

Second Supplement to Memorandum 91-50

Subject: Study D-1001 - Miscellaneous Creditors' Remedies Matters
(Revised Staff Draft)

The draft statute attached to Memorandum 91-50 has been reviewed by the California State Sheriffs' Association Civil Procedures Subcommittee. (See letter from Lt. Anthony J. Pisciotta of the San Francisco Sheriff's Department in Exhibit 1.) The Sheriffs' Association is not enamored with the proposal to require periodic returns during the life of a wage garnishment (every 180 days under the first staff draft). Nor does the Sheriffs' Association want to be responsible for recalculating the amount due, taking daily interest and partial satisfactions into account, and inform the employer of the adjusted amount. The Sheriffs' Association likes the proposal concerning dormant earnings withholding orders, but prefers that the employer have the duty to inform the levying officer when the withholding period terminates.

The staff has prepared a revised draft statute in an effort to deal with the concerns of the levying officers, as well as the concerns of the California Association of Collectors (CAC) (see Exhibit 1 attached to the First Supplement to Memorandum 91-50). There is a definite need to repair the statute, but if a solution cannot be found that is acceptable to the levying officers and the sponsors of the 1989 legislation that repealed the 90-day wage garnishment period (CAC), then the staff would reluctantly recommend dropping the matter. It is worth the effort, however, to consider the revised draft attached to this supplement. If the Commission approves this draft, subject to any needed revisions, we could distribute it as a tentative recommendation after the September meeting.

Full Satisfaction

As discussed in Memorandum 91-50, a major purpose of the draft statute is to achieve full satisfaction of judgments, without small

amounts of uncollected interest cluttering the process. Read literally, there is no possible way to get a full satisfaction under the Wage Garnishment Law because the earnings withholding order reflects the amount due when the order is issued and does not include interest accruing thereafter or additional statutory costs. While Code of Civil Procedure Section 706.028 provides for issuance of an order covering costs and interest, it does not deal with additional costs and interest accruing after issuance of that order.

The revised draft statute proposes a new approach. In a case where the first earnings withholding order has been fully satisfied for the amount on its face, a second order for accrued interest and costs added to the judgment may be issued. If this order is satisfied, the judgment is deemed fully satisfied and any additional interest and costs are disregarded (other than the levying officer's "disbursement" fee under Government Code Section 26746). In other words, interest would cease to accrue on the amount due under the earnings withholding order. However, if the order is not satisfied, the normal rules would apply, and the creditor could enforce the judgment in the full amount, including later accruing interest and costs added to the judgment, by any available means, such as another wage garnishment, levy and sale, etc.

This proposal eliminates the need for levying officers to determine interest or to add costs to the order and communicate with the employer. The creditor is not inconvenienced, since the bulk of interest and costs added before issuance of the second order would be collectible. At some point, the trouble and expense of obtaining a new writ of execution and another earnings withholding order outweigh the benefit of collecting the small amount of interest remaining unsatisfied. That point is reached when the face amount of the second earnings withholding order for interest and costs is satisfied.

Return

The writ return process serves an important function of keeping court records reasonably up to date -- or it is supposed to do so. However, if earnings withholding orders are outstanding for many years, this purpose is frustrated. There is no check on a sloppy or unethical

creditor who gets a new writ of execution issued that does not reflect the amount of collections under the wage garnishment. The staff firmly believes that the statute should provide a practical system for a reasonably accurate official record of amounts collected, and of costs added and interest accrued. At a minimum, the statute should not encourage abuse. There needs to be some sort of periodic reporting of amounts collected by levying officers.

Normally, the outside limit on the duration of an active writ of execution is two years. Code Civ. Proc. § 699.560(a)(1). Longer periods are contemplated in levies on a debtor's interest in personal property in a decedent's estate and a support debtor's pension benefits. See Code Civ. Proc. § 700.200(e); Civil Code § 4383. It should not be too burdensome for levying officers to make a return on the writ at least once every two years, reporting on amounts received and paid over to the creditor. The staff proposes that this two-year reporting scheme be substituted for the six-month rule in the earlier draft. See Section 706.026.

Duration of Earnings Withholding Order

The Sheriffs' Association letter recommends no change in Code of Civil Procedure Section 706.022(a)(1) providing that withholding is to continue until the employer has withheld the "full amount specified in the order." The meaning of the quoted language is not as clear today as it once was. The Judicial Council form of the earnings withholding order (copy attached as Exhibit 2) tells the employer to:

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. [Emphasis added.]

Note that this form contemplates a notice of amounts to be withheld in addition to the "total amount due." This reflects the five dollar "disbursement fee" in Government Code Section 26746, which the levying officer collects "from the judgment debtor in addition to, and in the same manner as, the moneys collected under the writ." The correct procedure in the case of an earnings withholding order, where the amount that may be withheld from earnings is controlled by federal law,

would be to total the disbursement fees and notify the employer to withhold that total only after the amount due on the face of the order has been withheld. The levying officer has already received the disbursement fees, since these fees are deducted from the amount paid over to the judgment creditor. It is not appropriate for the employer to anticipate the disbursement fee and increase the amount of the withheld earnings by five dollars.

Considered in light of the language of the Judicial Council form, the staff proposal to permit (but not require) the levying officer to adjust the amount due to take account of interest and costs seems highly beneficial. It is the single best way to achieve a full satisfaction of the judgment using only one earnings withholding order. Providing this approach as an option would also validate the existing practice of some levying officers.

Duty to Determine Dormant EWO

As noted above, the Sheriffs' Association would prefer that the employer have the duty to determine that an earnings withholding order has been dormant for 180 days and notify the levying officer, rather than the levying officer notifying the employer. The staff originally proposed placing the duty on the levying officers since they are ostensibly responsible for managing the garnishment. However, the Sheriffs' Association has a point that the employer is in a better position to notice that the withholding order has been dormant for the requisite time period. This follows where a general earnings withholding order has been superseded by an order with higher priority (for taxes or support), but not necessarily where the debtor has left employment. Still, since the employer is under a duty to recommence withholding if the debtor is rehired while the order is in effect, the employer would seem to be in a better position to monitor the 180-day dormancy period. We are reluctant to impose additional duties on the employer, but in this case, it is for the employer's benefit since, under the draft statute, the employer's duty to withhold would cease after 180 days of dormancy. Accordingly, the staff has revised the statute to shift this responsibility to employers. (See draft Section 706.032.)

Other Matters

The other issues as discussed in Memorandum 91-50 remain applicable to the draft attached to this supplement. In connection with the solicitation of comments on the Commission's review of debtors' exemptions, a copy of Judicial Council Form EJ-155 is attached as Exhibit 3.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



AUG 23 1991

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California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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* * *

Sue Muncy
Executive Director

August 21, 1991

Mr. Stan Ulrich
Staff Counsel
California Law Revisions Commission
400 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Ulrich,

I write to you on behalf of the California State Sheriffs' Association Civil Procedures Subcommittee to respond to your proposed revision draft of the wage garnishment law dealing with existing procedural problems.

The Subcommittee would like to comment on specific areas of the draft where we feel an amendment or revision is necessary, to clear up some technical problems.

1. Duration of Earnings Withholding Order

Recommend no change to 706.022 CCP with the withholding period continuing until the earliest of the following:

- 1) The date the employer has withheld the full amount specified in the order.
- 2) The date of termination specified in a court order served on the employer.
- 3) The date of termination specified in a notice of termination served on the employer by the levying officer.

Recommend creditor relevy for costs and interest pursuant to 706.028 CCP. Amend this section so interest ceases to accrue after date of service of the relevy withholding order.

2. Writ Return to Court

Recommend to allow levying officer to retain writ until amount specified in order is collected in addition to the levying officer's assessment fees. Amend 699.560 CCP.

If the levying officer must return the writ after 2 years from the date of issuance, amend 699.560 CCP to allow the continued collection of the withholding order. When the total amount is collected, or the withholding is terminated by the creditor, the levying officer would send a supplemental return to the court.

3. Termination of Employee or Interruption of Earnings Withholding Order by one of higher priority 706.032 CCP (added)

We agree with the 180 day time period for both termination or an interrupted order, but feel the employer should notify the levying officer when the withholding period terminates.

Recommend the employer's instruction of the withholding order be amended to state "earnings withholding orders terminate 180 days from the termination date of the employee or 180 days after receipt of a continuing intervening order".

The subcommittee opposes any revision that would require the levying officer to calculate accruing interest for creditors. Additionally, the subcommittee sees no purpose in a procedure requiring periodic supplemental returns, while the withholding order continues. The only time a return to the court should be required is when the writ is returned to court and the withholding terminates.

If you should have any questions regarding this response or wish to discuss the issues further, please give me a call.

Sincerely,



ANTHONY J. PISCIOTTA, Lieutenant
Chairman, Civil Procedures Subcommittee
California State Sheriffs' Association
Room 333, City Hall
San Francisco, CA 94102

cc: Sheriff Charles C. Plummer, Court Services Committee Chairman
Sue Muncy, Executive Director, CSSA
Civil Procedures Subcommittee

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	LEVYING OFFICER (Name and Address):
ATTORNEY FOR (Name):		
NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:		
PLAINTIFF: DEFENDANT:		
EARNINGS WITHHOLDING ORDER (Wage Garnishment)	LEVYING OFFICER FILE NO.:	COURT CASE NO.:

EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.

EMPLOYER: Enter the following date to assist your record keeping.
 Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

<p>Name and address of employer</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>		<p>Name and address of employee</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>
		<p>Social Security Number (if known):</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the levying officer (name and address above).
 If the employee works for you now, you must give the employee a copy of this order and the Employee Instructions within 10 days after receiving this order.
 Complete both copies of the form Employer's Return and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: \$ _____
 Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, do not withhold earnings payable for that pay period. Do withhold from earnings that are payable for any pay period ending on or after that tenth day.
 Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on _____ (date):
 The judgment creditor (if different from the plaintiff) is _____ (name):

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date: _____

..... (TYPE OR PRINT NAME) _____ (SIGNATURE)

LEVYING OFFICER REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

**EMPLOYER'S INSTRUCTIONS
EARNINGS WITHHOLDING ORDERS**

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the withholding period.

The withholding period is the period covered by the Earnings Withholding Order (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus the levying officer assessment, is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the EMPLOYER'S RETURN) is received.

You are entitled to rely on and should obey all written notices signed by the levying officer.

The form Employer's Return describes several situations that could affect the withholding period for this order. If you receive more than one Earnings Withholding Order during a withholding period, review that form (Employer's Return) for instructions.

Your duty to withhold does not end if the employee no longer works for you, for any reason; if the employee returns to work during the withholding period, the withholding must be resumed.

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within ten (10) days after the close of the pay period.

Be sure to mark each check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows **HOW MUCH TO WITHHOLD** when the federal minimum wage is \$3.80 per hour. When the **FEDERAL** minimum wage changes on April 1, 1991, the levying officer will provide a chart showing the new withholding rates.

FEDERAL MINIMUM WAGE: \$3.80 per hour (April 1, 1990-April 1, 1991)

PAY PERIOD	Daily	Weekly	Every Two Weeks	Twice a Month	Monthly
DISPOSABLE EARNINGS	\$0-\$114.00	\$0-\$114.00	\$0-\$228.00	\$0-\$247.00	\$0-\$494.00
WITHHOLD	None	None	None	None	None
DISPOSABLE EARNINGS	\$114.01-\$152.00	\$114.01-\$152.00	\$228.00-\$304.00	\$247.01-\$329.33	\$494.01-\$658.67
WITHHOLD	Amount above \$114.00	Amount above \$114.00	Amount above \$228.00	Amount above \$247.00	Amount above \$494.00
DISPOSABLE EARNINGS	\$152.01 or More	\$152.01 or More	\$304.01 or More	\$329.34 or More	\$658.68 or More
WITHHOLD	Maximum of 25% of Disposable Earnings				

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money, (whether called wages, salary, commissions, bonuses or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of \$400 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or \$100.

The chart below is based on the minimum wage which was effective April 1, 1990. It will change if the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to an Order Assigning Salary or Wages, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

- IMPORTANT WARNINGS -

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF EARNINGS WITHHOLDING ORDERS FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment) the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN EARNINGS WITHHOLDING ORDER BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE EARNINGS WITHHOLDING ORDER TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the laws that apply to this case.

IF YOU VIOLATE ANY OF THESE LAWS, YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

The following is a list of assets that may be exempt from levy.

Exemptions are found in the United States Code (USC) and in the California codes, primarily in the Code of Civil Procedure (CCP).

Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some are not available after a certain period of time. You or your attorney should read the statutes.

If you believe the assets that are being levied on are exempt, file a claim of exemption, which you can get from the levying officer.

Type of Property	Code and Section	Type of Property	Code and Section
<i>Accounts (See Deposit Accounts)</i>		Benefit Payments (cont.)	
Appliances	CCP § 704.020	Relocation Benefits	CCP § 704.180
Art and Heirlooms	CCP § 704.040	Retirement Benefits and Contributions—	
Automobiles	CCP § 704.010	Private	CCP § 704.115
BART District Benefits	CCP § 704.110	Public	CCP § 704.110
	Pub Util C § 28890	Segregated Benefit Funds	Ins C § 10498.5
Benefit Payments:		Social Security Benefits	42 USC § 407
BART District Benefits	CCP § 704.110	Strike Benefits	CCP § 704.120
	Pub Util C § 28896	Transit District Retirement Benefits (Alameda & Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Charity	CCP § 704.170	Unemployment Benefits and Contributions	CCP § 704.120
Civil Service Retirement Benefits (Federal)	5 USC § 8346	Veterans Benefits	38 USC § 3101
County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452	Veterans Medal of Honor Benefits	38 USC § 562
Disability Insurance Benefits	CCP § 704.130	Welfare Payments	CCP § 704.170 Welf & I C § 17409
Fire Service Retirement Benefits	CCP § 704.110 Govt C § 32210	Workers Compensation	CCP § 704.160
Fraternal Organization Funds Benefits	CCP § 704.130	Boats	CCP § 704.060
Health Insurance Benefits	CCP § 704.170		CCP § 704.710
Irrigation System Retirement Benefits	CCP § 704.130	Books	CCP § 704.060
Judges Survivors Benefits (Federal)	CCP § 704.110	Building Materials (Residential)	CCP § 704.030
Legislators Retirement Benefits	28 USC § 376(n)	Business:	
Life Insurance Benefits—		Licenses	CCP § 695.060 CCP § 699.720(a)(1) CCP § 704.060
Group	CCP § 704.110	Tools of Trade	CCP § 704.060
Individual	CCP § 704.100	Cars and Trucks (including proceeds)	CCP § 704.010
Lighthouse Keepers Widows Benefits	33 USC § 775	Cash	CCP § 704.070
Longshore & Harbor Workers Compensation or Benefits	33 USC § 916	Cemeteries	
Military Benefits—		Land Proceeds	Health & S § 7925
Retirement	10 USC § 1440	Plots	CCP § 704.200
Survivors	10 USC § 1450	Charity	CCP § 704.170
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337	Claims, Actions & Awards:	
Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913	Personal Injury	CCP § 704.140
Pension Plans (and Death Benefits)—		Worker's Compensation	CCP § 704.160
Private	CCP § 704.115	Wrongful Death	CCP § 704.150
Public	CCP § 704.110	Clothing	CCP § 704.020
Public Assistance	CCP § 704.170 Welf & I C § 17409	Condemnation Proceeds	CCP § 704.720(b)
Public Employees—		County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452 Fin C § 14864
Death Benefits	CCP § 704.110	Credit Union Shares	
Pension	CCP § 704.110	Damages (See Personal Injury and Wrongful Death)	
Retirement Benefits	CCP § 704.110	Deposit Accounts:	
Vacation Credits	CCP § 704.113	Escrow or Trust Funds	Fin C § 17410
Railroad Retirement Benefits	45 USC § 2281	Social Security Direct Deposits	CCP § 704.080
Railroad Unemployment Insurance	45 USC § 352(e)	Direct Deposit Account —	
		Social Security	CCP § 704.080
		Disability Insurance Benefits	CCP § 704.130
		Dwelling House	CCP § 704.740
		Earnings	CCP § 704.070 CCP § 706.050 15 USC § 1673(a)
		Educational Grant	Ed C § 21116

(Continued on reverse)

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS
(Continued)

<u>Type of Property</u>	<u>Code and Section</u>	<u>Type of Property</u>	<u>Code and Section</u>
Employment Bonds	Lab C § 404	Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913
Financial Assistance:		Personal Effects	CCP § 704.020
Charity	CCP § 704.170	Personal Injury Actions or Damages	CCP § 704.140
Public Assistance	CCP § 704.170 Welf & I C § 17409	Pension Plans:	
Student Aid	CCP § 704.190	Private	CCP § 704.115
Welfare (See Public Assistance)		Public	CCP § 704.110
Fire Service Retirement	CCP § 704.110 Govt C § 32210	Prisoner's Funds	CCP § 704.090
Fraternal Organizations Funds and Benefits	CCP § 704.130 CCP § 704.170	Property Not Subject to Enforcement of Money Judgments	CCP § 704.210
Fuel for Residence	CCP § 704.020	Prosthetic & Orthopedic Devices	CCP § 704.050
Furniture	CCP § 704.020	Provisions (for Residence)	CCP § 704.090
General Assignment for Benefit of Creditors	CCP § 1801	Public Assistance	CCP § 704.170 Welf & I C § 17409
Health Aids	CCP § 704.050	Public Employees:	
Health Insurance Benefits	CCP § 704.130	Death Benefits	CCP § 704.110
Home:		Pension	CCP § 704.110
Building Materials	CCP § 704.030	Retirement Benefits	CCP § 704.110
Dwelling House	CCP § 704.740	Vacation Credits	CCP § 704.113
Homestead	CCP § 704.720 CCP § 704.730	Railroad Retirement Benefits	45 USC § 2281
Housetrailer	CCP § 704.710	Railroad Unemployment Insurance	45 USC § 352(e)
Mobilehome	CCP § 704.710	Relocation Benefits	CCP § 704.180
Homestead	CCP § 704.720 CCP § 704.730	Retirement Benefits & Contributions—	
Household Furnishings	CCP § 704.020	Private	CCP § 704.115
Irrigation System		Public	CCP § 704.110 Ins C § 10498.5
Retirement Benefits	CCP § 704.110	Segregated Benefit Funds	Ins C § 10498.6
Insurance:		Social Security	42 USC § 407
Disability Insurance	CCP § 704.130	Social Security	
Fraternal Benefit Society	CCP § 704.110	Direct Deposit Account	CCP § 704.060
Group Life	CCP § 704.100	Soldiers & Sailors Property	50 USC § 523(b)
Health Insurance Benefits	CCP § 704.130	Strike Benefits	CCP § 704.120
Individual	CCP § 704.100	Student Aid	CCP § 704.190
Insurance Proceeds —		Tools of Trade	CCP § 704.060
Motor Vehicle	CCP § 704.010	Transit District Retirement Benefits (Alameda & Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Jewelry	CCP § 704.040	Travelers Check Sales Proceeds	Fin C § 1875
Judges Survivors Benefits (Federal)	28 USC § 376(n)	Unemployment Benefits & Contributions	CCP § 704.120
Legislators Retirement Benefits	CCP § 704.110 Govt C § 9359.3	Uniforms	CCP § 704.060
Licenses	CCP § 695.060 CCP § 720(a)(1)	Vacation Credits (Public Employees)	CCP § 704.113
Lighthouse Keepers Widows Benefits	33 USC § 775	Veterans Benefits	38 USC § 3101
Longshore & Harbor Workers Compensation or Benefits	33 USC § 916	Veterans Medal of Honor Benefits	38 USC § 562
Military Benefits:		Wages	CCP § 704.070 CCP § 706.050 CCP § 706.051
Retirement	10 USC § 1440	Welfare Payments	CCP § 704.170 Welf & I C § 17409
Survivors	10 USC § 1450	Workers Compensation Claims or Awards	CCP § 704.160
Military Personnel — Property	50 USC § 523(b)	Wrongful Death Actions or Damages	CCP § 704.150
Motor Vehicle (including proceeds)	CCP § 704.010 CCP § 704.060		
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337		

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su896
08/30/91

MISCELLANEOUS CREDITORS' REMEDIES REVISIONS

WAGE GARNISHMENT

Background

The Wage Garnishment Law (now Code Civ. Proc. §§ 706.010-706.154) was enacted on Commission recommendation in 1978.¹ As enacted, this statute provided for a continuing levy on a debtor's earnings for a period of 90 days, starting 10 days after service and concluding 100 days after service. The judgment creditor was not permitted to relevy on the debtor's earnings for a 10-day period following the conclusion of the 100-day period.

In 1989 the 90-day withholding period was repealed,² with the result that a wage garnishment may continue as long as the underlying judgment is enforceable.³ Repeal of the 90-day withholding period reduced paperwork for levying officers, court clerks, and judgment creditors, and eliminated the expense of obtaining and levying new earnings withholding orders and writs of execution. Tracking a single

1. 1978 Cal. Stat. ch. 1133, § 7 (enacting Code Civ. Proc. § 723.010 *et seq.*); renumbered as Code Civ. Proc. § 706.010 *et seq.*, as part of the Enforcement of Judgments Law, 1982 Cal. Stat. ch. 1364, § 2). For recommendations relating to wage garnishment, see 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601, 1703 (1976); 15 Cal. L. Revision Comm'n Reports 2001 (1980); 16 Cal. L. Revision Comm'n Reports 1001 (1980); 17 Cal. L. Revision Comm'n Reports 975 (1980).

2. 1989 Cal. Stat. ch. 263, § 1.

3. A money judgment (other than an installment judgment) becomes unenforceable 10 years after entry unless renewed within that time, and all enforcement procedures cease when the judgment becomes unenforceable. See Code Civ. Proc. §§ 683.020, 683.110. If a judgment is renewed, existing liens may be extended and existing enforcement proceedings commenced pursuant to a writ or order may be continued. See Code Civ. Proc. §§ 683.190, 683.200.

continuing levy is more convenient for employers than complying with a series of 90-day withholding periods separated by 10-day grace periods. For debtors, the new scheme saves expenses for which they are ultimately liable and perhaps avoids the danger of being fired for repeated wage garnishments.⁴

However, since the 90-day withholding period was part of a detailed statutory scheme, its repeal resulted in a number of gaps and inconsistencies in the Wage Garnishment Law. In this recommendation, the Commission proposes a number of revisions of the Wage Garnishment Law to resolve these technical problems. The Commission has not reexamined the policy behind the 1989 legislation.

Return Procedures

The Enforcement of Judgments Law was drafted on the assumption that wage garnishment activity by a general creditor will have concluded by the time the writ of execution needs to be returned to the court. A writ of execution is required to be returned two years after issuance or, if no levy is made within the first 180 days, promptly after 180 days from issuance.⁵ A levy, including service of an earnings withholding order, may be made under a writ only during its first 180 days. These rules are intended to ensure that enforcement papers are relatively current so that they will reflect the correct amount owing on the judgment, taking into account partial satisfactions as well as costs and interest added to the judgment.

The proposed law would (1) continue the important rule concerning the return of writs of execution, but provide for a "supplemental return" at the time the earnings withholding order terminates, and (2) since the order may terminate long after the writ is returned, require the levying officer to account to the court at least biennially so that court records will be periodically updated.

4. It is illegal to fire an employee for garnishments on one judgment. Labor Code § 2929(b).

5. Code Civ. Proc. § 699.560.

Costs, Interest, and Fees

The amount of an earnings withholding order is based on the amount of the writ of execution, and includes costs and interest added to the judgment, daily interest between the date of issuance of the writ and the date of issuance of the earnings withholding order, and specified levying officer fees that are controlled by statute.⁶ There is a problem in fully satisfying a judgment by wage garnishment under existing law since costs and interest continue to accrue after issuance of the order. This problem is magnified as the life of the earnings withholding order is extended for there is no explicit authority for adjusting the amount stated on the order to reflect interest, costs, or fees after issuance of the order.⁷

It is in the interest of both debtors and creditors to get a full satisfaction where feasible. The proposed statute provides two methods for obtaining full satisfaction. Both procedures adopt a new rule that cuts off the right to interest and additional costs when the judgment is near full satisfaction. This rule is similar to the general rule that terminates the right to interest on the date of levy where the proceeds of the collection are sufficient to fully satisfy the amount due on that date.⁸

First, the levying officer is permitted, in the officer's discretion, to adjust the amount due on the earnings withholding order by deducting partial satisfactions and adding accrued interest, costs added to the judgment, and statutory fees accruing after issuance of the order. The officer would give notice by first-class mail to the employer to withhold the additional amount and, when that amount is paid, the judgment would be satisfied.

6. See Code Civ. Proc. §§ 706.121(e), 706.125(e); Gov't Code §§ 26746 (levying officer's disbursement fee), 26750 (fee for performing duties under Wage Garnishment Law).

7. But see Judicial Council Form for "Earnings Withholding Order" (June 13, 1990), which provides that the "levying officer will notify [the employer] of an assessment you should withhold in addition to the amount due," implementing Gov't Code § 26746 (disbursement fee).

8. See Code Civ. Proc. § 685.030 (cessation of interest).

Second, where the first earnings withholding order is returned and costs and interest remain due, the judgment creditor would be able to obtain a "final earnings withholding order for costs and interest." If such a final order is satisfied, the judgment would be satisfied.

Dormant and Suspended Earnings Withholding Orders

If an employee whose wages are subject to garnishment leaves employment, the earnings withholding order remains in effect and will reattach to the employee's earnings if the debtor is reemployed during the withholding period.⁹ A similar difficulty can occur where an earnings withholding order is in effect and another order with priority, such as for support or taxes, is served on the employer. In this situation, the first order waits in line indefinitely until the order with higher priority is satisfied, and then revives.¹⁰

Dormancy and suspension of general earnings withholding orders did not present any special problems when the withholding period was limited to 90 days. But now that the withholding period runs indefinitely, the reattachment feature can place unrealistic burdens on the filing systems of levying officers and employers.

It is useful to provide a limited period during which an earnings withholding order may lie dormant. The debtor may have been temporarily laid off or may be a seasonal worker. In such situations it is more efficient to keep the existing order on file than return it and incur the delay and expense of obtaining a new writ and order. Similarly, in some cases a supervening order may be satisfied or removed within a short time. For example, if the supervening garnishment is a tax order for a limited amount, it makes sense to suspend the first order for a while until the supervening order can be satisfied. But if the supervening order is for a large amount or is for a continuing support obligation that consumes all withholdable

9. See Code Civ. Proc. § 706.022 & Comment. An earnings withholding order for support, which otherwise is open-ended, terminates one year after the debtor's employment terminates. See Section 706.030(b)(1).

10. See Section 706.022 & Comment.

earnings, it makes no sense to keep the first order on file indefinitely.

The proposed statute would terminate an earnings withholding order to collect a general money judgment where no amounts have been withheld under the order for a continuous period of 180 days.¹¹ This limit would apply regardless of the reason for the noncollection, and thus would apply both to dormancy where the debtor has left employment and to subordination to other orders.

Ten-Day Moratorium Between Garnishments

The 10-day moratorium between garnishments by the same creditor¹² has no purpose in a statute permitting unlimited continuing garnishments. Accordingly, the proposed statute eliminates this rule.

INTERROGATORIES TO JUDGMENT DEBTOR

The Enforcement of Judgments Law permits a judgment creditor to propound written interrogatories to the judgment debtor.¹³ The general discovery statute has been revised to provide a 35-interrogatory limit on specially prepared interrogatories in an action.¹⁴

The Commission is informed that this limitation has been applied to limit the cumulative number of judgment creditor interrogatories to judgment debtors. This application of the general discovery statute unduly limits the interrogatory remedy. The interrogatory remedy under

11. This time period is approximately half the suspense period applicable to earnings withholding orders for support where the debtor has left employment. See Code Civ. Proc. § 706.030(b)(1). The longer period is appropriate in the case of support orders on the ground of public policy.

12. See Code Civ. Proc. § 706.107. The 10-day delay at the start of withholding is retained, since this delay is needed for the convenience of employers. See Code Civ. Proc. § 706.022(a).

13. Code Civ. Proc. § 708.020.

14. Code Civ. Proc. § 2030(c).

the Enforcement of Judgments Law is already limited to one set of interrogatories every 120 days. The Commission recommends an amendment to make clear that the 35-interrogatory limit applies to the set of interrogatories propounded to a judgment debtor in each round and is not applied cumulatively.

REVIEW OF DEBTORS' EXEMPTIONS

The Commission is mandated by statute to review amounts exempt from enforcement of money judgments and report to the Governor and the Legislature before July 1, 1993.¹⁵ As part of this process, the Commission solicits suggestions from interested persons concerning any needed revisions in exemption statutes.¹⁶ Suggestions should be sent to the Commission:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

After its independent review and consideration of any suggestions for reform, the Commission will report any recommended revisions in exempt amounts.

15. See Code Civ. Proc. § 703.120 (Commission to review and report on exemptions every 10 years from the operative date of Enforcement of Judgments Law (July 1, 1983)).

16. The major body of debtors' exemptions is set out in Code of Civil Procedure Sections 704.010-704.850. For a comprehensive list of exemption statutes applicable in California, see Judicial Council Form EJ-155.

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RECOMMENDED LEGISLATION

OUTLINE

Code of Civil Procedure:

- § 685.030 (amended). Cessation of interest
- § 685.050 (amended). Costs and interest under writ
- § 685.090 (amended). Addition of costs to judgment
- § 699.560 (amended). Return of writ of execution
- § 706.022 (amended). Duty to withhold earnings
- § 706.024 (added). Amount required to satisfy earnings withholding order
- § 706.026 (amended). Receipt, account, and disbursement by levying officer
- § 706.028 (repealed). Subsequent earnings withholding order for costs and interest
- § 706.028 (added). Final earnings withholding order for costs and interest
- § 706.030 (technical amendment). Withholding order for support
- § 706.032 (added). Termination of dormant or suspended order
- § 706.033 (added). Supplemental return on writ
- § 706.107 (repealed). Service of additional order by same judgment creditor
- § 706.121 (amended). Application for issuance of earnings withholding order
- § 706.125 (amended). Contents of earnings withholding order
- § 708.020 (amended). Written interrogatories to judgment debtor

Code Civ. Proc. § 685.030 (amended). Cessation of interest

SEC. . Section 685.030 of the Code of Civil Procedure is amended to read:

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.

~~(2)~~ (3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

Comment. Subdivision (a) of Section 685.030 is amended to recognize the special rule applicable to cessation of interest with regard to collections by wage garnishment. See Sections 706.024 (amount required to satisfy earnings withholding order), 706.028 (final earnings withholding order for costs and interest).

Code Civ. Proc. § 685.050 (amended). Costs and interest under writ

SEC. . Section 685.050 of the Code of Civil Procedure is amended to read:

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

(1) The statutory fee for issuance of the writ.

(2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

(1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ. If amounts collected periodically do not fully satisfy the money judgment, the levying officer may, in the officer's discretion, adjust the amount of daily interest to reflect the partial satisfactions, and make later collections by reference to the adjusted amount of daily interest.

(3) Determine the collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

Comment. Subdivision (b) of Section 685.050 is amended to permit recomputation of the amount of daily interest accruing on a money judgment in the case of partial satisfactions, in the discretion of the levying officer. See also Sections 685.010 (rate of interest on judgments), 685.030 (cessation of interest). The levying officer may condition recomputation on receiving adequate instructions from the judgment creditor. See Section 687.010. The benefit of recomputing the amount of daily interest is evident in the case of a continuing levy under an earnings withholding order. See Section 706.024 (amount required to satisfy earnings withholding order). The purpose of recomputation is to permit the full satisfaction of a money judgment during the course of a continuing levy, without the need to seek issuance of a new writ of execution or final earnings withholding order for costs and interest. See Section 685.030(a)(2), (c) (interest ceases to accrue on amount of partial satisfaction when amount received by levying officer); see also Sections 706.024(c) (cessation of interest on earnings withholding order), 706.028 (cessation of interest on final earnings withholding order for costs and interest). Recomputation also avoids the potential of collecting an excessive amount, which would occur if the full amount of daily interest noted on the writ of execution were collected without adjustment for partial satisfactions.

Code Civ. Proc. § 685.090 (amended). Addition of costs to judgment

SEC. . Section 685.090 of the Code of Civil Procedure is amended to read:

685.090. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

(c) If a writ or earnings withholding order is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of such costs to the amount to be collected pursuant to the writ or earnings withholding order if the levying officer receives either of the following before the writ or earnings withholding order is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

Comment. Subdivision (c) of Section 685.090 is amended to authorize the addition of costs to a judgment in a case where collection is being made under an earnings withholding order. See Sections 706.010-706.154 (Wage Garnishment Law). The procedure under subdivision (c) may be applied where the writ of execution has been returned pursuant to Section 699.560 and collection continues under the earnings withholding order as permitted by Section 706.022. In this situation, costs may be added to the amount to be collected under the earnings withholding order without the need to obtain another writ of execution.

Code Civ. Proc. § 699.560 (amended). Return of writ of execution

SEC. . Section 699.560 of the Code of Civil Procedure is amended to read:

699.560. (a) Except as provided in subdivisions (b) and (c), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

(1) Two years from the date of issuance of the writ.

(2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.

(5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

(c) If a levy has been made under Section 4383 of the Civil Code on the judgment debtor's right to the payment of benefits from an employee pension benefit plan, the writ shall be returned within the time prescribed in that section.

(d) If a levy has been made under the Wage Garnishment Law, Chapter 5 (commencing with Section 706.010) and the earnings withholding order remains in effect, the writ of execution shall be returned as provided in subdivision (a) and a supplemental return shall be made as provided in Section 706.033.

Comment. Subdivision (d) is added to Section 699.560 to recognize the special rule concerning returns where an earnings withholding order continues in force after the writ of execution is required to be returned.

Code Civ. Proc. § 706.022 (amended). Duty to withhold earnings

SEC. . Section 706.022 of the Code of Civil Procedure is amended to read:

706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The date the employer has withheld the full amount specified in required to satisfy the order.

(2) The date of termination specified in a court order served on the employer.

(3) The date of termination specified in a notice of termination served on the employer by the levying officer.

(4) The date of termination of a dormant or suspended earnings withholding order as determined pursuant to Section 706.032.

(b) Except as otherwise provided by statute, an employer shall

withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of the employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (2) or (3) of subdivision (a).

Comment. Subdivision (a)(1) of Section 706.022 is amended for conformity with Section 706.024 (amount required to satisfy earnings withholding order).

The remainder of this Comment is drawn from the Comment to Section 706.023 as enacted, with revisions to reflect the amendment of this section in 1989. See 1982 Cal. Stat. ch. 1364, § 2; 1989 Cal. Stat. ch. 263, § 1.

Section 706.022 states the basic rules governing the employer's duty to withhold pursuant to an earnings withholding order.

Subdivision (b) requires the employer to withhold from all earnings of an employee payable for any pay period of such employee which ends during the "withholding period." The "withholding period" is described in subdivision (a). It should be noted that *only* earnings for a pay period ending during the withholding period are subject to levy. Earnings for prior periods, even though still in the possession of the employer, are not subject to the order. An employer may not, however, defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the satisfaction of a judgment pursuant to this chapter. See Section 706.153.

Under subdivision (a), the withholding period generally commences 10 calendar days (not working or business days) after service of an earnings withholding order is completed. See Section 706.101 (when service completed). For example, if an order is served on Friday, the withholding period would commence on the second following Monday. See Section 12 (computation of time). The 10-day delay affords the employer time to process the order within its organization, i.e., deliver the order to the employer's bookkeeper, make bookkeeping adjustments, and so on.

The introductory clause to subdivision (b) recognizes certain exceptions to the general rule stated in subdivision (b). An employer is not generally required to withhold pursuant to two orders at the same time, except in special cases involving withholding orders for support or taxes. Thus, an ordinary earnings withholding order served when an earlier order is in place will not be given effect. See Section 706.023 (priority of orders) & Comment. See also Section 706.104(a) (no withholding if debtor not employed and no earnings due).

The withholding period does not end until the first of the events described in paragraphs (1) through (4) of subdivision (a) occurs. The employer has a *continuing* duty to withhold during the withholding period. See also Section 706.032 (termination of dormant or suspended order).

Paragraph (1) requires the employer to stop withholding when the full amount required to be satisfy the earnings withholding order has been withheld. See Section 706.024 (amount required to satisfy order).

Paragraph (2) reflects the fact that the court may order the termination of the earnings withholding order. See Section 706.150(g). Of course, in some situations, the court will only modify the prior order, and the employer then must comply with the order as modified for the remainder of the withholding period.

Paragraph (3) requires the employer to stop withholding when served with a notice of termination. See Section 706.101 (manner of service). A notice of termination is served (1) where the levying officer is notified of the satisfaction of the judgment or (2) where the judgment debtor has claimed an exemption for the entire amount of earnings but the judgment creditor has failed within the time allowed to file with the levying officer a notice of opposition to claim of exemption and a notice of the hearing on the exemption. See Sections 706.027 (satisfaction of judgment), 706.105(f) (grounds for termination of withholding order in exemption proceeding). The levying officer may also serve a notice of termination where the order has been dormant or suspended for 180 days. See Section 706.032 (termination for dormancy or suspension).

Paragraph (4) recognizes the special rule for termination of earnings withholding orders that have been dormant or suspended for a period of 180 days. See Section 706.032 & Comment.

The judgment creditor has an affirmative duty to inform the levying officer of the satisfaction of the judgment. See Section 706.027.

Service of an order for the collection of state taxes suspends the duty of an employer to withhold pursuant to a prior order (other than an order for support). See Section 706.077 (tax orders). However, this is only a suspension. After the tax order is satisfied, if the withholding period for the prior order has not ended, the employer must again withhold pursuant to the prior order. See Section 706.032 (termination in case of suspension for 180 days by supervening order).

Similarly, the duty to withhold is not terminated by the layoff, discharge, or suspension of an employee and, if the employee is rehired or returns to work during the withholding period, the employer must resume withholding pursuant to the order. See Section 706.032 (termination in case of dormancy for 180 days).

The termination of certain types of orders -- orders for the collection of state taxes and support orders -- is governed by separate rules. See Sections 706.030 (support orders), 706.078 (tax orders).

Sometimes an order will be terminated without the employer's prior knowledge. Subdivision (c) makes clear that an employer will not be subject to liability for having withheld and paid over amounts pursuant to an order prior to service of a written notice of termination of the order. In such a case, the employee must look to the judgment creditor for the recovery of amounts previously paid to the judgment creditor. See Section 706.154 (employer entitled to rely on documents actually served). See also Section 706.105(i) (recovery from levying officer or judgment creditor of amounts received after order terminated).

An earnings withholding order may also be affected by federal bankruptcy proceedings. See Comment to Section 706.020.

Code Civ. Proc. § 706.024 (added). Amount required to satisfy earnings withholding order

SEC. . Section 706.024 is added to the Code of Civil Procedure, to read:

706.024. (a) The amount required to satisfy an earnings withholding order is the total amount required to satisfy the writ of execution on the date the order is issued, with the following additions and subtractions:

(1) The addition of the statutory fee for service of the order and any other statutory fees for performing duties under the order.

(2) The addition of costs added to the order pursuant to Section 685.090.

(3) The subtraction of the amount of any partial satisfactions.

(4) The addition of daily interest accruing after issuance of the order, as adjusted for partial satisfactions.

(b) From time to time the levying officer, in the levying officer's discretion, may give written notice to the employer of the amount required to satisfy the earnings withholding order and the employer shall determine the total amount to withhold based upon the levying officer's notice, notwithstanding a different amount stated in the order originally served on the employer.

(c) If the full amount required to satisfy the earnings withholding order as stated in the order or in the levying officer's notice under subdivision (b) is withheld from the judgment debtor's earnings, interest ceases to accrue on that amount.

Comment. Section 706.024 is new. This section provides for adjustment of the total amount required to satisfy an earnings withholding order. Since an active order continues in force until it is satisfied, full satisfaction of the judgment may not occur unless the total amount due as stated in the order as issued is adjusted as provided in subdivision (a).

See also Sections 685.030 (accrual of interest and satisfaction), 685.050 (costs and interest under writ), 685.090 (c) (costs added to writ or order after issuance), 695.210 (amount required to satisfy money judgment), 699.520(e) (amount enforceable under writ of execution), 706.101(c) (notice by first class mail).

Code Civ. Proc. § 706.026 (amended). Receipt, account, and disbursement by levying officer

SEC. . Section 706.026 of the Code of Civil Procedure is amended to read:

706.026. (a) The levying officer shall receive and account for all amounts received paid by the employer pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

(b) At least once every two years, the levying officer shall file an account with the court for all amounts collected under the earnings withholding order, including costs and interest added to the amount due.

Comment. Subdivision (b) is added to Section 706.026 to provide for an accounting to the court of activities under an earnings withholding order. See Section 680.160 ("court" defined). This account is in the nature of a return on a writ and is required whether or not the writ has been returned. See Section 699.560 (return of writ of execution). When the earnings withholding order terminates, the levying officer is to make a supplemental return on the writ. See Section 706.033 (supplemental return).

The change in subdivision (a) is a technical, nonsubstantive change intended to conform the language of this section to Section 706.025.

Code Civ. Proc. § 706.028 (repealed). Subsequent earnings withholding order for costs and interest

SEC. . Section 706.028 of the Code of Civil Procedure is repealed.

~~706.028. Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.~~

Comment. Section 706.028 is superseded by new Section 706.028 (final earnings withholding order for costs and interest). See new Section 706.028 & Comment.

Code Civ. Proc. § 706.028 (added). Final earnings withholding order for costs and interest

SEC. . Section 706.028 is added to the Code of Civil Procedure, to read:

706.028. (a) "Final earnings withholding order for costs and interest" means an earnings withholding order for the collection only of unsatisfied costs and interest, which is issued after an earlier earnings withholding order has been returned satisfied.

(b) After the amount stated as owing in a prior earnings withholding order is paid, the judgment creditor may obtain a final earnings withholding order for costs and interest to collect amounts of costs and interest that were not collected under the prior earnings withholding order.

(c) A final earnings withholding order for costs and interest shall be enforced in the same manner as other earnings withholding orders.

(d) Satisfaction of the amount stated as owing in a final earnings withholding order for costs and interest is equivalent to satisfaction of the money judgment. For this purpose, interest ceases to accrue on the date of issuance of the final earnings withholding order and no additional costs may be added after that date, except for the statutory fee for service of the order and any other statutory fees for performing duties under the order.

Comment. Section 706.028 provides for a final earnings withholding order for costs and interest. This section supersedes former Section 706.028 (subsequent order for costs and interest). The new "final order" differs from the "subsequent order" under former law since it permits a full satisfaction of the money judgment through wage garnishment by stopping the running of interest on the remaining balance due on the judgment (which balance comprises earlier costs and interest). The amount stated as due on a final earnings withholding order may be increased only by statutory costs. See Gov't Code §§ 26746 (disbursement fee), 26750 (fee for service and other duties under earnings withholding order). In other respects, as provided in subdivision (c), a final earnings withholding order is treated the same as any other earnings withholding order.

If the principal amount of the judgment is not fully satisfied before an earnings withholding order is terminated, another order may be issued to collect the balance due on the judgment pursuant to this chapter. See Section 706.102 (issuance of earnings withholding order). This later earnings withholding order is distinct from a final earnings withholding order for costs and interest provided by this section.

A final earnings withholding order is not available where the full amount due on the judgment has been collected under the initial earnings withholding order pursuant to the optional procedure set forth in Section 706.024.

Code Civ. Proc. § 706.030 (technical amendment). Withholding order for support

SEC. . Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A "withholding order for support" is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1), (2), or (3), ~~or~~ (4) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 706.030(b)(1) is amended to correct the cross-reference to Section 706.022 (as amended by 1989 Cal. Stat. ch. 263, § 1). This is a technical, nonsubstantive change.

Code Civ. Proc. § 706.032 (added). Termination of dormant or suspended order

SEC. . Section 706.032 is added to the Code of Civil Procedure, to read:

706.032. (a) Except as otherwise provided by statute, an earnings withholding order terminates at the conclusion of any continuous 180-day period in which no amounts are withheld under the order, whether because the judgment debtor's employment has terminated or earnings are being withheld under an order or assignment with higher priority, or for any other reason.

(b) If an earnings withholding order has terminated pursuant to subdivision (a), the employer shall return the order to the levying officer along with a statement of the reasons for returning the order.

Comment. Section 706.032 provides for the automatic termination of dormant or superseded earnings withholding orders. If the debtor leaves employment after an earnings withholding order has become effective, the duty to withhold continues for 180 days under subdivision (a). If the debtor returns to work during this period, the employer is required to resume withholding pursuant to the order. Similarly, if withholding under a general creditor's earnings withholding order is suspended because of withholding under an earnings withholding order or assignment for support or an earnings withholding order for taxes, the suspended order remains in effect until 180 days have elapsed with no withholding. See Sections 706.030 (support orders), 706.031 (wage assignment for support), 706.078 (tax orders).

The employer has a duty under subdivision (b) to determine whether an earnings withholding order has terminated under subdivision (a) and to return the order to the levying officer.

For a special rule concerning termination of earnings withholding orders for support, see Section 706.030(b)(1). If the debtor is not employed and no earnings are due when the withholding period would begin under Section 706.022, the service of the order is ineffective and is not subject to the 180-day rule of this section. See Section 706.104(a).

Code Civ. Proc. § 706.033 (added). Supplemental return on writ

SEC. . Section 706.033 is added to the Code of Civil Procedure, to read:

706.033. If the writ is returned before the earnings withholding order terminates, on termination of the earnings withholding order the levying officer shall make a supplemental return on the writ. The supplemental return shall contain the same information as an original return pursuant to Section 699.560.

Comment. Section 706.033 provides explicit authority for making a supplemental return on a writ where withholding under an earnings withholding order continues after the writ is returned. See also Section 706.026 (account of levying officer for amounts collected).

Code Civ. Proc. § 706.107 (repealed). Service of additional order by same judgment creditor

SEC. . Section 706.107 of the Code of Civil Procedure is repealed.

~~706.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.~~

Comment. Section 706.107 is repealed. The provision for a 10-day grace period before serving another earnings withholding order became obsolete with the deletion of the 100-day provision from Section 706.022(a). See 1989 Cal. Stat. ch. 263, § 1. An overlapping earnings withholding order involving the same parties on the same judgment is ineffective. See Section 706.023(c).

Code Civ. Proc. § 706.121 (amended). Application for issuance of earnings withholding order

SEC. . Section 706.121 of the Code of Civil Procedure is amended to read:

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.

(e) The total amount ~~to be withheld pursuant to~~ required to satisfy the order on the date of issuance (which shall ~~shall~~ may not exceed the amount required to satisfy the writ of execution on the date of the

issuance of the order plus the levying officer's statutory fee for service of the order).

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

Comment. Subdivision (e) of Section 706.121 is amended for consistency with Section 706.024 which governs the amount required to satisfy an earnings withholding order and Section 706.125(e) (contents of earnings withholding order). See Section 706.024 & Comment.

Code Civ. Proc. § 706.125 (amended). Contents of earnings withholding order

SEC. . Section 706.125 of the Code of Civil Procedure is amended to read:

706.125. The "earnings withholding order" shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount ~~that may be withheld pursuant to~~ required to satisfy the order on the date of issuance (which may not exceed the amount required to satisfy the writ of execution on the date of issuance of the order plus the levying officer's statutory fee for service of the order).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order subject to Section 706.024, as the case may be, for the pay periods ending during ~~such~~ the withholding period.

(g) An order to the employer to pay over to the levying officer at

a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return" and return it by first-class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

Comment. Subdivisions (e) and (f) of Section 706.125 are amended for consistency with Section 706.024 which governs the amount required to satisfy an earnings withholding order. See Section 706.024 & Comment.

Code Civ. Proc. § 708.020 (amended). Written interrogatories to judgment debtor

SEC. . Section 708.020 of the Code of Civil Procedure is amended to read:

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

(d) The limitation provided by Section 2030 on the number of interrogatories that may be propounded applies to each set of interrogatories propounded from time to time pursuant to this section, but does not apply cumulatively to interrogatories propounded by the judgment creditor to the judgment debtor.

Comment. Subdivision (d) is added to Section 708.020 to make clear that the 35 interrogatory limit in Section 2030(c) is not a cumulative limitation on interrogatories to judgment debtors. Thus, for example, a judgment creditor may propound 25 interrogatories to the judgment debtor and then 120 days later propound 30 more interrogatories without running afoul of the limitations in Section 2030. See also Section 2016(c) (discovery article applies in enforcement of judgment as provided in this article).