



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 14–15, 2016

Title	Agenda Item Type
Civil Practice and Procedure: Revision of Wage Garnishment Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms WG-002 and WG-030	July 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	March 30, 2016
	Contact
	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

Senate Bill 501 amends the method of computing the amount of a judgment debtor's earnings that may be garnished under an earnings withholding order. The Civil and Small Claims Advisory Committee recommends revising two wage garnishment forms to reflect the new method of calculating the amounts of wages to be withheld.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2016, revise the Instructions to Employers on *Earnings Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding Order for Elder or Dependent Adult Financial Abuse* (form WG-030), to reflect the new method of calculating the amounts of wages to be withheld, presented by Senate Bill 501.

The revised forms are attached at pages 5–9.

Previous Council Action

The council first adopted mandatory wage garnishment forms in 1980. In January 2012, these forms, along with other wage garnishment forms, were revised so that a judgment debtor's social security number would not be included on the publicly accessible forms but instead limited to a confidential form. In July 2013, the forms were further revised to reflect a new method of computing the maximum amount to be garnished, based on the state minimum wage rather than the federal minimum wage. The chart currently included on the form as an aid for calculating the appropriate amount to withhold has been amended several times over the past 10 years to reflect changes in the amount of the federal and, later, state minimum wage.

Rationale for Recommendation

Statute limits the amount of earnings of a judgment debtor that may be subject to an earnings withholding order. (See Code Civ. Proc., § 706.050.)¹ Currently, law prohibits the amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25 percent of the individual's weekly disposable earnings or (2) the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable, unless an exception applies.

Commencing July 1, 2016, Senate Bill 501 (Wieckowski; Stats. 2015, ch. 800) will change the second aspect of calculating the maximum amount to be withheld in two ways. The new law reduces the prohibited amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25 percent of the individual's weekly disposable earnings (this part stays the same as in current law) or (2) **50 percent** of the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage, **or applicable local minimum hourly wage**, if higher, in effect at the time the earnings are payable (the 2016 amendments are shown in bold italics).

This recommendation revises the second pages of each form (WG-002 and WG-030), which provide almost identical instructions to employers regarding their duties upon receipt of the order—including the duty to withhold the correct amount of earnings and instructions on how to calculate that amount. Section 706.127 mandates that the council prepare these instructions and revise them as needed to reflect any changes in the applicable law. The current forms, in addition to explaining how to calculate disposable earnings, contain a chart that shows how much of the disposable earnings to withhold based on the amount of such earnings and the pay period, based on the state minimum wage.

The revised forms no longer contain a chart. Because the amended law provides for employers to calculate the amount to withhold using the local minimum wage, if that is higher than the state minimum wage, a single chart of amounts to withhold is no longer applicable to all employers. In

¹ All statutory references hereafter are to the Code of Civil Procedure unless otherwise indicated.

place of the chart, the proposed forms contain step-by-step instructions on how to calculate the amount to be withheld based on the provisions in section 706.050.

The revised forms also provide a reference to the California Courts Self-Help Center public website, which is being expanded to include information help an employer calculate the maximum amount to withhold from an employee's pay. This information will include a table showing the maximum withholding amount when the state minimum wage is the applicable amount to use, along with instructions on how to calculate the maximum withholding amount—whether it is the state or a local minimum hourly wage that is to be used in the calculation. An online electronic calculator will also likely be made available on the website, as resources permit.

Comments, Alternatives Considered, and Policy Implications

The proposed form revisions are required to make the mandatory forms consistent with law as of July 1, 2016. Therefore the only alternatives considered by the committee were *how* to revise the instructions on the two forms, not *whether* to do so.

The proposed revised forms, with the calculation table removed and the full text of the statutory provisions for calculating withholding amounts, were circulated for comment in December 2015 and January 2016. Six comments were received, three from bar groups and three from courts. All commentators agreed that the changes were necessary, four agreed with the changes proposed, and two suggested different revisions.²

The Standing Committee on the Delivery of Legal Services (SCDLS) of the State Bar recommended that, in place of the text of the statute, the form include a step-by-step description of how to make the calculations required by the statute, and proposed language to be used for such instructions. The committee agreed, although it made a minor modification in the proposed instruction. The two revised forms incorporate the step-by-step instructions.

The Litigation Section of the State Bar proposed retaining the chart showing the amount to withhold based on the state minimum wage, for the convenience of those employers in areas without a local minimum wage law. The committee concluded that room on the forms is insufficient to include the table along with the rest of the needed information without making some items substantially smaller. Further, there was some concern that including such a table, even with the proposed precautionary language, could result in employers' using figures from the table without looking further into the small print on the form, not understanding that the table should not be used if there is a higher local minimum wage amount in effect at the place of employment.

² All comments and the committee's responses are set out in the chart attached at pages 9–13.

The committee initially had considered providing multiple charts on the form, using additional pages, for different levels of minimum wage amounts, so that employers could more easily calculate the appropriate withholding amount. However, that option was deemed impractical in light of the increasing number of municipalities with minimum wage amounts higher than the state minimum wage, the fact that those amounts differ from each other, and the different schedules for changing them.³ Trying to ensure that all the charts are up to date as various municipal minimum wage amounts are changed would be very difficult and result in a continuous stream of changed forms as often as twice each year.

Implementation Requirements, Costs, and Operational Impacts

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

Attachments and Links

1. Revised forms WG-002 and WG-030, at pages 5–8
2. Chart of comments, at pages 9–13
3. Link A: Senate Bill 501,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB501

³ Some of the higher local minimum wages currently in effect are set to change each January for several years, some are set to change each July, and at least one will change in October for the next two years.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	LEVYING OFFICER (Name and address): <div style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT</div> <div style="text-align: center; font-size: 24pt;">03/30/16</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">NOT APPROVED BY JUDICIAL COUNCIL</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
EARNINGS WITHHOLDING ORDER (Wage Garnishment)	LEVYING OFFICER FILE NO.: COURT CASE NO.:
EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.	
EMPLOYER: Enter the following date to assist your recordkeeping. Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):	

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer

Name and address of employee

Social Security No. on form WG-035 unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form). Pay the withheld sums to the **levying officer** (name and address above).

If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions* (form WG-003)** within 10 days after receiving this order.

Complete both copies of the form *Employer's Return* (form WG-005) and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (date):

The judgment creditor (if different from the plaintiff) is (name):

4. The **INSTRUCTIONS TO EMPLOYER** on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

LEVYING OFFICER REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-002

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins 10 calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *Employer's Return* (form WG-005)) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

COMPUTATION INSTRUCTIONS

California law provides how much earnings to withhold, if any, for different amounts of disposable earnings and different pay periods, and takes into consideration different minimum wage amounts. The method of calculation is at Code of Civil Procedure section 706.050 and is described in the column to the right. You may also look on the California Courts Self-Help website for assistance in determining the maximum withholding amounts for different amounts of disposable income, for different pay periods, and with different minimum wage amounts. The information is at www.courts.ca.gov/self-help-employerwagecivil.htm.

THESE COMPUTATION INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

State law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

(A) To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), first compute the employee's *disposable earnings*.

Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings because they are not paid by the employer.

Disposable earnings are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

(B) After the employee's disposable earnings are known, to determine what amount should be withheld, you may look to the statute, follow the directions below in (C), or seek assistance on the California Courts Self-Help website at www.courts.ca.gov/self-help-employerwagecivil.htm. Note that you also need to know the amount of the minimum wage in the location where the employee works.

(C) Calculate the maximum amount that may be withheld from the employee's disposable earnings, which is the *lesser* of the following two amounts:

- 25 percent of disposable earnings for that week; **or**
- 50 percent of the amount by which the employee's disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage.

To calculate the correct amount, follow the steps below:

Step 1: Determine the applicable minimum wage per pay period.

- For a daily or weekly pay period, multiply the applicable hourly minimum wage by 40.
- For a biweekly pay period, multiply the applicable hourly minimum wage by 80.
- For a semimonthly pay period, multiply the applicable hourly minimum wage by 86 ²/₃.
- For a monthly pay period, multiply the applicable hourly minimum wage by 173 ¹/₃.

Step 2: Subtract the amount from Step 1 from the employee's disposable earnings during that pay period.

Step 3: If the amount from Step 2 is less than zero, do not withhold any money from the employee's earnings.

Step 4: If the amount from Step 2 is greater than zero, multiply that amount by one-half.

Step 5: If the amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order*, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.
IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	LEVYING OFFICER (name and address): <p style="text-align: center;">DRAFT 3/30/16</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:	CASE NUMBER:
EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)	LEVYING OFFICER FILE NUMBER:

EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.

EMPLOYER: Enter the following date to assist your record keeping.
 Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer	Name and address of employee

Social Security No. on form WG-035 unknown

- A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form).
 Pay the withheld sums to the **levying officer** (name and address above). If the employee works for you now, you must **give the employee a copy of this order and the Employee Instructions (form WG-003)** within 10 days after receiving this order.
Complete both copies of the Employer's Return (form WG-005) and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.
- The total amount due is: \$
 - The amount arising from an elder or dependent financial abuse claim is: \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.
- The judgment was entered in the court on (date):
 The judgment creditor (if different from the plaintiff) is (name):
- The INSTRUCTIONS TO EMPLOYER on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date: _____

(TYPE OR PRINT NAME)
(SIGNATURE)

LEVYING OFFICER
 REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

**EARNINGS WITHHOLDING ORDER
 FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE
 (Wage Garnishment)**

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-030

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the withholding period.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins 10 calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *Employer's Return* (form WG-005)) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

COMPUTATION INSTRUCTIONS

California law provides how much earnings to withhold, if any, for different amounts of disposable earnings and different pay periods, and takes into consideration different minimum wage amounts. The method of calculation is at Code of Civil Procedure section 706.050, and is described in the column to the right. You may also look on the California Courts Self-Help website for assistance in determining the maximum withholding amounts for different amounts of disposable income, for different pay periods, with different minimum wage amounts. The information is at www.courts.ca.gov/self-help-employerwagecivil.htm.

THESE COMPUTATION INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

State law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

(A) To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), first compute the employee's *disposable earnings*.

Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings because they are not paid by the employer.

Disposable earnings are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

(B) After the employee's disposable earnings are known, to determine what amount should be withheld, you may look to the statute, follow the directions below in (C), or seek assistance on the California Courts Self-Help website at www.courts.ca.gov/self-help-employerwagecivil.htm. Note that you will also need to know the amount of the minimum wage in the location where the employee works.

(C) Calculate the maximum amount that may be withheld from the employee's disposable earnings, which is the *lesser* of the following two amounts:

- 25 percent of disposable earnings for that week; or
- 50 percent of the amount by which the employee's disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage

To calculate the correct amount, follow the steps below:

Step 1: Determine the applicable minimum wage per pay period.

- For a daily or weekly pay period, multiply the applicable hourly minimum wage by 40.
- For a biweekly pay period, multiply the applicable hourly minimum wage by 80.
- For a semimonthly pay period, multiply the applicable hourly minimum wage by 86 2/3.
- For a monthly pay period, multiply the applicable hourly minimum wage by 173 1/3.

Step 2: Subtract the amount from Step 1 from the employee's disposable earnings during that pay period.

Step 3: If the amount from Step 2 is less than zero, do not withhold any money from the employee's earnings.

Step 4: If the amount from Step 2 is greater than zero, multiply that amount by one-half.

Step 5: If the amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order*, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

W16-01**Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions** (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
1.	Orange County Bar Association by Todd G. Friedland, President	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
2.	State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Chair San Francisco, CA	AM	We agree with the proposal, except we would retain the chart showing the amount to withhold based on the state minimum wage for convenience for those in areas without a local minimum wage law. We suggest adding precautionary language on the need to determine whether a local minimum wage law applies.	The committee considered the suggested modification, but concluded that there is insufficient room on the forms to include the chart along with the rest of the needed information without making some items substantially smaller. Further, there was some concern that including such a table, even with the proposed precautionary language, could result in employers using figures from the table without looking further into the small print on the form, not understanding that the table should not be used if there was a higher local minimum wage amount in effect at the place of employment.
3.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) by Phong S. Wong, Chair San Francisco, CA	AM	<u>Does the proposal appropriately address the stated purpose?</u> Partially. SCDLS agrees generally with the proposal to change forms WG-002 and WG-030 so that they comply with SB 501. However, while the revised forms cite to Code of Civil Procedure section 706.050, as amended by SB 501, the forms mistakenly refer to the "state hourly minimum wage" rather than the "applicable hourly minimum wage" in subsections (b)(2), (3), and (4). In the "Additional Specific Comments" section below, SCDLS also suggests some modifications to reduce the likelihood that an employer may garnish an employee's paycheck in excess of what the amended statute permits.	The committee agrees that the language in the forms should refer to "applicable minimum wage" rather than "state minimum wage" and has further revised the forms to so reflect.

W16-01

Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
			<p>Additional Specific Comments</p> <p>While the new forms comply with SB 501, SCDLS believes that restating the statutory requirements as a series of steps (rather than quoting the statute in its entirety) would decrease the likelihood of an employer withholding more than is allowable under the law. Instead of quoting Code of Civil Procedure section 706.050, SCDLS proposes that the Computation Instructions section of both Form WG-002 and WG-030 could read as follows starting with (C).</p> <p>COMPUTATION INSTRUCTIONS</p> <p>(C) After the employee’s disposable earnings are known, you may follow the steps below to determine what amount should be withheld, or you may seek assistance by using the on-line calculator on the Self-Help website at www.courts.ca.gov/self-help-xxxxx.htm. Note that you also need to know the amount of the minimum wage in the location where the employee works.</p> <p>(D) Calculate the maximum amount that may be withheld from the employee’s disposable earnings, which is the lesser of the following two amounts:</p> <ul style="list-style-type: none"> • 25 percent of disposable earnings for that week; OR • 50 percent of the amount by which the 	<p>The committee agrees that the step-by-step instructions for calculating the maximum withholding amount is an improvement over using the statutory language, and has modified the forms to reflect this.</p> <p>The committee made two minor changes to the proposed text, however:</p> <ul style="list-style-type: none"> • A note has been added advising the employer that he or she can look to the statute directly or to the self-help website as an alternative to following the steps set out on the form, and • A correction was made to the proposed Step 1, combining subparts i and ii into a single item, to reflect that text of the statute at 706.050(b)(1) which provides that withholding for a pay period of 8-hours should be calculated the same as for a pay period of 40 hours.

W16-01

Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
			<p>employee’s disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage</p> <p>To calculate the correct amount, follow the steps below:</p> <p>a. <u>Step 1</u>: Determine the applicable minimum wage per pay period.</p> <p>i. For a daily pay period, multiply the applicable hourly minimum wage by 8.</p> <p>ii. For a weekly pay period, multiply the applicable hourly minimum wage by 40.</p> <p>iii. For a biweekly pay period, multiply the applicable hourly minimum wage by 80.</p> <p>iv. For a semimonthly pay period, multiply the applicable hourly minimum wage by $86 \frac{2}{3}$.</p> <p>v. For a monthly pay period, multiply the applicable hourly minimum wage by $173 \frac{1}{3}$.</p> <p>b. <u>Step 2</u>: Subtract the amount from Step 1 from the employee’s disposable earnings during that pay period.</p> <p>c. <u>Step 3</u>: If the amount from Step 2 is less than zero, do not withhold any money from</p>	

W16-01**Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions** (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
			<p>the employee's earnings.</p> <p>d. <u>Step 4</u>: If the amount from Step 2 is greater than zero, multiply that amount by one-half.</p> <p>e. <u>Step 5</u>: If amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.</p>	
4.	Superior Court of Orange County by Civil Operations Managers	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of Riverside County	A	Self Help website will need to be updated to contain online calculator and city/county minimum wage changes.	The committee agrees that the online California Courts Self Help Center should include a page to provide assistance to employers in calculating wage garnishments, including a chart for those using the state minimum wage and a reminder that the employer must use the local minimum wage amount if applicable. An online calculator will be included as resources permit.
6.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	<p>In answer to the request for specific responses, our court provides the following:</p> <p>Q: Would the proposal provide cost savings?</p> <p>No.</p> <p>Q: What are implementations requirements for courts?</p>	The committee notes the commentator's agreement with the proposal, and appreciates the information regarding court cost and implementation impacts.

W16-01**Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions** (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
			<p>Minimal/none.</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>Q: How well would this proposal work in courts of different sizes?</p> <p>No significant impact.</p> <p>Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs?</p> <p>Yes.</p> <p>Q: Does the proposal appropriately address the state purpose?</p> <p>Yes.</p>	