

WORTH COUNTY MAGISTRATE COURT **DIRECTION FOR GARNISHMENT- PLAINTIFF**

This pamphlet is for the Plaintiff. You are the creditor seeking monies or property. The Defendant is the one from whom money or property is being sought.

OVERVIEW

Garnishment: is an action against the wages, money, or property of the defendant which are held by a third party (the "garnishee"). It is a legal process which allows a creditor (plaintiff) to collect money owed by reaching the money or property of the person owing a debt. A garnishment can only be filed after the plaintiff has a judgment against the debtor AND the valid judgment is for an amount no greater than \$15,000 AND the garnishee (or its agent) is located in Worth County.

Plaintiff: the person seeking to collect a judgment.

Judgment debtor: person or entity that owes money, based on a Court's Order.

Garnishee: person or entity which holds or owes monies or property to the judgement debtor, such as the debtor's bank or employer.

Defendant's Claim: legal response to the affidavit, stating it is incorrect or untrue. The objection can be to the amount, the underlying judgment, the action itself or other matters.

Types of Garnishments

Continuing Garnishments or wage garnishments are filed against the employer of the one owing the money and last for about 7 months, or until the debt is paid, whichever comes first. The defendant's employer (garnishee) may be ordered by the Court to withhold up to 25% of the defendant's "**disposable income.**" The employer deducts money from the defendant's paycheck, and then delivers that money to the creditor/plaintiff.

Regular Garnishments are a one-time action filed against the entity that has the money or property belonging to the debtor. This may be the bank, credit union, employer, or other business. This action takes the amount the creditor files for or whatever might be in the account or owed at that time. *Certain funds held in a defendant's bank account may be exempt from garnishment.*

Support Garnishments apply only to court-ordered child support or alimony payments. The defendant must be at least 1 month behind in court ordered payments before a garnishment can be filed. Up to 50% of a defendant's disposable income can be garnished. This type of garnishment has no termination date; it lasts until a zero balance is reached, indicating that the defendant has become current on payments.

E-FILING

The Court does not accept electronically file (E-File) documents at this time. The forms required can be obtained in the Magistrate Clerk's office or on the County's website at **www.worthcountyboc.com**.

GARNISHMENT PROCEDURE

A Garnishment may be filed immediately if the judgment issued is a default judgment. All of the forms mentioned below are available in person in the office of the Clerk of the Magistrate Court or under the Magistrate Court tab on www.worthcountyboc.com. All forms must be completely filled out and properly signed and notarized.

Step 1: File Garnishment Affidavit

- Plaintiff files a "Garnishment Affidavit." The affidavit must be based on personal knowledge, and must contain a sworn statement that the plaintiff has a judgment against the named defendant.
- Attach a certified copy of the judgment or a copy of a valid fi. fa.
- Once the paperwork is complete, the plaintiff is responsible for serving the garnishment action on both the garnishee **and** the defendant.

Step 2: Serve the Action

Service on Garnishee: Plaintiff must serve the garnishee personally or by a legally authorized service substitute, requiring permission from the Court. Service must include a copy of these 4 documents:

1. Affidavit of Garnishment;
2. Summons of Garnishment (filled out by the Clerk at the filing of the affidavit & certified copy of underlying judgment);

3. Notice to Defendant of Right Against Garnishment of Money, Including Wages and Other Property; and,
4. The Defendant's Claim Form.

Service on Defendant: Plaintiff must serve the defendant with these 4 documents:

1. Affidavit of Garnishment;
2. Summons of Garnishment; and
3. Notice to Defendant of Right against Garnishment of Money, Including Wages and Other Property; and,
4. Defendant's Claim Form.

Service on the defendant may only be made through one of the following methods:

A. By regular mail to the defendant at the defendant's last known address **and** by registered or certified or statutory overnight delivery, return receipt requested. See O.C.G.A. § 18-4-8(b)(1)(A).; **or,**

B. Personal service by the sheriff or other approved process service. For any of the mail options, service on the defendant must be made no later than 3 business days after service on the garnishee. Personal service of the defendant must be made within a "reasonable" period of time. **A garnishment action will be dismissed if the defendant is not properly served.**

Step 3: File Certificate of Service

It is the plaintiff's responsibility to file with the Court a "Certificate of Service" form, which states that service on both the defendant and the garnishee was made in accordance with law. See O.C.G.A. § 18-4-8 and § 9-11-4 for more information regarding proper service.

Step 4: Answering a Continuing Garnishment

Garnishee's answer must be filed with the court issuing the summons **no sooner than 30 days and not later than 45 days** after service of the summons AND it must be accompanied by the money or other property subject to garnishment. See O.C.G.A. § 18-4-10.

If a garnishee does not file an answer within 45 days, they are in default. They may be held responsible for the total amount shown in the affidavit. However, the garnishee is allowed to open the default by paying court costs within 15 days of the default. If the garnishee fails to file an answer to open the default within 60 days after the service of summons, the plaintiff can request a judgment against the garnishee. To obtain a default judgment, the plaintiff must show proof of service on both the garnishee and defendant, and must then file notice of any default judgment to the garnishee by certified mail, statutory overnight delivery, Sheriff's service, or hand delivery.

If the garnishee seeks to modify the amount of the default, they may do so by filing a motion no later than 90 days from the date the garnishee was served with such default judgment and by paying all accrued court costs. See O.C.G.A. § 18-4-24.

If the garnishee files an answer stating that the defendant is no longer employed by the garnishee, the plaintiff cannot obtain a default judgment.

Step 5: Contesting the Garnishment:

- Defendant may file a **claim** to contest the garnishment. The claim can be filed at any time and must be based on either: (1) that the plaintiff does not have a judgment against the defendant; (2) that the plaintiff's affidavit of garnishment is untrue or legally insufficient (left out a required element, did not identify the defendant or property properly, or listed an incorrect amount on the affidavit); OR (3) the defendant's funds are subject to 1 or more statutory exemptions.
- The Claim **may not** be used to contest an underlying judgment or to express financial hardship. At the Claim hearing, the burden is on the defendant to prove the basis for his claim.
- Plaintiff may file a claim to contest the garnishee's answer as legally insufficient or untrue. This must be filed within 20 days after being served with the answer.

To contest or appeal the judgment, the defendant must file the appropriate motion(s) or appeal with the court that issued the judgment. If the appeal or motion to set aside or vacate was filed prior to the garnishment, the court may be required to stay or dismiss the garnishment.

Step 6: Court Review

Once the Court reviews the items submitted, the Clerk will release the funds to the Plaintiff. If issues arise during the review, the Court will identify the problem and give the party an opportunity to fix it. All defendant claims are heard within 10 days of being filed.

Step 7: Resolution

Once the debt is paid, Plaintiff must direct the clerk to cancel any Fi. Fa. and order to stop the garnishment once the debt has been paid and to mark the judgment satisfied. Failing to do so could subject the plaintiff to money damages. See O.C.G.A. § 9-13-80.

Defendants filing bankruptcy must notify the court. Once notified, the court will issue an order “staying” the case until the bankruptcy is either dismissed or discharged. The court will hold any funds paid into the court registry until the Bankruptcy Court directs the release of the funds.

When there are multiple garnishments filed against one defendant, the clerk will pay the old garnishment first. If the plaintiff can establish that they have the oldest judgment, they can challenge the order of payment.

Step 8: Distributing Funds

Plaintiff must file an Application for Disbursement of Funds and Ensure:

- Twenty (20) or more days have passed since Garnishee filed its last Answer;
- File proof with the Court that Garnishee and Defendant were properly served as required by law;
- No claims or traverses have been filed; and
- A copy of the request to disburse funds has been mailed to Defendant and Garnishee.

RESOURCES-HELPFUL TOOLS

The Judges and staff of the Magistrate Court cannot provide legal advice.

Instead, try these:

Law Library, located on the 1st Floor of the Courthouse in the Probate Court Office, offers a place to conduct legal research and find information to assist with your case.

The Uniform Magistrate Court Rules accessed through the Georgia Judicial Gateway’s website www.georgiacourts.gov.

Georgia Legal Aid (www.GeorgiaLegalAid.org)

DISCLAIMER: The information in this pamphlet is not legal advice. It is intended to give a general overview of the procedures and forms used in the Worth County Magistrate Court. We always suggest that litigants consult with an attorney if they have any questions about what they should do or questions specific to their case.