

THE EMPLOYER'S GUIDE TO PROCESSING CONTINUOUS ORDERS OF GARNISHMENT

Developed by The Ohio Judicial Conference (based on Am. Sub. H.B. 294-effective August 29, 2000)

THE PROCESS

Step 1. What will I receive?

The employer, or "garnishee," will be served, in the same manner as with a summons, with several forms:

1. Three copies of the *Order and Notice of Garnishment and Answer of Employer*.
2. Two copies of the *Notice to the Judgment Debtor*.
3. One copy of the *Request for Hearing*.
4. One copy of the *Interim Report and Answer of Garnishee*.
5. One copy of the *Employer Guide to Processing Continuous Orders of Garnishment*.
6. One copy of the *Final Report and Answer of Garnishee*.

Additionally, the employer will be served by the Court Clerk with a copy of the affidavit filed against the judgment debtor, the employee.

Step 2. How and when will I reply?

The employer has FIVE (5) business days from the date on which it receives the *Order and Notice of Garnishment and Answer of Employer* form to respond to the court. Of the three copies of this form received by the employer, only one completed and signed copy goes to the court. The employer may keep a signed and completed copy and will deliver the other signed and completed copy to the employee.

The copy of the *Order and Notice of Garnishment and Answer of Employer* form shall be delivered to the employee no later than the time that the employer otherwise would have paid the employee the personal earnings that are now being paid to the court. At the time of this delivery to the employee, the employer shall also give the two copies of the *Notice to the Judgment Debtor* form and the one copy of the *Request for Hearing* form to the employee.

The *Interim Report and Answer of the Garnishee* accompanies the payment that the employer makes to the court. The payment and the *Interim Report and Answer of Garnishee* shall be made to the court within 30 days after the end of each employee pay period. This begins with the first full pay period after the employer receives the *Order and Notice of Garnishment and Answer of Employer*. The amount sent to the court is a statutory percentage specified within the order (a maximum of 25%) and is to be calculated at each pay period.

The percentage remains the same regardless of whether the employee is paid weekly, biweekly or monthly. This is different from the law prior to H.B. 294. Garnishment orders issued under the old provisions are legally binding and still in effect.

The employer is not required to file an *Interim Report and Answer of the Garnishee* for any pay period in which no amount was withheld for that order. If the employer files this form with the court, then one completed and signed copy shall be kept for the employer's records and another copy shall be delivered to the employee. If permitted by the court, the employer may file the interim report and/or transfer the amount withheld by electronic means.

The employer shall file the *Final Report and Answer of Garnishee* with the court when the garnishment ceases to remain in effect. Two completed and signed copies of the *Final Report and Answer of Garnishee* shall be made. One shall be for the employer's records and another shall be delivered to the employee.

Step 3. How long must I withhold?

Part A. Single Garnishment Orders:

If an Order and Notice of Garnishment and Answer of Employer has been served upon an employer, then it must be processed continuously until paid in full or until the court issues an order that changes or ends the garnishment. The employer must withhold funds until one of the following events occurs, ending the garnishment:

- 1) The total amount due is paid in full.
- 2) The creditor files a written notice of termination with the court.
- 3) The court appoints a trustee and halts the order of garnishment.
- 4) A bankruptcy court issues an order of stay to the employer.
- 5) Another creditor obtains a garnishment order, which has a higher priority (e.g., child support order or an IRS lien) and the maximum amount is already being withheld pursuant to the higher priority order. However, if a high priority order does not take the maximum amount that can be withheld per each pay period, then the remainder can be used to satisfy other existing and subsequent orders.
- 6) Another creditor obtains a garnishment order, and 182 days have passed since the employer began withholding funds pursuant to the first garnishment order.

Part B. Multiply Garnishment Orders:

Employers receiving more than one garnishment order on an employee are required to stack the garnishments in the sequence in which they are received. If an employer is currently garnishing wages of an employee and receives a garnishment order from a different creditor, the employer is required to place the new garnishment in its proper order of the stack. One of four things will occur:

- 1) If the first garnishment is paid in full before 182 days expire, the employer should begin processing the next garnishment from the stack.
- 2) If the first garnishment is not paid in full and 182 days have passed since the employer began withholding funds pursuant to the first garnishment order, the garnishment ceases to be in effect and the employer is required to take the next garnishment from the stack.
- 3) If no additional garnishments have been filed, the employer will continue withholding on the second garnishment as in Part 1.
- 4) If one or more other garnishment orders have been received on the employee, and if the second garnishment is not paid in full and 182 days have passed since the employer began withholding funds pursuant to the second garnishment order, the garnishment ceases to be in effect and the employer is required to take the next garnishment from the stack. This process continues for each succeeding garnishment order on the employee received by the employer in the sequence in which they are received.

If a garnishment order ceases to be in effect and the debt has not been fully paid off, then the creditor must start the process over again from the beginning. The creditor may not re-file a garnishment on a specific judgment while its garnishment is either being processed or is being held in the stacking procedure.

An employer may not discharge an employee solely because of a garnishment by only one creditor within any one-year.

BACKGROUND

In House Bill 294 of the 123rd Ohio General Assembly, the Ohio Judicial Conference was requested to create a guide to help employers with the processing of continuous orders of garnishment.

In 1999, the Ohio General Assembly created the continuous order of garnishment of personal earnings. The revised order enables a garnishment to continue until either the total amount due was paid in full, or the order was no longer in effect. A "stacking" mechanism was created that allows garnishment orders to be stacked in order of when they were filed, or by priority, as determined by statute. Also, the fee paid to the employer was increased to compensate for complying with the new continuous orders. These changes replaced proceedings that were inefficient and costly.

However, H.B. 294 contains further revisions, improving the continuous order of garnishment. This simple guide describes the process for employers and should help answer questions regarding the operation of the new law.

WAIVER OF LIABILITY

An employer who acts, or attempts to act, in accordance with Chapter 2716 of the Ohio Revised Code, the provisions for garnishment, is not liable for damages in any civil action for any action taken pursuant to that chapter in good faith or any omission made in good faith. However, failure to comply could be grounds for contempt proceedings.

EMPLOYER PROCESSING FEE

The employer may deduct a \$3 fee for processing from the amount withheld from the judgment debtor's personal disposable earnings for each pay period that an amount of earnings was withheld for that order and for which an *Interim Report and Answer of the Garnishee* was filed. If no money is withheld and/or a report is not filed, then no fee may be deducted out by the employer. The employer is never required to deduct this fee for processing.

TERMS

Garnishment - a legal proceeding where a creditor seeks to satisfy a debt by claiming money owed to a debtor, usually in the possession of the debtor's employer.

Garnishee - the person whom has possession of money owed to a debtor, which has been claimed or attached by a creditor. The garnishee is the employee. An employer is defined as a person who is required to withhold taxes out of payments of personal earnings made to a judgment debtor.

Garnishor - the person who initiates or begins a garnishment proceeding in order to reach the debtor's money held by another person, usually the debtor's employer. The garnishor is the creditor.

AFFIDAVIT, ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER

(PERSONAL EARNINGS) (ORC 2716.02, 03, 04, 05, 06)

The State of Ohio
County of _____, SS
Court
Ohio

Case No. _____ Page _____
Docket No. _____

(The debt collector is attempting to collect a debt and any information obtained will be used for that purpose.)

vs. Judgment Creditor

Judgment Debtor

AFFIDAVIT IN SUPPORT OF MOTION FOR ORDER OF GARNISHMENT OF PERSONAL EARNINGS

The undersigned, being first duly cautioned and sworn, or affirmed, according to law, says:

1. That I am the attorney/judgment creditor herein who heretofore recovered, or certified, a judgment in the _____ Court, against the judgment debtor named above;

2. **That I have good reason to believe and do believe that the garnishee:

Name of Garnishee: _____ Street Address: _____
City, State, Zip Code: _____

Or the garnishee named in Section A of the Court Order and Notice of Garnishment, may have personal earnings owing to the judgment debtor that are not exempt under Section 2929.66, Ohio Revised Code.

3. That the written demand on the judgment debtor required by Section 2716.02, Ohio Revised Code has been made at least 15 days and not more than 45 days before the date hereof;

4. That the payment demanded in such written demand has not been made, nor has a sufficient portion been made to prevent the garnishment of personal earnings as described in such section;

5. **The total probable amount now due on this judgment is \$ _____. The total probable amount now due includes the unpaid portion of the judgment in favor of the judgment creditor, which is \$ _____; interest on that judgment and, if applicable, prejudgment interest relative to that judgment at the rate of _____% per annum payable until that judgment is satisfied in full; and court costs in the amount of \$ _____; and

6. That affiant has no knowledge of any application by the judgment debtor for the appointment of a trustee, nor that the debtor is the subject of a debt scheduling agreement, either of which would preclude the garnishment of judgment debtor's personal earnings.

Sworn to and subscribed before me on:

Signature of Judgment Creditor or Attorney

Date

Notary Public

**Completion of #2 and #5 will allow the Clerk's Office to generate the remaining forms: Court Order and Notice of Garnishment, Notice to the Judgment Debtor, Request for Hearing, Interim and Final Report(s) and Answer of Garnishee, and you will not be required to provide them at the time of filing.

SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT

To _____, Garnishee

The Judgment Creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this court stating that you may owe the judgment debtor money for personal earnings.

You are therefore ordered to complete the "ANSWER OF EMPLOYER (GARNISHEE)" in Section B of this form. Return one completed and signed copy of this form to the clerk of this court within five (5) business days after you receive this order of garnishment. Deliver one completed and signed copy of this form and the accompanying documents entitled "NOTICE TO THE JUDGMENT DEBTOR" and "REQUEST FOR HEARING" to the judgment debtor. Keep the other completed and signed copy of this form for your files.

The total probable amount now due on this judgment is \$ _____. The total probable amount now due includes the unpaid portion of the judgment in favor of the judgment creditor, which is \$ _____; interest on that judgment and, if applicable, prejudgment interest relative to that judgment at the rate of _____% per annum payable until that judgment is satisfied in full; and court costs in the amount of \$ _____.

This order of garnishment of personal earnings is a continuous order, that generally requires you to withhold a specified amount, calculated each pay period at the statutory percentage, of the judgment debtor's personal disposable earnings during each pay period, as determined in accordance with the "INTERIM REPORT AND ANSWER OF GARNISHEE," from the judgment debtor's personal disposable earnings during each pay period of the judgment debtor, commencing with the first full pay period beginning after you receive the order, until the judgment in favor of the judgment creditor and the associated court costs, judgment interest, and, if applicable, prejudgment interest awarded to the judgment creditor as described above have been paid in full. You generally must pay that specified amount, calculated each pay period at the statutory percentage, to the clerk of this court within thirty (30) days after the end of each pay period of the judgment debtor and must include with that specified amount, calculated each pay period at the statutory percentage an "INTERIM REPORT AND ANSWER OF GARNISHEE" substantially in the form set forth in section 2716.07 of the Ohio Revised Code. A copy of the "INTERIM REPORT AND ANSWER OF GARNISHEE" is attached to this order of garnishment of personal earnings, and you may photocopy it to use each time you pay the specified amount to the clerk of this court. You are permitted to deduct a processing fee of up to three dollars from the judgment debtor's personal disposable earnings for any pay period of the judgment debtor that an amount was withheld for that order. (The processing fee is not a part of the court costs). You are not required to file with the court the "Interim Report and Answer of Garnishee" for any pay period of the judgment debtor for which an amount from the judgment debtor's personal disposable earnings during that pay period was not withheld for that order.

This order of garnishment of personal earnings generally will remain in effect until one of the following occurs:

(1) The total probable amount due on the judgment as described above is paid in full as a result of your withholding of the specified amount, calculated each pay period at the statutory percentage, from the judgment debtor's personal disposable earnings during each pay period of the judgment debtor, that commenced with the first full pay period beginning after you received the order.

(2) The judgment creditor or the judgment creditor's attorney files with this court a written notice that the total probable amount due on the judgment as described above has been satisfied or the judgment creditor or the judgment creditor's attorney files a written request to terminate this order of garnishment and release you from the mandate of this order of garnishment.

(3) A municipal or county court appoints a trustee for the judgment debtor and issues to you an order that stays this order of garnishment of personal earnings.

(4) A federal bankruptcy court issues to you an order that stays this order of garnishment of personal earnings.

(5) A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor, and Ohio or federal law provides the other order with a higher priority than this order.

(6) A municipal or county court or a court of common pleas issues to you another order of garnishment of personal earnings that relates to the judgment debtor and a different judgment creditor and that does not have a higher priority than this order.

(7) The judgment creditor or the judgment creditor's attorney files with this court a written request to terminate and release the order of garnishment, and as a result, the order of garnishment will cease to remain in effect.

Under any of the circumstances listed above, you are required to file with this court a "FINAL REPORT AND ANSWER OF GARNISHEE" substantially in the form set forth in Section 2716.08 of the Ohio Revised Code. A copy of the "FINAL REPORT AND ANSWER OF GARNISHEE" is attached to this order of garnishment of personal earnings. Under the circumstances listed in (5) and (6) above, you must cease processing this order of garnishment after the expiration of the full pay period within which the one hundred eighty-second (182) day after you began processing it falls.

Special stacking, priority of payment, and manner of payment rules apply when a garnishee receives multiple orders of garnishment with respect to the same judgment debtor. These rules are set forth in section 2716.041 of the Ohio Revised Code. An employer guide to processing continuous orders of garnishment is included with this order of garnishment. You should become familiar with these rules.

Witness my hand and the seal of this court this _____ day of _____.

Judge

SECTION B. ANSWER OF EMPLOYER (GARNISHEE)

(An employer is one who is required to withhold payroll taxes out of payments of personal earnings made to the judgment debtor.)
(Answer all pertinent questions)

Now comes, _____, the employer (garnishee) herein, who says:

1. This order of garnishment of personal earnings was received on _____
- Yes No
2. The judgment debtor is in my/our employ: _____
- If the answer is "No", give date of last employment: _____
3. (A) Is the debt to which this order of garnishment of personal earnings pertains the subject of an existing agreement for debt scheduling, between the judgment debtor and a budget and debt counseling service, and has the judgment debtor made every payment that was due under the agreement for debt scheduling, no later than forty-five days after the date on which the payment was due? _____
- Yes No
- If the answer to both parts of this question is "Yes," give all available details of the agreement, sign this form, and return it to the court.

3(A) _____

- (B) Were you, on the date that you received this order of garnishment of personal earnings, withholding moneys from the judgment debtor's personal disposable earnings, pursuant to another order of garnishment of personal earnings that Ohio or federal law provides, with a higher priority than this order of garnishment of personal earnings (such as a support order or Internal Revenue Service levy)? _____
- If the answer to this question is "Yes," give the name of the court that issued the higher priority order, the associated case number, the date upon which you received that order, and the balance due to the relevant judgment creditor under that order: _____
- Yes No

3(B) _____

- (C) Did you receive prior to the date that you received this order of garnishment of personal earnings, one or more other orders of garnishment of personal earnings that are not described in question 3(B), and are you currently processing one or more of those orders for the statutorily required time period or holding one or more of those orders for processing for a statutorily required period in your sequence of their receipt by you? _____
- If the answer to this question is "Yes," give the name of the court that issued each of those previously received orders, the associated case numbers, the date upon which you received each of those orders, and the balance due to the relevant judgment creditor under each of those orders. List first the previously received order(s) that you are currently processing, and list each of the other previously received orders in the sequence that you are required to process them.
- Yes No

3(C) _____

I certify that the statements above are true, and that a completed and signed copy of this form, along with two copies of the Notice to Judgment Debtor form and Request for Hearing form, have been delivered to the judgment debtor.

Signed _____ (Signature of Person Who Completed Form) _____ (Print Name of Employer)

Dated this _____ day of _____, _____ (Print Name and Title of Person Who Completed Form)

Telephone Number _____

- 1 Three copies required to be served on the garnishee ORC § 2716.05. Required to be served at the same time as this form are 2 copies of Notice to Judgment Debtor and Hearing Request. Service on the garnishee shall be in the same manner as for the service of a summons. ORC § 2716.05. Praecipe must be given to the Clerk unless Court sends out forms without praecipe.
- 2 Section A completed before service ORC § 2716.05.
- 3 Garnishee must answer in five business days. ORC § 2716.21. Garnishee delivers one copy of this form and two copies of Notice form and Hearing Request to Judgment Debtor.