

## **HOW IS A WAGE GARNISHMENT BEGUN IN GENERAL DISTRICT COURT?**

A person or company that wants to collect money from you must get a court judgment against you before asking for a garnishment. If you are garnished, but you didn't know you'd been sued, something is wrong. Go to the clerk's office of the court shown on the garnishment and ask for a copy of the judgment. Look at the information on the judgment about service: if the original papers were delivered to some address where you did not live at the time, the judgment may not be valid. In that case, you may want to file a "motion to rehear" so you can get the judgment thrown out.

If the creditor does have a judgment, the creditor can pay a court fee and the court issues a yellow garnishment summons. For a wage garnishment, a copy is sent to your employer and one is sent to you.

## **HOW DO GARNISHMENTS WORK?**

The garnishment summons orders your employer to start holding money out of your wages to pay toward the amount of the judgment shown on the summons. The employer must follow the court order, or the employer will get into trouble with the court.

## **WHAT IS THE RETURN DATE?**

A wage garnishment runs out in 180 days, or about 6 months. The employer takes out money all of that time and sends it into the court before the return date shown on the upper right corner of the summons. This date is important - if you are going to protect your garnished earnings, you must do something before the return date.

The garnishment ends on the return date. If not enough money has been taken out to pay off the judgment, then the creditor can pay another court fee and start another garnishment.

## **HOW MUCH CAN BE TAKEN OUT OF MY WAGES?**

The amount which your employer can take out of wages for a garnishment is strictly limited by law. If the employer takes out too much, the employer will violate the court order and can get into trouble. Unfortunately the instructions on the garnishment summons can be confusing.

Virginia's garnishment exemption law (Virginia Code §34-29) requires a garnishment to be calculated two ways:

FIRST: the employer cannot take more than one fourth (25%) of your weekly disposable earnings.

SECOND: the employer must leave you at least \$290 per week in disposable earnings.

Your employer must use whichever method leaves you with more money. If you

are working only part-time, you might not be making more than \$290 per week in disposable earnings. If that is your situation, then your employer just reports to the court that you don't make enough to be garnished.

## **WHAT ARE DISPOSABLE EARNINGS?**

Disposable earnings are your total (gross) earnings less deductions for state and federal taxes and Social Security. It may be the same as your take home pay or it may not (if, for example, insurance is also coming out of your check). The garnishment deduction will be based on your disposable earnings, not your gross earnings.

## **DO THE SAME GARNISHMENT LIMITS ALWAYS APPLY?**

The garnishment limits described above apply to most judgment debts. For support, however, a much higher percentage can be taken; 60% of your disposable earnings, or 65% if you get behind (only 55% if you support a spouse or child besides those covered by the order). The second calculation rule - leaving \$290 - doesn't apply to support. And none of the limits apply to garnishments for state or federal taxes.

## **WHAT IF TOO MUCH IS TAKEN FROM MY WAGES?**

Employers sometimes make mistakes and take too much from a garnishment. If that happens, first you should ask your employer

for a correction. If that doesn't work, then you can fill in the exemption claim form that comes with a garnishment summons, and take it to the court. The court will set a hearing to clear things up.

### **CAN I DO ANYTHING TO PROTECT MY WAGES FROM GARNISHMENT?**

Here are several ways to protect your wages.

Payment plan. A creditor may agree not to garnish you if you agree to pay voluntarily about as much as the creditor would get by garnishment.

Wage assignment. If your employer is willing, you can make a voluntary wage assignment. This lets your employer take out an amount you agree to each pay period, and send it to the creditor. Some employers won't do this. If you agree to this, you can change your mind any time.

Bankruptcy. Filing a Chapter 7 or Chapter 13 bankruptcy will stop the garnishment and all other collection actions. Consult with a lawyer or legal aid for more information about bankruptcy.

Child support order. If you are already paying child support by order of a court or DCSE, you can have the support order turned into a wage garnishment or "mandatory withholding of earnings." By law, this kind of wage deduction goes to the head of the line,

and kicks out any other garnishment in most cases. The support garnishment doesn't run out after a certain period of time; it keeps on going as long as the support order lasts. But unless the support amount is very small, it prevents other creditors from garnishing you.

Homestead deed. In some cases, you can get garnished money back with a homestead deed. This does not stop the garnishment or prevent future garnishments, but it does get your money back. You must list your garnished wages as property you want to exempt on the homestead deed form, and file it with the land records office at the circuit court in the jurisdiction where you live. You will also need to file a copy with the court where the garnishment arises. All of this must be done before the return date on your garnishment. You should consult with a lawyer about this option or call legal aid.

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