

## Legislative Proposal

**Date:** August 19, 2016

**To:** Whom It May Concern

**From:** Richard Berens, Judge, Fairfield County Court of Common Pleas  
David A. Trimmer, Judge Fairfield County Court of Common Pleas  
Jillian Boone, Court Administrator, Fairfield County Court of Common Pleas

**Re:** Legislative Proposal—Revisions to O.R.C. 2716.13

**Issue:** The Court has encountered a recurring problem when dealing with garnishments, specifically garnishments of property other than personal earnings of the judgment debtor. Judgment debtors appear in Court at the tentatively scheduled hearing date (which the Court is required to set upon the initial filing) without affirmatively requesting a hearing. Because no hearing was requested, the creditor's attorney does not appear. So, the Court (1) has allocated time on its docket for a hearing that often does not occur; (2) is often forced to partake in ex parte communication to explain to judgment debtors who appear that they have failed to file a request for hearing, that the creditor's attorney is not present, and that the hearing must be canceled or continued; and (3) has to reschedule the garnishment hearing for a later date, if/after a request for hearing is affirmatively made.

**The Law:** Chapter 2716 governs garnishment proceedings in Ohio. The statute is detailed and comprehensive, including suggested forms and notices that creditors are encouraged to utilize. The statute is separated into two main categories: (1) garnishments of personal earnings and (2) garnishments of property other than personal earnings. The Court has not encountered any problems with the first category of garnishment proceedings/notices. This is predominantly due to the fact that the Court is not required to set a tentative hearing date immediately upon a filing of garnishment for personal earnings. Instead, the debtor is generally advised of his or her right to a hearing upon request. Nowhere in the provisions governing the garnishment of personal earnings must the Court set a definitive hearing date prior to the debtor making an affirmative request for hearing. Once a request is received, of course, the Court is required to set a hearing and inform the parties of the hearing date. See O.R.C. 2716.03 - 2716.06. But until that time, the debtor is not assigned any specific hearing date.

Much to the Court's chagrin, the provisions/notices required for garnishments of property other than personal earnings are different. O.R.C. 2716.13 requires a Court to immediately schedule a definite hearing date within 12 days of the initial filing. The notices provided for by statute include this hearing date in all of the notices to the judgment debtor. (The Court is tasked with writing in the scheduled hearing date in numerous copies of these notices and forms with each filing.) However, like the personal earnings garnishment, the Court is only required to hold this pre-scheduled

hearing if the judgment debtor affirmatively requests the hearing. Although the proposed statutory notices inform the debtor of this, this scheduling requirement is nonetheless inefficient, counterintuitive and leads to serious confusion.

**Inefficient:** The Court must allocate time on its docket to a hearing that the judgment debtor is not even entitled to at the time.

**Counterintuitive:** Despite the notices providing the debtor with a definite court date and time, the debtor is expected to understand that he or she must file an additional request for a hearing in order for the already-scheduled hearing to be held.

**Confusing:** Judgment debtors often see the scheduled hearing, neglect to read the fine print, and appear at Court on the pre-scheduled date and time. The creditor's attorney does not appear, as no affirmative request for hearing was made. The Court must then explain to often exasperated debtors that they will not be heard and that despite taking the time and making the effort to appear at Court, the hearing is either continued or cancelled. If continued, the Court must allocate yet another slot on its docket, and the debtors must again call off work or arrange transportation to appear at the future date.

**Proposal:** The Proposers feel that these issues could be resolved with simple changes to O.R.C. 2716.13. The Proposers ask that the statute be amended to remove the requirement that courts set definitive hearing dates upon initial filing. The Proposers also encourage removing the definitive hearing date provisions from the forms/notices provided for in the statute. In essence, the Court asks that the procedure for scheduling garnishment hearings under O.R.C. 2716.13 mirrors the procedure for scheduling garnishment hearings for personal earnings. **This proposal does not recommend any changes to the substantive law.** (Debtors will still get their day in Court, albeit only upon compliance with the statutory requirement to affirmatively request a hearing.) Instead, this proposal is administrative in nature, and aims to (1) make the process more efficient and less counterintuitive; (2) clarify and streamline the hearing process; and (3) avoid misunderstandings and the wasted time and effort expended as a result of confusing forms/notices.

The relevant Revised Code Sections, with comments, are attached for your consideration and review. If you have any questions or comments about the Proposal, please contact Jillian Boone at 740-652-7424 or [jwboone@co.fairfield.oh.us](mailto:jwboone@co.fairfield.oh.us).

## PERSONAL EARNINGS GARNISHMENT PROVISIONS

### *2716.03 Commencing proceeding for garnishment of personal earnings.*

(A) Subject to the limitation on the commencement of proceedings contained in division (B) of section 124.10 of the Revised Code, a proceeding in garnishment of personal earnings may be commenced after a judgment has been obtained by a judgment creditor by the filing of an affidavit in writing made by the judgment creditor or the judgment creditor's attorney setting forth all of the following:

- (1) The name of the judgment debtor whose personal earnings the judgment creditor seeks to garnish;
- (2) The name and address of the garnishee who may be an employer of the judgment debtor and who may have personal earnings of the judgment debtor;
- (3) That the demand in writing, as required by section 2716.02 of the Revised Code, has been made;
- (4) That the payment demanded in the notice required by section 2716.02 of the Revised Code has not been made, and a sufficient portion of the payment demanded has not been made to prevent the garnishment of personal earnings as described in section 2716.02 of the Revised Code;
- (5) That the affiant has no knowledge of any application by the judgment debtor for the appointment of a trustee so as to preclude the garnishment of the judgment debtor's personal earnings;
- (6) That the affiant has no knowledge that the debt to which the affidavit pertains is the subject of a debt scheduling agreement of a nature that precludes the garnishment of the personal earnings of the judgment debtor under division (B) of this section.

(B) No proceeding in garnishment of personal earnings shall be brought against a judgment debtor for the collection of a debt that is the subject of an agreement for debt scheduling between the judgment debtor and a budget and debt counseling service, unless any payment to be made by the judgment debtor, or by a budget and debt counseling service to the judgment creditor under the agreement for debt scheduling between the judgment debtor and the budget and debt counseling service, is due and unpaid for more than forty-five days after the date on which the payment became due, or unless the judgment creditor previously was notified by the service that the debt scheduling agreement between the judgment debtor and the service was terminated.

(C) Upon a court's issuance of an order of garnishment of personal earnings following a judgment creditor's filing of an affidavit under this section and compliance with section 2716.04 of the Revised Code, the garnishee and the judgment debtor shall be notified of the proceeding in garnishment of personal earnings in accordance with sections 2716.05 and 2716.06 of the Revised Code.

(D) As used in this chapter:

(1) A "budget and debt counseling service" or "service" means a corporation organized under Chapter 1702. of the Revised Code for the purpose of counseling consumers with respect to their financial obligations and assisting them in dealing with their creditors.

(2) "Debt scheduling" means counseling and assistance provided to a consumer by a budget and debt counseling service under all of the following circumstances:

(a) The counseling and assistance is manifested in an agreement between the consumer and the service under which the consumer regularly pays that portion of the consumer's income to the service that has been determined not to be required for the maintenance of health or the essentials of life.

(b) The payments are made to the service until the debts of the consumer that are the subject of the agreement are fully retired.

(c) The service has sent written notice, by certified mail, return receipt requested, or by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail, to the creditors of the consumer that are disclosed by the consumer to the service. The notice shall contain all of the following:

(i) A statement of the consumer's intent to participate in debt scheduling;

(ii) A summary of the consumer's income, proposed itemized budget, schedule of creditors, and proposed debt retirement plan;

(iii) A statement of the particular creditor's duty to respond, in writing, to the service regarding the consumer's participation in debt scheduling within fifteen days after receiving the notice.

(d) The debts of the consumer that are the subject of the agreement for debt scheduling are determined as follows:

(i) Any debt owed to a creditor that was notified of the consumer's intent to participate is a subject of the agreement if the creditor responds to the service and enters into an agreement with the service, pursuant to which the creditor agrees not to attempt to collect the debts of the consumer as long as the consumer regularly pays to the service the amount previously agreed upon by the service and the consumer, and no payment to be made by the judgment debtor to the service or by the service to the creditor is due and unpaid for more than forty-five days after the date on which the payment became due, as long as the debt scheduling agreement between the consumer and the service has not been terminated, and as long as the service regularly pays to the creditor a mutually acceptable amount that is either the amount agreed upon by the service and the creditor on the date they entered into their original agreement or an amount agreed upon by both the service and the creditor on a date after the date of the original agreement.

(ii) Any debt owed to a creditor that was notified of the consumer's intent to participate is a subject of the agreement if the creditor does not respond to the service and state the creditor's objection, in writing, to the consumer's participation in debt scheduling within fifteen days after receiving notice of the consumer's intention to do so; however, no debt that is subject to a lien or security interest of any type, other than a judgment lien or execution lien, shall be a subject of the agreement unless the creditor specifically assents, in writing, to the debt being a subject of the agreement. The creditor shall be considered to have entered into an agreement of the type described in division (D)(2)(d)(i) of this section, and the amount to be regularly paid by the service to the creditor shall be an amount determined to be reasonable by the service or an amount agreed upon by both the service and the creditor on a date after the expiration of the fifteen-day period.

(iii) Any debt owed to a creditor that was not notified of the consumer's intent to participate, or a debt owed to a creditor that was notified of the consumer's intent to participate and that responded to the service and stated its objection, in writing, to the consumer's participation in debt scheduling within fifteen days after receiving notice of the consumer's intention to do so, is not a subject of the agreement.

(e) The service agrees that, if the consumer fails to make a payment under the agreement within forty-five days of its due date or if the agreement is terminated, the service will notify each creditor that is owed a debt that is subject to the agreement of the failure or termination by regular mail within two business days of the failure or termination, and the service provides that notice in accordance with the agreement.

*2716.031 Filing affidavit of current balance due on garnishment order.*

(A) The judgment creditor or judgment creditor's attorney shall file with the court, the garnishee, and the judgment debtor an affidavit of current balance due on garnishment order that contains the current balance due on the order. The judgment creditor or attorney shall file the affidavit on an annual basis.

(B) At any time after the filing of the original affidavit of garnishment, the judgment creditor or the judgment creditor's attorney may file with the court, the garnishee, and the judgment debtor an affidavit of current balance due on garnishment order that contains the current balance due on the order.

(C) An affidavit of current balance due on garnishment order shall contain the name of the court issuing the order, the case number, the caption of the case, the original amount of the judgment that is the basis of the order, the accrued interest to date, the court costs assessed to date, all moneys paid to the judgment creditor and the judgment creditor's attorney on the judgment to date, the current balance due, the name and address of the judgment creditor and the judgment creditor's attorney, and the date of the affidavit. The judgment creditor or judgment creditor's attorney shall serve the affidavit upon the judgment debtor by personally delivering it to the judgment debtor by personal service, by sending it to the judgment debtor by certified mail, return receipt requested, or by sending it to the judgment debtor by regular mail evidenced by a properly completed and stamped certificate of mailing by regular mail, addressed to the judgment debtor's last known place of residence. A certificate of service upon the judgment debtor shall be attached to each affidavit of current balance due on garnishment order.

(D) Court costs shall not be assessed for filing the affidavit of current balance due on garnishment order with the court.

(E)

(1) When a judgment creditor or a judgment creditor's attorney issues an affidavit of current balance due on garnishment order in accordance with division (A) of this section, the judgment creditor or the judgment creditor's attorney shall comply with division (E) of this section and serve the notice and request for hearing upon the judgment debtor in accordance with division (E) of this section.

(2)

(a) The notice to the judgment debtor that the judgment creditor or the judgment creditor's attorney is required to serve on and deliver to the judgment debtor shall be in substantially the following form:

"(Name and Address of the Court)

(Case Caption)

Case No. ....

#### NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that the judgment creditor in this proceeding has issued an affidavit of current balance due on garnishment order in the above case. The document entitled "AFFIDAVIT OF CURRENT BALANCE DUE ON GARNISHMENT ORDER" that is enclosed with this notice shows the original amount of the judgment that was the basis of the garnishment order, the accrued interest to date, the court costs assessed to date, all moneys paid to the judgment creditor and the judgment creditor's attorney on the judgment to date, and the current balance due on the judgment.

If you dispute the judgment creditor's determination of these amounts or if you believe that this affidavit is improper for any other reason, you may request a hearing before this court by disputing the affidavit in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's determination of the amounts shown in the "AFFIDAVIT OF CURRENT BALANCE DUE ON GARNISHMENT ORDER" in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's determination, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing.

NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING. The hearing will be limited to a consideration of the amount currently due on the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing not later than the end of the fifth business day after you receive this notice, the court will conduct the hearing no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing not later than the end of the fifth business day after you receive this notice, some of your personal earnings will continue to be paid to the judgment creditor until the judgment is satisfied.

**Comment [JWB1]:** For personal earnings garnishments, the Court is only required to schedule a definite hearing date if/when the debtor delivers his or her request.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, you should contact the local bar association.

.....  
Judgment Creditor or

Judgment Creditor's Attorney  
.....

Date"

(b) The request for hearing form that the judgment creditor or the judgment creditor's attorney is required to serve on and deliver to the judgment debtor shall have attached to it a postage-paid, self-addressed envelope or shall be on a postage-paid, self-addressed postcard, and shall be in substantially the following form:

“(Name and Address of Court)

Case Number ..... Date .....

#### REQUEST FOR HEARING

I dispute the judgment creditor's determination of current balance due on garnishment order in the above case and request that a hearing in this matter be held not later than twelve days after delivery of this request to the court.

I ..... believe that the need for

(Insert "do" or "do not") the hearing is an emergency.

I dispute the judgment creditor's determination for the following reasons:

.....  
(Name of Judgment Debtor)

.....  
(Signature)

Date

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING, AND SOME OF YOUR PERSONAL EARNINGS WILL CONTINUE TO BE PAID TO (JUDGMENT CREDITOR'S NAME) IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT CREDITOR."

(F) The judgment debtor may receive a hearing in accordance with this division by delivering a written request for a hearing to the clerk of the court within five business days after receipt of the notice provided pursuant to division (E) of this section. The request may set forth the judgment debtor's reasons for disputing the judgment creditor's determination of the current balance due on garnishment order; however, neither the judgment debtor's inclusion of nor the judgment debtor's failure to include those reasons upon the request constitutes a waiver of any defense of the judgment debtor or affects the judgment debtor's right to produce evidence at the hearing. If the request is made by the judgment debtor within the prescribed time, the court shall schedule a hearing no later than twelve days after the request is made, unless the judgment debtor indicated that the judgment debtor believed the need for the hearing was an emergency, in which case the court shall schedule the hearing as soon as practicable after the request is made. The court shall send notice of the date, time, and place of the hearing to the parties in accordance with division (H) of this section. The hearing shall be limited to a consideration of the amount of the current balance due on the garnishment order, if any.

(G) If the judgment debtor does not request a hearing within the prescribed time pursuant to division (F) of this section, the garnishee shall continue to pay some of the judgment debtor's personal disposable earnings into court. If a hearing is conducted, the court shall determine at the hearing the amount owed by the judgment debtor to the judgment creditor and issue an order, accordingly, to the garnishee to pay that amount, calculated each pay period at the statutory percentage, of the personal disposable earnings into court. If the court determines that the judgment debtor has overpaid on the judgment, the court shall issue an order to the judgment creditor to pay that amount to the judgment debtor and issue an order terminating the garnishment. If the court determines that the judgment is satisfied, then the court shall issue an order terminating the garnishment.

(H) If the judgment debtor requests a hearing within the prescribed time pursuant to division (F) of this section, the clerk shall send a notice of the date, time, and place of the hearing by regular mail to the judgment creditor or the judgment creditor's attorney and the judgment debtor.

**Comment [JWB2]:** Again, the Court only sends notice of a specific time and date after it receives the debtor's affirmative request.

2716.06 Form for notice to judgment debtor.

(A) The notice to the judgment debtor that must be served on the garnishee and delivered to the judgment debtor shall be in substantially the following form:

“(Name and Address of the Court)

(Case Caption) Case No. ....

NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that this court has issued an order in the above case in favor of (name and address of judgment creditor), the judgment creditor in this proceeding, directing that some of your personal earnings be used in satisfaction of your debt to the judgment creditor instead of being paid to you. This order was issued on the basis of the judgment creditor's judgment against you that was obtained in (name of court) in (case number) on (date).

The law of Ohio provides that you are entitled to keep a certain amount of your personal earnings free from the claims of creditors. Additionally, wages under a certain amount may never be used to satisfy the claims of

creditors. The documents entitled "ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER" that are enclosed with this notice show how the amount proposed to be taken out of your personal earnings was calculated by your employer.

If you dispute the judgment creditor's right to garnish your personal earnings and believe that you are entitled to possession of the personal earnings because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court, no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your personal earnings in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING. The hearing will be limited to a consideration of the amount of your personal earnings, if any, that can be used in satisfaction of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted no later than twelve days after your request is received by the court, and the court will send you notice of the date, time, and place. You may indicate in the form that you believe that the need for the hearing is an emergency and that it should be given priority by the court. If you do so, the court will schedule the hearing as soon as practicable after your request is received and will send you notice of the date, time, and place. If you do not request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, some of your personal earnings will be paid to the judgment creditor.

**Comment [JWB3]:** Again, the statute makes clear that the debtor must affirmatively request a hearing date in order for one to be assigned.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association.

.....  
Clerk of Court

.....  
Date"

(B) The request for hearing form that must be served on the garnishee and delivered to the judgment debtor shall have attached to it a postage-paid, self-addressed envelope or shall be on a postage-paid, self-addressed postcard, and shall be in substantially the following form:

"(Name and Address of Court)

Case Number ..... Date .....

#### REQUEST FOR HEARING

I dispute the judgment creditor's right to garnish my personal earnings in the above case and request that a hearing in this matter be held no later than twelve days after delivery of this request to the court.

I ..... feel that the need for the

{insert "do" or "do not"} hearing is an emergency.



I dispute the judgment creditor's right to garnish my personal earnings for the following reasons:

.....  
(Optional)  
.....  
.....

I UNDERSTAND THAT NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE CONSIDERED AT THE HEARING.

.....  
(Name of Judgment Debtor)  
.....

(Signature)  
.....

(Date)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING, AND SOME OF YOUR PERSONAL EARNINGS WILL BE PAID TO (JUDGMENT CREDITOR'S NAME) IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT CREDITOR."

(C) The judgment debtor may receive a hearing in accordance with this division by delivering a written request for a hearing to the clerk of the court within five business days after receipt of the notice provided pursuant to division (A) of this section. The request may set forth the judgment debtor's reasons for disputing the judgment creditor's right to garnish the personal earnings; however, neither the judgment debtor's inclusion of nor the judgment debtor's failure to include those reasons upon the request constitutes a waiver of any defense of the judgment debtor or affects the judgment debtor's right to produce evidence at the hearing. If the request is made by the judgment debtor within the prescribed time, the court shall schedule a hearing no later than twelve days after the request is made, unless the judgment debtor indicated that the judgment debtor felt the need for the hearing was an emergency, in which case the court shall schedule the hearing as soon as practicable after the request is made. Notice of the date, time, and place of the hearing shall be sent to the parties in accordance with division (E) of this section. The hearing shall be limited to a consideration of the amount of the personal earnings of the judgment debtor, if any, that can be used in satisfaction of the debt owed by the judgment debtor to the judgment creditor.

(D) If the judgment debtor does not request a hearing within the prescribed time pursuant to division (C) of this section, the court shall issue an order to the garnishee to pay some of the judgment debtor's personal disposable earnings into court, if they have not already been paid to the court. This order shall be based on the answer of the garnishee filed pursuant to section 2716.05 of the Revised Code. If a hearing is conducted, the court shall determine at the hearing the amount, calculated each pay period at the statutory percentage, of the judgment debtor's personal disposable earnings for the present pay period, if any, that can be used in satisfaction of the debt owed by the judgment debtor to the judgment creditor, and issue an order, accordingly, to the garnishee to pay that amount, calculated each pay period at the statutory percentage, of the personal disposable earnings into court if it has not already been paid to the court.

(E) If the judgment debtor requests a hearing within the prescribed time pursuant to division (C) of this section, the clerk shall send a notice of the date, time, and place of the hearing by regular mail to the judgment creditor or the judgment creditor's attorney and the judgment debtor.

**Comment [JWB4]:** Again, the Court only sends notice of a specific time and date after it receives the debtor's affirmative request.

**PROPERTY OTHER THAN PERSONAL EARNINGS GARNISHMENT PROVISIONS**

2716.13 [See notes for adjustments for inflation] Hearing on motion for garnishment of property, other than personal earnings of judgment debtor.

(A) Upon the filing of a proceeding in garnishment of property, other than personal earnings, under section 2716.11 of the Revised Code, the court shall cause the matter to be set for hearing within twelve days after that filing.

**Comment [JWB5]:** Unlike the previous sections, the Court is required to set a hearing date and time immediately upon filing.

(B) Upon the scheduling of a hearing relative to a proceeding in garnishment of property, other than personal earnings, under division (A) of this section, the clerk of the court immediately shall issue to the garnishee three copies of the order of garnishment of property, other than personal earnings, and of a written notice that the garnishee answer as provided in section 2716.21 of the Revised Code and the garnishee's fee required by section 2716.12 of the Revised Code. The copies of the order and of the notice shall be served upon the garnishee in the same manner as a summons is served and the clerk shall also mail a copy of the order and notice of garnishment to the garnishee by ordinary or regular mail service. The copies of the order and of the notice shall not be served later than seven days prior to the date on which the hearing is scheduled. The order shall bind the property in excess of four hundred dollars, other than personal earnings, of the judgment debtor in the possession of the garnishee at the time of service. Any garnishee that garnishes the property, other than personal earnings, of a judgment debtor in good faith reliance upon the order and notice of garnishment received by ordinary or regular mail service shall not be liable for damages in any civil action.

The order of garnishment of property, other than personal earnings, and notice to answer shall be in substantially the following form:

"ORDER AND NOTICE OF GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS AND ANSWER OF GARNISHEE

Docket No. ....

Case No. ....

In the ..... Court

....., Ohio

The State of Ohio

County of ....., ss

....., Judgment Creditor vs .

....., Judgment Debtor

**SECTION A. COURT ORDER AND NOTICE OF GARNISHMENT**

To: ....., Garnishee

The judgment creditor in the above case has filed an affidavit, satisfactory to the undersigned, in this Court stating that you may have money, property, or credits, other than personal earnings, in your hands or under your control that belong to the judgment debtor.

You are therefore ordered to complete the "ANSWER OF GARNISHEE" in section (B) of this form. Return one completed and signed copy of this form to the clerk of this court together with the amount determined in accordance with the "ANSWER OF GARNISHEE" by the following date on which a hearing is tentatively scheduled

relative to this order of garnishment: ..... Deliver one completed and signed copy of this form to the judgment debtor prior to that date. Keep the other completed and signed copy of this form for your files.

**Comment [JWB6]:** Date and time of tentative hearing included in recommended form.

The total probable amount now due on this judgment is \$..... The total probable amount now due includes the unpaid portion of the judgment in favor of the judgment creditor, which is \$.....; interest on that judgment and, if applicable, prejudgment interest relative to that judgment at the rate of .....% per annum payable until that judgment is satisfied in full; and court costs in the amount of \$.....

You also are ordered to hold safely anything of value that belongs to the judgment debtor and that has to be paid to the court, as determined under the "ANSWER OF GARNISHEE" in section (B) of this form, but that is of such a nature that it cannot be so delivered, until further order of the court.

Witness my hand and the seal of this court this ..... day of ....., .....

.....

Judge

#### SECTION B. ANSWER OF GARNISHEE

Now comes ..... the garnishee, who says:

1. That the garnishee has more than \$400 in money, property, or credits, other than personal earnings, of the judgment debtor under the garnishee's control and in the garnishee's possession.

.....yes no if yes, amount over \$400

2. That property is described as:

3. If the answer to line 1 is "yes" and the amount is less than the probable amount now due on the judgment, as indicated in section (A) of this form, sign and return this form and pay the amount of line 1 to the clerk of this court.

4. If the answer to line 1 is "yes" and the amount is greater than that probable amount now due on the judgment, as indicated in section (A) of this form, sign and return this form and pay that probable amount now due to the clerk of this court.

5. If the answer to line 1 is "yes" but the money, property, or credits are of such a nature that they cannot be delivered to the clerk of the court, indicate that by placing an "X" in this space: ..... Do not dispose of that money, property, or credits or give them to anyone else until further order of the court.

6. If the answer to line 1 is "no," sign and return this form to the clerk of this court.

I certify that the statements above are true.

.....

(Print Name of Garnishee)

.....

(Print Name and Title of Person Who Completed Form)

Signed.....

(Signature of Person Completing Form)

Dated this ..... day of ....., ....."

Section A of the form described in this division shall be completed before service. Section B of the form shall be completed by the garnishee, and the garnishee shall file one completed and signed copy of the form with the clerk of the court as the garnishee's answer. The garnishee may keep one completed and signed copy of the form and shall deliver the other completed and signed copy of the form to the judgment debtor.

If several affidavits seeking orders of garnishment of property, other than personal earnings, are filed against the same judgment debtor in accordance with section 2716.11 of the Revised Code, the court involved shall issue the requested orders in the same order in which the clerk received the associated affidavits.

(C)

(1) At the time of the filing of a proceeding in garnishment of property, other than personal earnings, under section 2716.11 of the Revised Code, the judgment creditor also shall file with the clerk of the court a praecipe instructing the clerk to issue to the judgment debtor a notice to the judgment debtor form and a request for hearing form. Upon receipt of the praecipe and the scheduling of a hearing relative to an action in garnishment of property, other than personal earnings, under division (A) of this section, the clerk of the court immediately shall serve upon the judgment debtor, in accordance with division (D) of this section, two copies of the notice to the judgment debtor form and of the request for hearing form. The copies of the notice to the judgment debtor form and of the request for hearing form shall not be served later than seven days prior to the date on which the hearing is scheduled.

(a) The notice to the judgment debtor that must be served upon the judgment debtor shall be in substantially the following form:

"(Name and Address of the Court)

(Case Caption) ..... Case No. ....

#### NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that this court has issued an order in the above case in favor of (name and address of judgment creditor), the judgment creditor in this proceeding, directing that some of your money in excess of four hundred dollars, property, or credits, other than personal earnings, that now may be in the possession of (name and address of garnishee), the garnishee in this proceeding, be used to satisfy your debt to the judgment creditor. This order was issued on the basis of the judgment creditor's judgment against you that was obtained in (name of court) in (case number) on (date). Upon your receipt of this notice, you are prohibited from removing or attempting to remove the money, property, or credits until expressly permitted by the court. Any violation of this prohibition subjects you to punishment for contempt of court.

The law of Ohio and the United States provides that certain benefit payments cannot be taken from you to pay a debt. Typical among the benefits that cannot be attached or executed upon by a creditor are the following:

- (1) Workers' compensation benefits;
- (2) Unemployment compensation payments;
- (3) Cash assistance payments under the Ohio works first program;
- (4) Benefits and services under the prevention, retention, and contingency program;
- (5) Disability financial assistance administered by the Ohio department of job and family services;

(6) Social security benefits;

(7) Supplemental security income (S.S.I.);

(8) Veteran's benefits;

(9) Black lung benefits;

(10) Certain pensions.

There may be other benefits not included in the above list that apply in your case.

If you dispute the judgment creditor's right to garnish your property and believe that the judgment creditor should not be given your money, property, or credits, other than personal earnings, now in the possession of the garnishee because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the request for hearing form, appearing below, or in a substantially similar form, and delivering the request for hearing to this court at the above address, at the office of the clerk of this court no later than the end of the fifth business day after you receive this notice. You may state your reasons for disputing the judgment creditor's right to garnish your property in the space provided on the form; however, you are not required to do so. If you do state your reasons for disputing the judgment creditor's right, you are not prohibited from stating any other reason at the hearing. If you do not state your reasons, it will not be held against you by the court, and you can state your reasons at the hearing. **NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.** If you request a hearing, the hearing will be limited to a consideration of the amount of your money, property, or credits, other than personal earnings, in the possession or control of the garnishee, if any, that can be used to satisfy all or part of the judgment you owe to the judgment creditor.

If you request a hearing by delivering your request for hearing no later than the end of the fifth business day after you receive this notice, it will be conducted in ..... courtroom ..... (address of court), at ..... m. on ..... You may request the court to conduct the hearing before this date by indicating your request in the space provided on the form; the court then will send you notice of any change in the date, time, or place of the hearing. If you do not request a hearing by delivering your request for a hearing no later than the end of the fifth business day after you receive this notice, some of your money, property, or credits, other than personal earnings, will be paid to the judgment creditor.

**Comment [JWB7]:** Date and time of tentative hearing included in recommended form.

If you have any questions concerning this matter, you may contact the office of the clerk of this court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local bar association.

.....  
Clerk of the Court

.....  
Date"

(b) The request for hearing form that must be served upon the judgment debtor shall have attached to it a postage-paid, self-addressed envelope or shall be on a postage-paid self-addressed postcard, and shall be in substantially the following form:

"(Name and Address of Court)

Case Number ..... Date .....

REQUEST FOR HEARING

I dispute the judgment creditor's right to garnish my money, property, or credits, other than personal earnings, in the above case and request that a hearing in this matter be held

.....  
(Insert "on" or "earlier than") the date and time set forth in the document entitled "NOTICE TO THE JUDGMENT DEBTOR" that I received with this request form.

I dispute the judgment creditor's right to garnish my property for the following reasons:

.....  
(Optional)  
.....  
.....

I UNDERSTAND THAT NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING.

.....  
(Name of Judgment Debtor)  
.....

(Signature)  
.....

(Date)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WAIVE YOUR RIGHT TO A HEARING AND SOME OF YOUR MONEY, PROPERTY, OR CREDITS, OTHER THAN PERSONAL EARNINGS, NOW IN THE POSSESSION OF (GARNISHEE'S NAME) WILL BE PAID TO (JUDGMENT CREDITOR'S NAME) TO SATISFY SOME OF YOUR DEBT TO (JUDGMENT CREDITOR'S NAME)."

(2) The judgment debtor may receive a hearing in accordance with this division by delivering a written request for hearing to the court within five business days after receipt of the notice provided pursuant to division (C)(1) of this section. The request may set forth the judgment debtor's reasons for disputing the judgment creditor's right to garnish the money, property, or credits, other than personal earnings; however, neither the judgment debtor's inclusion of nor failure to include those reasons upon the request constitutes a waiver of any defense of the judgment debtor or affects the judgment debtor's right to produce evidence at the hearing. If the request is made by the judgment debtor within the prescribed time, the hearing shall be limited to a consideration of the amount of money, property, or credits, other than personal earnings, of the judgment debtor in the hands of the garnishee, if any, that can be used to satisfy all or part of the debt owed by the judgment debtor to the judgment creditor. If a request for a hearing is not received by the court within the prescribed time, the hearing scheduled pursuant to division (A) of this section shall be canceled unless the court grants the judgment debtor a continuance in accordance with division (C)(3) of this section.

**Comment [JWB8]:** Despite already being scheduled, the hearing is only to be held if the debtor affirmatively requests it.

**Comment [JWB9]:** Otherwise, it is technically "canceled." So why not mirror language of personal earnings provisions and state that a hearing will be scheduled upon request?

(3) If the judgment debtor does not request a hearing in the action within the prescribed time pursuant to division (C)(2) of this section, the court nevertheless may grant a continuance of the scheduled hearing if the judgment debtor, prior to the time at which the hearing was scheduled, as indicated on the notice to the judgment debtor required by division (C)(1) of this section, establishes a reasonable justification for failure to request the hearing within the prescribed time. If the court grants a continuance of the hearing, it shall cause the matter to be set for hearing as soon as practicable thereafter. The continued hearing shall be conducted in accordance with division (C)(2) of this section.

(4) The court may conduct the hearing on the matter prior to the time at which the hearing was scheduled, as indicated on the notice to the judgment debtor required by division (C)(1) of this section, upon the request of the judgment debtor. The parties shall be sent notice, by the clerk of the court, by regular mail, of any change in the date, time, or place of the hearing.

(5) If the scheduled hearing is canceled and no continuance is granted, the court shall issue an order to the garnishee to pay all or some of the money, property, or credits, other than personal earnings, of the judgment debtor in the possession of the garnishee at the time of service of the notice and order into court if they have not already been paid to the court. This order shall be based on the answer of the garnishee filed pursuant to this section. If the scheduled hearing is conducted or if it is continued and conducted, the court shall determine at the hearing the amount of the money, property, or credits, other than personal earnings, of the judgment debtor in the possession of the garnishee at the time of service of the notice and order, if any, that can be used to satisfy all or part of the debt owed by the judgment debtor to the judgment creditor, and issue an order, accordingly, to the garnishee to pay that amount into court if it has not already been paid to the court.

(D) The notice to the judgment debtor form and the request for hearing form described in division (C) of this section shall be sent by the clerk by ordinary or regular mail service unless the judgment creditor requests that service be made in accordance with the Rules of Civil Procedure, in which case the forms shall be served in accordance with the Rules of Civil Procedure. Any court of common pleas that issues an order of garnishment of property, other than personal earnings, under this section has jurisdiction to serve process pursuant to this section upon a garnishee who does not reside within the jurisdiction of the court. Any county court or municipal court that issues an order of garnishment of property, other than personal earnings, under this section has jurisdiction to serve process pursuant to this section upon a garnishee who does not reside within the jurisdiction of the court.