

## PROCESS CHECK LIST FOR THE JUDGMENT CREDITOR GARNISHMENT OF EARNINGS

### WARNING !

*ALL PARTIES TO A GARNISHMENT ARE STRONGLY URGED TO OBTAIN LEGAL ADVICE FROM AN ATTORNEY. Garnishment procedures are governed by Arizona law and are extremely complicated. All parties involved must follow these laws and procedures correctly. The Court may issue an Order for monetary penalties against any party who does not proceed properly, including the judgment creditor.*

### INTRODUCTION

This packet is for a judgment creditor who wishes to collect a money judgment from a judgment debtor's "earnings." The term "earnings" refers to compensation payable for work performed by the judgment debtor and not yet paid by the employer (see A.R.S. §12-1598(4) for further information). Some examples of earnings include wages, salaries, commissions, bonuses or other compensation. Generally only 25% of a judgment debtor's disposable earnings may be garnished. If a judgment debtor proves extreme financial hardship, a judicial officer may reduce this percentage to not less than 15% (see A.R.S. §12-1598.10 and §33-1131 for more information).

A judgment debtor's earnings may not be garnished if:

- The judgment debtor's earnings are already being garnished and the statutory maximum has been reached
- The judgment debtor has a pending bankruptcy proceeding
- The money judgment has been discharged in a bankruptcy proceeding
- At the time the Writ was served, the debt was subject to an effective agreement for debt scheduling between the judgment debtor and a qualified debt counseling organization
- All available wages are exempt from collection

To begin your garnishment action, read through this Process Check List and all the forms and instructions in the packet. There are separate instructions for each form in this packet.

### **STEP 1: Complete FORMS 1 & 2 and fill out the captions on the other forms needed for your case**

Fill out the Application for Writ of Garnishment (FORM 1) and the Writ of Garnishment and Summons (Earnings) (FORM 2). Do not fill in any unnumbered blanks. **Only fill out the caption and if included on the form, fill out the Petitioner, Respondent, and Garnishee's name, address & phone number** on forms 5, 6, 8, 9, 10, 11, 14, and either FORM 12 or FORM 13, (depending on whether the money judgment you are seeking to collect is for support of a person (see STEP 2 for more information about which form to use).

### **STEP 2: Take your forms to the Court for filing**

When you have filled out the forms identified in STEP 1, take them to the Court Clerk at the Court in which you are filing your garnishment proceeding.

You will need to bring multiple copies of some forms. The following list will help you identify which forms and how many copies of each to bring with you to the Clerk's Office:

- FORM 1 Application for Writ of Garnishment – original only
- FORM 2 Writ of Garnishment and Summons (Earnings) – original and 3 copies
- FORM 5 Instructions to Garnishee (Earnings) – 1 copy
- FORM 6 Garnishee's Answer (Earnings) – 4 copies
- FORM 8 Request for Hearing on Garnishment (Earnings) (A.R.S. §12-1590.16(C)) – 2 copies
- FORM 9 Notice of Hearing on Garnishment (Earnings) – 4 copies
- FORM 10 Garnishee's Notice to Judgment Debtor of Garnishment (Earnings) – 2 copies
- FORM 11 Request for Hearing on Garnishment (Earnings) (A.R.S. §12-1598.16(F)) – 2 copies
- Either FORM 12 or FORM 13 Garnishee's Nonexempt Earnings Statement – 4 copies
  - Use FORM 12 if the underlying debt **is not for** support of a person
  - Use FORM 13 if the underlying debt **is for** support of a person (e.g., child support)
- FORM 14 Request for Hearing on Nonexempt Earnings Statement – 2 copies
- The judgment awarding you money against the judgment debtor – 1 copy

### **STEP 3: Serve the required forms on the garnishee**

At the Clerk's Office, the clerk will file stamp, issue, and return some of your forms to you. Once you have the signed Writ of Garnishment and Summons (Earnings) (FORM 2), you must arrange to serve the garnishee with the following forms, some of which must be provided in multiple copies:

- FORM 2 Signed Writ of Garnishment and Summons (Earnings) – 2 copies
- FORM 5 Instructions to Garnishee (Earnings) – 2 copies
- FORM 6 Garnishee's Answer (Earnings) – 4 copies
- FORM 9 Notice of Hearing on Garnishment (Earnings) – 4 copies
- FORM 10 Second Notice to Judgment Debtor of Garnishment (Earnings) – 2 copies
- FORM 11 Request for Hearing on Garnishment (Earnings) (A.R.S. §12-1598.16(F)) – 2 copies
- Either FORM 12 or FORM 13 Garnishee's Nonexempt Earnings Statement – 4 copies
  - Use FORM 12 if the underlying debt **is not for** support of a person
  - Use FORM 13 if the underlying debt **is for** support of a person (e.g., child support)
- FORM 14 Request for Hearing on Nonexempt Earnings Statement – 4 copies
- The judgment awarding you money against the judgment debtor – 1 copy

You will be charged a fee for service of these documents. A private process server, a constable from the Court or a deputy sheriff can serve them for you. You may be able to recover the amount of money you pay to serve these forms at the end of the garnishment process. If you cannot afford to pay the service fee, you may qualify for waiver or deferral of the payment. Private process servers do not accept waivers or deferrals. The clerk has a form you can complete to request waiver or deferral of service fees. The process server, constable or deputy sheriff will file a certificate of service, which notifies you and the Court of the date on which the garnishee received the documents listed above.

#### **STEP 4: Deliver the following documents to the judgment debtor**

FORM 2	Signed Writ of Garnishment and Summons (Earnings) – 1 copy
FORM 7	Initial Notice to Judgment Debtor of Garnishment (Earnings) – 1 copy
FORM 8	Request for Hearing on Garnishment (Earnings) (A.R.S. §12-1590.16(C)) – 1 copy
FORM 9	Notice of Hearing on Garnishment (Earnings) 1 copy

Make sure to retain copies of all documents filed and/or served on the other parties for yourself.

#### **STEP 5: File with the Court a certification of service on the judgment debtor**

A written statement must be filed with the Court Clerk describing how and when the documents listed in Step 4 were delivered or served on the judgment debtor. If a private process server, constable or deputy sheriff served these documents, that person must file a certification on your behalf. If you delivered these documents by mail or personally delivered them to the judgment debtor, you are responsible for filing the certificate. Use FORM 21, Certificate of Service, for this purpose.

#### **STEP 6: Wait for garnishee to file an Answer**

The garnishee is to complete a Garnishee's Answer (FORM 6) and file it with the Court Clerk within 10 business days, beginning with the first business day after service on the garnishee. Do not take any further steps until this time period has passed or until you receive a copy of the Garnishee's Answer, whichever occurs first. If the time period has expired and you still have not received a copy of the answer from the garnishee, contact the Court to see if an Answer has been filed.

#### **STEP 7: What to do if the garnishee does not file an Answer**

If the garnishee does not file a Garnishee's Answer within the 10-day response time, then complete and file a Petition and Order to Show cause Regarding Garnishee's Default (FORMS 17 & 18). The Court will then order the garnishee to appear for a hearing and explain why no Answer was filed. The Petition and Order to Show cause must be served on the garnishee in the same manner as in STEP 3. At the hearing, the Judge may order the garnishee to pay the judgment creditor any portion of the total amount owed by the judgment debtor.

#### **STEP 8: If the garnishee files an Answer**

The information provided in the Garnishee's Answer will determine whether your case can proceed to a garnishment of the judgment debtor's earnings.

- (A) The garnishee is entitled to be released, if the Garnishee's Answer states that the garnishee:
- Did not employ the judgment debtor at the time the Writ was served
  - Would not owe earnings to the judgment debtor within 60 days after service of the Writ on the garnishee
  - Was unable to determine the identity of the judgment debtor after making a good faith effort to do so

If you object to the Answer, file a Request for Hearing (see FORM 16) to have your objection resolved by the Court. If the garnishee is entitled to be released, the Court may order you to pay for the garnishee's reasonable expenses related to responding to the Writ of Garnishment. Go to STEP 13 for information on releasing the garnishee.

- (B) If the Garnishee's Answer indicates that the garnishee does employ the judgment debtor or will owe the judgment debtor earnings within the next 60 days, you must wait an additional period of time, as specified below, to give the judgment debtor an opportunity to file an objection to the Garnishee's Answer.
- If the Garnishee's Answer was personally delivered to the judgment debtor, the judgment debtor has 10 business days to object.
  - If the Garnishee's Answer was delivered by mail, the judgment debtor has 15 days to object. The Garnishee's Answer should show the method of delivery.

### **STEP 9: Objections**

**CAUTION: Your Writ of Garnishment will expire 45 days after the Garnishee's answer is filed, if no objections are filed. If you fail to obtain a signed Order of Continuing Lien before the 45 days runs out, the garnishee will be released and you will have to start the garnishment process over again. You must also deliver a copy of the signed Order of Continuing Lien to the garnishee.**

- (A) If no one objects to the Garnishee's Answer, and the appropriate amount of time has passed, promptly file your Application for Order of Continuing Lien (FORM 3) and submit an unsigned Order of Continuing Lien (Garnishment) (FORM 4). You must also deliver a copy of each document to the garnishee and the judgment debtor.
- (B) If an objection is filed, the Court will hold a hearing on the objection within 10 business days after the objection is filed. You must attend the hearing. If the garnishment is not quashed (dismissed) and the Court does not enter an Order of Continuing Lien on your behalf, promptly complete and file your Application for an Order of Continuing Lien and submit an Order of Continuing Lien form (FORMS 3 & 4), before the 45 days expire. Deliver a copy of each document to the garnishee and the judgment debtor.

### **STEP 10: Report money received**

It is the obligation of the judgment creditor to take reasonable action to assure that the garnishee does not withhold more nonexempt earnings of the judgment debtor than are necessary to satisfy the underlying judgment. To fulfill this responsibility, you must report to the garnishee and judgment debtor on what you have received and how much of the judgment remains to be paid. Report this information to the garnishee and the judgment debtor on the Creditor's Garnishment Report (Earnings) (FORM 15). You should also keep a copy for your own files. Do not file this report with the Court. As long as the Order of Continuing Lien is in effect, you must complete and deliver a new Creditor's Garnishment report (Earnings) at each of the following intervals:

- (A) As long as the balance due is greater than \$500, within 21 days after the end of each calendar quarter, in other words –

- For the quarter ending March 31, no later than April 21
- For the quarter ending June 30, no later than July 21
- For the quarter ending September 30, no later than October 21
- For the quarter ending December 30, no later than January 21

(B) As long as the balance due is less than \$500, before the 10<sup>th</sup> day of each month.

(C) The first time the balance due is less than double the sum received in the last two pay periods. To know when you have reached this point, each time you receive a Nonexempt Earnings Statement --

- Add the amount of money you received with that particular statement (this figure may be \$0) with the amount of money you received with the prior statement.
- Multiply this sum by 2 and compare the total with the balance due.
- If the total is more than the balance due, you must provide written notice to the garnishee and the judgment debtor. You may use the Creditor's Garnishment Report (Earnings) (FORM 15) for this purpose.

Failure to comply with your reporting obligations may result in the Court issuing an Order for monetary penalties against you.

### **STEP 11: Release the garnishee**

Once you have been paid in full, it is your responsibility to file the Petition and Order Discharging Garnishee (FORMS 19 & 20) with the Court Clerk. You must deliver a copy of these completed forms to the garnishee, the judgment debtor and any creditors who have asked you to notify them. You also need to file this form if you learn that the judgment debtor is no longer working for the garnishee or if the Garnishee's Answer states that no earnings are owed to the judgment debtor and you did not file an objection (see STEP 8).

### **STEP 12: File a satisfaction of judgment**

Once the judgment has been paid in full, you are responsible for filing a Satisfaction of Judgment (FORM 22). You must deliver a copy to the garnishee, the judgment debtor and any creditors who have asked you to notify them.

## **WHAT COULD AFFECT YOUR REQUEST FOR A WAGE GARNISHMENT**

### **Grounds for termination or expiration of the Order of Continuing Lien**

As long as the Order of Continuing Lien is in effect, the garnishee should continue to withhold the ordered amount of the judgment debtor's wages and send it to you. However, any of the following events can cause this Order to terminate, at which point so will the garnishee's payments to you.

- The Court quashes (stops) the garnishment
- The debtor leaves the garnishee's employ for more than 60 days
- The debtor does not earn enough money to permit withholding by the employer for at least 60 days

- The underlying judgment is paid in full, is vacated or expires
- The garnishment proceedings are stayed by a Court such as the U.S. Bankruptcy Court

### **If the judgment debtor is a public employee**

If your judgment debtor is employed by the state, a county, a city or town or some other political subdivision of the state, including a state university, then special rules contained in A.R.S. §12-1601 through – 1604 apply to your case. Special rules and procedures may be required to garnish wages of federal employees. For information relating to military personnel and the Service Members' civil Relief Act (formerly known as the Soldiers' and Sailors' Civil Relief Act), consult an attorney.

### **The judgment debtor may object to wage garnishment**

The judgment debtor may object to statements in the Application for Writ of Garnishment, the Garnishee's answer or any garnishee's Nonexempt earnings statement. The judgment debtor may argue that the underlying judgment has been paid in full, or the judgment debtor might object to statements made in the Garnishee's Answer or Nonexempt Earnings Statement about the amount of wages being paid. Other common objections are lack of notice, extreme financial hardship, lack of jurisdiction, lack of responsibility for the debt or garnishment of exempt earnings.

If the judgment debtor proves to the Court that the proposed garnishment of wages will cause the judgment debtor or the judgment debtor's family to suffer extreme financial hardship, the Court has authority to reduce the amount of wages being withheld from the judgment debtor by the garnishee from 25% to not less than 15% of the judgment debtor's "disposable earnings" (see A.R.S. §12-1598.10(F) for more information).

### **You may object**

You may file an objection with the Court disputing statements in the Garnishee's answer (see STEP 8), a Nonexempt Earnings Statement or other document filed in this case, or if the garnishee fails to turn over earnings to you. As a general rule, you must file your objection within 10 business days after you receive the document to which you are objecting. Use FORM 16 for this purpose. The Court should hold a hearing on any objection and request for hearing within 10 business days after the objection is filed.

- These forms are guides only and are not intended to be legal advice.
- These forms are not tailored for every fact situation.
- While not mandatory, parties should have all documents reviewed by an attorney who specializes in post – judgment proceedings.