

Criminal Court & General Sessions Criminal Division Garnishments

February 10th, 2022

Topics

01. TCA § 40-24-105

02. When to Garnish

03. Garnishment Forms

04. Challenges

Tennessee Annotated Code § 40-24-105 (a)

40-24-105. Collection of fines, costs and litigation taxes — Installment payment plan — Suspended license — Restricted license — Conversion to civil judgment — Settlement. [Effective on January 1, 2022. See the version effective until January 1, 2022.]

(a) Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. The trial court may also enforce all orders assessing any fine remaining in default by contempt upon a finding by the court that the defendant has the present ability to pay the fine and willfully refuses to pay. **Costs and litigation taxes due may be collected in the same manner as a judgment in a civil action,** but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs or litigation taxes. The following shall be the allocation formula for moneys paid into court in matters adjudicated on or after January 1, 2022: the first moneys paid in a case shall first be credited toward the payment of restitution owed to the victim, if any, and once restitution has been paid in full, the next moneys shall be credited toward payment of litigation taxes, and once litigation taxes have been paid, the next moneys shall be credited toward payment of costs; then additional moneys shall be credited toward payment of the fine.

When Should You Garnish?

After Execution

After 12 months?

After 24 months?

Only as a last effort?

Garnishment Forms

TENNESSEE STATE COURTS
TN COURTS
.gov



JUDICIAL RESOURCES
 Forms & Documents

- Court Forms
- Computer-related instructions
- Other Forms & Resources
- Travel & Expense Forms

NOTICE TO JUDGMENT DEBTOR [TCA 26-2-404(a)]

To collect a judgment against you in this lawsuit, your money or other property has been seized by execution or garnishment. An execution allows the sheriff to sell the property levied upon. A garnishment requires your bank (or other person holding your money or property) to transfer your property to the court or to hold it to satisfy the judgment. **READ THIS CAREFULLY. YOU MAY BE ABLE TO KEEP YOUR MONEY OR PROPERTY OR GET IT BACK.**

State and federal laws prevent certain types of money or property from being used to pay a judgment. Such money or property is "exempt." Examples of exempt money are: Social Security benefits, SSI, unemployment benefits, Veterans' benefits, AFDC, and most government pensions. Examples of exempt property are certain health care aids and "tools of trade." These examples of exempt money and property constitute only a partial list, and you may have other exemptions.

If you think you have exempt money or property that has been seized, you have the right to file a motion with the court clerk's office identified below claiming your exemption and asking for the release or return of your money or property.

You can get a form for filing this motion at the clerk's office below, or the clerk may have supplied such a form on the back of this notice. **YOU SHOULD ACT QUICKLY.** If you file a motion within twenty (20) days from the date this notice was mailed to you or was given to you, the court must hear and decide your motion promptly, and in no event later than fourteen (14) days from filing. The clerk will notify you of the time, date, and place of the hearing.

IF YOU DO NOT UNDERSTAND YOUR RIGHTS OR HOW TO EXERCISE THEM, YOU MAY WISH TO CONSULT WITH A LAWYER. IF YOU CANNOT AFFORD A LAWYER, YOU MAY BE ELIGIBLE FOR FREE LEGAL ASSISTANCE.

The court clerk's office can provide you with forms and with information about legal services in your area, but the clerk cannot give you legal advice.

NOTICE TO THE DEBTOR (EMPLOYEE) [TCA 26-2-216(b)(2)]: Your earnings have been subjected to a garnishment which has been served upon your employer. The garnishment creates a lien on a portion of your earnings until the judgment is satisfied, or for six (6) months, whichever occurs first. You have the following rights:

Some of your wages are protected by state and federal law from garnishment. See the notices below [OR ON REVERSE] to the employer to find out how much of your wages are protected from garnishment.

IF YOUR EMPLOYER IS TAKING TOO MUCH MONEY FROM YOUR WAGES:

You may apply to the court at the clerk's office shown below within twenty (20) days from any improper withholding of your wages for a motion to stop the garnishment. The court clerk identified below shall provide you with a form for making such a motion, or may have supplied a form motion on the back of this notice. You may wish to seek the counsel of a lawyer. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

PLEASE NOTE: If you file a motion, the court must hear and decide your motion promptly, and in no event later than fourteen (14) days from filing. The clerk will notify you of the time, date, and the place of hearing. The court clerk's office can provide you with forms and with information about legal services in your area, but the clerk cannot give you legal advice.

IF THE RIGHT AMOUNT OF MONEY IS BEING TAKEN FROM YOUR WAGES BUT YOU WANT TO GET THE GARNISHMENT STOPPED THROUGH A PAYMENT PLAN:

You may apply to the court for an order suspending further garnishments by the same creditor upon your paying a certain sum of money weekly, biweekly, or monthly, to pay the judgment. If you file this motion, the garnishment of your wages will stop for as long as you make the payments ordered by the court.

The court clerk shall provide you with the necessary forms to make this application, or you may seek the counsel of an attorney. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

NAME: _____, Clerk
 _____, Court
 ADDRESS: _____
 TELEPHONE: _____

TO ALL FINANCIAL INSTITUTIONS:
THESE FUNDS ARE ATTACHED AND SHALL BE PAID INTO COURT WITHOUT FURTHER ORDER.

OFFICER'S RETURN (other than wage garnishment): executed as follows:

[OR] executed by LEVYING on the following described property:

On this _____ day of _____, 20____.

 Deputy Sheriff/Constable

OFFICER'S RETURN (on wage garnishment) [TCA 26-2-216(b)(1)(A)]

AFFIDAVIT FOR EXECUTION

Having first been duly sworn according to law, I hereby make oath that the following information is true to the best of my knowledge and belief:

Judgment Creditor's Address for mailing notices required by TCA 26-2-402:

Telephone No.: _____

Judgment Debtor's Name and Last Known Address:

Telephone No.: _____

Balance on Judgment including original Cost \$ _____

By: _____

Judgment Creditor/Agent

Sworn to and subscribed before me on _____ day of _____, 20____.

Deputy Clerk/Notary Public

My Commission Expires: _____

Application for Execution

The Judgment Creditor hereby makes application to the Clerk of the _____ Court to have an Execution in the above styled case to satisfy a judgment against the Judgment Debtor(s) herein:

Date of Judgment _____
 Judgment Balance \$ _____
 Pre-Paid Cost \$ _____
 Interest \$ _____
 Clerk's Fees \$ _____
 Officer's Fee \$ _____
 Total \$ _____

Case/Docket No. _____

EXECUTION

_____ COUNTY _____ COURT

Garnishment Levy
 on Financial Institution/Bank

 Plaintiff
 VS.

 Defendant

Judgment Debtor's SSN/EIN: _____

To: _____

Address: Employer (if wage garnishment) or other garnishee

To: _____

Address: Financial Institution/Bank

Account No: _____

Address: _____

Levy On: _____

AFFIDAVIT FOR OFFICER

WAGE GARNISHMENT

I, _____, Deputy Sheriff/Constable after

being sworn, make oath that:

A garnishment summons was served on _____, employer garnishee, on _____ day of _____, 20____, and that the employer garnishee refused to sign a receipt acknowledging service of said summons.

[TCA 26-2-216(b)(1)(B)]

RE: COPY FURNISHED JUDGMENT DEBTOR

A copy of the execution by levy was mailed to the judgment debtor at the address provided pursuant to TCA 26-2-402 or was provided by actual hand delivery. [TCA 26-2-405]

Please Print: Deputy Sheriff/Constable

Signature _____

Challenges

Employment

Ultimately the defendant self-reports this information, and we cannot demand an answer from them.

We are currently seeing higher than average “self-employed” and unemployed individuals.

Defendant Population

Population demographics can offer unique challenges when performing any collections process. Garnishment as a means of collecting past due court costs can be especially difficult if your population consists of a high number of :

College Students

Retirees/Disability Recipients

Seasonal Workers

Tourism Based Workers

The Income Formula

If a defendant already has a civil judgement, alimony, or child support, there may not be enough disposable earnings left for your garnishment.

Unintended Consequences

Our garnishment form may be the employer’s first notification that an employee is a felon or that they have a criminal history.

Summary

Should you garnish?

Do you have the office support to fill out, submit, and track each form?

Do you have a population that would allow for garnishments to be effective?

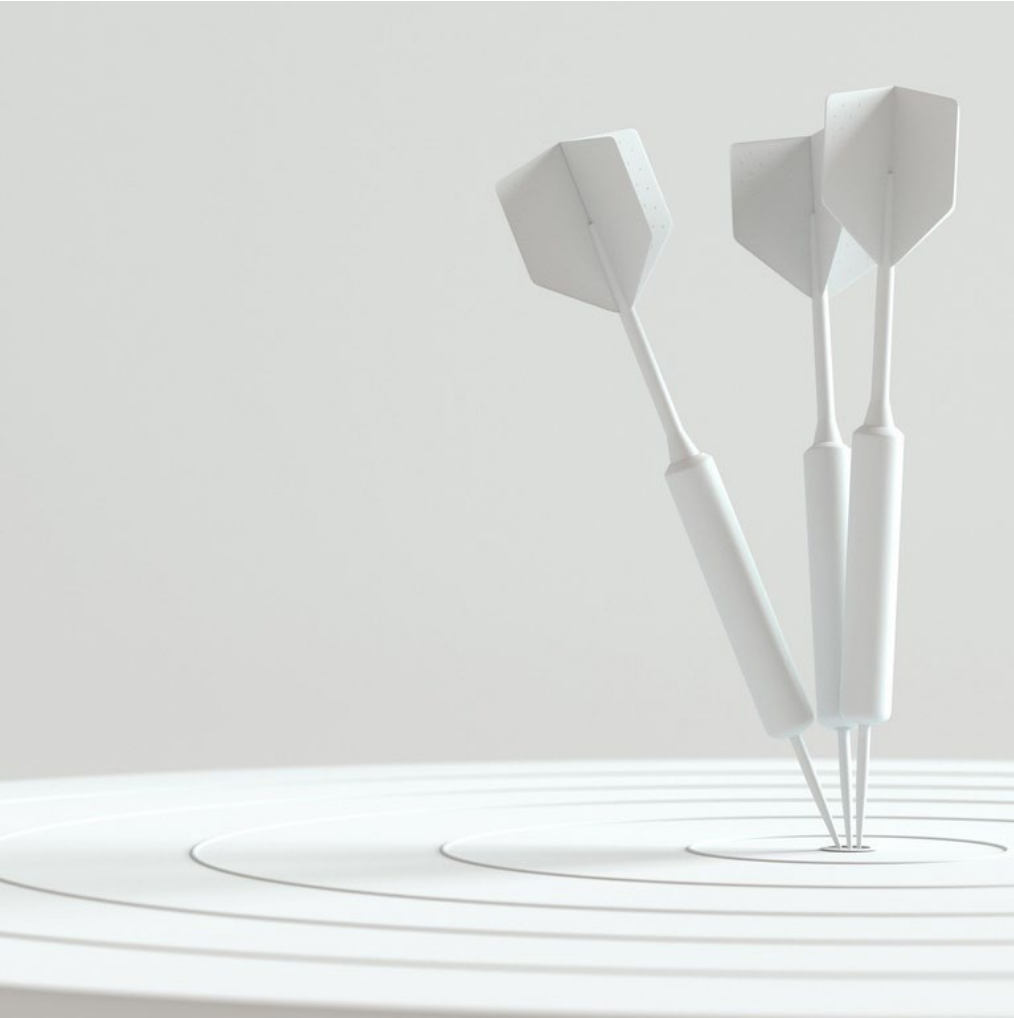
Do you have the information you need to locate the current employer without having to issue multiple forms?

Do your judges agree with the time frame of your garnishments?

By the numbers:

**January 2020 General Sessions-Criminal Division
28 Garnishments Submitted, \$2,488.90 paid**

Outcome	#
Unable to Garnish (Disposable Earnings)	16
Defendant no longer with employer	8
Paid in full upon receipt	2
Cost Agreement/Slow Pay	1
Garnished	1



Thank you

If you would like more information on some of the methods we use in Knox County to increase collections on court costs, please feel free to email me at Stacey.Olfe@knoxcounty.org or call/ text 865-364-8663.