

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

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

**What is a non-earnings garnishment?** A non-earnings garnishment is when the court orders a person or entity (garnishee), who is not an employer of the debtor but who owes money to the debtor, to pay a judgment creditor for an amount owed by the debtor to the creditor.

## **CREDITOR'S STEPS:**

1. **First, you have to win your case.**
2. **Decide in which county you will file your garnishment.** Small Claims non-earnings garnishments to recover judgments totaling \$10,000 or less are typically filed in the county where the original judgment was entered. You may also file your garnishment in any county in which you have filed a transcript of the original judgment.
3. **Fill out a Small Claims Non-Earnings Garnishment Summons and Complaint (SC-301).** In non-earnings garnishment, you are the creditor and the person who owes you money is the debtor. The person or entity holding the debtor's money is called the garnishee. Make three copies of the completed form.
4. **File the Small Claims Non-Earnings Garnishment Summons and Complaint and pay the fee to the Clerk of Court in the county where you are filing your garnishment.** The Clerk will keep the original and return the three copies to you with court information completed.
5. **Serve (deliver) one copy of the Small Claims Non-Earnings Garnishment Summons and Complaint on the garnishee and on the debtor.** For a non-earnings garnishment to begin, you must:
  - Serve the garnishee with a copy of the summons and complaint and pay a \$3 fee to the garnishee.
  - Within 10 days of serving the garnishee, the debtor must be served with a copy of the summons and complaint.

Service may be done by the sheriff or a private process server. See the "Pre-Judgment: Basic Steps to Small Claims Service" (SC-6050V) guide for additional information.

- 6. **Review any answer you receive from the debtor or garnishee.** In some counties, a hearing will be scheduled by the Clerk and the date will be indicated on the summons and complaint. In other counties, if no hearing is scheduled, you must object and request a hearing if you object to the answers of the debtor and/or garnishee.
- 7. **Attend the hearing.** At the hearing, the court will review the debtor's financial situation and/or whether the garnishee has followed the law. If the court orders the non-earnings garnishment to continue, the court will send the garnishee an order directing the garnishee to release the money to the creditor. If the court determines the debtor is exempt, the garnishee will not be required to withhold the money from the debtor. If the court stops the garnishment, you have the option of beginning the entire non-earnings garnishment process again when you believe a new non-earnings garnishment is appropriate.

### **GARNISHEE'S STEPS:**

- 1. **Once you receive the Small Claims Non-Earnings Garnishment Summons and Complaint, you must withhold the amount claimed by the creditor**, except that if you are indebted to the debtor for payment for the sale of agricultural products grown or produced by the debtor or the debtor's minor children, you must pay the debtor the exempt net income allowed under law.
- 2. **You must file a Non-Earnings Garnishment Garnishee Answer (SC-302) within 20 days of being served with the summons and complaint.** You should file the original with the court and send copies to the creditor and debtor. The answer should state if you claim any setoff, lien, or claim to the property. Also, the garnishee may state any claim of exemption on the part of the defendant or other objection. If you fail to answer within 20 days from service of this summons, judgment will be entered against you for the amount of the creditor's judgment against the debtor(s) plus the costs of this action.
- 3. **If the debtor serves you with a Small Claims Non-Earnings Garnishment Debtor's Answer (SC-303) claiming exemptions, you must withhold the amount claimed by the debtor until further order of the court.**
- 4. **You must attend any hearing.** If the creditor objects to the claims in your answer and schedules a hearing, you must appear at the hearing for a determination to be made by the court as to how much money may be withheld from the creditor's claim.
- 5. **If you have no exemption to claim and the debtor does not claim an exemption, you must release the money claimed by the creditor upon the order of the court.**

### **DEBTOR'S STEPS:**

- 1. **Receive a copy of the Small Claims Non-Earnings Garnishment Summons and Complaint which the creditor is required to serve on you.** Service must be done by a sheriff or a private process server.

2. **Complete the Small Claims Non-Earnings Garnishment Debtor's Answer if you believe your money is completely exempt or your money is partially exempt.**
- The first part of the answer form lists reasons why your money is completely exempt for reasons, such as that the judgment listed by the creditor has been paid or that you have filed bankruptcy.
  - The second part of the answer form lists reasons why your money is completely or partially exempt due to exemptions under the law, such as an exemption of 75% of your net income.

3. **File the Small Claims Non-Earnings Garnishment Debtor's Answer by the date and time listed on the summons and complaint or bring it with you to the hearing date listed.**
- If you are only directed to file a written answer and no hearing is scheduled, file the answer with the Clerk of Court by the date and time listed on the summons and complaint. You must also serve a copy of the answer on the creditor's attorney or the creditor and on the garnishee.
  - You must sign the answer form and write down the date the form was delivered or mailed to the court, to the creditor's attorney or creditor, and to the garnishee.

Service may be done by first class mail or by certified mail with return receipt requested or by personally delivering the copy of the answer to the creditor's attorney or the creditor, and the garnishee.

4. **Try to resolve any disputes with the creditor before a hearing.** If the creditor objects to the exemptions you claim, the creditor may try to resolve the dispute informally. You should send copies of documentation that you believe supports your exemptions to the creditor in order to try and resolve any disputes.
5. **You must attend any hearing.** If a hearing is scheduled on the summons and complaint or if the creditor objects to the claims in your answer or the garnishee's answer and schedules a hearing, you must appear at the hearing for a determination to be made by the court as to how much money may be withheld from the creditor's claim. The court will decide what exemptions are appropriate and how much money, if any, must be released by the garnishee to pay to the creditor.
6. **If you and the garnishee do not claim any exemptions and the garnishee does have money of yours, the court will order the garnishee to release the money requested by the creditor.**