



Judicial Council of California • Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2011

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| Title | Agenda Item Type |
| Civil Forms: Wage Garnishment Forms Concerning Claims of Exemption | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Revise forms WG-003 and WG-009 | January 2, 2012 |
| Recommended by | Date of Report |
| Civil and Small Claims Advisory Committee Hon. Dennis Perluss, Chair | November 18, 2011 |
| | Contact |
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council implement the statutory changes to wage garnishment exemptions enacted in Assembly Bill 1388 by revising two wage garnishment forms to reflect the changed exceptions to the exemptions. Because the new law goes into effect on January 1, 2012, the committee recommends that these revised forms be adopted expeditiously and circulated for public comment after approval. A previous set of revised wage garnishment forms also become effective on January 1, 2012, so these two forms are proposed to go into effect the next day, January 2, to avoid the confusion of having different versions of a form with the same effective date.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Employee Instructions* (form WG-003) and *Notice of Opposition to Claim of Exemption (Wage Garnishment)* (form WG-009), effective January 2, 2012, to reflect changes in the statutory exceptions to exemptions from wage garnishments.

The proposed form revisions are attached at pages 6–8.

Previous Council Action

The Judicial Council first adopted mandatory wage garnishment forms in 1980. Minor revisions have been made to several of the forms over the years. Most recently, at its October 2011 meeting, the council revised several of the wage garnishment forms, effective January 1, 2012, to reflect the new priority accorded to garnishment of wages based on claims for financial abuse of elder or dependent adults and to delete items showing the judgment debtor’s full Social Security numbers on the publicly accessible forms.

Rationale for Recommendation

On October 9, 2011, the Governor signed into law Assembly Bill 1388 (Stats. 2011, ch. 694).¹ Among other things, this legislation amends Code of Civil Procedure section 706.051.² That statute provides that the earnings of a judgment debtor necessary for the support of his or her family are exempt from wage garnishment, except in certain circumstances. These exceptions, set forth at section 706.051(c), have been amended by AB 1388 in two ways:

- The new law deletes the current exception for debts incurred for the common necessities of life furnished to the judgment debtor or his or her family. Wage garnishments for judgments based on such debts *will* be subject to claims of exemption as of January 2012. (Cf. current Code Civ. Proc., § 706.051(c)(1).)
- The new law adds a new exception, for debts for attorney’s fees based on a court order under Family Code section 2030, 3121, or 3557. Wage garnishments to collect the award of such fees *will not* be subject to claims of exemption as of January 2012. (See AB 1388 at § 706.051(c)(1).)

When these changes take effect on January 1, 2012, two of the Judicial Council wage garnishment forms will be incorrect unless revised.

Employee Instructions (form WG-003)

Current law provides that the Judicial Council prescribe the forms for various notices, claims of exemptions, and orders concerning wage garnishments, including notice to the employee of an earnings withholding order. (§§ 706.120 and 706.127.) The notice to the employee is to include, among other information, a statement that informs the judgment debtor of the right to an exemption from the garnishment and the procedure for claiming

¹ The text of AB 1388 may be viewed at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1351-1400/ab_1388_bill_20111009_chaptered.pdf.

² All statutory references in this report are to the Code of Civil Procedure unless stated otherwise.

an exemption. (§ 706.127.) *Employee Instructions* (form WG-003) provides this information, including a list of exceptions to the exemption.

The first proposed revision to the form deletes the exception to the exemption for moneys owed for “food, clothing, medical care, or housing” and replaces it with an exception for moneys owed to an attorney in a family law case. (Form WG-003, item 3b.)

The second revision is on the back on the form, in the section providing information on what will happen after a claim of exemption has been filed. The information includes the possibility that an opposition to the claim will be filed by the judgment creditor and provides an example of how a judgment debtor may prove that the factual basis of the notice of opposition is wrong. In the current form, the example revolves around the exception for debts incurred for common necessities of life. Since that exception will no longer apply, the example has been replaced with a new one based on the exception for debts for wages to former employees.

The final revision is a minor change to the box at the bottom left of the form, to note that the form is a mandatory one. As noted above, the form is mandated by statute. (See § 706.120 (only the forms prescribed by the Judicial Council may be used to implement the wage garnishment provisions).)

Notice of Opposition to Claim of Exemption (Wage Garnishment) (form WG-009)

Item 5 on this form states the factual basis on which the judgment creditor opposes the claim of exemption, including one option stating that the debt was incurred for the common necessities (former item 5a). That item has been deleted, and a new item has been added stating that the basis for the opposition is that the debt was for attorney’s fees based on a court order in a family law action. (Item 5b.)

The box at the bottom left of this form has also been revised to indicate that it is a mandatory Judicial Council form, as it too is a notice form that the Legislature has mandated be prescribed by the council. (§§ 706.120, 706.128.)

Timing of change

The legislation enacting these new provisions will take effect on January 1, 2012. The committee concluded that it is important for the forms to be modified as soon as possible to reflect these changes in the law. The levying officer is required to serve the *Employee’s Notice* with all wage garnishment orders, and the employer is required to deliver it to the employee. (§§ 706.103 and 706.104.) *Notice of Opposition to Claim of Exemption* must be used by all judgment creditors opposing such claims. Unless the forms are modified, inconsistencies between the information on the forms and statutory requirements will create confusion for parties and courts. Judgment debtors and judgment creditors may both believe incorrectly that an exception for debts for common necessities still exists, leading judgment debtors to fail to make valid claims in some cases and

leading judgment creditors to file oppositions for which there is no longer any factual basis. Such oppositions by judgment creditors would lead to unnecessary court hearings.

The committee has concluded that eliminating this confusion and facilitating implementation of the statute by the courts warrant immediate approval of these form changes. The committee therefore recommends that the council adopt this proposal effective January 2, 2012, without circulating it for public comment.

Comments, Alternatives Considered, and Policy Implications

Comments

Because the proposed revisions are noncontroversial and required to implement legislation effective as of January 1, 2012, the committee unanimously recommends that the Judicial Council approve the proposed revisions without a prior public comment period to ensure that the forms are available for use by courts as soon as possible. To facilitate future committee consideration of public feedback, the Judicial Council's Rules and Projects Committee will circulate the forms for public comment during the winter. The committee will return to the council with any further recommendations based on comments received.

Alternatives considered

The committee considered the following alternatives to revising the forms effective January 2, 2012, as recommended in this report:

Option 1: Make no changes to the forms. The committee did not consider this option to be a viable option. If the forms are not updated to reflect the new provisions of the statute, they will contain incorrect statements of the law and lead to confusion among parties as to when claims for exemption to wage garnishments may be filed and what defenses are available to such claims.

Option 2: Recommend circulation and July 1 effective date. The committee considered, but decided against, recommending that the proposed form revisions be sent out for comment during the winter cycle and presented to the Judicial Council at its April 24, 2012, meeting, for adoption effective July 1, 2012. The advantage of this approach is that the council would have the benefit of public comments on the proposal before considering it for adoption. However, parties and courts would still, for six months, face the confusion and added work resulting from baseless oppositions to claims of exemption.

Implementation Requirements, Costs, and Operational Impacts

There will be very limited costs and operational impacts for the courts, as neither of these forms are completed or provided by courts. Moreover, the forms as they currently exist

will be incorrect as of January 1, 2012, so providing correct forms should facilitate the courts' implementation of the new statutory provisions in wage garnishment cases.

Attachments

Forms WG-003 and WG-009, at pages 6–8

EMPLOYEE INSTRUCTIONS

-NOTICE-
**IMPORTANT LEGAL NOTICE TO EMPLOYEE
ABOUT EARNINGS WITHHOLDING ORDERS**
(Wage Garnishment)

The **Earnings Withholding Order** requires your employer to pay part of your earnings to the sheriff or other levying officer. The levying officer will pay the money to a creditor who has a court judgment against you. The information below may help you protect the money you earn.

-NOTICIA-
**NOTICIA LEGAL IMPORTANTE RESPECTO
A LAS ÓRDENES DE RETENCIÓN DE SUELDO**

La **Orden de Retención de Sueldo** requiere que su empleador pague una parte de su sueldo a un oficial de embargo. El oficial le pagará el dinero retenido a su acreedor que ha conseguido una decisión judicial en contra de usted. Pida usted que un amigo o su abogado le lea este papel oficial. Esta información le puede ayudar a proteger su sueldo.

CAN YOU BE FIRED BECAUSE OF THIS?

NO. You cannot be fired unless your earnings have been withheld before for a different court judgment. If this is the first judgment for which your wages will be withheld and your employer fires you because of this, the California Labor Commissioner, listed in the phone book of larger cities, can help you get your job back.

HOW MUCH OF YOUR PAY WILL BE WITHHELD?

The reverse of the Earnings Withholding Order (abbreviated in this notice as EWO) that applies to you contains Employer Instructions. These explain how much of your earnings can be withheld. Generally, the amount is about 25% of your take home pay until the amount due has been withheld. The levying officer will notify the employee of an additional assessment charged for paying out money collected under this order and that amount will also be withheld.

If you have trouble figuring this out, ask your employer for help.

IS THERE ANYTHING YOU CAN DO?

YES. There are several possibilities.

1. See an attorney. If you do not know an attorney, check with the lawyer referral service or the legal aid office in your county (both are listed in the yellow pages under "Attorneys").
An attorney may be able to help you make an agreement with your creditor, or may be able to help you stop your earnings from being withheld. You may wish to consider bankruptcy or asking the bankruptcy court to help you pay your creditors. These possibilities may stop your wages from being withheld.
An attorney can help you decide what is best for you. Take your **EWO** to the attorney to help you get the best advice and the fastest help.
2. Try to work out an agreement yourself with your creditor. Call the creditor or the creditor's attorney, listed on the **EWO**. If you make an agreement, the withholding of your wages will stop or be changed to a smaller amount you agree on. *(See item 4 on the reverse for another way to make an offer to your creditor.)*
3. You can ask for an EXEMPTION. An exemption will protect more, or maybe even all of your earnings. You can get an exemption if you need your earnings to support yourself or your family, **but you cannot get an exemption if:**
 - a. You use some of your earnings for luxuries and they aren't really necessary for support; **OR**
 - b. You owe money to an attorney because of a court order in a family law case; **OR**
 - c. You owe the debt for past due child support or spousal support (alimony); **OR**
 - d. You owe the debt to a former employee for wages.

HOW DO YOU ASK FOR AN EXEMPTION?

(See the other side of this form for instructions about claiming an exemption.)

HOW DO YOU ASK FOR AN EXEMPTION?

1. Call or write the levying officer for three (3) copies each of the forms called "Claim of Exemption" and "Financial Statement." These forms are free. The name and address of the levying officer are in the big box on the right at the top of the **EWO**.
2. Fill out both forms. On the forms are some sentences or words which have boxes in front of them. The box means the words which follow may not apply to your case. If the words do apply, put a check in the box.
Remember, it is **your** job to prove with the Financial Statement form that your earnings are needed for support. Write down the details about your needs.
3. For example, if your child has special medical expenses, tell which child, what illnesses, who the doctor is, how often the doctor must be visited, the cost per visit, and the costs of medicines. These details should be listed in item 6. If you need more space, put "See attachment 6" and attach a typed 8½ by 11 sheet of paper on which you have explained your expenses in detail.
4. You can use the Claim of Exemption form to make an offer to the judgment creditor to have a specified amount withheld each pay period. Complete item 3 on the form to indicate the amount you agree to have withheld **each pay day during the withholding period**. (Be sure it's less than the amount to be withheld otherwise.) If your creditor accepts your offer, he will not oppose your claim of exemption. (See (1) below.)
5. Sign the Claim of Exemption and Financial Statement forms. Be sure the Claim of Exemption form shows the address where you receive mail.
6. Mail or deliver two (2) copies of each of the two forms to the levying officer. Keep one copy for yourself in case a court hearing is necessary.

Do not use the Claim of Exemption and Financial Statement forms to seek a modification of child support or alimony payments. These payments can be modified only by the family law court that ordered them.

FILE YOUR CLAIM OF EXEMPTION AS SOON AS POSSIBLE FOR THE MOST PROTECTION.

ONE OF TWO THINGS WILL HAPPEN NEXT

- (1) The judgment creditor will not oppose (object to) your claim of exemption. If this happens, after 10 days the levying officer will tell your employer to stop withholding or withhold less from your earnings. The part (or all) of your earnings needed for support will be paid to you or paid as you direct. And you will get back earnings the levying officer or your employer were holding when you asked for the exemption.

—OR—

- (2) The creditor will oppose (object to) your claim of exemption. If this happens, you will receive a Notice of Opposition and Notice of Hearing on Claim of Exemption, in which the creditor states why your exemption should not be allowed. A box in the middle of the Notice of Hearing tells you the time and place of the court hearing which will be in about ten days. Be sure to go to the hearing if you can.

If the judgment creditor has checked the box in item 3 on the Notice of Hearing on Claim of Exemption, the creditor will not be in court. If you are willing to have the court make its decision based on your Financial Statement and the creditor's Notice of Opposition, you need not go to the hearing.

The Notice of Opposition to Claim of Exemption will tell you why the creditor thinks your claim should not be allowed. If you go to the hearing, take any bills, paycheck stubs, cancelled checks, or other evidence (including witnesses) that will help

you prove your Claim of Exemption and Financial Statement are correct and your earnings are needed to support yourself or your family.

Perhaps you can even prove the Notice of Opposition is wrong. For example, perhaps the Notice of Opposition states that the judgment was for wages for a past employee. You may be able to provide evidence that the person was not an employee or that the debt was not for wages.

If the judge at the hearing agrees with you, your employer will be ordered to stop withholding your earnings or withhold less money. The judge can even order that the **EWO** end before the hearing (so you would get some earnings back).

If the judge does not agree with you, the withholding will continue unless you **appeal to** a higher court. The rules for appeals are complex so you should see an attorney if you want to appeal.

If you have one court hearing, you should not file another Claim of Exemption about the same **EWO** unless your finances have gotten worse in an important way.

If your **EWO** is to be changed or ended, the levying officer must sign the notice to your employer of the change. He may give you permission to deliver it to the employer, or it can be mailed.

WHAT HAPPENS TO YOUR EARNINGS IF YOU FILE A CLAIM OF EXEMPTION?

Your employer must continue to hold back part of your earnings for the **EWO** until he receives a notice signed by the levying officer to change the order or end it early.

The levying officer will keep your withheld earnings until your Claim of Exemption is denied or takes effect. At that time your earnings will be paid according to the law that applies to your case.

REGARDING CHILD SUPPORT

If you are obligated to make child support payments, the local child support agency may help you to have an Order Assigning Salary or Wages entered. This order has the top priority claim on your earnings. When it is in effect, little or no money may be

available to be withheld for an **EWO**. And, if the local child support agency is involved in collecting this support from you, it may agree to accept less money if this special order is entered.

WHAT IF YOU STILL HAVE QUESTIONS?

If you cannot see an attorney, or don't want to see an attorney, you might be able to answer some of your questions by reading the law in a law library. Ask the law librarian to help you find sections 706.050 and 706.105 of the California Code of Civil Procedure. Other sections of the code, beginning with section 706.010 may also answer some of your questions.

Also, the office of the Wage and Hour Division of the U.S. Department of Labor may be able to answer some of your questions. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

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| 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;">DRAFT Not Approved by the Judicial Council 11.18.11</p> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ | COURT CASE NUMBER: _____ |
| NOTICE OF OPPOSITION TO CLAIM OF EXEMPTION (Wage Garnishment) | LEVYING OFFICER FILE NUMBER.: _____ |

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 following expenses of the debtor are not necessary for the support of the debtor or the debtor's family (specify): _____
 - b. the debt was for attorney's fees based on a court order under Family Code section 2030, 3121, or 3557.
 - 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)

