

A GUIDE TO GARNISHMENT OF PERIODIC PAYMENTS

A Supplement to the Request and Writ for Garnishment and the Garnishee Disclosure

(SCAO Approved Forms MC 12 and MC 14)

for use by the employer or other person who makes
payments to a creditor on a regular basis



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HOW TO COMPLETE THE GARNISHEE DISCLOSURE FORM FOR PERIODIC GARNISHMENTS

Follow these instructions if you receive a "Request and Writ for Garnishment (Periodic)," form MC 12, and "Garnishee Disclosure," form MC 14. You must complete form MC 14 and send copies to the court and all parties within 14 days of the date you receive these forms.

A periodic garnishment means that the plaintiff has the right to take part or all of a defendant's payments to pay for a judgment. You have been identified as a "garnishee," a person who has control over some or all of the money that is paid to the defendant.

As the garnishee, you are being ordered to give all or part of this money to the plaintiff instead of the defendant. You are required to take money for up to 91 days or until the judgment amount in item 2 of the Request on form MC 12 has been paid in full, whichever occurs first. If you do not do this, a judgment may be entered against you.

As soon as you receive forms MC 12 and MC 14, determine whether you are obligated to make periodic payments to the defendant. Periodic payments are payments you make to the defendant on a regular basis. These payments may be paychecks, rent payments, land contract payments, or other contract payments.

1. Write in the date the garnishment was issued (in the lower left-hand corner of form MC 12). Then write in the date you received forms MC 12 and MC 14.

- If you don't know the defendant or are not obligated to make payments to him or her, check boxes 1b and 2d. Then check the box that describes the reason you are not obligated. If you check "other" write out the reason. Date and sign the form and follow the instructions in item 3 below.
- If you know the defendant and are obligated to make payments to him or her, you must mail or deliver a copy of MC 12 to the defendant. After mailing or delivering MC 12 to the defendant, check box 1a and write in the date you mailed or delivered it. Follow the instructions in item 2 below. "Obligated to make payments" includes employees who may not necessarily be receiving a paycheck at the time. For example, an employee may be sick, laid off, or on leave when this writ was issued, but they are still your employee and will eventually be back to work.

2. Check box 2e and complete the information in item 2e as explained below.

- Check either the box "earnings" or "nonearnings" so the plaintiff knows what kind of payments you make to the defendant. If you check "nonearnings," write in the kind of payments (for example, if you make rent payments, write that on the line after the "nonearnings" box).
- Check the box that describes how often you make the payments to the defendant. If you check the "other" box, write on the line after that box how often you make the payments.
- Check whether or not you are already garnishing money from the defendant (a higher priority writ/order). If you check the box that a higher priority writ/order is in effect, copy from those papers the name of the court that issued that writ, the case number of that writ, the date that writ was issued, and the date it was served on you.
- If the defendant is currently due to receive payments from you from the date the writ was issued, check the box that says withholding "will begin immediately if sufficient funds are available." If the defendant is not due to receive a payment, check the box that says "will not begin immediately." Then check the box that explains why payment is not due: for example, defendant is laid off, sick, on leave of absence.

Date and sign the form and follow the instructions in item 3.

3. Fill in the dates that you will be mailing or delivering the copies of this form. Then date and sign this part of the form. Separate the four copies of the form. Mail the original to the court and one copy to the plaintiff. You can either mail a copy to the defendant or hand deliver it to him or her. Keep one copy for your records.

HOW TO GARNISH MONEY FROM THE DEFENDANT

Follow these instructions if you checked box 2d on form MC 14, Garnishee Disclosure.

- If you are paying the defendant's wages, step 4 below does not apply to you.
 - If you are not paying the defendant's wages, steps 2 and 3 below do not apply to you.
1. If you are already garnishing money from the defendant for another plaintiff, you must also garnish available money for this plaintiff up to the maximum allowed until the other garnishment has expired unless the money is for wages. The expiration date is at the bottom of form MC 12. Do not throw out this garnishment; if the other garnishment expires before the expiration date of this one, you must start garnishing money on this garnishment until it expires.

For example: Today is April 1. You received a writ of garnishment for plaintiff A on March 1 and are withholding money from the defendant and sending it to plaintiff A. The writ for plaintiff A expires on May 31. You receive another writ of garnishment today from plaintiff B with an expiration date of June 30. Complete form MC 13 for plaintiff B as instructed. Place the writ of garnishment for plaintiff B in a file until May 31. On May 31, the writ for plaintiff A expires. Determine how much money to withhold on plaintiff B's garnishment and start sending it to plaintiff B. On June 30, the writ for plaintiff B expires.
 2. **This Step applies only to employers.** Determine when to start calculating the amount of money to withhold from the defendant based on the pay period as follows:
 - If the pay period is weekly, biweekly, or semimonthly, start calculating from the first full pay period after you received the writ (form MC 12).
 - If the pay period is monthly and you received the writ (form MC 12) within the first 14 days of the pay period, start calculating from that pay period.
 - If the pay period is monthly and you received the writ (form MC 12) on or after the 15th day of the pay period, start calculating from the next pay period.
 3. **This Step applies only to employers.** Calculate how much money to withhold. Use the calculation sheet (the last page of these instructions) to figure out how much to withhold from the defendant's paycheck.
 4. **This Step does not apply to employers.** Withhold the entire amount you would be paying to the defendant.
 5. Withhold the first amount according to the instructions above, and after that, continue withholding for every period you would be paying the defendant until the writ (MC 12) expires. Every time you withhold money from the defendant, write the case name, case number, date of withholding, amount withheld, and the balance due on the writ after subtracting the amount you withheld. You can write this on a receipt, a paystub, or any other type of form you wish. You must give this information to the plaintiff and the defendant everytime you withhold money.
 6. Do not start sending any of the money you have withheld until 28 days after you received the writ. On the 29th day, make a check payable to the person or court as ordered in the writ (MC 12) for the entire amount of money you have withheld so far and send it to the person or court as ordered in the writ along with the information you wrote down as required in Step 5. Once you have sent this first payment, continue to send the payments and other information as you withhold the payments until the writ expires.
 7. Within 14 days after the writ expires or the judgment is paid off (whichever comes first), you must send a final report of withholding to the court, plaintiff, and defendant. You may use form MC 48, Final Statement on Garnishment of Periodic Payments.

You do not need to use this calculation sheet. If you do, it does not need to be filed with the court or provided to the defendant and plaintiff. However, you must maintain some type of record of your payment calculations and make it available for review by the plaintiff, defendant, or court upon request.

GARNISHEE CALCULATION SHEET FOR EARNINGS

1. The employer's current payday is _____ . The principal defendant's gross earnings from the employer that were earned for this pay period are: \$ _____
2. Deductions required by law to be withheld from gross earnings shown on line 1:
 - a. Federal withholding tax (for income tax) \$ _____
 - b. State withholding tax (for income tax) \$ _____
 - c. Employee portion of social security tax \$ _____
 - d. Employee portion of medicare tax \$ _____
 - e. City withholding tax (for income tax) \$ _____
 - f. Public employee retirement when required by law \$ _____
 - g. Total (add lines 2a through 2f) \$ _____
3. **Disposable earnings** (subtract line 2g from line 1) \$ _____
4. Test I for amount available for garnishment (25% of line 3): (this percentage does not apply to garnishments for support of a person) \$ _____
5. Test II for amount available for garnishment (disposable earnings minus federal minimum wage multiplied by appropriate multiple for normal pay period):
 - a. Locate the appropriate figure from the chart below and insert here \$ _____
 - b. Subtract amount on line 5a from amount on line 3. Insert amount here \$ _____
6. Maximum amount subject to garnishment (line 4 or 5b, whichever is less) \$ _____
7. Amounts withheld from disposable earnings (see line 3) pursuant to orders with priority:
 - a. Orders of bankruptcy court \$ _____
 - b. Orders for past due federal or state taxes \$ _____
 - c. Income withholding for support of any person \$ _____
 - d. Other general garnishments served prior to this writ \$ _____
 - e. Total of all priority amounts withheld (add lines 7a through 7d) \$ _____
8. Amount subject to garnishment under this writ (subtract line 7e from line 6) \$ _____
9. **Amount to be withheld in response to this writ** (line 8 above or line 2 on the request and writ for garnishment, whichever is less) \$ _____

Chart *		
Test II for Amount Available for Garnishment Beginning:	<u>July 24, 2008</u>	<u>July 24, 2009</u>
Weekly (or more frequently) pay period	\$196.50	\$217.50
Biweekly pay period	\$393.00	\$435.00
Semimonthly pay period	\$425.75	\$471.25
Monthly pay period	\$851.50	\$942.50
*Training wage: for person aged 16 to 19 on their first job, use 85% of the above figures.		