

First Supplement to Memorandum 82-86

Subject: Study D-301 - Creditors' Remedies (Reconsideration of Denial of Attachment)

An attorney has asked whether a plaintiff who has been denied issuance of a right to attach order because of a failure to show probable validity of the plaintiff's claim may later apply for a right to attach order. The suggestion was made that the Attachment Law is not clear and that it should be amended to make it clear.

The staff concludes that no amendment is necessary to deal with this question. General rules of practice govern procedure under the Attachment Law, unless there is some exception provided. Code of Civil Procedure Section 484.100 makes clear that the determinations in the attachment proceedings have no effect on the rights of the parties in the action or in any other action, but this section is silent on the specific question referred to us. Code of Civil Procedure Section 1008 provides for a motion to reconsider a denial of an application for an order and also provides for subsequent applications for the same order "upon an alleged different state of facts." This would govern the situation where the plaintiff, having completed discovery after the initial denial of a motion for a right to attach order, now has a "different state of facts" to support the issuance of the order. Section 1008 also requires the plaintiff to show by affidavit what application has been made, when it was made and to what judge, what order was issued, and what new facts are claimed to be shown. A violation of Section 1008 is punishable as a contempt and an erroneous order may be vacated by the judge who made it or the judge in the action.

Respectfully submitted,

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