

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

NOVEMBER 2 AND 3, 1978

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on November 2 and 3, 1978.

PERSONS ATTENDING MEETING

Law Revision Commission

Present: Howard R. Williams, Chairperson
Beatrice P. Lawson, V. Chairperson
Judith Meisels Ashmann

George Y. Chinn
Ernest M. Hiroshige
Laurence N. Walker

Absent: George Deukmejian, Senate Member
Alister McAlister, Assembly Member

Jean C. Love
Bian M. Gregory, Ex Officio

Staff Members Present

John H. DeMouilly
Robert J. Murphy III

Nathaniel Sterling
Stan G. Ulrich

Consultants Present

Charles W. Adams, Homesteads, November 2 and 3
Garrett H. Elmore, Guardianship-Conservatorship, November 2

Others

John K. Spencer, Jr., Attorney, San Francisco, November 2

ADMINISTRATIVE MATTERS

Minutes of October Meeting

The following corrections were made in the Minutes of the October 6, 1978, Meeting:

(1) On page 9, the following was substituted for the underscored language in Section 2254:

conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is required (1) to provide medical treatment needed to alleviate severe pain or (2) to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

(2) on page 10, line 4, "disability or death" was substituted for "disability of death."

With these corrections, the Minutes of the October 6, 1978, Meeting of the Law Revision Commission were approved.

staff personnel has resulted in heavy use of temporary and inexperienced assistance, and the productivity of these persons is, of course, substantially less than the experienced persons they replace. It will be necessary to cut back substantially on the amounts that otherwise would be available for research consultants and travel, since these are the only two areas where significant reductions are possible.

After discussing the problem, the Commission decided to hold two-day meetings every two months. Efforts should be made to meet in a meeting facility that is provided without cost to the State if the use of the facility would reduce the overall cost of a meeting.

The Commission adopted the following schedule for future meetings:

December 1980

December - No Meeting

January 1981

January 9 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles
January 10 (Saturday) - 9:00 a.m. - 4:00 p.m.

March 1981

March 13 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco
March 14 (Saturday) - 9:00 a.m. - 4:00 p.m.

May 1981

May 15 (Friday) - 10:00 a.m. - 5:00 p.m. Los Angeles
May 16 (Saturday) - 9:00 a.m. - 4:00 p.m.

July 1981

July 10 (Friday) - 10:00 a.m. - 5:00 p.m. San Diego
July 11 (Saturday) - 9:00 a.m. - 4:00 p.m.

August 1981 - No Meeting

September 1981

September 11 (Friday) - 10:00 a.m. - 5:00 p.m. San Francisco
September 12 (Saturday) - 9:00 a.m. - 4:00 p.m.

PROCEDURE WHERE COMMISSION ATTENTION IS REQUIRED BUT NO MEETING IS SCHEDULED

The Commission discussed the procedure to be followed where a matter needs Commission attention or approval and no meeting is scheduled during the time within which such attention or approval is required.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS

The Commission considered Memorandum 78-48 concerning the homestead exemption, Memorandum 78-35 and the First Supplement thereto concerning retroactive application of exemptions, Memorandum 78-47 concerning redemption from execution and foreclosure sales of real property, and Memorandum 78-70 concerning exemptions from enforcement of money judgments. The Commission made the following decisions:

Homestead Exemption

Procedure for asserting exemption. The existing statutory scheme which provides for homestead declarations under Civil Code Sections 1237-1304, a creditor-initiated hearing for issuance of a writ of execution against a dwelling (including a mobilehome or vessel) under Code of Civil Procedure Section 690.31, and a debtor-initiated claim procedure for mobilehomes and vessels under Code of Civil Procedure Section 690.3, should be replaced by a single procedure for asserting a dwelling exemption at a hearing on issuance of a writ of execution.

Collateral effects of homestead exemption. The collateral effects on conveyancing and survivorship that result from a declaration of a homestead under existing law should not arise from the claim of a homestead. Further study should be devoted to the rules governing conveyance of homesteads and the right of survivors in homesteads; however, tentatively it was decided that the written consent of both spouses should be required to convey or encumber the home, independent of an exemption claim, and that the designation of a probate homestead should be left to the probate court and should be unaffected by any homestead exemption as against creditors.

Property subject to homestead exemption. Any title, interest, or estate in a home should be subject to a claim of exemption. The long-term lease restriction in Civil Code Sections 1237-1238 should not be continued.

Amount of exemption. The exemption should be continued at the level set by the Legislature but should be made subject to automatic changes to reflect the changes in the value of the dollar as proposed in Section 707.200 of the draft statute.

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Schoenfeld v. Norberg--Joint tenancy homestead. The Commission considered the problem of homesteads in joint tenancy property presented in Schoenfeld v. Norberg, 11 Cal. App.3d 755, 90 Cal. Rptr. 47 (1970), and requested the staff and the consultant to submit a more detailed analysis of the effects of the various proposals when this subject is next considered.

Priority of voluntary encumbrances junior to judgment creditor's lien. If the judgment debtor has voluntarily encumbered homestead property after the attachment of a judgment lien, the exempt amount of proceeds that would otherwise be paid to the debtor should be used to satisfy such liens. This would change the rule of priority of distribution stated in Civil Code Section 1256 which requires all liens and encumbrances to be paid first.

Sale subject to senior liens. Liens on homestead property that are superior to the judgment lien should be preserved rather than paid off when the property is sold on execution.

Judgment lien subject to homestead exemption. The homestead exemption should have priority over the judgment lien to the extent of the exemption. This would abolish the rule under the Civil Code that precludes declaration of a homestead after the abstract of judgment is filed to create a judgment lien. The homestead exemption should also prevail over the judgment lien where the property is sold voluntarily or on execution. The judgment lien should not automatically continue in the property as is provided by Code of Civil Procedure Section 674(c). Further consideration will be given to the Oregon statutory scheme for determination of the amount of the excess value over the homestead exemption in order to facilitate the sale of homestead property.

Antideficiency proposal. The Commission decided against recommending that homestead property could only be sold in full satisfaction of the judgment lien.

Exemptions From Enforcement of Money Judgments

The Commission reviewed the changes in substantive exemptions and procedural provisions that would be accomplished by the adoption of the draft statute attached to Memorandum 78-70. Section 707.180 which provides for the manner of tracing exempt amounts was approved; the Comment to this section should refer to Republic Supply Co. v. Richfield Oil

Co., 79 F.2d 375, 379 (9th Cir. 1935), which discusses the rule for determining the lowest intermediate balance.

Retroactive Application of Exemptions

The rule in In re Rauer's Collection Co., 87 Cal. App.2d 248, 196 P.2d 803 (1948), to the effect that exemptions in effect at the time an obligation was incurred apply in the enforcement of that obligation, should be abolished. Exemptions in effect at the time an exemption claim is made should govern.

Redemption From Execution and Foreclosure Sales of Real Property

The Commission considered the comments received concerning the Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property which was distributed in January and made the following decisions:

Notice of levy. Notice of levy on real property should also be given to persons who have requested a notice of sale and to interest holders of record.

Interest holders entitled to notice. Draft Section 703.640(c) should be revised in the following manner:

§ 703.640. Notice of sale of real property

(c) Notice shall be mailed to all of the following:

(1) The judgment debtor.

(2) A person who has requested notice pursuant to Section 702.540.

(3) A person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Notice shall be mailed to the person at the address used by the county recorder for the return of the instrument after recording.

Manner of description of property in notice of sale. Draft Section 703.640(a) should be revised in the following manner to clarify the required types of description of property to be sold:

§ 703.640. Notice of sale of real property

703.640. (a) A notice of sale of an interest in real property shall describe the real property by giving a legal description of the property and its street address or other common designation, if any. If a legal description of the property is given, the validity of the notice is not affected by the fact that the street

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address or other common designation given is erroneous or omitted. If the property has no street address or other common designation, the notice of sale shall contain a statement that directions may be obtained from the levying officer upon oral or written request. Directions are sufficient if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road.

Recoverability of costs of advertising for sale. The staff should examine Code of Civil Procedure Section 1033.7 pertaining to recovery of costs to see if it adequately provides for recovery of the costs of the judgment creditor's advertising for sale pursuant to draft Section 703.630(h).

Period of delay of sale. In order to provide a longer time for the debtor to obtain financing to save the property, the 90-day grace period between notice of levy and notice of sale was increased to 120 days.

Credit bids. Draft Section 703.680 should be revised as follows to permit credit bids:

§ 703.680. Manner of payment

703.680. (a) Except as provided in subdivision subdivisions (b) and (c), the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The levying officer conducting the sale shall accept the amount of a bid by the judgment creditor as a credit on the judgment except that the expenses of the levying officer and the amount of preferred labor claims, exempt proceeds, and any other superior claim which is required to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the high bid is in excess of five thousand dollars (\$5,000), the high bidder may elect to treat the sale as a credit transaction by paying five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is the greater, in cash or by certified check or cashier's check, and paying the balance within 30 days from the date of the sale in cash or by certified check or cashier's check. If the high bidder fails to complete the purchase within the time allowed, the amount paid shall be applied toward the satisfaction of the judgment and any excess remaining thereafter shall be returned to the bidder.

Multilingual notices. The Judicial Council should be given discretion to draft notices under the Enforcement of Judgments Law in different languages and provide rules for their use.

Form of notices. Language should be added to the draft statute providing that notices should state the consequences in plain language including, in the context of a levy on real property, that the property

will be sold without the right to redeem and that the price obtained at an execution sale may be less than its fair market value.

STUDY D-900 - WAGE GARNISHMENT PROCEDURE

The Commission considered Memorandum 78-68 and the attached staff draft of a recommendation relating to wage garnishment procedure. The Commission also considered a letter from the California State Sheriffs' Association, a copy of which is attached hereto, relating to service by first-class mail by the levying officer and personal service by the judgment debtor.

The Commission decided to split the recommendation. An urgency bill should be introduced at the next session to (1) defer the operative date of the wage garnishment law; (2) restore the technical change in Code of Civil Procedure Section 682 that was chaptered out by Senate Bill 1564, and (3) permit service by levying officers by first-class mail and personal service by the judgment debtor, in the manner suggested in the letter from the Sheriffs' Association. The provision relating to service by the judgment debtor should be redrafted so that the substantive provision is not introduced by the clause "Nothing in this subdivision precludes"

The second part of the recommendation should be made a tentative recommendation and distributed to the debtor-creditor committee of the State Bar, poverty lawyers, levying officers, and other interested persons. The importance of saving taxpayer costs by eliminating the function of the levying officer in wage garnishments should be more adequately highlighted in the preliminary part. In this connection, the likelihood of the fees of the levying officer being increased should also be mentioned. The Commission also made the following changes in the recommended legislation:

Section 723.022. The words "by the judgment creditor" were deleted from subdivision (a)(5) so that a certified copy of the satisfaction of judgment may be served by either debtor or creditor.

Section 723.026. A provision should be added that the judgment creditor need not send receipts to the judgment debtor more frequently than monthly.

Section 723.101. Subdivision (c) should be revised so that the time of completion of different types of service is clear.

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STUDY F-300 - GUARDIANSHIP-CONSERVATORSHIP REVISION
(PRELIMINARY PORTION OF RECOMMENDATION)

The Commission considered Memorandum 78-67 and the attached staff draft of the preliminary portion of the Recommendation Relating to the Guardianship-Conservatorship Law. The material attached to the memorandum was approved for printing subject to any necessary technical or editorial revisions determined to be necessary by the staff in preparing the material for the printer. Commissioner Williams provided the staff with a copy containing his editorial suggestions for consideration in preparing the material for the printer and Commissioner Walker indicated he would be sending his editorial suggestions to the staff within the week.



California State Sheriffs' Association



CIVIL PROCEDURES COMMITTEE

Organization Founded by the Sheriffs in 1894

Refer reply to:
P.O. Box 28, San Jose
(408) 299-2450

October 30, 1978

President

DUANE H. LOWE
Sacramento County
P. O. Box 988
Sacramento, CA 95805
916-440-5092

The Honorable Alister McAlister
Assemblyman, 25th District
California Legislature
1595 East Santa Clara Avenue
San Jose, California

1st Vice President

BOB WILEY
Yuba County
County Civic Center
Yuba, CA 99278
209-731-6241

RE: AB 393 - CHAPTER 1133

Dear Sir:

2nd Vice President

AL LOUSTALOT
Butte County
P. O. Box 2208
Bakersfield, CA 95301
805-327-3392

Our Committee respectfully requests your early consideration of an urgency amendment to CCP 723.101, subdivision (c), for an effective date of July 1, 1979. This effective date is based on the presently scheduled effective date, however we understand the California Judicial Council may be asking for an extension to insure time to prepare the necessary forms and rules, which extension we favor if July 1 is too soon for them since a majority of such forms will have to be printed by levying officers who will need from 3 to 6 months lead time to do so.

Sergeant At-Arms

RICHARD F. PACILEO
Fresno County
Fair Lane Drive
Fresno, CA 95667
408-436-2211

Our suggested wording for consideration is as follows:

Secretary

LYNN S. WOOD
Santa Clara County
P. O. Box 858
Milpitas, CA 95133
408-526-6566

(c) Except as provided in subdivision (b), Service service of any notice or document under this chapter may be made in the same manner as an earnings withholding order by first class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by registered or certified mail; return receipt requested; first class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery on the employer before the employer's return has been received by the levying officer, or on the person designated in the employer's return after its receipt, and such personal delivery may be made by either the levying officer or, if the notice or document runs in the debtor's favor, by the debtor or debtor's agent who requests the levying officer's permission to do so.

Treasurer

BRAD L. GATES
Orange County
P. O. Box 4151
Santa Ana, CA 92702
714-834-3012

The Honorable Alister McAlister
October 30, 1978

This suggested amendment is intended to eliminate the costly, time consuming requirement for a levying officer to serve such post levy notices and documents by registered or certified mail, return receipt requested. Substituted is the use of less costly and simpler first class mail, postage prepaid, or personal delivery by the levying officer or, under appropriate circumstances, the debtor or debtor's agent. These proposed changes conform to present, very long standing practices, which have been both cost and goal effective, with any problems being infinitesimal.

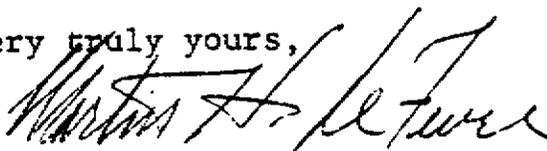
Added costs to the taxpayer under the present wording have a significant potential. First class mail costs only 15¢, while even certified mail with return receipt is nine times more at \$1.40, with registered mail with return receipt being more still at \$3.60. Clerical time to prepare certified or registered and return receipt documentation, maintain and process control procedures, and distribute and process return receipts is obviously far more time consuming and costly. Providing for the debtor or debtor's agent to make a personal delivery, under the proper circumstances, saves levying officer time and cost and speeds up the delivery and effect of the notice or document, this being a common, effective procedure followed now for many years.

The required use of registered or certified mail will work to the detriment of some debtors, particularly since such notification usually will involve a stay, reduction in amount to satisfy, or release of the levy. Experience tells us some employers will refuse this kind of mail, thereby creating at least a 15-day delay before a levying officer would even attempt a personal delivery, during which time the employer would continue to withhold the debtor's earnings.

Although we believe the initial levy service of an earnings withholding order by the use of registered or certified mail with receipt is beneficial and appropriate, its use to give subsequent notification is not and in fact creates added costs and problems for all concerned. The long standing, effective procedures are less costly, more effective, and should be allowed to continue.

We will greatly appreciate your early consideration of this request, and you or members of your staff may contact me for any assistance I can give you.

Very truly yours,



MARTIN H. LEFEVRE, Sheriff's Captain
County of Santa Clara
Vice-Chairman of Committee

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STUDY K-100 - EVIDENCE OF MARKET VALUE

The Commission considered Memorandum 78-66 and the attached staff draft of the tentative recommendation relating to application of Evidence Code property valuation rules in noncondemnation cases. The Commission approved the staff draft for distribution for comment by appropriate committees of the State Bar and other interested persons. A copy should be sent to Judge Marvin Freeman of the Los Angeles Superior Court.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary