

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

IMPROVEMENTS IN EMPLOYEES' EARNINGS PROTECTION LAW

November 1978

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. **COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN JANUARY 29, 1979.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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TENTATIVE RECOMMENDATION

relating to

IMPROVEMENTS IN EMPLOYEES' EARNINGS PROTECTION LAW

The Employees' Earnings Protection Law,¹ governing wage garnishment procedure, was enacted in 1978² upon recommendation of the California Law Revision Commission.³ The Commission has continued its study of wage garnishment procedure and recommends two improvements in the 1978 statute: (1) service by first-class mail of earnings withholding orders, and (2) elimination of duties of levying officer.

Service by First-Class Mail

The Employees' Earnings Protection Law authorizes delivery of many orders, notices, and documents by first-class mail⁴ but limits service of an earnings withholding order to personal delivery or registered or certified mail, return receipt requested.⁵

Experience indicates that a person to whom first-class mail is sent is more likely to receive the mail, and to receive it more quickly, than if it is sent by registered or certified mail. First-class mail service has long been used by the state in enforcing tax liabilities by wage garnishment, and the Employees' Earnings Protection Law specifically authorizes service of all orders, notices, and documents by the state by first-class mail.⁶ First-class mail is also less expensive than other forms of service.

1. Code Civ. Proc. §§ 723.010-723.154.
2. 1978 Cal. Stats., Ch. 1133, § 7.
3. Recommendation Relating to Wage Garnishment, 13 Cal. L. Revision Comm'n Reports 1703 (1976).
4. E.g., Code Civ. Proc. §§ 723.104(b) (employer's return), 723.105(d) (judgment creditor's notice of opposition).
5. Code Civ. Proc. § 723.101.
6. Code Civ. Proc. § 723.080.

For these reasons, the Commission recommends that first-class mail be authorized for all orders, notices, and documents, including an earnings withholding order. Nothing in the recommended legislation would preclude a person from using a more costly form of service at that person's own expense. But, to encourage fullest use of first-class mail, the Commission further recommends that the costs of service under the Employees' Earnings Protection Law not be a recoverable cost. Use of first-class mail will result in a substantial saving to the judgment creditor initially and to the judgment debtor ultimately. The law provides adequate remedies--such as citation for contempt and liability for abuse of process--to protect against any possible abuse of the first-class mail procedure.

Duties of Levying Officer

Under the Employees' Earnings Protection Law, the levying officer acts as a middleman between court, judgment creditor, judgment debtor, and employer. The levying officer serves the earnings withholding order on the employer,⁷ receives the withheld earnings from the employer and transmits them to the judgment creditor,⁸ receives exemption papers from judgment debtor and judgment creditor and transmits them to the court,⁹ and transmits court orders to the employer.¹⁰ Some of these acts involve a substantial commitment of resources by the levying officer, such as the duty to account for all amounts received.¹¹ The fee for performing these acts is limited by law.¹²

The acts for which the levying officer is responsible could as well be performed by the parties themselves, without use of a middleman.

7. Code Civ. Proc. § 723.103.

8. Code Civ. Proc. § 723.026.

9. Code Civ. Proc. § 723.105.

10. Code Civ. Proc. § 723.105.

11. Code Civ. Proc. § 723.026.

12. Govt. Code § 26750 (the fee is \$8.50; no additional fees may be charged).

The judgment creditor can serve the earnings withholding order directly on the employer, the employer can send the withheld earnings directly to the judgment creditor, the judgment debtor and judgment creditor can transmit their exemption papers directly to the court, and the court can transmit orders directly to the employer. There is no need for an intermediary in the wage garnishment process. The use of the levying officer causes delay, for example, in the receipt of money by the judgment creditor and in receipt by the employer of a notice to terminate withholding from the judgment debtor's earnings. The fee charged by the levying officer, while inadequate for the services performed by the levying officer, represents an added burden that is ultimately on the judgment debtor. And the fact that the levying officer's fee is inadequate increases the likelihood that the fee will be raised, thereby imposing an even greater burden on the judgment debtor.

This is an area where a nonessential service and cost of the levying officer can and should be eliminated. The taxpaying public is required to support this function of the levying officer unnecessarily. In view of Proposition 13 and the need to reduce spending by local government, the Commission recommends the removal of the duties of the levying officer under the Employees' Earnings Protection Law.

The Commission's recommendations would be effectuated by enactment of the following measure.

14/906

An act to amend Sections 683, 723.022, 723.025, 723.027, 723.030, 723.031, 723.073, 723.077, 723.080, 723.101, 723.102, 723.103, 723.104, 723.105, 723.121, 723.122, 723.125, 723.126, 723.127, 723.129, and 723.152 of, to repeal and add Section 723.026 to, and to add Sections 723.079 and 723.155 to, the Code of Civil Procedure, to repeal Section 26750 of the Government Code, and to amend Section 12 of Chapter 1133 of the Statutes of 1978, relating to the Employees' Earnings Protection Law.

The people of the State of California do enact as follows:

SECTION 1. Section 683 of the Code of Civil Procedure is amended to read:

683. (a) The execution may be made returnable, at any time not less than 10 nor more than 60 days after its receipt by the officer to whom it is directed, to the court in which the judgment is entered. When the execution is returned, the clerk must attach it to the judgment roll, or the judge must make the proper entry in the docket.

(b) If an execution is returned unsatisfied, another may be afterward issued within the time specified in this code.

(c) If property either personal or real be levied upon under such writ of execution but the sale thereunder be postponed beyond or not held within the return date after it is received by the officer to whom it was delivered and which has been returned to the clerk of the court in which the judgment is entered, upon request of the person in whose favor the writ runs the court may direct the clerk to redeliver such execution to the officer to whom it was directed in order to permit the officer to make an alias return of the proceedings of the sale or levy thereon as in the case of an original return of execution.

(d) If proceeds resulting from a levy of execution are received by the levying officer after the writ has been returned to the court in which the judgment is entered, upon request of the person in whose favor the writ runs, the clerk shall redeliver such execution to the officer to whom it was directed in order to permit the officer to make an alias return of the levy as in the case of an original return of execution.

(e) Whenever a writ of execution issued against real property containing a dwelling house has been returned, proof that notice required by subdivision (d) or (g) of Section 690.31 has been served shall be indicated on the writ, or separately and attached to the writ.

(f) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 2.5 (commencing with Section 723.010) prior to the time the writ of execution is made returnable under subdivision (a), the execution is returnable as provided in Section 723.026.

Comment. Section 683 is amended to delete the reference to the rules governing the return of a writ of execution when an earnings withholding order has been served. A writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

14/913

SEC. 2. Section 723.022 of the Code of Civil Procedure is amended to read:

723.022. (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 100th day after the order was served.
- (2) The date the employer has withheld the full amount specified in the order.
- (3) The date of termination specified in a court order served on the employer.

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

(5) The date of satisfaction of the judgment pursuant to which the earnings withholding order is issued specified in a copy of the satisfaction of judgment served on the employer.

(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 period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the ~~levying officer~~ judgment creditor pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) ~~or~~ (4) ~~or~~ (5) of subdivision (a).

Comment. Section 723.022 is amended to delete the references to the ~~levying officer~~. The court order of termination referred to in subdivision (3) and the notice of termination referred to in subdivision (4) are served by the court clerk. Section 723.105. The satisfaction of judgment referred to in subdivision (5) may be served by either the judgment creditor or the judgment debtor. Section 723.027. The employer pays amounts over to the judgment creditor. Section 723.025.

18/530

SEC. 3. Section 723.025 of the Code of Civil Procedure is amended to read:

(a) Except as provided in subdivision (b), the amount required to be withheld pursuant to an earnings withholding order shall be paid monthly to the ~~levying officer~~ judgment creditor not later than the 15th day of each month. The initial monthly payment shall include all amounts

required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer judgment creditor more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

Comment. Section 723.025 is amended to delete the references to the levying officer. Payments are made to the judgment creditor. Section 723.125.

31/786

SEC. 4. Section 723.026 of the Code of Civil Procedure is repealed.

~~723.026. (a) The levying officer shall receive and account for all amounts received pursuant to Section 723.025 and shall pay amounts so received over to the person entitled thereto at least once every 30 days.~~

~~(b) Where an earnings withholding order has been served prior to the time the writ of execution is made returnable under subdivision (a) of Section 683, the levying officer may, in the levying officer's discretion, return the writ of execution at either of the following times:~~

~~(1) The writ of execution may be returned after the earnings withholding order terminates and the amount withheld by the employer has been paid over to the levying officer.~~

~~(2) The writ of execution may be returned at a time earlier than the time specified in paragraph (1). In such case, the issuance of the earnings withholding order and the date of its service on the employer shall be indicated on the writ, or separately and attached thereto, and a supplemental return on the earnings withholding order shall be made at the time provided in paragraph (1) in the same manner as the writ was returned.~~

(c) Nothing in subdivision (b) extends the time within which a levy may be made under the writ of execution pursuant to which the earnings withholding order was issued.

Comment. Former Section 723.026, which required the levying officer to receive and account for earnings, is superseded by new Section 723.026 which requires a receipt by the judgment creditor.

18/531

SEC. 5. Section 723.026 is added to the Code of Civil Procedure, to read:

723.026. Not less frequently than monthly, the judgment creditor shall send the judgment debtor a receipt for payments received from the employer. The receipt shall state the amount of the payments received, the maximum amount that may be withheld pursuant to the earnings withholding order, and the total amount received during the period the order has been in effect. No receipt is required for payments received pursuant to a withholding order for support.

Comment. The receipt required by Section 723.026 not only provides the judgment debtor with a record of payments made on the judgment but also enables the judgment debtor to determine whether the employer has paid the amount withheld from earnings to the judgment creditor.

32/815

SEC. 6. Section 723.027 of the Code of Civil Procedure is amended to read:

723.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 723.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination serve an acknowledgment of the satisfaction of judgment on the employer. Nothing in this section precludes the judgment debtor from serving a certified copy of the satisfaction of judgment on the employer.

Comment. Section 723.027 is amended to delete the duty imposed on the levying officer. The judgment creditor or judgment debtor serves the satisfaction of judgment on the employer, which terminates withholding. Section 723.022(a)(5).

405/002

SEC. 7. Section 723.030 of the Code of Civil Procedure is amended to read:

723.030. (a) A "withholding order for support" is an earnings withholding order on a writ of execution issued 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 (2), (3), or (4) , or (5) of subdivision (a) of Section 723.022, 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 723.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

Comment. Section 723.030 is amended to delete the reference to the writ of execution. A writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

405/003

SEC. 8. Section 723.031 of the Code of Civil Procedure is amended to read:

723.031. (a) Nothing in this chapter affects an order made pursuant to Section 4701 of the Civil Code.

(b) An order made pursuant to Section 4701 of the Civil Code shall be given priority over any earnings withholding order as provided in that section. An employer upon whom an order made pursuant to Section 4701 is served shall withhold and pay over the earnings of the employee pursuant to such order notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the ~~levying officer~~ judgment creditor who served the earnings

withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both an order made under Section 4701 of the Civil Code and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 723.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to the order made under Section 4701 of the Civil Code and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 723.070).

Comment. Section 723.031 is amended to delete the reference to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103.

405/185

SEC. 9. Section 723.073 of the Code of Civil Procedure is amended to read:

723.073. Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes. For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

Comment. Section 723.073 is amended to delete the reference to the levying officer. The judgment creditor takes actions under this chapter. As used in this chapter, "judgment creditor" as applied to the state means the specific state agency seeking to collect a judgment or tax liability. Section 723.011(d).

405/186

SEC. 10. Section 723.077 of the Code of Civil Procedure is amended to read:

723.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 723.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the ~~levying officer~~ judgment creditor who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

Comment. Section 723.077 is amended to delete the reference to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103.

405/398

SEC. 11. Section 723.079 is added to the Code of Civil Procedure, to read:

723.079. No receipt need be sent to the taxpayer for amounts paid over to the state pursuant to a withholding order for taxes unless the taxpayer has requested in writing that receipts for such amounts be sent.

Comment. Section 723.079 provides an exception to the requirement of Section 723.026.

405/188

SEC. 12. Section 723.080 of the Code of Civil Procedure is amended to read:

723.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, in the manner provided in Section 723.101 or by any authorized state employee. ~~Service of a withholding order for taxes is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 723.101. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a~~

withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

Comment. Section 723.080 is amended in recognition of the general provisions for service by mail. See Section 723.101.

405/191

SEC. 13. Section 723.101 of the Code of Civil Procedure is amended to read:

723.101. (a) An earnings withholding order shall be served by the levying officer judgment creditor upon the employer by delivery service of the order to on any of the following persons :

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by first-class mail, postage prepaid, by personal delivery as provided in Section 415.10 or 415.20 , or by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5. Service of an earnings withholding order is complete when it is received by, or the return receipt is executed by or on behalf of, the employer or a person described in subdivision (a).

(c) Service of any other notice or document under this chapter may be made in the same manner as an earnings withholding order. If service is made on the employer after the employer's return has been received by the levying officer judgment creditor , the service shall be made by registered or certified mail, postage prepaid, with return receipt requested, 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 in the county. Nothing in this subdivision precludes service by personal delivery on the person designated in the employer's return. Service of any other notice or document on the person on whom it is served is complete at the following times:

(1) If made by first-class mail, postage prepaid, when the notice or document is deposited in the mail addressed to the last known address of the person.

(2) If made by registered or certified mail, postage prepaid, with return receipt requested, when the return receipt is executed by or on behalf of the person.

(3) If made by personal delivery as provided in Section 415.10 or 415.20, when the notice or document is received by the person.

(d) Notwithstanding Section 1032.6, a judgment creditor is not entitled to the costs of service under this chapter.

Comment. Section 723.101 is amended to delete the references to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103. The employer's return is made to the judgment creditor. Section 723.104.

Section 723.101 is also amended to enable service under this chapter by first-class mail. The person on whom a notice or document is served is more likely to receive the notice or document, and to receive it more quickly if service is by first-class mail. First-class mail service has long been used by the state in enforcing tax liabilities by wage garnishment. Cf. Section 723.080 (first-class mail service authorized). First-class mail is also less expensive than other forms of service. In recognition of this fact and to encourage service by first-class mail, subdivision (d) is added to preclude recovery of collection costs for service of notices and documents. Nothing in Section 723.101 should be construed to preclude use of registered or certified mail or personal service at the judgment creditor's own expense, however.

404/148

SEC. 14. Section 723.102 of the Code of Civil Procedure is amended to read:

723.102. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time for the return of the writ under subdivision (a) of Section 683 has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application, in the form prescribed by the Judicial Council, with a levying officer in such county who the clerk of the court that entered the judgment pursuant to which the earnings withholding order is sought. The court clerk shall

promptly issue an earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.125.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

Comment. Section 723.102 is amended to delete the reference to the levying officer. The judgment creditor serves the earnings withholding order. Section 723.103. The reference to an outstanding writ of execution is likewise deleted--issuance of such a writ, which gives the levying officer authority to act, is unnecessary because the levying officer is not involved in the service of the earnings withholding order.

404/149

SEC. 15. Section 723.103 of the Code of Civil Procedure is amended to read:

723.103. (a) The levying officer judgment creditor shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to employee of earnings withholding order in the form prescribed pursuant to Sections 723.120 and 723.122.

(b) At the time the levying officer judgment creditor makes service pursuant to subdivision (a), the levying officer judgment creditor shall provide the employer with a copy of the employer's instructions referred to in Section 723.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (a) of Section 683 for the return of the writ of execution under which the order was issued has expired.

(c) An earnings withholding order served upon the employer more than 45 days after its date of issuance is ineffective.

Comment. Section 723.103 is amended to delete the references to the levying officer. The judgment creditor serves the earnings withholding order and transmits other required information. Because the levying officer is not involved in the service of the earnings withholding order, there is no writ of execution issued which gives the levying officer authority to act, and there is no corresponding return of the writ required. See Section 723.102. The time within which the earnings withholding order must be served is thus no longer tied in subdivision (c) to the time of return of the writ, but is set at a fixed 45 days after issuance of the withholding order.

SEC. 16. Section 723.104 of the Code of Civil Procedure is amended to read:

723.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding order within 10 days from the date of service. 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. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the ~~levying officer and mail it by first-class mail, postage prepaid,~~ to the levying officer judgment creditor and send it to the judgment creditor within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the ~~levying officer~~ judgment creditor with the employer's return.

Comment. Section 723.104 is amended to delete the references to the levying officer. The judgment creditor serves the employer's return on the employer. Section 723.103. The reference to mail is deleted in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

SEC. 17. Section 723.105 of the Code of Civil Procedure is amended to read:

723.105. (a) A judgment debtor may claim an exemption under Section 723.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the ~~levying officer~~ court clerk an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon the filing of the claim of exemption, the levying officer court clerk shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

- (1) A copy of the claim of exemption.
- (2) A copy of the financial statement.

(3) A notice of claim of exemption, in the form prescribed by the Judicial Council, stating that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer court clerk within 10 days after the date of the mailing of the notice of claim of exemption is sent .

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of mailing of the notice of claim of exemption is sent , file with the levying officer court clerk a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer court clerk within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion the court clerk shall set the matter for hearing, which hearing shall be held not later than 20 days from the date the notice of motion opposition was filed unless continued for good cause. Not less than 10 days prior to the hearing, the judgment creditor court clerk shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and serve a notice of the time and place of the hearing on the judgment debtor and judgment creditor and serve a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid;

addressed to the judgment debtor at the address stated in the claim of exemption and; if service on the attorney for the judgment debtor was requested in the claim of exemption; to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing; the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer court clerk does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of making of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption; the levying officer was served, the court clerk shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly ~~transmit~~ a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earning withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of

service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer judgment creditor, the employer shall promptly pay over such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

Comment. Section 723.105 is amended to delete the references to the levying officer. The court clerk handles exemption claims. The references to mailing are also deleted in recognition of the general provision for service of notices and documents by mail. Section 723.101.

404/297

SEC. 18. Section 723.121 of the Code of Civil Procedure is amended to read:

723.121. The "application for issuance of earnings withholding order" shall be executed under oath or by declaration under penalty of perjury 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)~~ (d) The amount sought to be collected, indicating the amount of the judgment, plus additional accrued items, less partial satisfactions, if any.

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

~~(g)~~ (f) The name and address of the person, if other than the judgment creditor, to whom the withheld money is to be paid by the levying officer employer.

Comment. Section 723.121 is amended to delete the reference to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025.

Former subdivision (d) is deleted because a writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

404/299

SEC. 19. Section 723.122 of the Code of Civil Procedure is amended to read:

723.122. The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 723.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order judgment creditor in payment of the judgment described in the order.

~~(b)~~ The amounts required to be withheld pursuant to Section 723.050 on illustrative amounts of earnings.

~~(c)~~ (b) No amount can be withheld from the earnings of a judgment debtor which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

~~(d)~~ (c) If a judgment debtor wishes a court hearing to prove the amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer court clerk an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained without charge at the office of the levying officer any clerk of a trial court .

~~(e)~~ (d) Under Section 300 of the Labor Code, the judgment debtor may revoke an assignment of wages or salary to be earned after the time of the revocation unless the assignment is made pursuant to Section 4701 of the Civil Code.

Comment. Section 723.122 is amended to delete the references to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025. A claim of exemption is filed with the court clerk. Section 723.105. Copies of forms are kept at the court clerk's office. Section 723.129.

Former subdivision (b) is also deleted because, as enacted, Section 723.050 does not provide a withholding scheme based on gross earnings for particular pay periods.

404/302

SEC. 20. Section 723.125 of the Code of Civil Procedure is amended to read:

723.125. 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 the earnings withholding order .

(e) The total amount that may be withheld pursuant to the order (the amount of the judgment, plus additional accrued items, less partial satisfactions, if any).

(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 723.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the levying officer judgment creditor or such other person as is named in the application for issuance of earnings withholding order 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 judgment creditor 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. Section 723.125 is amended to delete the references to the levying officer. The employer pays over withheld earnings to the judgment creditor. The employer's return is made to the judgment creditor. Section 723.104.

Subdivision (d) is revised because a writ of execution is not issued in the case of an earnings withholding order. See Section 723.102 and Comment thereto.

The reference to mail is deleted from subdivision (h) in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

404/339

SEC. 21. Section 723.126 of the Code of Civil Procedure is amended to read:

723.126. (a) The "employer's return" shall be executed under oath or by declaration under penalty of perjury. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer judgment creditor to whom the form is to be returned.

(2) A direction that the form be mailed returned to the levying officer judgment creditor by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

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

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is now employed by the employer or whether the employer otherwise owes earnings to the employee.

~~(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.~~

~~(4) (3) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.~~

~~(5) (4) Whether the employer was required on the date of service to comply with an order made pursuant to Section 4701 of the Civil Code and, if so, the court which issued such order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.~~

~~(6) (5) The name and address of the person to whom notices to the employer are to be sent.~~

Comment. Section 723.126 is amended to delete the references to the levying officer. The employer's return is made to the judgment creditor. Section 723.104. The earnings withholding order is served by the judgment creditor. Section 723.103.

The reference to mail is deleted from paragraph (a)(2) in recognition of the general provision for service of notices and documents by mail. See Section 723.101.

Former paragraph (b)(3) is also deleted because, as enacted, Section 723.050 does not provide a withholding scheme based on gross earnings for particular pay periods.

SEC. 22. Section 723.127 of the Code of Civil Procedure is amended to read:

723.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided to the employer by the levying officer judgment creditor, the Judicial Council shall publish and provide to the levying officers court clerks copies of the employer's instructions.

Comment. Section 723.127 is amended to delete the references to the levying officer. The judgment creditor provides forms to the employer. Section 723.103. The earnings withholding order is issued by the court clerk. Section 723.102.

SEC. 23. Section 723.129 of the Code of Civil Procedure is amended to read:

723.129. The levying officer clerk of each trial court shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 723.051.

Comment. Section 723.129 is amended to delete the reference to the levying officer. The claim of exemption is filed with the court clerk. Section 723.105.

SEC. 24. Section 723.152 of the Code of Civil Procedure is amended to read:

723.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer judgment creditor, the employer is guilty of a misdemeanor.

Comment. Section 723.152 is amended to delete the reference to the levying officer. The employer pays withheld earnings to the judgment creditor. Section 723.025.

SEC. 25. Section 723.155 is added to the Code of Civil Procedure, to read:

723.155. The fee for filing an application for an earnings withholding order under Section 723.102 is the same as the fee for issuing a writ of execution. No other filing fees may be charged under this chapter.

Comment. Section 723.155 reflects the fact that garnishment of earnings is made by an earnings withholding order rather than by writ of execution under this chapter. The fee for issuance of a writ of execution by the county clerk is four dollars. Govt. Code § 26828. The fee for issuance of a writ of execution by a justice court or a municipal court is one dollar and fifty cents. Govt. Code §§ 71665.6 (justice court) and 72065 (municipal court).

SEC. 26. Section 26750 of the Government Code is repealed.

~~26750. (a) The fee for serving an earnings withholding order under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure, including but not limited to the costs of postage or traveling, and for performing all other duties of the levying officer under that law with respect to such levy is eight dollars and fifty cents (\$8.50).~~

~~(b) No additional fees, costs, or expenses may be charged by the levying officer for performing the duties under the Employees' Earnings Protection Law, Chapter 2.5 (commencing with Section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure.~~

Comment. Section 26750 is repealed because the levying officer has no duties under the Employees' Earnings Protection Law.

SEC. 27. Section 12 of Chapter 1133 of the Statutes of 1978 is amended to read:

12. This act shall become operative on July 1, 1979. The Judicial Council, the state agencies concerned with the implementation of Article 4 (commencing with Section 723.070) of Chapter 2.5, of Title 9, of Part 2 of the Code of Civil Procedure, and the court clerks and levying officers shall, prior to that date, take all measures necessary in order that the provisions of this act may be implemented on July 1, 1979.

Comment. Section 12 of Chapter 1133 of the Statutes of 1978 is amended to delete the reference to levying officers. The levying officers have no duties under the Employees' Earnings Protection Law.

Note. The Law Revision Commission intends to sponsor legislation at the 1979 legislative session to defer the operative date of the Employees' Earnings Protection Law to January 1, 1980.