

THE SCAO GARNISHMENT FORM MC-13 (REQUEST AND WRIT FOR GARNISHMENT) AND SCAO GARNISHMENT FORM MC-14 (GARNISHEE DISCLOSURE)

Issue

Should the SCAO Garnishment Form MC-13 (Request and Writ for Garnishment) and Garnishment Form MC-14 (Garnishee Disclosure) be revised to include a provision that expressly directs a bank or a financial institution to protect exempted income from garnishment?

Synopsis

Under federal law, certain income is exempted from garnishment by a judgment creditor. Examples of some of the types of income that are exempted from garnishment are listed in the attached SCAO Form MC-13 (Request and Writ for Garnishment). But the two SCAO court forms that are used in the garnishment process—Form MC-13 (Request and Writ for Garnishment), and Form MC-14 (Garnishee Disclosure)—do not contain the provisions necessary to allow a financial institution to protect exempted income from garnishment. As a result, financial institutions are wrongfully garnishing accounts that contain exempted income and are denying account-holders access to these exempted funds. The Committee on Justice Initiatives now submits a proposal to insert into the two court forms the necessary provisions to direct a financial institution to protect exempted income from garnishment. Because the two court forms contain bolded, underlined and highlighted language in their original format, the proposed additions to the two court forms are *italicized* for the Representative Assembly's review.

Background

Currently, many banks and financial institutions freeze accounts that contain funds exempted from garnishment. While Michigan law allows an account holder to object to the garnishment of the exempted income, it generally takes several weeks or months to "unfreeze" the account. This delay can lead to catastrophic results, particularly when many recipients of the exempted income live in poverty or on the brink of poverty. As a result of losing access to their only source of income, many are unable to pay rent, buy groceries or pay utility bills. Moreover, the freezing of the bank account causes other outstanding checks to bounce, leading to both creditor and bank charges against the account.

An example is the case of Mr. Washington Osler.¹ Mr. Osler is a 50-year-old disabled man whose sole source of income is Social Security Disability (SSD) benefits, which are directly deposited by the federal government into his checking account. In July 2005, the bank received a request and writ of garnishment from a judgment creditor to whom Mr. Osler owed \$87.36. On July 15, 2005, the bank froze Mr. Osler's account. Mr. Osler obtained a legal services attorney, who filed objections to the garnishment. On August 30, 2005, a hearing on the objections was held. At the hearing, the judgment creditor agreed that the funds in the account were exempted from garnishment, and the bank "unfroze" the account. Thus, for a period of 45 days, Mr. Osler was denied access to the funds in his account to which he was legally entitled. During the time he was

¹ This is an actual case.

wrongfully denied access to his account, however, Mr. Osler accrued \$223.89 in overdraft charges, not counting the bank fees of \$6.00 per day that were charged against the account for containing a negative balance. The judgment creditor refused to pay the overdraft fees, and the bank insisted that Mr. Osler pay the bank fees. Mr. Osler's legal services attorney filed a motion to order the judgment creditor to pay the overdraft fees, and the Court subpoenaed the bank to the motion hearing. At the hearing, the bank's attorney agreed that Mr. Osler should not pay the overdraft fees.

The above is a classical example of numerous cases handled by the legal services programs in Michigan, who represent clients facing the wrongful garnishment of exempted income. The outcome for those who are not represented by counsel may be totally different.

The Committee on Justice Initiatives, the proponent of the changes to the two court forms, believes that the revised forms will properly address the problem described above and adequately eliminate unnecessary court proceedings and delay. Accordingly, the two garnishment forms should be changed to expressly allow a financial institution to protect exempted income from garnishment. States such as Virginia and Alabama have adopted similar changes to their garnishment court forms. Because of the current advances in computer technology, a bank can readily and easily determine whether deposited funds are exempt. For example, each electronic Social Security deposit is tagged with the letters "SOC SEC" (Social Security) or "SUPP SEC" (Supplemental Security Income).

Opposition to the Proposal

None known.

Fiscal Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 14, 2006

The SCAO Garnishment Form MC-13 (Request and Writ for Garnishment) and the SCAO Garnishment Form MC-14 (Garnishee Disclosure) should be revised to include a provision that expressly directs a bank or a financial institution to protect exempted income from garnishment.

(a) Yes

or

(b) No

● STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	REQUEST AND WRIT FOR GARNISHMENT (NON-PERIODIC)	● CASE NO.
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Court Address **● Zip Code** **Court telephone no.**

● Plaintiff name and address (judgment creditor) ● Plaintiff's attorney, bar no., and address ● Telephone no.	V	● Defendant name and address (judgment debtor) ● Social security no. Account no. Garnishee name and address
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REQUEST

1. Plaintiff received judgment against defendant for \$ _____ on _____.
 2. The amount of the unsatisfied judgment now due (including interest and costs) is ● \$ _____.
 3. Plaintiff knows or with good reason believes that the garnishee is indebted to or possesses or controls property belonging to the defendant.
 4. **Plaintiff requests** a writ of non-periodic garnishment.
- I declare that the statements above are true to the best of my information, knowledge, and belief.

Date Plaintiff/Agent/Attorney signature

WRIT OF GARNISHMENT To be completed by the court. See other side for additional information and instructions.

TO THE PLAINTIFF: You must provide all copies of the disclosure form (MC 14), 2 copies of this writ for serving on the garnishee, and any applicable disclosure fee. You are responsible for having these documents served on the garnishee within 91 days. If the disclosure states that the garnishee holds property **other than money** belonging to the defendant, you must motion the court within 56 days after the disclosure is filed for an order to apply the property toward the judgment.

- TO THE DEFENDANT:**
1. Do not dispose of any negotiable instrument representing a debt of the garnishee or any negotiable instrument of title representing property in which you claim an interest held in the possession or control of the garnishee.
 2. You have **14 days** after this writ is mailed or delivered to you to file objections with the court. If you do not take this action within this time, without further notice, the property or debt held under this writ may be applied to the judgment **28 days** after this writ was mailed or delivered to the garnishee.

- TO THE GARNISHEE:**
1. Within **7 days** after you are served with this writ, you must deliver a copy of this writ to the defendant in person or mail a copy to his or her last known address by first class mail.
 2. Deliver no tangible or intangible property and pay no obligation to the defendant unless allowed by statute or court rule.
 3. Within **14 days** after you are served with this writ, you must deliver or mail copies of your verified disclosure (form MC 14) to the court, plaintiff/attorney, and defendant. A default may be entered against you for failure to comply with this order.
 4. If indebted to the defendant, you must withhold an amount not to exceed the amount of the judgment stated in item 2. of the request. Payment of withheld funds must be made **28 days** after you are served with this writ unless notified that an objection has been filed.

5. If the sums of money consist solely of direct deposited funds exempt under federal law such as Social Security, SSI, Veterans', Black Lung, and Railroad Retirement benefits, then the exemption shall apply and you must not withhold.

You are ordered to make the payment withheld under this writ payable to:

<input type="checkbox"/> the plaintiff	<input type="checkbox"/> the plaintiff's attorney	<input type="checkbox"/> the court.
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and mail it to:

<input type="checkbox"/> the plaintiff.	<input type="checkbox"/> the plaintiff's attorney.	<input type="checkbox"/> the court.
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5. If you hold property other than money belonging to the defendant, do not transfer it until further order of the court.

Date of issue

Expiration date for service

Deputy court clerk

MC 13 (Proposed) **REQUEST AND WRIT FOR GARNISHMENT (NON-**

MCL 600.4011 et seq.; MSA 27A.4011 et seq., MCR 3.101

NON-PERIODIC GARNISHMENTS

Definitions

Non-Periodic Garnishment - a garnishment of property or obligations made on a non-periodic basis, including but not limited to bank accounts, property, money, goods, chattels, credits, and negotiable instruments or effects. **Do not use this form to garnish income tax refunds from the State of Michigan; see Michigan statute for specific procedures to garnish state income tax.**

Additional Instructions for the Plaintiff:

You must provide information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, account number, etc.

If the disclosure states that the garnishee holds property belonging to the defendant, you must motion the court (with notice to the defendant and the garnishee) for an order which will tell the garnishee to take the defendant's property, sell it, and apply it toward your judgment. If there are no pending objections to the garnishment and you have not filed such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

Additional Instructions for the Defendant:

1. This writ has been issued because there is a judgment against you which you have not paid. In order to collect on this judgment, income due to you may be withheld or property belonging to you may be taken from and sold.
2. You may object to this garnishment if:
 - a. Your income is exempt from garnishment by law.
 - b. You have a pending bankruptcy proceeding;
 - c. The maximum withheld exceeds the amount allowed by law;
 - d. You have an installment payment order;
 - e. You have paid the judgment in full;
 - f. The garnishment was not properly issued or is otherwise invalid.
3. Certain income is exempt from garnishment and the law gives you the right to claim this income as exempt to prevent it from being used to collect on this judgment. **Below** are examples of some types of income that are exempt from garnishment and the citations where each type may be found in the law. This is not intended as a complete list. You may want to contact your lawyer or legal aid agency for further assistance.

Additional Instructions for the Garnishee:

If you are a financial institution, such as a bank or credit union, and the sums of money consist solely of direct deposited funds exempt under federal law, such as Social Security, SSI, Veterans', Black Lung, and Railroad Retirement benefits, then the exemption shall apply and no funds shall be garnished from the account.

EXAMPLES OF INCOME EXEMPT FROM GARNISHMENT

The following are examples of **some** of the types of income that are exempt from garnishment and the citations where each type may be found in the law. **Please note that this is not intended as a complete list. You may want to contact your lawyer or legal aid agency for further assistance.**

- Individual Retirement Account (IRA) - [MCL 600.6023(a)(11)]
- Social Security Benefits - [42 USC, Section 407]
- Supplemental Security Income Benefits (SSI) - [42 USC, Section 1383(d)]
- Aid to Families with Dependent Children (AFDC) - [MCL 400.63]
- General Assistance Benefits (GA) - [MCL 400.63]
- Unemployment Compensation Benefits - [MCL 421.30]
- Veterans Assistance Benefits - [38 USC, Section 3101]
- Workers' Compensation Benefits - [MCL 418.821]
- The first \$500.00 on deposit in a savings and loan savings account - [MCL 491.628]
- Cash value or proceeds of life insurance or annuity, payable to the spouse or children of the insured - [MCL 500.2207(1)]
- Income benefits under the Michigan Civil Service Act - [MCL 38.40]
- Income benefits under the Michigan Retirement Act - [MCL 421.30]
- U.S. Civil Service Retirement Benefits - [5 USC, Section 8346]
- **Railroad Retirement Benefits - [45 USC 231m(a)]**
- **Black Lung Benefits - [30 USC 932(a)]**

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the garnishee with 2 copies of the request and writ of garnishment, a disclosure form, and any applicable fee and file proof of service with the court clerk as directed by the plaintiff. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notary not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)
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I served 2 copies of the request and writ for garnishment, a disclosure form, and any applicable fee by:

personal service registered or certified mail (copy of return receipt attached) on:

Garnishee name	Complete address of service	Day, date, time
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I have personally attempted to serve the writ for garnishment, a disclosure form, and any applicable fee on the garnishee and have been unable to complete service.

Garnishee name	Complete address of service	Day, date, time
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Service Fee	Miles Traveled	Mileage Fee	Total Fee	Signature
\$		\$	\$	_____
				Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary Public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received 2 copies of the request and writ for garnishment, a disclosure form and any applicable fee on _____.

Day, date, time

Signature on behalf of _____

GARNISHEE INSTRUCTIONS

Definitions:

- Periodic payments include wages, earnings, commissions, land contract payments, rent, and other periodic debt or contract payments which are paid to the principal defendant on a periodic basis.
- Non-periodic payments include bank accounts, other property, money, goods, chattels, credits, negotiable instruments or effects, or earnings in the form of bonuses which are not paid to the principal defendant on a periodic basis. The rest of these instructions do not apply to garnishment of property, which needs to be sold before it can be applied to the judgment.

Responsibility to Disclose:

Within 14 days after being served with the writ of garnishment you must deliver or mail copies of this completed disclosure to the court, plaintiff's attorney (or plaintiff if no attorney), and defendant. No further disclosures are required.

Withholding Instructions:

1. Determine when funds should be withheld.

- a. If item 2b is checked, funds or other property available at the time of service of the writ must be withheld from the defendant from the time of this disclosure.
- b. **If item 2d is checked, no funds shall be withheld from an account that consists solely of direct deposited federal benefits that are statutorily exempt from garnishment such as Social Security, SSI, Veterans', Black Lung, and Railroad Retirement benefits.**
- c. If item 2f is checked, funds must be withheld each time you are indebted to the defendant until the writ expires. Determine the date withholding will begin and end as follows:
 - 1) for garnishees with weekly, bi-weekly, or semi-monthly pay periods, withholding begins with the first full pay period after the writ was served and ends on the last day of the last full pay period before the writ expires.
 - 2) for garnishees on a monthly pay period:
 - if the writ is served on the garnishee within the first 14 days of the pay period, withholding begins on the date the writ was served and continues until the writ expires.
 - If the writ is served on or after the 15th day of the pay period, withholding begins on the next full pay period after the writ was served and continues until the writ expires.

2. Priority Writs or Orders and Multiple Writs (for periodic garnishments only):

Garnishments with a higher priority than this garnishment of periodic payments are:

- orders of bankruptcy court
 - orders for past due federal or state taxes
 - income withholding for support of any person
 - other general garnishments served before this writ
- a. If a higher priority writ/order is currently in effect and withholding is not applicable at this time, you must monitor the garnishment until: 1) the higher priority writ expires; 2) the installment payment is set aside; 3) the defendant's wages are sufficient for both writs; or 4) other circumstances change which make funds available. If this writ has not expired by then, withholding and payment should begin immediately. An amended disclosure is not necessary.
 - b. If a higher priority writ/order is served on you while this writ is in effect and there is not enough money available for both writs, you must suspend withholding under this writ and inform the plaintiff of that fact. Once the higher priority is paid off, the suspended writ becomes effective again if it has not already expired. No further payments can be withheld on this writ if it expires while a higher priority is in effect.
 - c. The plaintiff may not file another writ of garnishment of periodic payments for the same defendant, garnishee, and judgment while the existing writ is pending.
- #### 3. Determine the amount to be withheld.
- The amount withheld cannot exceed the amount of the balance of the judgment specified in item 2. of the request.

For periodic garnishment of earnings only a calculation sheet (part 5 of this multi-part form) is provided to determine the amount to be withheld. You do not need to use this calculation sheet but if you do, you are not required to file it with the court or provide it to the defendant and plaintiff. However, a record of payment calculations must be maintained and made available for review by the plaintiff, defendant, or court upon request.

Payment Instructions:

Determine when disclosed amounts may be released. Funds available under this writ of garnishment may not be released to the plaintiff or court until 28 days after you were served with the writ. After 28 days, funds must be paid as ordered in this writ unless otherwise notified by the court. **No further order to pay will be issued except for garnishments of property other than money.**

For periodic garnishments only. During the first 28 days, payments must be withheld but not paid. After the initial 28 day waiting period, if the court does not notify the garnishee otherwise, all previously withheld funds must be paid out and any future payments must be withheld and paid as they become due until the writ expires. Every time a periodic payment is withheld, the garnishee must provide the plaintiff, defendant (and the court if funds are deposited with the court) with the case name, case number, date of withholding, amount withheld, and the balance due on the writ.

Final Report Instructions:

A final report of withholding is required for periodic garnishments. Within 14 days after the writ expires or the garnishee is no longer obligated to make periodic payments, the garnishee must file with the court and mail to the plaintiff and defendant a final statement of the total amount paid on the writ. The statement must include the names of the parties, the case number, the total amount paid, and the balance on the writ. Form MC 48 can be used for this.

