, as required by the provisions of Section 687.010.

(c) ~~At the time of~~ Within five days after levy under this section ~~or promptly thereafter~~, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010).

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The ~~recovery~~ of the fee for services of a registered process server under this section is governed by Section 1032b not a recoverable cost of collection.

Note. Paragraph (4) is added to subdivision (b) by an amendment approved by the Commission at the July meeting.