

#D-1001

su892
07/24/91

First Supplement to Memorandum 91-50

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

Attached to this supplement are letters commenting on the wage garnishment proposals in the staff draft attached to Memorandum 91-50 from Ronald H. Sargis on behalf of the California Association of Collectors (Exhibit 1) and from Lt. Anthony J. Pisciotta of the San Francisco Sheriff's Department (Exhibit 2).

Respectfully submitted,

Stan Ulrich
Staff Counsel

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 Suite 300 South
 Sacramento, CA 95833-1505
 (916) 925-0020
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July 23, 1991

Mr. Stan Ulrich
 California Law Revision
 4000 Middlefield Rd., Ste. D2
 Palo Alto, CA 94303

VIA FACSIMILE
 (415) 494-1827

Re: Earning Withholding Orders

Dear Stan:

Larry Cassidy forwarded a copy of your June 16, 1991 letter concerning corrective amendments to the CCP pertaining to earning withholding orders. Larry asked me to review, as general counsel for the Association, the proposed amendments and provide you with input.

Most of the amendments do not require comment, other than to say that they clarify some issues and help to further streamline the process so as to avoid unnecessary or repetitive charges to a judgment debtor. I do not have any further suggestions or modifications to the proposed amendments to CCP §§685.090, 699.50, 706.022, 706.026, 706.028, 706.030, 706.033, 707.107, 706.121, 706.125 and 708.020.

With respect to proposed CCP §706.024, I believe we should make some minor changes and add one more sentence to paragraph (b) pertaining to the Sheriff giving written notice to the employer of the amount required to satisfy the EWO. This is to prevent any argument that failure of the levying officer to give such notice, within the period that the debtor believes constitutes "from time to time," somehow limits or effects the validity of the EWO. I suggest that paragraph (b) read as follows:

(b) From time to time, the levying officer shall give written notice to the employer of the amount required to satisfy the earning withholding order and the employer shall determine the total amount to withhold based upon the levying officer's latest notice, notwithstanding the different amount stated in the order originally served on the employer. Failure of the levying officer to give such notice shall not effect the obligation of the employer to comply with the earning withholding order.

Arthur Helmer
 (1922-1928)

Theodore M. Marois, Jr.
 James M. Woodside
 John D. Bessey
 Kenneth R. Stone
 Timothy D. Taton
 William M. Gallagher
 Robert N. Willett
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Of Counsel
 Robert N. Stark
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 Judy Campos McKeehan

Mr. Stan Ulrich
July 23, 1991
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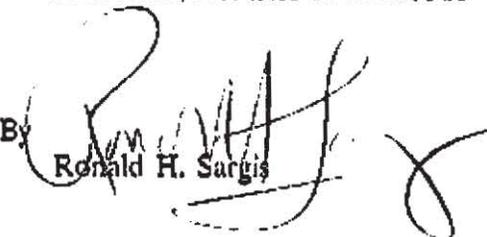
I have not yet had an opportunity to discuss in detail with my client the proposed new CCP §706.032, relating to termination of dormant or suspended orders. As Larry advised you, the Association is concerned about attempts to cut back on the continuing effectiveness of earning withholding orders. I do note your arguments and factors to be considered in this regard, and will discuss them with my client. In the event that such a provision is added to the CCP, it should also include a provision making it clear that an employer's failure to comply with the proper order will not cause that order to be terminated.

A final matter, not addressed in the proposed amendments but in your staff report, relates to creating some fixed term for the effectiveness of an earning withholding order. As Larry advised you, having just enacted the amendments to do away with an arbitrary termination of an earnings withholding order, the Association does not agree to setting up a new arbitrary time limit. I read with interest the comments in your report and will discuss them in greater detail with my client.

Please feel free to call me directly, as well as Larry Cassidy, to address any follow up questions on this matter, or any other matters which you believe will draw the interest of the Association. I look forward to working with you again in addressing these concerns.

Very truly yours,

HEFNER, STARK & MAROIS

By 
Ronald H. Sargis

RHS:dn

cc: Mr. Lou Mele
Mr. Larry Cassidy
Bob Wilson, Esq.

CAC:ULRICH:lr
0177-2

1st Supp. Memo 91-50



Study D-1001

California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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* * *

Executive Director
Sue Muncy

July 23, 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 you in response to your staff draft of the amendments to correct problems associated with the wage garnishment procedures.

I requested a review of the draft by all the members of the Civil Procedures Subcommittee. Due to the complexity of the problems and the potential effect of the proposed changes, I feel the subcommittee will need time to carefully review the draft before the subcommittee gives an opinion. I will send those comments to you well in advance of the Commission's September meeting.

I will personally comment on some of the areas covered in your draft.

1. Duration of Earnings Withholding Order.

Even though your staff is not proposing the two-year withholding period, I believe this would be the best solution to some of the technical problems under review.

Your comment regarding a 10-day gap before relevy, with a two-year levy, is well taken, as we have received complaints from creditors who feel that a continuous collection is unfair to other creditors wishing to at least have an opportunity to partially satisfy a judgment.

2. Return Procedures (Writ).

Your draft proposes periodic supplemental returns to the court adding costs, interest and fees on an ongoing bases from the

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time the withholding order is issued to full satisfaction. This procedure will continue in some cases for years, for a \$20.00 fee, in addition to a \$5.00 disbursement fee for creditor payouts. This fee represents the same fee charged creditors when the 90-day withholding was in effect. I believe most Sheriffs/Marshals would not favor doing additional accounting work, unless there is a way to charge additional fees for services on large judgments extending over a long period of time. I realize this brings up another issue, but many civil offices are already experiencing budgeting problems. With a continuous collection, a deficiency gradually develops between services rendered and fees collected. Levying officers should be compensated for continuing accounting services they provide, otherwise the creditor and the debtor benefit at the expense of the taxpayer. To give you an example, the San Francisco Sheriff's Department Civil Section receives approximately \$60,000.00 a year in fees, which includes disbursement fees collected. The total cost to operate is approximately \$1,400,000.00

3. Supplemental Returns.

This would require the accounting section to separate each supplemental return period in each case. Another alternative might be to periodically submit accumulative returns. This might be easier for offices doing their accounting manually.

4. Dormant and Suspended Withholding Order.

180 days gives the employer and the levying officer a specific time frame, and it still allows the creditor the advantage to collect if the employee is only temporarily off work.

5. Accruing Interest.

Consideration must be given to the fact some offices are still operating without computers, and also that calculating accruing interest on an ongoing bases means more work per case.

6. Employers.

Presently, employers receive the earnings withholding order with the total amount of the judgment plus fees and interest to date of service. This means that the levying officer will be required to notify the employer of the changing balance due to the accruing interest, as employers are not aware of the accruing interest.

My feeling is that the levying officer should not be required to perform additional duties unless the fees are increased or a service charge is added periodically to offset costs.

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I forward these comments to you in hopes that they will be of some assistance to you as I know your first meeting to review this draft is scheduled for July 25-26.

As I stated at the beginning of my letter the accumulative comments of the subcommittee will follow.

If you have any questions regarding my comments please give me a call. (415) 554-7231.

Sincerely,



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

cc: Sue Muncy, Executive Director, CSSA