

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

In the Matter of:)	
)	
MODIFICATION OF)	Administrative Directive
GARNISHMENT OF NON-)	No. 2019 - <u>07</u>
EARNINGS FORMS)	
)	
)	
)	

Administrative Order No. 2007-56 authorizes the Administrative Director of the Administrative Office of the Courts to approve or modify the statewide garnishment forms in response to changes in state or federal laws or procedures and make other necessary administrative amendments or corrections.

Consistent with amendments made during the fifty-fourth Legislature, first regular session to A.R.S. §§ 12-1574 and 12-1577 regarding the garnishment of non-earnings, the following forms have been modified to add the option for service by certified mail, return receipt requested.

- Process Checklist for the Judgment Creditor in a Garnishment of Non-Earnings,
- Form 2, Writ of Garnishment and Summons,
- Form 3, Instructions to the Garnishee, and
- Instructions for Form 4. Garnishee’s Answer.

The amended language was reviewed by members of the Arizona Creditor Bar Association, who suggested additional clarifying language, some of which are included herein. Therefore,

IT IS DIRECTED that the attached garnishment forms are approved for use by the courts in Arizona in matters concerning garnishment non-earnings. Courts shall cease to use the previous versions of these forms after August 27, 2019.

Dated this 27th day of June, 2019.

DAVID K. BYERS
Administrative Director of the Courts

Attachment A

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 other than “earnings” that is owed to the debtor by a third party (some examples of “earnings” are wages, salary, commission, bonus, pension or retirement payments). 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 held in a single bank account is protected from garnishment, with that exemption being doubled to \$600 if the account holders are married. If persons other than the judgment debtor(s) 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

These documents can be served by certified mail, return receipt requested, or they can be served by a constable, deputy sheriff or other process server. If you use a constable, deputy sheriff or process server, you will have to pay a fee. 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: <https://www.azleg.gov/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 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.

- (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: _____

Email Address: _____

Phone(s): _____

(7) Case Number: _____

**WRIT OF GARNISHMENT
 AND SUMMONS
 (NON-EARNINGS)
 (A.R.S. §§12-1571 through -1574)**

(5) Respondent/Defendant

Judgment Debtor

Judgment Creditor

Name: _____

Address: _____

City, State, Zip Code: _____

Email Address: _____

Phone(s): _____

(6) Garnishee:

Name: _____

Address: _____

City, State, Zip Code: _____

Email Address: _____

Phone(s): _____

Attorney: _____

STATEMENTS OF JUDGMENT CREDITOR

1. Judgment creditor was awarded a judgment or order against (8) _____,
 judgment debtor.

2. The amount of the outstanding balance on the judgment or order, including accrued interest and allowable costs, is (9) \$ _____. Interest accrues at the rate of (10) _____% per (11) _____. The cost of serving this Writ of Garnishment will be as shown on the Affidavit of Service and may be added to the judgment.
3. Judgment creditor believes that garnishee holds nonexempt property or money other than wages owed or belonging to judgment debtor.
4. The names and addresses of all parties are as listed in (4), (5), and (6).

TO THE GARNISHEE (A.R.S. § 12-1579)

YOU SHALL answer all the following questions in writing, under oath, on a separate document. Your answer must be filed with the Court within 10 business days after you are served with this Writ of Garnishment.

- A. Were you holding personal property or money other than wages belonging to the judgment debtor at the time this Writ was served on you?
- B. How much money do you owe the judgment debtor and how much of that money did you withhold pursuant to the Writ? Did you release any of that money after you were served with the Writ, and, if so, how much did you release and why?
- C. Did you possess any personal property belonging to the judgment debtor at the time the Writ was served on you? If so, please describe each item or group of items you held and describe the specific items of personal property you withheld pursuant to the Writ, if any.
- D. What other person or entity, within your knowledge, is indebted to the judgment debtor or in possession of personal property of the judgment debtor?
- E. If the garnishee is a corporation, what shares, or interest does the judgment debtor own?

SUMMONS

A WRIT OF GARNISHMENT has been issued, naming you as garnishee. You are required to answer this Writ in writing, under oath, and file the answer with the Court within 10 days (excluding weekends and holidays) after service on you. If you fail to file an answer, you may be ordered to appear in person to answer this Writ, and a default judgment may be entered against you. If a default judgment is entered against you, you may be ordered to pay the full amount shown on this Writ, plus attorney fees and costs.

THIS SUMMONS IS NOT A REQUEST TO SEND ANY MONEY OR PERSONAL PROPERTY TO THE COURT.

Date

Judicial Officer/Clerk of the Court

NOTICE TO GARNISHEE

You should have been served with a blank Garnishee’s Answer form. You may complete and file this form to make your required answer.

**FORM 3
INSTRUCTIONS TO THE GARNISHEE (NON-EARNINGS)**

**(for the garnishee who owes money other than wages, or
holds personal property belonging to the judgment debtor)**

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.

If you, the garnishee, fail to meet your responsibilities in this garnishment proceeding, the Court may order you to pay the judgment creditor's attorney fees, costs and even the amount of money which the judgment debtor owes the judgment creditor. This can happen even if you do not have any of the judgment debtor's property or do not owe the judgment debtor any money.

You have been served with a Writ of Garnishment and Summons in which you are named as the "garnishee." The person or company that filed this court action (the "judgment creditor") is attempting to collect payment from an individual or organization named as the "judgment debtor." You are involved in this proceeding because the judgment creditor believes you either owe the judgment debtor money, other than "earnings" (for example, other than wages, salary, commission, bonus, pension or retirement payments), or are in possession of personal property owned by the judgment debtor.

The judgment creditor should have served you with the following documents:

- Writ of Garnishment and Summons (Non-Earnings) (you should have received 2 copies)
This document identifies the parties and the reason for the garnishment.
- Instructions to the Garnishee (Non-Earnings)
This document explains your rights and responsibilities in this court action.
- Garnishee's Answer (Non-Earnings) (4 copies)
You will complete this document and file it with the Court.
- Notice to Judgment Debtor of Garnishment (Non-Earnings) (2 copies)
This document explains the judgment debtor's rights and responsibilities.
- Request for Hearing (Non-Earnings) (2 copies)
This document can be used by the judgment debtor to object to the garnishment or the Garnishee's Answer.
- Notice of Hearing on Garnishment (Non-Earnings) (2 copies)
This document is completed by the Court to notify parties of a hearing on a judgment debtor's objection.
- One copy of the Judgment in the original lawsuit between the judgment creditor and the judgment debtor
This document shows you how much money was awarded to the judgment creditor in the case against the judgment debtor.

STEP 1: DELIVER DOCUMENTS TO THE JUDGMENT DEBTOR

Within 3 business days of the date on which you received the paperwork listed above, deliver one copy of the following documents to the judgment debtor:

- Writ of Garnishment and Summons (Non-Earnings)
- Notice to Judgment Debtor of Garnishment (Non-Earnings)
- Request for Hearing (Non-Earnings)
- Notice of Hearing on Garnishment (Non-Earnings)
- The Judgment in the original lawsuit between the judgment creditor and the judgment debtor

These documents can be delivered personally by you, or by first class mail, or they can be served by a constable, deputy sheriff or other process server. If you use a constable, deputy sheriff or process server, you will have to pay a fee.

STEP 2: FILE YOUR ANSWER WITH THE COURT

You must file an Answer **within 10 business days** after the date on which you received the paperwork listed above, even if you do not have any property or owe any money to the judgment debtor. Fill out the Garnishee's Answer (Non-Earnings) form and file it with the Court. Send a copy to the judgment debtor and the judgment creditor (by mail or by personal delivery). Show on the Garnishee's Answer how you delivered the copies to the other parties. **This must be done within 10 business days.**

CAUTION: Failure to file a Garnishee's Answer can result in an order being entered against you in the full amount of the debt owed by the judgment debtor to the judgment creditor. This can happen even if you do not know the judgment debtor or do not owe the judgment debtor any money or property.

STEP 3: HOLD ON TO WHATEVER PROPERTY OR MONEY YOU HAVE THAT BELONGS TO THE JUDGMENT DEBTOR UNTIL FURTHER NOTICE FROM THE COURT

The Writ of Garnishment and Summons tells you, the garnishee, to maintain control over any of the judgment debtor's property in your possession on the day the Writ was received.

- Some types and amounts of property are not subject to garnishment. A list of these is shown on the Request for Hearing form (FORM 8). You should review this list. An attorney can help determine how much of the debtor's property is exempt.
- Corporate garnishees should not transfer any shares or interest belonging to the judgment debtor until further court order.

STEP 4: AWAIT THE COURT'S RULING

The Court may issue a Garnishment Judgment directing the release of the debtor's funds or other property to the judgment creditor after any objections to the garnishment are considered. The judgment creditor will send you an unsigned copy of the Garnishment Judgment at the time it is filed with the Court. After the judge has signed this form, the Court will send you a signed version of the Garnishment Judgment informing you of how to proceed. Do not proceed until you have received the signed Judgment.

If you are holding money or other property of the judgment debtor and you do not receive a signed Garnishment Judgment within 90 days of the date on which the Garnishee's Answer was filed, and no party has filed a written objection pursuant to A.R.S. § 12-1587, you must then return the property to the judgment debtor (A.R.S. § 12-1587). Before returning the property, contact the Court or the judgment creditor to verify that no party has filed an objection and the Court has not in fact signed a Garnishment Judgment in your case.

What to do if the judgment debtor objects to the Garnishment or the Garnishee's Answer:

The judgment debtor has 10 business days after receiving the Garnishee's Answer to file a Request for Hearing on Garnishment (Non-Earnings). The judgment debtor is responsible for sending a copy of the Request for Hearing to you. The Court will notify you of the hearing date. You may attend this hearing.

INSTRUCTIONS
FORM 4
GARNISHEE'S ANSWER (NON-EARNINGS)

WARNING !

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USE FORM 4 IF:

- You have received a Writ of Garnishment and Summons (Non-Earnings) which identifies you as the garnishee, or
- You are the authorized agent for a company or other organization that has received a Writ of Garnishment and Summons on which the company or other organization is identified as the garnishee.

TO COMPLETE FORM 4, YOU WILL NEED:

- If you are holding personal property or money other than wages belonging to the individual or organization identified as the judgment debtor, you will need a detailed description of the exact items you are holding. This information must include a means of identifying specific items such as an account number, vehicle identification number or serial number. The term “wages” can include salary, commission, bonus, pension or retirement payments.
- Information on the Writ of Garnishment and Summons (Non-Earnings) with which you were served.

HOW TO COMPLETE FORM 4:

TYPE OR PRINT NEATLY USING **BLACK INK**. Match each numbered item in the instructions with the same numbered item on the Garnishee's Answer (Non-Earnings).

(1) Type or print the name, mailing address, email address, and telephone numbers of the person filing this form. If you are representing yourself in this matter, check the box before “Self.”

Check the box before “Other” if you are representing a garnishee but you are not an attorney and you are permitted by law to do so. A party to a garnishment may represent him/herself or be represented by an attorney. A **power of attorney** does not give the person a right to represent another party in a garnishment. In Justice Courts only, a corporation may be represented not only by an attorney but also by a duly authorized officer of the corporation (if the officer's primary duties are other than representing the corporation in Court); a partnership may be represented by an attorney or one or more partners.

*Lines 2 through 8 are known as the **caption**. You must complete this portion if not already filled in.*

(2), (3) or (4) Check the appropriate box that identifies the Court in which you are filing this Garnishee's Answer (Non-Earnings).

(2) If you checked this box, type or print the name of the Justice Court precinct in which you are filing the Garnishee's Answer and the name of the county in which the Court is located.

- (3) If you checked this box, type or print the name of the city or town in which you are filing the Garnishee's Answer and the name of the county in which the Court is located.
- (4) If you checked this box, type or print the name of the county in which the Court is located.
- (5) Type or print the petitioner/plaintiff's name, mailing address, email address, and phone number(s) as they appear on the Writ. Check the box to indicate whether this party is the judgment creditor or judgment debtor as shown on the Writ.
- (6) Type or print the respondent/defendant's name, mailing address, email address, and phone number(s) as they appear on the Writ. Check the box to indicate whether this party is the judgment debtor or judgment creditor as shown on the Writ.
- (7) Type or print the garnishee's name, mailing address, email address, and phone number, as they appear on the Writ and attorney (if any).
- (8) Type or print the case number assigned to the judgment or order.
- (9) Check all boxes that apply and fill in the blanks for each box checked.
- (10) If this statement applies to you, type or print the amount of money you owed the judgment debtor on the date you received the Writ of Garnishment and Summons.
- (11) If this statement applies to you, type or print the amount of money that you currently owe the judgment debtor and have not yet paid.
- (12) If this statement applies to you, type or print the amount of money you provided to the judgment debtor after receiving the Writ of Garnishment and Summons.
- (13) Type or print your explanation of why you did not retain the money described in item (12). Attach an additional sheet with your explanation if necessary.
- (14) If this statement applies to you, type or print a description of each item of personal property or group of items belonging to the judgment debtor that you had in your possession on the date you received the Writ of Garnishment.
- (15) If this statement applies to you, type or print a description of each item or group of items belonging to the judgment debtor that you currently have in your possession.
- (16) If this statement applies to you, type or print a description of the corporate shares or interests belonging to the judgment debtor.
- (17) Type or print the name of any other person or organization of which you are aware that owes money to the judgment debtor or is in possession of personal property belonging to the judgment debtor.
- (18) Type or print the amount of money you want to receive for preparation and filing of the Answer.
- (19) Complete the information under this box indicating the date and manner in which you will provide a copy of your Answer, Writ of Garnishment and Notice to Judgment Debtor forms to the judgment debtor.

- (20) Complete the information under this box indicating the date and manner in which you will provide a copy of your Answer to the judgment creditor.
- (21) Date and sign your Answer where indicated.

WHEN YOU HAVE COMPLETED THE ANSWER (NON-EARNINGS):

- ✓ Follow the steps on FORM 3, Instructions to the Garnishee (Non-Earnings).