

INSTRUCTIONS to GARNISHEE
GARNISHMENT OF EARNINGS

BELOW IS AN EXECUTIVE SUMMARY OF THE ARIZONA REVISED STATUTES.
THIS IS NOT LEGAL ADVICE.
CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS.

Statutes require that the Judgment Creditor provide the Garnishee with multiple copies of the following documents:

- Writ and Summons of Garnishment
- Underlying Judgment
- Answer of Garnishee
- Notice to Judgment Debtor
- Request for Hearing on Garnishment
- Instructions
- Nonexempt Earning Statements
- Request for Hearing on Earnings

If any of these documents are missing, contact the Judgment Creditor's attorney right away.

Please note, some of these documents can be found on our website, Phoenixatty.com.

DEFINITIONS of COMMONLY USED TERMS

“Garnishee” is the person or entity suspected of employing or owing earnings to the Judgment Debtor. All parties are identified in the heading on Page 1 of the Writ of Garnishment.

“Judgment Creditor” means a party who has money Judgment or an order for support of a person that is due and unpaid.

“Judgment Debtor” means a party against whom a money Judgment or order for support of a person has been awarded.

“Earnings” mean compensation paid, or payable, for personal services, whether these payments are wages, salary, commission, bonus or otherwise. Earnings include those paid to an independent contractor or “1099” worker. Earnings also include periodic payments pursuant to a pension or retirement program.

“Disposable earnings” mean the amount remaining from the gross earnings for a pay period after the deductions required by State and Federal law.

“Nonexempt earnings” mean those earnings, or that portion of earnings, which are subject to judicial process including garnishment.

“Payday” means the fixed, regular day for payment of wages designated by an employer.

“Date of Service” is the date on which garnishment documents were served upon the Garnishee's Statutory Agent, the Arizona Corporation Commission or other authorized party pursuant to the rules of civil procedure.

(Compiled from Ariz. Rev. Stat. Ann. §12-1598 and other sources)

GARNISHEE'S DUTIES to WITHHOLD

If the Judgment Debtor is employed by the Garnishee, or the Garnishee otherwise owes earnings to the Judgment Debtor:

1. The Garnishee must start to withhold nonexempt earnings of the Judgment Debtor each payday after of the date of service.
2. Nonexempt earnings are calculated by completing the Nonexempt Earnings Statement. Copies of the Nonexempt Earnings Statements must be delivered to the Judgment Debtor and the Judgment Creditor.
3. The Garnishee is to hold onto the withheld funds awaiting instructions from the Court.
4. The Garnishee is not liable to the Judgment Creditor for failing to withhold earnings from the Judgment Debtor if those earnings are paid to the Judgment Debtor on a payday falling within 3 days, not including weekends and holidays, after the date of service of the Writ of Garnishment.

(Ariz. Rev. Stat. Ann. §12-1598.05)

GARNISHEE'S DUTIES to RESPOND to SUMMONS

Within 10 days after being served with the Writ and Summons of Garnishment, the Garnishee must:

1. If the Garnishee **does not employ or anticipate owing earnings** to the Judgment Debtor within 60 days following the date of service of the Writ of Garnishment, the Garnishee must:
 - a. Answer of Garnishee
 - i. Complete and sign the Answer of Garnishee under oath.
 - ii. If there is more than one Judgment Debtor, the Garnishee must answer as to each Judgment Debtor named in the Writ of Garnishment.
 - iii. File the original Answer of Garnishee with the Court.
 - iv. Deliver a copy to the Judgment Creditor.
 - v. If possible, deliver a copy to the Judgment Debtor.
 - b. After the Answer of Garnishee is filed, the Court may require further action from the Garnishee if any party objects to the Answer of Garnishee.
2. If the Garnishee **does employ or anticipates owing earnings** to the Judgment Debtor within 60 days following the date of service of the Writ of Garnishment, the Garnishee must:
 - a. Answer of Garnishee
 - i. Complete the Answer of Garnishee, signed by Garnishee, true and under oath.
 - ii. If there is more than one Judgment Debtor, Garnishee must answer as to each Judgment Debtor named in the Writ of Garnishment.
 - iii. File the original Answer of Garnishee with the Court.
 - iv. Deliver a copy to the Judgment Creditor.
 - v. Deliver a copy to the Judgment Debtor via first class mail, hand delivery or service of process only. (No other method of delivery is acceptable to the Court).
 - b. Nonexempt Earnings Statement
 - i. Complete the Nonexempt Earnings Statement
 1. The initial Nonexempt Earnings Statement must be delivered within 10 days of service. If there are no paydays within these 10 days, the Garnishee may use the calculations from the

previous paycheck and clearly mark the Nonexempt Earnings Statement with "ESTIMATE."

2. Each pay period following and while the lien is in effect, Garnishee shall provide Nonexempt Earnings Statements.

ii. Deliver a copy to the Judgment Creditor.

iii. Deliver a copy of the Nonexempt Earnings Statement and the Request for Hearing on Earnings, to the Judgment Debtor via first class mail, hand delivery or service of process only.

c. Notice to Judgment Debtor

i. Deliver to the Judgment Debtor via first class mail, hand delivery or service of process only.

d. Request for Hearing on Garnishment form

i. Deliver the Judgment Debtor via first class mail, hand delivery or service of process only.

(Ariz. Rev. Stat. Ann. §§12-1598.06, 12-1598.07, 12-1598.08, 12-1598.11)

GARNISHEE'S DUTIES UPON RECEIPT of ORDER of CONTINUING LIEN

1. If appropriate, the Court will order that the garnishment is a continuing lien against the nonexempt earnings of the Judgment Debtor. The Judgment Creditor will deliver a copy of the Order of Continuing Lien to the Garnishee. Once received, the Garnishee is to immediately sending all of the earnings withheld since service of the Writ of Garnishment to the Judgment Creditor's Attorney. Checks should be made payable to:

The Trust Account of James R. Vaughan
11445 E Via Linda, Ste. 2-610
Scottsdale, AZ 85054

2. The Garnishee is to continue to withhold and send funds and nonexempt earnings statement until the Garnishee is discharged (see "Discharge of the Garnishee" below)

(Ariz. Rev. Stat. Ann. §12-1598.10)

DISCHARGE of the GARNISHSEE

1. If an Order of Continuing Lien is entered, it will remain in effect until the occurrence of any of the following:

a. The underlying judgment is satisfied in full, is vacated or expires.

b. The Judgment Debtor leaves the Garnishee's employ for more than 60 days.

c. The Judgment Creditor releases the garnishment.

d. The proceedings are stayed by a court of competent jurisdiction, including the United States Bankruptcy Court.

e. The Judgment Debtor has not earned any nonexempt earnings for at least 60 days.

f. The Court orders that the garnishment be quashed.

(Ariz. Rev. Stat. Ann. §12-1598.09)

2. If no Order of Continuing Lien is entered within 45 days after the Answer of Garnishee is filed with the Court and only if no objections are filed to your Answer of Garnishee, any earnings held by the Garnishee shall be released to the Judgment

Debtor. Furthermore, the Garnishee will be discharged from any liability on the Garnishment.

(Ariz. Rev. Stat. Ann. §12-1598.10)

CONSEQUENCES for FAILURE to COMPLY

The Garnishee is not liable to the Judgment Debtor, for acting in reliance on the validity of a garnishment which is regular on its face. However, for noncompliance with the Garnishee's responsibilities, the garnishment law provides the following:

(B) If the Garnishee fails after written notice to deliver nonexempt earnings to the Judgment Creditor within 30 days after the ending date of the pay period, or fails after written notice to deliver the Nonexempt Earning Statement to the Judgment Debtor with the Nonexempt earnings, the Judgment Debtor may petition the Court for relief. The Court shall, after notice, hold a hearing to determine if such failure was willful or the result of gross negligence. If the Court determines that the failure was willful or the result of gross negligence, the Court shall find the Garnishee in contempt and shall award the Judgment Debtor all of the following:

1. An amount to compensate for actual losses, if any, caused by the failure to comply.
2. Reasonable attorney's fees, if the Judgment Debtor was represented by an attorney at such hearing.
3. Court costs. The Court may award the Judgment Creditor an additional amount not to exceed \$400.00.

(C) While an Order of Continuing Lien pursuant to 12-1598.10 is in effect, if the Garnishee fails to deliver to the Judgment Creditor the nonexempt earnings of the Judgment Debtor, if any, and the copy of the Nonexempt earnings Statement within 14 days of the end of the pertinent pay period, and the Judgment Creditor thereafter delivers a written demand for the nonexempt earnings and statement and the garnishee does not comply within 14 days of the receipt of the written demand, the Judgment Creditor may petition the Court for relief. The Court shall, after notice, hold a hearing to determine whether the failure to comply with the written demand within 14 days of receipt, if any, was willful or the result of gross negligence. If the Court determines that the failure was willful or the result of gross negligence, the Court shall find the Garnishee in contempt and shall award the Judgment Creditor all of the following:

1. An amount to compensate for actual losses, if any, caused by the failure to comply.
2. Reasonable attorney's fees, if the Judgment Creditor was represented by an attorney at such hearing.
3. Court costs. The Court may award the Judgment Creditor an additional amount not to exceed \$400.00.

(Ariz. Rev. Stat. Ann. 12-1598.13)