

# Post-Judgment: Basic Steps for Handling a Small Claims Earnings Garnishment (Recovery of Judgments Totaling \$10,000 or less)

Any forms mentioned in this basic guide may be obtained from the Clerk of Court or online at <http://www.wicourts.gov/forms1/circuit.htm>.

## What is an earnings garnishment?

An earnings garnishment is having an employer take money out of the debtor's paycheck and send it to a judgment creditor to pay a judgment.

### **CREDITOR'S STEPS:**

1. **First, you have to win your case.**
2. **Decide in which county you will file your garnishment.** Small Claims earnings garnishments to recover judgments totaling \$10,000 or less are typically filed in the county where the original judgment was entered. You may also file your garnishment in any county in which you have filed a transcript of the original judgment.
3. **Fill out an Earnings Garnishment Notice (CV-421).** In an earnings garnishment, you are the creditor and the person who owes you money is the debtor. The debtor's employer is called the garnishee.
4. **File the Earnings Garnishment Notice.** File the Earnings Garnishment Notice and pay the fee to the Clerk of Court in the county where you are filing your garnishment.
5. **Complete the Earnings Garnishment.** Once you have filed the Earnings Garnishment Notice, the Clerk will give you two original copies of an Earnings Garnishment form (CV-422). Complete the information on the Earnings Garnishment and keep both copies. You DO NOT file this form with the Clerk of Court.
6. **Serve (deliver) one copy of the Earnings Garnishment on the garnishee.** For an earnings garnishment to begin, you must:
  - Provide the garnishee with one of the two Earnings Garnishment forms given to you by the Clerk of Court and the Garnishee Answer to Creditor form (SC-518).
  - Pay a \$15 garnishee fee, and any other statutorily required fees, to the garnishee.
  - Serve the Earnings Garnishment and the statutorily required fees on the garnishee within 60 days of the day you filed the Earnings Garnishment Notice with the Clerk of Court.

Service may be done by the sheriff, a private process server, by first class mail or certified mail with return receipt requested, or you may personally deliver the papers to

the garnishee if the garnishee signs a receipt admitting service. See the “Pre-Judgment: Basic Steps to Small Claims Service” (SC-6050V) guide for additional information.

7. **Serve (deliver) one copy of the Earnings Garnishment and other documents on the debtor.** For an earnings garnishment to begin, you must also serve the debtor with the following documents:

- 1) One copy of the Earnings Garnishment given to you by the Clerk of Court;
- 2) A blank copy of the Earnings Garnishment – Debtor’s Answer form (CV-424);
- 3) A blank copy of the Garnishment Exemption Worksheet form (CV-426); and
- 4) A copy of the current Poverty Guidelines for Earnings form (CV-427).

You must serve the debtor with these documents within certain time limits:

- within 60 days after the Earnings Garnishment Notice is filed with the Clerk of Court,
- but not more than seven business days after the garnishee is served, and,
- at least three business days before the first payday affected.

Service may be done by the sheriff, a private process server or by first class mail or certified mail with return receipt requested. You may not personally deliver the documents to the debtor.

8. **Receive the debtor’s wages from the garnishee.** Beginning the pay period the week after the garnishee receives the Earnings Garnishment, and continuing for 13 weeks, the garnishee will withhold 20% of the debtor’s after tax earnings and send this money directly to you, minus a \$3 fee that the garnishee will keep.

If your judgment has not been completely paid at the end of the 13 weeks and you wish to continue garnishing the debtor’s wages, you may file and pay for a new garnishment action. Another option is for you and the debtor to agree in writing to extend the garnishment for another 13-week period. This saves both you and the debtor money because you don’t have to pay the additional fees and costs that would otherwise be added to the amount owed to you by the debtor.

You and the debtor may agree to extend the garnishment each time a 13-week period is completed. Even if you and the debtor make this agreement, you still must pay an additional \$15 garnishee fee to the garnishee with each extension agreement.

9. **Review any answer you receive from the debtor or garnishee.**
- Debtor’s answer: The debtor may fill out the Earnings Garnishment – Debtor’s Answer and give it to the garnishee if the debtor believes there is a legal reason why their wages should not be garnished. The garnishee must then send it to you. The Answer temporarily prevents or stops the garnishee from paying you. The debtor may give the Answer to the garnishee any time during the 13-week garnishment period if the debtor believes his or her situation changes and it justifies stopping the garnishment.
  - Garnishee’s answer: The garnishee must send you an answer if they cannot garnish some or all of the debtor’s garnishable wages.

10. **If you object to the debtor's or garnishee's answer or if the garnishee has failed to respond at all, do one of the following:**

- Object to the debtor's answer: Fill out the Earnings Garnishment - Objection to Debtor's Answer and Demand for Hearing form (CV-425) and file it with the Clerk of Court. There is no filing fee. The clerk will schedule a hearing with the court between you and the debtor to determine whether the answer is appropriate. The court will notify you of the hearing date and serve the debtor.
- Object to the garnishee's answer or failure to answer: Fill out the Notice of Motion and Motion for Judgment Against Garnishee form (SC-519). Make at least two copies for service on the garnishee and one for yourself. File the original and the copies with the Clerk of Court. There is no filing fee. The clerk will schedule a hearing with the court between you and the garnishee to determine whether the answer or failure to answer is appropriate. Service must be done by the sheriff or a private process server at least 5 days before the hearing date. File proof of service on the garnishee with the Clerk of Court at or before the hearing.

11. **Attend the objection hearing.** At the hearing, the court will review the debtor's financial situation and/or whether the garnishee has followed the law. If the court orders the garnishment to start, the court will send the garnishee an order directing the garnishment to begin. If the court determines the debtor is exempt, the garnishee will not be required to withhold earnings from the debtor. If the court stops the garnishment, you have the option of beginning the entire garnishment process again when you believe a new garnishment is appropriate.

**DEBTOR'S STEPS:**

1. **Receive the following documents which the creditor is required to serve on you:**

- 1) One copy of the Earnings Garnishment;
- 2) A blank copy of the Earnings Garnishment – Debtor's Answer form (CV-424);
- 3) A blank copy of the Garnishment Exemption Worksheet form (CV-426); and
- 4) A copy of the current Poverty Guidelines for Earnings form (CV-427).

Service must be done by a sheriff, a private process server or by first class mail or certified mail with return receipt requested. The documents may not be personally served by the creditor.

2. **The garnishee will garnish your earnings unless you claim an exemption.** Beginning the pay period the week after the garnishee receives the Earnings Garnishment, and continuing for 13 weeks, the garnishee will withhold 20% of your after tax earnings and send this money, minus a \$3 fee that the garnishee will keep, directly to the creditor.

If the judgment has not been completely paid at the end of the 13 weeks and the creditor wishes to continue garnishing your wages, the creditor may file and pay for a new garnishment action. Another option is for you and the creditor to agree in writing to extend the garnishment for another 13-week period. This saves both you and the creditor

money because you don't have to pay the additional fees and costs that would otherwise be added to the amount owed by you to the creditor.

You and the creditor may agree to extend the garnishment each time a 13-week period is completed. Even if you and the creditor make this agreement, the creditor still must pay an additional \$15 garnishee fee to the garnishee with each extension agreement.

3. **Complete the Earnings Garnishment - Debtor's Answer form if you believe your earnings are completely exempt or your earnings are partially exempt.**
- If your earnings are completely exempt:  
The Earnings Garnishment - Debtor's Answer form lists several reasons under paragraph 1 why your earnings would be completely exempt. Check the box that applies to your situation. You may use the Garnishment Exemption Worksheet and the Poverty Guidelines for Earnings forms to calculate how your earnings would be completely exempt because your household income is below the federal poverty line or because the garnishment would reduce your income to below the federal poverty line. You are not required to complete the Garnishment Exemption Worksheet or to send it to the creditor or to the garnishee.
  - If your earnings are partially exempt:  
Under paragraph 2 of the Earnings Garnishment - Debtor's Answer, check the appropriate box that explains why your income is not completely exempt but that too much of your income is being withheld. Again, you may use the Garnishment Exemption Worksheet and the Poverty Guidelines for Earnings forms to calculate how too much of your earnings are being withheld.
  - Under paragraph 3 of the Earnings Garnishment - Debtor's Answer, check the box and explain why you have a different legal reason that your earnings are completely exempt or that your earnings are partially exempt.
4. **Deliver or mail a copy of the Earnings Garnishment - Debtor's Answer to the garnishee and fill in the date of delivery or mailing on the form.** The answer temporarily prevents or stops the garnishee from paying the creditor. You may give the answer to the garnishee any time during the 13-week garnishment period if you believe your situation changes and it justifies stopping the garnishment.
5. **It is recommended that you mail or deliver a copy of the Earnings Garnishment - Debtor's Answer to the creditor along with whatever worksheets or documentation you may have to support your claim for an exemption or a limitation on the amount of income that may be withheld.** For example, you may give the creditor a copy of the completed Garnishment Exemption Worksheet. Another example is that you may give the creditor a copy of the award letter showing that you have received medical assistance, food stamps, or SSI within the past 6 months, which would exempt you completely from the withholding of your income. If the creditor has this documentation, it is less likely to ask for a hearing before the court.

6. **The creditor may object to your answer and file an objection with the Clerk of Court.** The clerk will schedule a hearing with the court between you and the creditor to determine whether the answer is appropriate. The court will serve you notice of the hearing date.
7. **You must attend the objection hearing.** Bring documentation to support your claim of exemption to the hearing, such as copies of your pay stubs, benefit letters or bank statements proving you receive SSI or other public benefits. At the hearing, the court will review your financial situation and/or whether the garnishee has followed the law. If the court orders the garnishment to start, the court will send the garnishee an order directing the garnishment to begin and stating how much of your earnings should be garnished. If the court determines your earnings are exempt, the garnishee will not be required to withhold your earnings.