

Garnishment and Asset Seizure During COVID-19

GUIDANCE FOR JUDGES AND COURT STAFF

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In April 2020, under **The CARES Act**, the federal government began issuing paper checks or direct deposits into individuals' bank accounts called "rebates" or "stimulus checks." Funds were dispersed: up to \$1,200 for eligible individual taxpayers; \$2,400 for eligible married couples filing jointly, plus a \$500 bonus for each child who is 16 or younger, up to \$3,400. Federal and state benefits received are likely protected from creditors. However, The CARES Act does not protect direct deposit stimulus checks from private creditors' seizure from bank accounts to satisfy outstanding court judgments or the banks' ability to seize the funds to pay debts owed to banks. Recipients of Social Security benefits may be able to protect their stimulus checks if the IRS places them in accounts dedicated to Social Security benefits. These accounts are generally shielded from collection efforts. In general, public benefits such as veterans benefits, federal retirement benefits, disability benefits, unemployment, and workers' compensation benefits are exempt from most garnishment efforts except child support or alimony.

Some states—to protect residents during the declared disaster emergency from creditors and banks seizing funds that pay for groceries, rent, and other essentials—have issued executive or court orders to temporarily prohibit judgment creditors from initiating new or continuing currently filed proceedings for attachment, garnishment, levy, or execution to collect or enforce a judgment on debts. The federal government may also pass into law another round of stimulus checks and may also add language to protect those future stimulus checks from creditors' and banks' garnishment.

SPECIAL CONSIDERATIONS DURING THE COVID-19 PANDEMIC

1. Does Your State Have a Current Executive Order, Court Order or Law Placing a Temporary Moratoria on Garnishments or Asset Seizures?

- If yes, what types of collection efforts are included and excluded in the moratorium?
- Does the order or law require additional notice requirements to the debtor?

2. Has the Debtor Received Proper Notice?

For public health reasons, USPS has temporarily changed its mail handling procedures, [March 20, 2020 COVID-19 Continuity of Operations Update for Customer Signature Service](#), citing its authority to temporarily alter delivery practices in order to continue postal services. 39 U.S.C. §§ 101, 401, 403, 410. USPS temporarily no longer requires an in-person signature, which may compromise the validity of service of process. Instead, USPS letter carriers may ask, at a safe

and appropriate distance, for a last name and first initial of the customer. These practices may vary by location and over the course of the pandemic.

- Has Your State Issued any Orders or Guidance Regarding the Post Office's New Practices and Service of Process? If not, are there any added precautions that can be put in place to address service concerns and mail delays (including checking returned mail, electronic means, adding extra response time).
- Is there any indication in the record that notice was not received?

KEY RECOMMENDATIONS TO ENSURE A FAIR POST-JUDGMENT ENFORCEMENT HEARING

1. Has the Court Provided the Same Procedural Due Process for Post Judgment Proceedings as for the Proceedings in the Underlying Judgment?

2. Does The Litigant Have the Opportunity and Means to Challenge the Enforceability of the Underlying Judgment?

The debtor needs a clear legal basis for challenging the underlying judgment in a garnishment action. At the same time, there are historic challenges in high-volume cases including issues with service and a lack of information clearly tying the claimed debt to the debtor. The point of garnishment may be the first time a party learns of the underlying action.

- Has the debtor been provided information about how to challenge the underlying judgment if the debtor believes it was entered in error?
- Can the debtor access the information underlying the judgment, ideally electronically?
- If not, can the creditor provide this information directly to the debtor?

3. Has Information Regarding the Sources of Income that are Exempt from Garnishment and Asset Seizure Been Provided?

4. Are There Opportunities and Resources for Parties to Reach Resolution Rather Than Garnishment or Asset Seizure?

Before the pandemic, many courts offered parties in high-volume dockets the opportunity to engage in mediation with trained court staff or volunteer mediators while waiting for their case to be called. This often resulted in workable solutions for the parties and less time expended in formal adjudication by the court.

- Is there a way to provide mediation online?
- If your court has Online Dispute Resolution (ODR), could post-judgment proceedings be included in your ODR program? ODR provides similar opportunities for parties to engage in negotiation or mediation online, typically weeks or months before an in-court hearing can be held.

5. Have You Included All Final Rulings On the Record?

The court should find, on the record, that the debtor was provided prior adequate notice of the writ of garnishment and the opportunity to challenge the enforceability of the underlying judgment, and the garnishment is not subject to COVID moratoria.