

First Supplement to Memorandum 91-20

Subject: New Topic Suggestion (Interrogatories to Judgment Debtor)

We received a telephone call from William Sternfeld, a judgment creditor in Los Angeles, who had encountered a problem in using the procedure for interrogatories to the judgment debtor under Code of Civil Procedure Section 708.020. This section was enacted on Commission recommendation as part of the Enforcement of Judgments Law in 1982. The problem arises because the interrogatory procedure in Code of Civil Procedure Section 2030, which is incorporated by Section 708.020, was revised in the Civil Discovery Act of 1986 to limit interrogatories of right to 35.

The interrogatory procedure in Section 708.020 is one of several miscellaneous creditors' remedies. It is intended to serve as a less burdensome alternative or as a supplement to examination proceedings where the debtor may be compelled to appear personally. The statute recognizes that interrogatories and examination proceedings are subject to abuse. Consequently, the creditor may not use these procedures more frequently than once every 120 days. The limitation in the Enforcement of Judgments Law focuses on the frequency rather than the number of interrogatories.

Apparently, the judgment debtor in Mr. Sternfeld's case was successful in resisting a second set of interrogatories that complied with the frequency rule in Section 708.020 by citing the 35 interrogatory rule in Section 2030. The question is whether this is appropriate, or whether the conflict between the two sections should be resolved in a different manner. The staff believes that the 35 interrogatory limit should apply to each set of interrogatories, but that the purpose of the interrogatory procedure is defeated if the limit is applied cumulatively to all interrogatories after judgment. The cumulative approach forces the creditor to resort to an examination of the debtor, making a fetish out of the policy of avoiding abuse of

discovery (the purpose of the Civil Discovery Act) while ignoring the increased cost and inefficiency involved in examination proceedings -- costs borne by the creditor, the debtor (if not judgment proof), and the court.

The staff proposes that the Commission consider this issue along with any other miscellaneous creditors' remedies problems with a view toward recommending legislation to the 1992 legislative session.

Respectfully submitted,

Stan Ulrich
Staff Counsel