

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W13-04

Title	Action Requested
Civil Practice and Procedure: <i>Memorandum of Garnishee</i>	Review and submit comments by January 25, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form AT-167/EJ-152	July 1, 2013
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

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

The Proposal

The proposed form revision is urgently needed to conform with law. Existing law establishes procedures for attachment and execution of levies served on financial institutions. While 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 that a garnishee must include in the memorandum of garnishee where applicable, both in responses to writs of attachment (Code Civ. Proc. § 488.610¹) and in responses to a writ of execution (§ 701.030). Each such memorandum must now, when applicable, include a statement that the garnishee holds neither any property nor any

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

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

obligations in favor of the judgment debtor. (See § 488.610(b)(5) and § 701.030(b)(7).) It is that statutory amendment that this proposal addresses.

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 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 be 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 court in their efforts to comply with the new amended statutes.

The proposed revision would add a new item to address this new requirement. As shown in the attached form, new item 3 describes the newly required statement and provides a space for the garnishee to make the statement if applicable. The committee proposes placing the new item at the beginning of the form because if this item is completed, the remaining items on the form will generally not be applicable.

The committee also considered an alternative format for the new item, which it requests specific comment on. The alternative would add a check box to new item 3, rather than having the party write a statement. The item would read as follows:

3. (*Check if applicable.*) The garnishee holds neither any property nor any obligations in favor of the judgment debtor.

Additionally, while the form is being revised to make it compete under the new law, other non-substantive revisions that have been requested in past years are proposed, to make the following changes:

- Modernize the caption.
- Delete the recorder's box, which is unnecessary since this form is not recorded.
- Add the names of the garnishee and the judgment debtor in order to avoid confusion when an action may involve multiple garnishees or debtors. (This change also results in renumbering the other items.)
- Clarify that the declaration is to be signed by the garnishee.

Alternatives Considered

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 committee also considered the alternatives of seeking immediate approval for the form revision, because the new statutory requirements will go into effect in January 2013. However, the committee balanced the need for legally correct forms against the need for transparency and public and court input in the rule- and form-making process. The group concluded that a July implementation date, after the opportunity for public comment, is the appropriate balance in this instance, providing a period for comments on the appropriate format for the new item and on the other minor changes recommended, while still providing for swifter than usual adoption of the form.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by third parties and levying officers, so implementation of the proposal should not have any cost burden or operational impact on the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should new item 3 be formatted as a check-box item, so that the garnishee need not draft a statement but only check the box if the item is applicable? Would such formatting make this new item clearer and easier to use, or possibly lead to confusion because it would be the sole item on the form with a check box?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Link

1. Form AT-167/EJ-152 is at page 4.
2. Assembly Bill 2364 is at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2364&search_keywords=\

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and Address): <p style="text-align: center;">DRAFT 11/29/12</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: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	LEVYING OFFICER FILE NO.: _____
MEMORANDUM OF GARNISHEE (Attachment–Enforcement of Judgment)	COURT CASE NO.: _____

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. If you hold neither any property nor any obligations in favor of the judgment debtor, state that: _____

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: