

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### SPR11-21

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Title	Action Requested
Civil Forms: Revision of Wage Garnishment Forms to Reflect Priority for Elder and Dependent Adult Financial Abuse Claims	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms WG-001, WG-002, WG-004, WG-005 and adopt forms WG-030 and WG-035	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne Ronan
Hon. Dennis M. Perluss, Chair	415-865-8933 <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a>

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### Summary

Assembly Bill No. 2619 (Block; Stats. 2010; ch. 64) provides that a wage garnishment order based on a judgment for elder or dependent adult financial abuse shall be given priority over other general wage garnishment orders, behind withholding orders for support or for taxes. To implement this new law, several of the wage garnishment forms must be revised and a new wage garnishment order developed.

In addition, this proposal also includes revisions to the wage garnishment forms that would remove the required social security number of the judgment debtor from the face of the forms and provide that, if known, the numbers be placed on a separate document that would be kept confidential if filed with the court.

### Discussion

#### Wage Garnishments for Financial Abuse Claims

Assembly Bill 2619 was enacted to provide priority in wage garnishments to elders and dependent adults who suffered financial abuse and received a money judgment under Welfare and Institutions Code section 15657.5.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Generally, earnings withholding orders are to be complied with in the order in which they are served. An employer is to comply with the first order served, and any served subsequently are ineffective until the first is paid in full. (See Code Civ. Proc., §706.23(a) through (c).) However, wage garnishments based on claims for child or family support or claims for taxes have statutory priority over other wage garnishments and are to be paid before earlier-received wage garnishment orders. (Code Civ. Proc., §§706.031(b) (earnings assignment order for support has priority over all earnings withholding orders), 706.030(c) (earnings withholding order for support takes priority over other withholding orders), 706.077 (earnings withholding order for taxes takes priority over other withholding orders except for support orders).)

AB 2619 has added wage garnishments based on awards for claims of elder and dependent adult financial abuse to the list of priorities, to be paid behind claims for taxes or support, but before all others. (Code Civ. Proc. § 706.23(d) and (e).) In order to clearly identify such awards, Assembly Bill 2619 also provided that any money judgment arising from a claim of financial abuse of elder or dependent adults is to include a statement that the judgment or some part of it is based on such a claim, specifying the amount if such award is less than the entire judgment. (Welf. & Inst. Code §15657.5(e).)

In order to implement this new priority for elder and dependent adult financial abuse wage garnishment orders, the wage garnishment forms must be revised. The proposed revisions are as follows:

- *Application for Earnings Withholding Order* (form WG-001). A new item 5 has been added, as required by Code of Civil Procedure section 706.121(d), to state whether the judgment is based in whole or in part on a claim for elder or dependent adult financial abuse and, if only in part, what amount of the judgment is based on the claim.
- *Earnings Withholding Order for Elder and Dependent Adult Financial Abuse* (form WG-030). This is a new form developed to provide an employer with notice that the wage garnishment is based on a claim for elder or dependent adult financial abuse, including how much of the judgment is based on such a claim (as required by Code of Civil Procedure section 706.125(d)).<sup>1</sup> See item 2(b). A new form was developed in order to make it easier for employers to know that the withholding order is one which has priority over others.
- *Employer's Return (Wage Garnishment)* (form WG-005). The list of priorities on the top of the second page has been revised to include Earnings Withholding Order for Elder or Dependent Adult Financial Abuse as the fourth priority, over the more general Earnings Withholding Order (Wage Garnishment).

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<sup>1</sup> Note that although the new law requires the application form and the order to specify whether the judgment is entirely or only partially based on an elder financial abuse claim, the law does not provide that the part of a judgment not based on financial abuse of the judgment is to be treated differently than the rest of the judgment.

### **Removal of Social Security numbers from the forms**

Each of the wage garnishment forms includes an item in which the judgment debtor's Social Security number is to be listed, if known. The numbers are required by statute to be included in the application form (form WG-001; see Code Civ. Proc., §706.121(a)), in the withholding order itself (forms WG-002, WG-004, and proposed WG-035; see Code Civ. Proc., §706.125(a)); in the employer's return (form WG-005; see Code Civ. Proc., §706.126(a)(3)) and in the judgment creditor's opposition to any claim of exemption (form WG-009; Code Civ. Proc. §706.128(a)).

Rule 1.20 of the California Rules of Court provides that Social Security numbers should not be included (except for the last four digits) or should be redacted from pleadings or other papers filed in the public files, unless otherwise provided by law. As noted above, the law does require the inclusion of the numbers in the filings relating to wage garnishments, when known, in order to more certainly identify the individual whose wages are to be withheld. Because many of these documents end up in the court files, however, frequently filed by the sheriff or levying officer, not counsel, the Social Security numbers of judgment debtors are regularly included in publicly accessible files.

Hence, in order to protect the privacy of the judgment debtor, the second part of this proposal is to eliminate the required Social Security number from the face of the current documents, which may eventually become part of a public court record, and to instead include it on a separate supplemental document, which would, if filed in the court, be kept confidential. This is the method used in recent years when new forms were developed for wage garnishment for taxes, and it has also been used with some family law forms. Here, a single supplemental form is proposed, to be used with all the non-tax wage garnishment forms that call for Social Security numbers. See proposed *Confidential Statement Of Judgment Debtor's Social Security Number* (form WG-035).

In addition, on each of the pertinent forms, the item immediately beneath the judgment debtor's name and address, which currently states "Social Security number (if known)", would be revised to state "Social Security No." followed by two checkboxes, with one option stating "on form FW-035" and the other stating "unknown." In addition to protecting the privacy of the judgment debtor, this revision would also clarify whether the item was intentionally left blank because the number is not known to the filer, rather than simply overlooked.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and Address):  <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>Not Approved by the</b></p> <p style="text-align: center;"><b>Judicial Council</b></p>  <p style="text-align: center;"><b>03.28.11</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> : STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	LEVYING OFFICER FILE NO.:
<b>APPLICATION FOR EARNINGS WITHHOLDING ORDER</b> <b>(Wage Garnishment)</b>	

TO THE SHERIFF OR ANY MARSHAL OR CONSTABLE OF THE COUNTY OF OR ANY REGISTERED PROCESS SERVER

1. The judgment creditor (name): requests issuance of an Earnings Withholding Order directing the employer to withhold the earnings of the judgment debtor (employee).

<input type="text"/> Name and address of employer	<input type="text"/> Name and address of employee
 <input type="text"/>	 <input type="text"/>

2. The amounts withheld are to be paid to Social Security No.  on form WG-035  unknown

a.  The attorney (or party without an attorney) named at the top of this page.

b.  Other (name, address, and telephone):

3. a. Judgment was entered on (date):

b. Collect the amount directed by the Writ of Execution unless a lesser amount is specified here:

\$

4.  The Writ of Execution was issued to collect delinquent amounts payable for the support of a child, former spouse, or spouse of the employee.

5. a.  The Writ of Execution was issued to collect a judgment based entirely on a claim for elder or dependent adult financial abuse.

b.  The Writ of Execution was issued to collect a judgment of which part is based on a claim for elder or dependent adult financial abuse. The amount that arises from the claim for elder or dependent adult financial abuse is (state amount)

6.  Special instructions (specify):

7. (Check a or b)

- a.  I have not previously obtained an order directing this employer to withhold the earnings of this employee.
- OR—
- b.  I have previously obtained such an order, but that order (check one):
- was terminated by a court order, but I am entitled to apply for another Earnings Withholding Order under the provisions of Code of Civil Procedure section 706.105(h).
- was ineffective.

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	LEVYING OFFICER ( <i>Name and Address</i> ):  <b>DRAFT</b> <b>Not Approved by the</b> <b>Judicial Council</b>   03.28.11
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>EARNINGS WITHHOLDING ORDER</b> <b>(Wage Garnishment)</b>	LEVYING OFFICER FILE NO.: _____ COURT CASE NO.: _____

**EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.**

**EMPLOYER: Enter the following date to assist your recordkeeping.**  
**Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):**

**TO THE EMPLOYER REGARDING YOUR EMPLOYEE:**

_____ Name and address of employer _____  _____ _____	_____ Name and address of employee _____  _____ _____
	Social Security No. <input type="checkbox"/> on form WG-035 <input type="checkbox"/> unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form*). Pay the withheld sums to the **levying officer** (*name and address above*).

If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions*** (form WG-003) within 10 days after receiving this order.

**Complete both copies of the form *Employer's Return*** (form WG-005) and **mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: \$ \_\_\_\_\_  
 Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date*): \_\_\_\_\_  
 The judgment creditor (*if different from the plaintiff*) is (*name*): \_\_\_\_\_

4. The **INSTRUCTIONS TO EMPLOYER** on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date: \_\_\_\_\_

_____ (TYPE OR PRINT NAME)		_____ (SIGNATURE)
<input type="checkbox"/> LEVYING OFFICER		<input type="checkbox"/> REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

**INSTRUCTIONS TO EMPLOYER  
ON EARNINGS WITHHOLDING ORDERS**

**WG-002**

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN*) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

**WHAT TO DO WITH THE MONEY**

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check* with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.

**WHAT IF YOU STILL HAVE QUESTIONS?**

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

**THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.**

The chart below shows **HOW MUCH TO WITHHOLD** when the federal minimum wage is \$7.25 per hour. If the **FEDERAL** minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

**FEDERAL MINIMUM WAGE: \$7.25 per hour**

**(Beginning July 24, 2009.)**

PAY PERIOD	Daily	Weekly	Every Two Weeks	Twice a Month	Monthly
<b>DISPOSABLE EARNINGS</b>	\$0-\$217.50	\$0-\$217.50	\$0-\$435.00	\$0-\$475.25	\$0-\$942.50
<b>WITHHOLD</b>	None	None	None	None	None
<b>DISPOSABLE EARNINGS</b>	\$217.51-\$290.00	\$217.51-\$290.00	\$435.01-\$580.00	\$475.26-\$628.33	\$942.51-\$1,256.66
<b>WITHHOLD</b>	Amount above \$217.50	Amount above \$217.50	Amount above \$435.00	Amount above \$475.25	Amount above \$942.50
<b>DISPOSABLE EARNINGS</b>	\$290.01 or more	\$290.01 or more	\$580.01 or more	\$628.34 or more	\$1,256.67 or more
<b>WITHHOLD</b>	Maximum of 25% of Disposable Earnings				

**COMPUTATION INSTRUCTIONS**

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of \$500 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or \$125.

The chart below is based on the minimum wage that became effective July 24, 2009. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order*, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

**— IMPORTANT WARNINGS —**

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

*IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and Address):  <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3> <h2 style="margin: 0;">03.28.11</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	LEVYING OFFICER FILE NO.:
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	COURT CASE NO.:
<b>EARNINGS WITHHOLDING ORDER FOR SUPPORT (Wage Garnishment)</b>	

**EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.**

**EMPLOYER: Enter the following date to assist your record keeping.**  
 Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

**TO THE EMPLOYER REGARDING YOUR EMPLOYEE:**

_____ Name and address of employer	_____ Name and address of employee
_____ _____	_____ _____

Social Security No.   
  on form WG-035   
  unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the **levying officer** (name and address above).

If the employee works for you now, you must **give the employee a copy of this order and the Employee Instructions** within 10 days after receiving this order.

**Complete both copies of the form Employer's Return and mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding until

- (1) the total amount due has been withheld; or
- (2) you receive a court order or an order from the levying officer telling you to stop the withholding earlier.

3. The judgment was entered in the court shown above. The judgment creditor is (name):

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date:

_____ (TYPE OR PRINT NAME)		_____ (SIGNATURE)
		<input type="checkbox"/> LEVYING OFFICER <input type="checkbox"/> REGISTERED PROCESS SERVER

The **EMPLOYER'S INSTRUCTIONS** on the reverse contain special rules that apply to Earnings Withholding Order For Support. Read the instructions carefully.

(Employer's Instructions on reverse)

**EMPLOYER'S INSTRUCTIONS  
(EARNINGS WITHHOLDING ORDERS FOR SUPPORT)**

These instructions apply *only* to Earnings Withholding Orders for Support. Applicable instructions appear on the reverse of the other types of Earnings Withholding Orders.

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The usual *withholding period* begins ten (10) calendar days after you receive the Earnings Withholding Order. In the case of an Earnings Withholding Order for Support (this Order) the *withholding period continues* until one of two things happens: (1) the total amount specified in the Order, plus any amounts listed in a notice from the levying officer, has been withheld, or (2) you receive a court order or notice signed by the levying officer specifying a termination date.

You are entitled to rely on and should obey all written notices signed by the levying officer.

The form Employer's Return describes several situations that could affect the withholding period for this order. If you receive more than one Earnings Withholding Order during a withholding period, review that form (Employer's Return) for instructions.

Your duty to withhold does not end merely because the employee no longer works for you. Withholding for an Earnings Withholding Order for Support does not automatically terminate until one year after the employment of the employee by the employer ends.

**WHAT TO DO WITH THE MONEY**

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within ten (10) days after the close of the pay period.

*Be sure to mark each check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account*

**WHAT IF YOU STILL HAVE QUESTIONS?**

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based.

Inquiries about the federal law will be answered by mail, telephone or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

**COMPUTATION INSTRUCTIONS**

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money, (whether called wages, salary, commissions, bonuses or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employees' retirement systems. Disposable earnings will change when the required deductions change.

After the employee's disposable earnings are known, WITHHOLD FIFTY (50) PERCENT of the *disposable earnings* for the Withholding Order for Support. For example, if the employee has monthly disposable earnings of \$1,432, the sum of \$716 would be withheld to pay to the levying officer on account of this order.

Occasionally, the employee's earnings will also be subject to a Wage and Earnings Assignment Order, an order available for child support or spousal support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order. For example, if the employee is subject to a Wage and Earnings Assignment Order and the employer is required to withhold \$300 per month to pay on that order, when the employer receives this Earnings Withholding Order for Support, the employer should deduct the \$300 for the Wage and Earnings Assignment Order from the \$716 and pay the balance to the levying officer each month for this order.

— **IMPORTANT WARNINGS** —

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF EARNINGS WITHHOLDING ORDERS FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to judgment (no matter how many debts are represented in that judgment) the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN EARNINGS WITHHOLDING ORDER BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE EARNINGS WITHHOLDING ORDER TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the laws that apply to this case.

***IF YOU VIOLATE ANY OF THESE LAWS, YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!***

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and Address):  <p style="text-align: center;"><b>DRAFT Not Approved by the Judicial Council</b></p> <p style="text-align: center;"><b>03.28.11</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
<b>EMPLOYER'S RETURN (Wage Garnishment)</b>	LEVYING OFFICER FILE NO.:

**EMPLOYER:** You must complete both copies of this form and mail them to the levying officer within 15 days.  
*Please correct any errors* in the mailing information above and provide any missing information, including the name of the person to whom notices should be directed.

**FAILURE TO COMPLETE AND RETURN THESE FORMS MAY SUBJECT YOU TO PAYMENT OF ATTORNEY FEES AND OTHER CIVIL PENALTIES.**

_____ Name and address of employer	_____ Name and address of employee
_____ <b>Attn:</b>	_____ Social Security No.

(Insert name above)

on form WG-035     unknown

1. I received the Earnings Withholding Order on (date):
2. The employee is
  - a.  not employed by this employer (if not employed, omit items 2b through 6 and proceed to the declaration at the end of this form).
  - b.  now employed by this employer and in the last pay period had gross earnings of \$ :
3. The employee's pay period is
  - a.  daily                      b.  weekly                      c.  every two weeks
  - d.  twice a month            e.  monthly                      f.  other (specify):

**(IF YOU HAVE RECEIVED NO OTHER ORDERS THAT PRESENTLY AFFECT THIS EMPLOYEE'S EARNINGS, OMIT ITEMS 4, 5 AND 6, AND PROCEED TO THE DECLARATION AT THE END OF THIS FORM.)**

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based.

(Continued on reverse)

SHORT TITLE: _____	LEVYING OFFICER FILE NO.:	COURT CASE NO.:
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If you have received other orders that presently affect this employee's earnings, another order may have priority over this one. The following list indicates the priority of orders:

- Wage and Earnings Assignment Order (for Support) \_\_\_\_\_ First priority
- Earnings Withholding Order for Support \_\_\_\_\_ Second priority
- Earnings Withholding Order for Taxes \_\_\_\_\_ Third priority
- Earnings Withholding Order for Elder or Dependent Adult Financial Abuse \_\_\_\_\_ Fourth priority
- Earnings Withholding Order \_\_\_\_\_ Fifth priority

If two or more orders have the same priority, comply with the one received first. If both were received on the same date, comply with the one with the earlier date of judgment. If the dates of judgment are the same, you may select which order you choose to comply with.

- 4.  This order appears to have higher priority than any other order. Earnings will be withheld for this order in accord with the EMPLOYER'S INSTRUCTIONS (on reverse of Earnings Withholding Order).
- 5.  The employer has received another order affecting the employee's earnings and earnings are being withheld for the other order because:
  - a.  The other order was received first. The other order was received on (date):
  - b.  This order does not have higher priority.
  - c.  A copy of the other order is attached (retain original for your records. If a copy is not attached, complete item d.)
  - d.  A copy of the other order is NOT attached. Describe the other order by providing the following information:
    - (1) Court name, address, and case number:
    - (2) Levying officer name and address and file number:
    - (3) Total amount to be withheld: \$
- 6.  This order is not effective for the reason shown in item 5. It is returned to the levying officer with this return.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DECLARANT)

If an Earnings Withholding Order is not effective when served, for any reason, do not hold it. Return it to the levying officer with this return.

**FAILURE TO COMPLETE AND RETURN THIS FORM MAY SUBJECT AN EMPLOYER TO CIVIL PENALTIES AND ATTORNEY FEES.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and Address):  <p style="text-align: center;"><b>DRAFT Not Approved by the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	<p style="text-align: center;"><b>03.28.11</b></p>
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
<b>NOTICE OF OPPOSITION TO CLAIM OF EXEMPTION (Wage Garnishment)</b>	LEVYING OFFICER FILE NO.: _____

TO THE LEVYING OFFICER:

1. Name and address of judgment creditor \_\_\_\_\_ 2. Name and address of employee \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Social Security No.  on form WG-035  unknown

3. The Notice of Filing Claim of Exemption states it was mailed on (date): \_\_\_\_\_
4. The earnings claimed as exempt are
- a.  not exempt.
  - b.  partially exempt. The amount not exempt per month is \$ \_\_\_\_\_
5. The judgment creditor opposes the claim of exemption because
- a.  the judgment was for the following common necessities of life (specify): \_\_\_\_\_
  - b.  the following expenses of the debtor are not necessary for the support of the debtor or the debtor's family (specify): \_\_\_\_\_
  - c.  other (specify): \_\_\_\_\_

6.  The judgment creditor will accept \$ \_\_\_\_\_ per pay period for payment on account of this debt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____		LEVYING OFFICER (Name and Address):  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial</b> <b>Council</b>  <b>03.28.11</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		LEVYING OFFICER FILE NO.:
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		COURT CASE NO.:
<b>EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)</b>		
<b>EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.</b>		

**EMPLOYER: Enter the following date to assist your record keeping.**  
Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

**TO THE EMPLOYER REGARDING YOUR EMPLOYEE:**

<input type="text"/> Name and address of employer	<input type="text"/> Name and address of employee
<input type="text"/> 	<input type="text"/> 

Social Security No.  on form WG-035  unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the **levying officer** (name and address above).

If the employee works for you now, you must **give the employee a copy of this order and the Employee Instructions** (form WG-003) within 10 days after receiving this order.

**Complete both copies of the form Employer's Return (form WG-005) and mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

- 2. a. The total amount due is \$
- b. The amount arising from an elder or dependent financial abuse claim is \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

- 3. The judgment was entered in the court on (date):  
The judgment creditor (if different from the plaintiff) is (name):

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

LEVYING OFFICER       REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

**ON EARNINGS WITHHOLDING ORDER FOR FINANCIAL ELDER ABUSE**

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN*) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

**WHAT TO DO WITH THE MONEY**

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check* with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.

**WHAT IF YOU STILL HAVE QUESTIONS?**

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

**THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.**

The chart below shows **HOW MUCH TO WITHHOLD** when the federal minimum wage is \$7.25 per hour.

If the **FEDERAL** minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

**FEDERAL MINIMUM WAGE: \$7.25 per hour**

**(Beginning July 24, 2009.)**

PAY PERIOD	Daily	Weekly	Every Two Weeks	Twice a Month	Monthly
<b>DISPOSABLE EARNINGS</b>	\$0-\$217.50	\$0-\$217.50	\$0-\$435.00	\$0-\$475.25	\$0-\$942.50
<b>WITHHOLD</b>	None	None	None	None	None
<b>DISPOSABLE EARNINGS</b>	\$217.51-\$290.00	\$217.51-\$290.00	\$435.01-\$580.00	\$475.26-\$628.33	\$942.51-\$1,256.66
<b>WITHHOLD</b>	Amount above \$217.50	Amount above \$217.50	Amount above \$435.00	Amount above \$475.25	Amount above \$942.50
<b>DISPOSABLE EARNINGS</b>	\$290.01 or more	\$290.01 or more	\$580.01 or more	\$628.34 or more	\$1,256.67 or more
<b>WITHHOLD</b>	Maximum of 25% of Disposable Earnings				

**COMPUTATION INSTRUCTIONS**

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of \$500 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or \$125.

The chart below is based on the minimum wage that became effective July 24, 2009. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order*, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

**— IMPORTANT WARNINGS —**

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

*IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!*

**CONFIDENTIAL**

**WG-035**

SHORT TITLE: _____	LEVYING OFFICER FILE NO.:	COURT CASE NO.:
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**CONFIDENTIAL STATEMENT OF JUDGMENT DEBTOR'S  
SOCIAL SECURITY NUMBER**

**Supplement to Wage Garnishment Forms  
WG-001, WG-002, WG-004, WG-005, WG-009, and WG-030**

(Do not attach to forms.)

This separate *Confidential Statement of Judgment Debtor's Social Security Number* contains the social security number of the judgment debtor for whom an earnings withholding order is being sought or has issued in the case referenced above. This supplement must be kept separate from any applications or orders filed in this case, and should not be a public record.

INFORMATION ON JUDGMENT DEBTOR:

1. Name:
2. Social Security Number:

<p><b>TO COURT CLERK</b>  <b>THIS STATEMENT IS CONFIDENTIAL.</b>  <b>DO NOT FILE THIS CONFIDENTIAL STATEMENT IN A PUBLIC COURT FILE.</b></p>
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## Item SPR11-21 Response Form

**Title:** **Civil Forms: Revision of Wage Garnishment Forms to Reflect Priority for Elder and Dependent Adult Financial Abuse Claims** (revise forms WG-001, WG-002, WG-004, WG-005 and adopt forms WG-030 and WG-035)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

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

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*