

IN THE SUPREME COURT OF THE STATE OF ARIZONA  
ADMINISTRATIVE OFFICE OF THE COURTS

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In the Matter of:	)	
	)	
MODIFICATION OF GARNISHMENT	)	Administrative Directive
OF EARNINGS, NONEXEMPT	)	No. 2014 - <u>23</u>
EARNINGS STATEMENT	)	
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Administrative Order No. 2007-56 authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve or modify the garnishment forms in response to changes in state or federal laws or procedures and make other necessary administrative amendments or corrections.

A.R.S. § 12-1596(C) provides “The notice to judgment debtor and request for hearing form prescribed by the Supreme Court shall be in substantially the following form.” The form provided in Title 12 should reflect the current personal property exemptions in Title 33, Chapter 8. However, when the Legislature increased the exemptions in 2013, it failed to enact a corresponding amendment to the notice in § 12-1596(C). Specifically, A.R.S. § 33-1126(A)(9) was amended to increase the exemption for monies held in bank accounts from \$150 to \$300 and A.R.S. § 33-1125(8) was amended to increase the vehicle exemption from \$5,000 to \$6,000 or from \$10,000 to \$12,000 for disabled debtors, Laws 2013, Ch. 123 (HB 2325). The Legislature also added a new provision, A.R.S. § 33-1126(A)(10), that exempts an interest in a college savings plan under section 529 of the Internal Revenue Code of 1986, Laws 2013, Ch. 112 (SB 2032).

To remedy these omissions, the necessary changes have been incorporated on pages 1 and 3 of the Process Checklist for the Judgment Creditor in a Garnishment of Non-Earnings, and page 3 of the Notice to Judgment Debtor of Garnishment, Form 7. Therefore,

IT IS DIRECTED that effective November 1, 2014, the Process Checklist and the Notice to Judgment Debtor of Garnishment, Form 7 shall be replaced by the versions in Appendix A of this Directive.

Dated this 24th day of October, 2014.

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David K. Byers  
Administrative Director

# **ATTACHMENT**

**A**

(1) [ ] JUSTICE COURT \_\_\_\_\_, COUNTY OF \_\_\_\_\_

(2) [ ] MUNICIPAL COURT \_\_\_\_\_, COUNTY OF \_\_\_\_\_

(3) [ ] ARIZONA SUPERIOR COURT, COUNTY OF \_\_\_\_\_

(4) Petitioner/Plaintiff [ ] Judgment Creditor [ ] Judgment Debtor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone(s): \_\_\_\_\_

(7) Case No.: \_\_\_\_\_

(5) Respondent/Defendant [ ] Judgment Debtor [ ] Judgment Creditor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone(s): \_\_\_\_\_

**NOTICE TO JUDGMENT DEBTOR  
OF GARNISHMENT  
(NON-EARNINGS)**

(6) Garnishee:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone(s): \_\_\_\_\_

Attorney: \_\_\_\_\_

**AVISO**

El tribunal ha ordenado que su empleador tome un parte de su sueldo y que pague a su acreedor hasta terminado el proceso en contra suya y este pagada la deuda. En conformidad con la ley, su acreedor tiene el derecho a “solo una parte” de su salario. A continua con figura una explicacion de sus derechos. Ud. puede obtener una traduccion en Espanol del tribunal.

**NOTICE TO JUDGMENT DEBTOR OR DEFENDANT**

You are hereby notified that this Court has issued an order in the above case in favor of the judgment creditor in this proceeding, directing that some of your money, property or corporate shares or interest be used to satisfy some of your debt to the judgment creditor. The order was issued to enforce the judgment creditor's judgment, support order or provisional remedy order against you that was obtained:

(8) (name of Court) \_\_\_\_\_

(9) (case number) \_\_\_\_\_ on (10) (date of judgment or order)

\_\_\_\_\_. A copy of the judgment or order is attached.

The law provides that monies from certain benefits or in certain amounts are free from the claims of creditors even if deposited in a bank, savings and loan association or credit union. Some examples of exempt monies appear later in this notice. The law also provides that certain personal property is exempt from the claims of creditors. Some examples of exempt property appear later in this notice.

The creditor named above says you haven't paid what you owe on the attached judgment or order. At the creditor's request, this Court issued a Writ of Garnishment (attached) to the garnishee named above. The writ says that some of your money or property now held by the garnishee will be withheld and may be turned over to the creditor to satisfy your debt.

Within ten days after being served with the Writ of Garnishment the garnishee who is holding your money or personal property is required to mail or deliver to you his answer stating what money or personal property he is withholding from you for the judgment creditor pursuant to the Writ.

You may object to the garnishment or file a claim of exemption by requesting a hearing with this Court, if you believe any of the following is true:

1. The judgment creditor does not have a valid provisional remedy order or support order or judgment against you or that the debt or judgment has been paid in full.
2. Some or all of the monies that are being withheld by the garnishee may be exempt monies. The following are examples that *may* be exempt monies:

- (a) Three hundred dollars in a bank, savings and loan association or credit union account.  
(Six hundred dollars for married account holders.)
- (b) Temporary assistance for needy families.
- (c) Supplemental security income (SSI).
- (d) Social security benefits (SSA).
- (e) Veterans' administration benefits (VA).
- (f) Certain pension benefits and retirement funds.
- (g) Workers' compensation benefits.
- (h) Some insurance proceeds.
- (i) An interest in a college savings plan under Section 529 of the Internal Revenue Code of 1986.

**Other state and federal exemptions may apply. Certain exemptions may not apply to support orders or to the collection of taxes. An attorney can assist you in determining what monies are exempt.**

3. Some or all of the personal property being withheld by the garnishee may be exempt property. Examples of exempt personal property are:

- (a) Household goods, furniture and appliances.
- (b) Up to \$6,000 equity value for each owner of a car or truck. (\$12,000 equity value if the owner is physically disabled).
- (c) Wearing apparel, musical instruments, televisions or stereos and other personal items.
- (d) Tools and equipment used in a commercial activity, trade, business or profession.
- (e) Professionally prescribed prostheses, including a wheelchair, for you or a dependent.

**These exemptions are limited in statute by description and dollar value. An attorney can assist you in determining what personal property is exempt.** A comprehensive listing of exemptions is available from the website for the U.S. Bankruptcy Court for the District of Arizona, [http://www.azb.uscourts.gov/Documents/arizona\\_exemptions.pdf](http://www.azb.uscourts.gov/Documents/arizona_exemptions.pdf)

4. More than fifteen days have passed since the garnishee was served with the Writ and you have not yet received the Garnishee's Answer.
  
5. You otherwise disagree with the Answer of the garnishee. To request a hearing, deliver the request for hearing form enclosed, or a substantially similar form to the Court Clerk's office. At the same time, you must mail or deliver a copy (photocopy or handwritten copy) of the request for hearing to the judgment creditor and the garnishee at the address stated in the Writ. If you do not deliver the request for hearing form to this Court within ten days after the date you receive the Answer of garnishee, your request for hearing will be denied, unless a good reason for the delay, acceptable to the Court, is shown.

If you request a hearing it will be held no later than five days, not including weekends and holidays, after your request is received by the Court. If appropriate, you may request a hearing before the garnishee files his Answer.

The Court will notify you and the other parties of the time and date of the hearing. You may attend the hearing with or without an attorney.

***WARNING: if you want a hearing, the Court must receive the hearing request form within ten (10) days after you get Garnishee's Answer. If you don't get the request in on time, you won't get a hearing unless there is a very good reason why you're late.***

# PROCESS CHECKLIST FOR THE JUDGMENT CREDITOR IN A GARNISHMENT OF NON-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 intended for a judgment creditor who wishes to pursue a garnishment of “non-earnings.” A non-earnings garnishment targets personal property belonging to a judgment debtor but held by a third party, or money other than wages that is owed to the debtor by a third party. Some examples of non-earnings include money in a bank account, the contents of a safe deposit box, a rent payment owed but not yet paid, or an account receivable.

Property that is not earnings may be subject to garnishment, however, not all property is subject to garnishment, and certain non-earnings property is protected (see A.R.S. Title 33, Chapter 8). For example, Arizona law provides that a judgment creditor who garnishes a bank account may only take the money that is in the account on the day the Writ of Garnishment is served on the bank. If additional funds are later deposited in the account, a new garnishment must be filed to collect them. In addition, the first \$300 per person per bank account is protected from garnishment. If persons other than the judgment debtor(s) is/are on the account, a hearing may be held to determine each person’s share in the account (A.R.S. § 12-1595).

### **[ ] STEP 1: Review the forms and instructions in the packet**

To garnish a bank account or other form of property other than wages, you will be working with the following forms in the packet (the number of each form appears in the bottom left corner of each page): FORMS 1 through 16 .

### **[ ] STEP 2: Apply to the court for a writ of garnishment and serve the required forms on the garnishee**

To begin your garnishment action, complete and file an Application for Writ of Garnishment (FORM 1). There is a fee for filing this form. If you cannot pay the fee, it may be deferred if you qualify. The Clerk has a form you can complete to request deferral.

Fill out and file with the Court the Application for Writ of Garnishment (Non-Earnings)(FORM 1), and the Writ of Garnishment and Summons (Non-Earnings) (FORM 2). If you are filing your application in a Superior Court, the Clerk of the Court will sign the writ and summons. If you are filing your application in a Municipal or Justice of the Peace Court, the Judge or Justice of the Peace or Clerk will sign the Writ and Summons form you have filed. After the Judge or Clerk has signed FORM 2 and it has been returned to you, you must serve the documents listed below on the garnishee. The number of copies to be served is indicated for each form. You must fill out the caption – and only the caption – on FORMS 4, 7, 8, and 9 before serving them on the garnishee.

[ ] Writ of Garnishment and Summons (Non-Earnings) (FORM 2) – 2 copies

[ ] Instructions to Garnishee (Non-Earnings) (FORM 3) – 1 copy

[ ] Garnishee’s Answer (Non-Earnings) (FORM 4) – 4 copies

Notice to Judgment Debtor of Garnishment (Non-Earnings) (FORM 7) – 2 copies

Request for Hearing (FORM 8) – 2 copies

Notice of Hearing on Garnishment (Non-Earnings) (FORM 9) – 2 copies

The judgment awarding you money against the judgment debtor – 1 copy

You will pay 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 proceeding. If you cannot afford to pay the service fee, you may qualify for deferral of the payment. Private process servers do not accept deferrals. The Clerk has a form you can complete to request deferral of service fees.

For specific information on how to serve these documents on a financial institution, refer to A.R.S. §12-1577. Arizona statutes may be read online at: <http://www.azleg.state.az.us/ars/12/01577.htm>, and at your local law library.

**STEP 3: Wait for garnishee's Answer**

By law, the garnishee is to complete and file a Garnishee's Answer with the Court within 10 business days, beginning with the first business day after service on the garnishee. Do not take any further steps in this process until this time period has been completed or until you receive a copy of the Garnishee's Answer, if that occurs sooner. 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 4A [IF APPLICABLE]: If the garnishee does not file an Answer**

Complete and file a Petition for Order to Show Cause Regarding Garnishee's Default and Order to Show Cause (FORMS 10 and 11). This is a request to the Court to order the garnishee to appear and answer. The Court may then order the garnishee to appear for a hearing and explain why no Answer was filed. If a hearing date is set, you must serve the Petition and the signed Order to Show Cause on the garnishee using one of the service methods listed in STEP 2 (service by process server, constable or deputy sheriff). You must also deliver a copy of the Petition and signed Order to Show Cause to the judgment debtor by mail or hand delivery. At the hearing, the Judge may order the garnishee to pay the judgment creditor up to the total amount owed by the judgment debtor.

**STEP 4B [IF APPLICABLE]: If the garnishee claims to hold no property of the judgment debtor**

The garnishee who holds no property of the judgment debtor can ask the Court to make the judgment creditor pay for the garnishee's reasonable expenses related to responding to a Writ of Garnishment. For this reason, before beginning a garnishment, the judgment creditor should take precautions to ensure the person or organization named as the garnishee does in fact possess property of the judgment debtor.

**STEP 4C [IF APPLICABLE]: If the garnishee claims to hold property of the judgment debtor**

Wait 10 more business days to see whether the debtor files a Request for Hearing on Garnishment (FORM 8). If the judgment debtor does not request a hearing within 10 business days of the filing of the Garnishee's Answer, complete and file an Application for Garnishment Judgment (Non-Earnings) (FORM 5). Also file a Garnishment Judgment (Non-Earnings) (FORM 6) for the Judge to sign.

Mail or personally deliver copies of these forms to the garnishee and to the judgment debtor before you file them with the Court. Once the Judge signs the Garnishment Judgment (Non-Earnings) (FORM 6), the Court will send a copy of the signed version of this form to all parties.

If the garnishee does not receive a copy of the signed Garnishment Judgment within 90 days of filing an Answer, you will have to begin again from the beginning, except under limited circumstances, *see* A.R.S. § 12-1587. *The writ expires 90 days after the Answer is filed with the Court in a non-earnings garnishment.* Check with the Court periodically if you do not receive a signed Garnishment Judgment within 3-6 weeks after filing your Application for Garnishment Judgment (FORM 5).

**[ ] STEP 5A [IF APPLICABLE]: If a request for hearing is filed to object to the garnishment**

If the judgment debtor objects to the garnishment and files a Request for Hearing (Non-Earnings) (Form 8), the Court should set a hearing date within 5 days after the request is filed. The Judge may not sign the Garnishment Judgment (FORM 6) until the hearing has been held. Some of the more common objections include: lack of notice, lack of jurisdiction, invalid or satisfied judgment, exempt money is being garnished (\$300 in bank account, welfare, worker's compensation, child support or other potentially exempt monies), or exempt property is being garnished. There may be other reasons as well. Additional information concerning exemptions can be found at A.R.S. §§ 33-1101–1130. It is important for the judgment creditor to attend this hearing.

**[ ] STEP 5B [IF APPLICABLE]: WHAT TO DO IF YOU DO NOT AGREE WITH CLAIMS MADE IN THE GARNISHEE'S ANSWER OR DO NOT RECEIVE ANY NON-EARNINGS PROPERTY FROM THE GARNISHEE**

A judgment creditor who does not agree with the Garnishee's Answer, or does not receive any property from the garnishee to which the judgment creditor is entitled can file a Request for Hearing (FORM 14) and the Court will hold a hearing on the request.

**If you desire to release the garnishee and/or judgment debtor from the garnishment:**

1. The Petition and Order Discharging Garnishee (FORMS 12 & 13) can be used to release the garnishee who turns over property in response to the Writ of Garnishment or in other appropriate circumstances. Once it is filed, mail a copy to the garnishee, the judgment debtor and any other creditor who has asked to be notified. This can be done even if the garnishee's payment does not completely satisfy the judgment debtor's debt.
2. A Satisfaction of Judgment (FORM 16) can be filed with the Court to establish that the judgment has been fully paid off or otherwise satisfied. Mail a copy to the judgment debtor.

**Frequently Asked Questions**

1. **Can I get back money I paid the constable or process server for service on the garnishee?**  
Yes. There is a place on the Application for Garnishment Judgment to record this amount. The fee is paid to the constable or process server. This cost is added to the total amount included in the garnishment. As judgment creditor, you are responsible for arranging for service of process.
2. **If the garnishee has money or property belonging to judgment debtor, will I collect all the money owed to me?**

Maybe. There are certain kinds of money or property that may be exempt from collection. Additional information concerning exemptions can be found at A.R.S. §§ 33-1101–1130.

3. **What are “earnings?”**

The term “earnings” means compensation owed to an individual for personal services or work performed by that individual for another. This compensation may be called wages, salary, commissions, bonuses or something similar. “Earnings” include periodic payments made pursuant to a pension or retirement program. “Earnings” become monies upon their payment by the employer to the employee, except payment into a pension or retirement fund. Money in a pension or retirement fund is no longer classified as “earnings” once it is disbursed to the employee.

- ✓ **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.**