



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 26, 2013

Title	Agenda Item Type
Civil Practice and Procedures: <i>Memorandum of Garnishee</i>	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form AT-167/EJ-152	July 1, 2013
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M Perluss, Chair	March 6, 2013
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the *Memorandum of Garnishee* (form AT-167/EJ-152) to comply with the requirements under recently enacted Assembly Bill 2364 (Wagner; Stats. 2012, ch. 484). AB 2364 amends the statutory requirements regarding what statements must be included in the memorandum of a garnishee served in response to a writ of attachment or a writ of execution. The current form will be inconsistent with law if it is not revised. The committee also recommends some additional revisions at the same time, changing the formatting of the caption and file-stamp boxes on the form to the current format for Judicial Council forms that are not recorded, and adding items to include the names of the garnishee and the judgment debtor.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2013, revise *Memorandum of Garnishee* (form AT-167/EJ-152) to reflect recent changes in statute plus other nonsubstantive changes.

A copy of the recommended form is attached at pages 5–6.

Previous Council Action

The *Memorandum of Garnishee* form was approved by the council in 1983 as part of a series of forms to be used in seeking and enforcing writs of attachment and has not been modified since that time.

Rationale for Recommendation

The form revision is urgently needed to conform with law. Existing law establishes procedures for attachment and execution of levies served on financial institutions. Although the primary purpose of AB 2364 is to establish procedures for service of process and execution of levies at a central location designated by a bank and its other branches, the new law also makes various other changes, including adding a new statement which a garnishee must include in the memorandum of garnishee where applicable, in responses to both writs of attachment (Code Civ. Proc., § 488.610)¹ and writs of execution (§ 701.030).² Each such memorandum must now, when applicable, include a statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor. (See § 488.610(b)(5) and § 701.030(b)(7).)

The *Memorandum of Garnishee* (form AT-167/EJ-152) is a single form that does joint duty: it is used by garnishees under both the writ of attachment and the enforcement of judgment sections of the Code of Civil Procedure. The form currently contains items for each statement or piece of information that the statutes require in the garnishee's memorandum. If not revised to include the newly required statement, it will be inconsistent with the law. Garnishees will have to individually modify the form to add the new item where applicable or individually draft a memorandum that complies with the law, burdening the parties and the courts in their efforts to comply with the amended statutes.

The proposed revision would add a new item to address this new requirement. New item 3 includes the newly required statement and a check box for the garnishee to fill in if the statement is applicable. The new item is placed at the beginning of the form because, if this item is completed, the remaining items on the form will generally not be applicable.

Additionally, while the form is being revised to comply with the new law, the committee recommends other nonsubstantive revisions that have been requested in past years:

- Modernize the caption to conform to the current Judicial Council form style.

¹ All statutory references in this memorandum are to the Code of Civil Procedure unless otherwise indicated.

² A copy of AB 2364 can be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2364&search_keywords= .

- Delete the recorder’s box, which is unnecessary because this form is not recorded.
- Add new items 1 and 2 for the names of the garnishee and the judgment debtor to avoid confusion when an action involves multiple garnishees or judgment debtors. (This change also results in renumbering of the other items.)
- Clarify that the declaration is to be signed by the garnishee.

Comments, Alternatives Considered, and Policy Implications

Because this is an optional form, the committee considered the alternative of not revising the form, leaving it up to the parties to add the newly required statement on their own and courts to scrutinize whether it had been added. However, the form is used frequently in attachment proceedings and in enforcement of judgments and, because it is completed by parties, the revision will cause little burden to the courts. Hence, the committee concluded that the form should be revised as soon as possible to correctly reflect the law.

The proposed form was circulated during December 2012, and January 2013. Three comments were received, from Superior Court of San Diego County, the Orange County Bar Association, and an individual attorney. All agree with the revisions.³

The attorney commentator requested that the form include a line for the responding party to insert his or her name, to help identify the respondent when more than one levy has been served. The committee notes that the revised form includes an item for the name and address of the garnishee that is providing the memorandum (item 1). The form also includes lines where the person executing the document is to type or print his or her name; and above the lines, the heading has been revised to state “Declaration of Garnishee.” The committee therefore concluded that no further modification is needed.

The invitation to comment requested comments on whether using a check box for new item 3 might lead to confusion because it would be the sole item on the form in that format. None of the comments addressed this point. The committee concluded that a check box will make this new item clearer and easier to use and so added a check box to the item.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by third parties and levying officers, so implementation of the proposal should have no cost burden or operational impact on the courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

Revision of this form, besides being needed to conform with the law, falls within Goal IV of the strategic plan, Quality of Justice and Service to the Public, particularly Objective 1 of the

³ A summary of the comments and the committee’s responses are on the comments chart attached at page 7.

operational plan for that goal, to foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.

Attachments

1. Form AT-167/EJ-152, at pages 5–6
2. Comment Chart, at page 7

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR <i>(Name):</i> _____	LEVYING OFFICER <i>(Name and Address):</i> <p style="text-align: center;">DRAFT 03/05/13</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	LEVYING OFFICER FILE NO.: _____
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	COURT CASE NO.: _____
MEMORANDUM OF GARNISHEE (Attachment–Enforcement of Judgment)	

NOTICE TO PERSON SERVED WITH WRIT AND NOTICE OF LEVY OR NOTICE OF ATTACHMENT: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy or attachment unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney fees incurred in obtaining the required information.

— RETURN ALL COPIES OF THIS MEMORANDUM TO THE LEVYING OFFICER —

This memorandum does *not* apply to garnishment of earnings.

1. a. Garnishee *(name)*: _____
 b. Address: _____
2. Judgment Creditor *(name)*: _____
3. *(Check if applicable.)* The garnishee holds neither any property nor any obligations in favor of the judgment debtor.
4. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

5. **For writ of execution only.** Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

(Continued on reverse)

SHORT TITLE:	LEVYING OFFICER FILE NO.:	CASE NUMBER:
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6. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and the terms of the obligation and the reason for not paying it to the levying officer:

7. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

8. **For writ of execution only.** Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

9. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION OF GARNISHEE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

If you need more space to provide the information required by this memorandum, you may attach additional pages.

Total number of pages attached:

W13-04**Civil Forms: Memorandum of Garnishee** (revise form AT-167/EJ-152)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Wayne R. Gross	A	No additional comments.	The committee notes the commentator's agreement with the proposal.
2.	Mikki Sullivan Attorney San Diego, California	AM	It also would be helpful if the form contains a line for the responding third party to insert their name as the responding entity or person. Often a bank responding to a levy scribbles a signature that one can't read and you have no idea what entity is responding. This is particularly troublesome when a judgment creditor has served more than one entity with a garnishment/levy in the same case, such as levies served on several banks around the same time.	The committee notes the commentator's general agreement with the proposal. The new form includes an item for the responding garnishee to provide name and address (item 1), it has lines where the declarant is to type or print his or her name; and the heading above the lines has been revised to state "Declaration of Garnishee." No further changes are needed.
3.	Superior Court of San Diego County By Michael Roddy, Court Executive Officer	A	No additional comments.	The committee notes the commentator's agreement with the proposal.

