#39.160 3/2/77

First Supplement to Memorandum 77-12

Subject: Study 39.160 - Attachment (General Assignments for the Benefit of Creditors)

Attached hereto is a letter from Mr. Hal Coskey which opposes the proposal to terminate the lien of a temporary protective order upon the making of a general assignment or the commencement of bankruptcy proceedings in Memorandum 77-12.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Memorandum 77-12

EXHIBIT 1

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TOBIAS COSKEY (1898-1974)
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February 24, 1977

California Law Revision Commission
Stanford Law School
Stanford, California

Re: Memorandum 77-1; Attachment Law

Gentlemen:

The purpose of this letter is to submit for your consideration a contrary opinion to that of Joseph Wein, as expressed in his letter of January 13, 1977 with regard to §486.110 of the attachment law.

Under the law which is now in effect, the making of an assignment for the benefit of creditors or the filing of a petition in bankruptcy does not, of itself, affect the lien of a temporary restraining order. We perceive of no purpose for the California Statute to either interfere with bankruptcy law, or to unduly encourage common law assignments for the benefit of creditors.

It is possible that a lien obtained prior to a bankruptcy may not be vulnerable to attack in the bankruptcy court. That certainly would be the case if the debtor were not insolvent at the time the lien became effective. If, in fact, the lien is subject to attack in the bankruptcy court, there is a speedy and expeditious procedure provided by the Bankruptcy Act for invalidating the lien. Even the Bankruptcy Act does not invalidate all liens. A certain showing must be made before a lien is set aside in bankruptcy. California creditors are entitled to that protection in obtaining writs of attachment.

The entire area of common law assignments for the benefit of creditors might be a fruitful one for study by your commission. We question, however, the encouragement of these assignments without a great deal of study.

We, as Mr. Wein, have encountered a certain amount of difficulty and time consumption under the new law. The forms appear to be quite formidible to the layman who is asked to sign them. Clerks in some counties are not aware of the time limitations, and are issuing writs with too short of time limit for the hearing.

As the act now reads, it is almost impossible to set a hearing for attachment in less than 25 to 30 days after the filing. Service of process might be completed within a day or two, but if service is not completed, the task of obtaining a new date is a time-consuming one. Consideration might be given to shortening the 20 day service period, and also shortening the defendant's reply period from five days to perhaps three working days.

Sincerely,

H. L. COSKEY
of COSKEY, COSKEY & BOXER

HLC/bh

cc: Joseph Wein, Esq.
Buchalter, Nemer, Fields & Savitch

27/28