

Magistrates Court (Civil Jurisdiction) Rules 2004—Form 83

(see s 319 (1))

Garnishee order attaching debt other than earnings

Note The **judgment creditor** is the person to whom an amount is to be paid by the judgment debtor by order of the Court. The **judgment debtor** is the person required to pay an amount to the judgment creditor by order of the Court. **Garnishee** means the person or organisation who owes an amount to the judgment debtor eg her/his employer or bank.

The purpose of this order is to require the garnishee to pay to the Court the debt or amount payable by the garnishee to the judgment debtor in partial or full satisfaction of the amount payable by the judgment debtor to the judgment creditor.

To:
(full name of garnishee)

of:
(address of garnishee)

And to the judgment debtor.

On the application of the judgment creditor:

Order

IT IS ORDERED that all debts due or accruing (including a debt that will become due and payable) from the garnishee to the judgment debtor at the time of service of this order, or that will become due or payable (other than any earnings payable to the judgment debtor) be attached to the extent of \$..... to answer a judgment made in these proceedings.

(If appropriate):

It is alleged that the garnishee is indebted to the judgment debtor in relation to account number..... in the name of

..... at the branch of the garnishee at
.....

Dated:

Registrar

IMPORTANT NOTICE

To the judgment debtor:

You may apply to the Court seeking an order varying or revoking this order on the grounds that the order imposes exceptional hardship on you or on a member of your family; or apply to the Court for leave to pay the judgment debt or the balance of the judgment debt by instalments. If an instalment order is made, the execution of any garnishee order attaching earnings is stayed (suspended).

To the garnishee:

You are to pay the amount attached to the Registrar of the Magistrates Court at Canberra within 21 days of service of this order. However, if the debt attached is not due for payment to the judgment debtor within this 21-day period, payment is to be made not later than the date when the attached debt would be due for payment to the judgment debtor. If the debt attached is not due for payment within 21 days of service, you must notify the judgment creditor of the date when the attached debt is or is likely to be due for payment and of the amount of the attached debt (if it is less than the amount of the judgment debt).

You are entitled to deduct the prescribed amount of \$..... for costs incurred in complying with this order. Your liability to the judgment debtor is discharged to the extent of the amount actually paid, in accordance with this order including the prescribed amount of \$ deducted for costs.

You may serve on the judgment creditor and the Registrar an affidavit in accordance with form 84 stating there is no debt due or accruing to the judgment debtor. You may apply to the Court for an order varying or revoking this order on the grounds that the order would impose exceptional, hardship on you or on a member of your family.

If you do not comply with this order or file an affidavit with the Registrar stating that there is no debt, due or accruing, or that there is no debt that will become due or payable from you to the judgment debtor, you may be

summoned to show cause why judgment should not be made against the garnishee for the sum of \$.....

Notes 1 The garnishee may pay any amount attached by this order to or at the direction of the judgment creditor instead of to the Registrar if the garnishee first notifies the judgment debtor and the Registrar that he or she proposes to do so.

2 If a garnishee reasonably believes that at the time of service of this order, there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the Registrar an affidavit in accordance with form 84 to that effect containing a summary of the grounds on which that belief is based.

Garnishee order attaching earnings

Note The **judgment creditor** is the person to whom an amount is to be paid by the judgment debtor by order of the Court. The **judgment debtor** is the person required to pay an amount to the judgment creditor by order of the Court. **Garnishee** means the person or organisation who owes an amount to the judgment debtor eg her/his employer or bank.

The purpose of this order is to require the garnishee to pay to the Court the debt or amount payable by the garnishee to the judgment debtor in partial or full satisfaction of the amount payable by the judgment debtor to the judgment creditor.

To:
(full name of garnishee)

of:
(address of garnishee)

And to the judgment debtor.

On the application of the judgment creditor.

Order

IT IS ORDERED that each payment of earnings payable by the garnishee to the judgment debtor from time to time after deducting an amount (kept by the judgment debtor) calculated:

- (a) if the judgment debtor has dependants — at the rate of the amount per week that is equal to the amount of the minimum weekly wage for the time being payable under the Metal Trades (ACT) Award 1982 as originally made and as varied from time to time; or
- (b) if the judgment debtor does not have any dependants — at the rate of the amount per week that is equal to $\frac{3}{4}$ of the amount of the minimum weekly wage for the time being payable under the Metal Trades (ACT) Award 1982 as originally made and as varied from time to time;

is attached for or towards securing payment of a total amount due of \$.....(including costs and interest to date) in relation to a judgment recovered in this action plus an amount for interest accruing at the rate of \$..... per day from the date of this order on the balance outstanding.

Dated:

Registrar

IMPORTANT NOTICE

To the judgment debtor:

You may apply to the Court seeking an order varying this order on the grounds that the order imposes exceptional hardship on you or on a member of your family, or apply to the Court for leave to pay the judgment debt or the balance of the judgment debt by instalments. If an instalment order is made, the execution of any garnishee order attaching earnings is stayed (suspended).

To the garnishee:

1. This order attaches earnings due for payment to the judgment debtor from the date of service.

- 2 Payment of earnings attached must be made to the Registrar within 14 days of the day when the earnings fall due for payment to the judgment debtor.
- 3 You may:
 - (i) serve on the judgment creditor and the Registrar an affidavit stating that the judgment debtor is not employed by you or that you are not indebted to the judgment debtor in relation to earnings; or
 - (ii) apply to the Court for an order varying or revoking this order on the grounds that the order would impose exceptional hardship on you or a member of the family of your family or the family of the judgment debtor.

Notes

- A Earnings comprise any sums payable to the judgment debtor:
- (1) by way of wages or salary (including fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or
 - (2) by way of pension, including—
 - (i) an annuity in relation to past services (whether or not the services were rendered to the person paying the annuity);
 - (ii) periodical payments in relation to compensation for the loss, abolition or relinquishment or any diminution in the emoluments of any office or employment; and
 - (iii) periodical payments in relation to compensation for the loss of wages or salary because of illness or injury;but do not include any pension, benefit or allowance payable to the person under the *Social Security Act 1991* (Cwlth) or the *Veteran's Entitlements Act 1986* (Cwlth).

- B You may pay the amount(s) attached by this order to or at the direction of the judgment creditor instead of to the Registrar if you first notify the judgment debtor and the Registrar that you propose to do so.
- C You may keep from any amount attached by this order an amount for the reasonable expenses incurred by you in complying with the order, provided that it does not exceed 10% of the amount attached and that when making payment you advise the judgment creditor in writing of the total amount attached, the amount kept by you and the balance paid to the Registrar or judgment creditor. Any amount so kept by you will for the purpose of the earnings attached be deemed to have been paid by you to the judgment debtor.
- D The amount(s) attached under this order must be reduced by any amount(s) already attached under any order of this or any other Court, as well as by the amount referred to in paragraph (a) or (b) of the above order. If you are already making deductions from the judgment debtor's earnings to meet payments required under a previous garnishee order or orders, the total amount deducted should not exceed the amount referred to in paragraph (a) or (b) of the above order. Priority of payment is established on the basis of the date of service on you of each order. If you have queries about this aspect you should contact the Court.
- E If a garnishee order attaching earnings is in force and the judgment debtor ceases to be employed by the garnishee, the judgment debtor and the garnishee **must** within 21 days after the judgment debtor ceases to be so employed each notify the Court in writing:
- (a) that the judgment debtor has ceased employment with the garnishee: and
 - (b) specify the date when the employment ceased; and if the judgment debtor has a new employer the judgment debtor must also state in his or her notice:
 - (c) the name and address of the new employer and the place of the new employment; and
 - (d) the amount of his or her earnings from the new employer.

- F If a garnishee reasonably believes that at the time of service of this order there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the Registrar an affidavit in accordance with form 84 to that effect containing a summary of the grounds on which that belief is based.

Endnotes

- 1 This form was originally in the *Magistrates Court (Civil Jurisdiction) Act 1982* (the **authorising Act**), schedule 1. Under amendments made by the *Legislation (Consequential Amendments) Act 2001*, the form was omitted from the authorising Act and became a form approved under section 471 of that Act (see amdt 1.2791, amdt 1.2793).
- 2 Under the *Court Procedures Act 2004* A2004-59, pt 8, this form became a form approved under that Act.
- 3 This republication includes amendments made under the Legislation Act, part 11.3 (Editorial changes).

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