



Legal Hotline for Michigan Seniors
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A program of Elder Law of Michigan, Inc.

FILING OBJECTIONS TO GARNISHMENT

Garnishment is a court process used by a creditor to collect a debt and involves seizing funds or other assets which are in the hands of someone other than the debtor. Often, garnishment is directed towards the bank account of the debtor. The garnishment process can be very scary because the person whose monies are garnished often feels powerless. Certain types of funds, for example Social Security benefits, are protected from garnishment. However, you need to assert the protection by filing documents with the court. This pamphlet will hopefully lessen your fears by explaining your rights and help you to respond to a garnishment of your bank account.

A few definitions are necessary. *Plaintiff* refers to the person or business that has obtained a judgment against you; *defendant* refers to the person that the court decided owes money to the plaintiff. *Garnishee*, or *garnishee defendant*, refers to the third party who owes money to the defendant or is holding money for the defendant—whether it's money, i.e., in a bank account, wages, rent, personal property, or other assets.¹

Garnishment Process

Once a plaintiff has received a judgment, the plaintiff may obtain a Writ of Garnishment from the court any time after the time for filing an appeal has passed—usually 21 days after the

¹ Michigan Court Rule (MCR) 3.101(A).

judgment is entered. The plaintiff may then obtain a Writ of Garnishment and has 91 days to serve it on the garnishee defendant. The Writ acts as a restraining order prohibiting the garnishee from transferring any money or property that belongs to the defendant/debtor. Within seven days of receiving the Writ, the garnishee defendant must send a copy of the Writ to the defendant. So if you are the defendant, you will not receive the Writ of Garnishment from the plaintiff; you will receive it from the garnishee, which is the one holding your money. After the defendant receives the Writ, he or she then has 14 days from the date of service to file an objection. Filing an objection within 14 days will suspend or stop the garnishee's obligation to pay the plaintiff. If the defendant files an objection beyond 14 days, the garnishee's obligation to pay is not suspended unless the court orders the suspension. Therefore, if you wish to file an objection to a garnishment, for example for the reason that the funds being garnished are your Social Security benefit, **you must file it with the court within 14 days after receipt of notice of the garnishment.**

Objections

A defendant's objection is only to the garnishment procedure; since the judgment has already been entered, the defendant may not challenge the underlying judgment. Objections to the Writ of Garnishment must be based on only one or more of the following:

- (1) the funds or property are exempt (protected) from garnishment by law;
- (2) garnishment is not allowed because of the pendency of bankruptcy proceedings;
- (3) garnishment is barred by an installment payment order;

- (4) garnishment is not allowed because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;
- (5) the judgment has been paid; or
- (6) the garnishment was not properly issued or is otherwise invalid.

Most objections are based on the fact that the funds being garnished are exempt from garnishment. The following are examples of some types of income that are exempt from garnishment. The numbers after them are citations to Michigan law.

- Individual Retirement Account (IRA). MCL 600.6023(a)(11).
- Social Security Benefits. 42 USC § 407.
- Supplemental Security Income Benefits (SSI). 42 USC § 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 § 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 § 8346.
- Over 25% of disposable earnings per week, unless debtor

earns minimum wage or near minimum wage. 15 USC 1673.

If the defendant feels there is a legitimate objection to the garnishment, he or she may file a form ([MC 49](#)) titled Objections to Garnishment and Notice of Hearing. The State Court Administrative Office publishes this form, and it's available through the Legal Hotline, at public libraries, and on the Internet at <http://www.courts.michigan.gov/scao/courtforms>.

Within seven days of filing the objection, a notice of the hearing date on the objections must be sent to the plaintiff, the defendant, and the garnishee. As required by court rule, the hearing must be held within 21 days of the date the objections are filed. If the judgment is from the district court, the court will send the notice. In circuit and probate court, however, the objecting party must send notice. In that case, the defendant must obtain the hearing date from the court assignment clerk.

Joint Assets

Many judgment debtors jointly own their assets with other nondebtors. For instance, a husband and wife may own real estate together; or a mother and daughter may jointly own a bank account. Can a judgment creditor garnish either of these? It depends. In Michigan, generally, real estate owned by both husband and wife cannot be used to satisfy a judgment where the judgment is only against one spouse.² In contrast, much *personal* property can be used to satisfy a judgment, but it depends. The Legal Hotline can help you sort out which personal property is exempt.

As to the bank account, the courts presume that joint owners are equal contributors to the account.³ So only half of the bank

² See, e.g., *Rossmann v Hutchinson*, 289 Mich 577; 286 NW 835 (1939).

³ See, e.g., *Danielson v Lazoski*, 209 Mich App 623; 531 NW2d 799 (1995).

account is garnishable where the debt is against only one of the co-owners. If the nondebtor co-owner actually owns more than half of the account, though, he or she may prove this to the court to avoid wrongful garnishment.

Commingling Assets

Commingling assets occurs when more than one type of funds is held in the same bank account. For example, a bank account has commingled assets when it contains both social security benefits and regular wages or pension funds and rents. In such a situation, with some exceptions, the plaintiff may only garnish the assets that would normally be garnishable. For instance, Social Security benefits can not be garnished but wages can be. So a plaintiff may not garnish that portion of the bank account that came from Social Security benefits.⁴ It is important to note here that Social Security benefits (and some other government benefits) cannot be garnished at the source from which they are paid (the U.S. Department of Treasury), and importantly, they are still exempt from garnishment when they are in the recipient's account. This is not true with many other types of benefits, e.g. pension benefits. These are not garnishable at the source from which they are paid (Pension Fund), but once they are deposited into the debtor's account, they can be garnished.⁵ This is a complicated area of garnishment law and you should proceed with the help of a lawyer. The Legal Hotline may be able to help by giving you advice and answering questions.

Court Hearing On Objections

Once you receive notice of the date and time for the court hearing it's important to begin preparing for your appearance at the

⁴ *Philpott v Essex County Welfare Bd*, 409 US 413 (1973); *Whitwood, Inc v South Blvd Property Mngmt Co*, 265 Mich App 651; 701 NW2d 747 (2005).

⁵ *Guidry v Sheet Metal Workers Int'l Ass'n*, 10 F3d 700 (1993).

hearing. Since most people in these situations are unable to afford an attorney to represent them at the hearing, they will have to represent themselves. Appearing in court without an attorney can be challenging. Many judges are patient with defendants who represent themselves. They understand that self-represented debtors do not have the benefit of a legal education or courtroom experience. But there are also judges who are impatient with people who try to represent themselves but have no training or experience. You should do all you can to prepare for the hearing. Make sure you gather and bring with you any paperwork concerning your account and funds that are deposited into it. During an objection to garnishment hearing, the judge will ask the defendant questions about the exemption of the money or property. The judge will want to know (1) the type, or source, of money or property at issue, (2) the legal authority that exempts it from garnishment, and (3) proof that the money in the account really is from the source you claim. The list on page two above offers the most common examples of exempt money and property and references the legal authority. Provided also are references to selected court cases and you may need to advise the judge of these. The Legal Hotline may be able to help you find and understand the law.

As for proof, most judges will accept statements from the income source, bank statements, or the like. Often, you can show that money is exempt by showing that a deposit on a bank statement matches the amount on the income statement.

During your court appearance, you should wear business, fairly formal attire. Since the court handles important business, it is important to dress accordingly. You should always show up a few minutes early. The Court clerk should be able to help you find which courtroom you are scheduled to appear in. Once in the courtroom, wait in the gallery until your case is called. When called, move from the gallery to the main part of the courtroom.

As the judgment debtor is usually the defendant, you should sit at the table that is the farthest away from the jury box. As a sign of respect, always stand when addressing the judge. Be sure to call the judge “Your Honor.”

The judge will usually start by asking the judgment debtor the reasons for the objections. That’s when you should explain the exemptions and the legal authority for your exemptions, as discussed above.

At the end of the hearing, the judge will usually pronounce the ruling. Sometimes, though, the judge will take the matter under advisement to allow his staff to research the issue.

If the judge finds that the money is not exempt, then the judgment creditor may garnish it and all you could then do would be to file a costly appeal. If the judge declares that the money is exempt, then the plaintiff is barred from receiving that money and the funds in the account may be released to the defendant. There is a court form, entitled Order on Objections to Garnishment, which the judge will sign to be filed with the court clerk. A copy of this order will need to be taken to the garnishee defendant (often a bank) so they can “unfreeze” the account. A copy of the form is attached.

The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph Street, Suite C-200, Lansing, MI 48917. Thank You.