CHAPTER 812

GARNISHMENT

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SUBCHAPTER I

GARNISHMENT OF PROPERTY OTHER THAN EARNINGS

NOTE: 1993 Wis. Act 80, which affected subch. I and created subch. II, contains extensive judicial council notes.

812.01 Commencement of garnishment. (1) Any creditor may proceed against any person who is indebted to or has any property in his or her possession or under his or her control belonging to such creditor's debtor or which is subject to satisfaction of an obligation described under s. 766.55 (2), as prescribed in this subchapter. "Plaintiff" as used in this subchapter includes a judgment creditor and "defendant", a judgment debtor or the spouse or former spouse of a judgment debtor if the judgment is rendered in connection with an obligation described under s. 766.55 (2).

(2) The procedures in this subchapter govern all garnishments except the garnishment of earnings. Except as otherwise provided in this subchapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 apply to actions under this subchapter.

(2a) A garnishment action is a separate action.

(3) An individual may commence a garnishment action in the individual's own person and in the individual's own behalf, or by an attorney licensed to practice in the courts of this state, but not otherwise. Garnishment actions on behalf of any other party shall be commenced only by attorneys licensed to practice in the courts of this state.

(4) No garnishment action shall be brought to recover the price or value of alcohol beverages sold at retail.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.01; 1981 c. 79 s. 17; 1985 a. 37; 1993 a. 80, 486.

The doctrine of marshaling assets is discussed. Moser Paper Co. v. North Shore Pub. Co. 83 Wis. 2d 852, 266 N.W.2d 411 (1978).

To be subject to garnishment, a debt must be owing absolutely at the time of the service of process, even if payable later. When the question of indebtedness depends entirely upon future contingencies, there is no liability. Hometown Bank v. Acuity Insurance, 2008 WI App 48, 308 Wis. 2d 503, 748 N.W.2d 203, 07−1048.

Notwithstanding sub. (2), procedures in ch. 799 are used in small claims garnishment actions. Wisconsin Natural Gas Co. v. Kletsch, 95 Wis. 2d 691, 291 N.W.2d 640 (Ct. App. 1980).

An otherwise valid judgment can be enforced against a legal entity when the judgment is entered against the name under which the legal entity does business. If the name under which a person or corporation does business is "simply another way to refer to" a single legal entity and constitutes no entity distinct from the person or corporation who does business, then a judgment against the "doing business as" name is enforceable against the legal entity from which it is indistinct. Paul Davis Restoration of S.E. Wisconsin, Inc. v. Paul Davis Restoration of Northeast Wisconsin, 2013 WI 49, 347 Wis. 2d 614, 831 N.W.2d 413, 11−1121.

A Wisconsin court may issue an in personam order affecting out−of−state property, even though the court does not have in rem jurisdiction over the property. A debt may generally be garnished wherever personal jurisdiction may be exercised over the garnishee. Midland Funding, LLC v. Mizinski, 2014 WI App 82, 355 Wis. 2d 475, 854 N.W.2d 371, 13−2422.

A plaintiff in a garnishment action has no right to receive any property from the garnishee until superior liens are satisfied. The mere fact that a creditor was the first party to file a garnishment action is not dispositive of priority. Prince Corporation v. Vandenberg, 2015 WI App 55, 364 Wis. 2d 457, 868 N.W.2d 599, 14−2097.

The state is immune from suit in any garnishment action not involving a state employee or officer. 77 Atty. Gen. 17.

Garnishment of corporate bank accounts must comply with due process protections of *Fuentes* and *Sniadach*. North Georgia Finishing, Inc. v. Di−Chem, Inc. 419 U.S. 601 (1975).

A proposal for monitoring the impact of increased wage garnishment exemptions under the Wisconsin consumer act. 1974 WLR 466.

812.02 Garnishment before and after judgment. (1) A plaintiff may commence a garnishment action at any time after:

(a) A summons and complaint are filed:

1. In an action for damages founded upon contract, express or implied (or in a contract action where a writ of attachment could issue on demands not yet due under s. 811.03 (3)).

2. In an action upon a judgment.

3. In a tort action where a writ of attachment could issue under s. 811.03 (2).

(b) An execution upon an in personam judgment is issuable.

(2) (b) If the plaintiff in the principal action is unable to obtain personal service on a defendant and has filed the summons and return of service from the sheriff with the clerk of court, the judge of the court in which the principal action is pending may grant an order permitting the plaintiff to make substituted service on the defendant's employer if the plaintiff shows:

1. The defendant's present place of employment; and

2. That a cause of action exists; and

3. That a reasonable effort has been made to obtain personal service on the defendant.

(c) Before taking judgment in an action commenced under par. (b), the plaintiff shall present an affidavit from the defendant's employer stating that the defendant received the summons of that action.

(2e) A plaintiff may not commence any garnishment action affecting the property of a spouse who is not a defendant in the

principal action unless the spouse is a defendant in the garnishment action.

(2m) Any garnishment action shall be subject to the limitations of s. 806.25.

(3) The plaintiff may, in like manner, subsequently proceed against other garnishees and, if the plaintiff has reason to believe they have subsequently become liable, against the same garnishee more than once.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.02; 1985 a. 37; 1993 a. 80, 486.

Judicial Council Committee Note, 1974: S. 812.02 (1) (a) (intro.) is amended to require the filing of summonses and complaints to make garnishment proceedings comport with other actions under s. 801.02. [Re Order effective Jan. 1, 1976]

An attorney prosecuting an action under sub. (1) (a), which has been found to be unconstitutional as applied to prejudgment garnishment of wages and other property, may be liable under an action under the Civil Rights Act, 42 USC 1983. United States General, Inc. v. Schroeder, 400 F. Supp. 713 (1975).

Prejudgment garnishment. 1975 WLR 860.

812.04 Garnishment actions; how commenced; summons. (1) Upon payment to the clerk of court of the fee prescribed in s. 814.62 (1), the clerk shall issue a garnishee summons together with sufficient copies to the plaintiff or his or her attorney; the summons form may be in blank, but must carry the court seal.

(2) The garnishee summons shall be substantially in the following form:

STATE OF WISCONSIN

.... COURT

.... COUNTY

A. B., Plaintiff

vs.

C. D., Defendant

and

E. F., Garnishee

The State of Wisconsin, to the garnishee:

You are hereby summoned, as garnishee of the defendant, C. D., and required, within 20 days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer, whether you are indebted to or have in your possession or under your control any property belonging to the defendant.

IF YOU ARE INDEBTED TO THE DEFENDANT FOR PAYMENT FOR THE SALE OF AGRICULTURAL PRODUCTS, YOU ARE ORDERED TO PAY THE PRESCRIBED AMOUNT TO THE DEFENDANT. YOU ARE ORDERED TO RETAIN FROM THE BALANCE THE AMOUNT OF THE PLAINTIFF'S CLAIM AND DISBURSEMENTS, AS STATED IN THE ANNEXED COMPLAINT PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU HAVE PROPERTY BELONGING TO THE DEFENDANT AND THE AMOUNT OF INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND DISBURSEMENTS, YOU ARE TO RETAIN THE PROPERTY PENDING THE FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN SECTION 812.18 (3) OF THE WISCONSIN STATUTES. THE AMOUNT RETAINED BY YOU FOR THE PLAINTIFF'S DISBURSEMENTS MAY NOT EXCEED $40.

You are further required to serve a copy of your answer to the garnishee complaint on the undersigned attorney and to file your original answer with the clerk of this court, within the 20−day period. In case of your failure to answer, judgment will be entered against you for the amount of plaintiff's judgment against the defendant and costs, of which the defendant will also take notice.

If the property which is the subject of this garnishment action is the proceeds from the sale of crops, livestock, dairy products or another product grown or produced by a person or by his or her minor children, you must pay over to the principal defendant the appropriate amount under section 812.18 (2m) (b) of the Wisconsin Statutes.

Dated this .... day of ...., ... (year)

Clerk of .... Court

(Seal)

Attorney for Plaintiff:

....

P. O. Address

....

....

(3) A garnishment action shall be commenced by the filing of a garnishee summons and annexed complaint, except no action shall be deemed commenced as to any defendant upon whom service of authenticated copies of the summons and the complaint has not been made within 60 days after filing.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.04; 1977 c. 80; 1979 c. 32 s. 92 (16); 1979 c. 228, 355; 1981 c. 317; 1983 a. 92, 257, 538; 1985 a. 135; 1987 a. 221; 1993 a. 80; 1997 a. 250.

Judicial Council Committee Note, 1974: S. 812.04 (3) is amended to comport with the new rules. There are 2 modifications: the complaint need not be verified and the mode of commencement is changed to comport with s. 801.02. [Re Order effective Jan. 1, 1976]

812.05 Garnishee complaint before and after judgment; several garnishees. (1) The garnishee complaint in a garnishment action before judgment must allege the existence of one of the grounds for garnishment mentioned in s. 812.02 (1) (a), the amount of the plaintiff's claim against the defendant and disbursements, not to exceed $40, above all offsets, known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his or her possession or under his or her control, other than earnings, as defined under s. 812.30 (7), belonging to the defendant (naming him or her) and that the indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(2) The garnishee complaint in a garnishment action after judgment must allege the existence of the grounds for garnishment mentioned in s. 812.02 (1) (b), and the name and location of the court, case number, if any, date of entry and amount of the judgment on which the garnishment action is based, the amount of the plaintiff's claim against the defendant and disbursements, not to exceed $40, above all offsets known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his or her possession or under his or her control belonging to the defendant (naming him or her) and that the indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(3) Any number of garnishees may be joined in the same garnishment action; but if a joint liability is claimed it shall be so stated in the complaint, otherwise the several garnishees shall be deemed severally proceeded against.

(4) If a garnishee defendant is named by a partnership name, service of the garnishee summons and complaint may be made upon any partner. A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.05; 1977 c. 80; 1983 a. 257; 1993 a. 80.

812.06 Garnishee fees, costs. A garnishee shall be entitled to $3 as garnishee fee, and shall not be required to answer unless such fee is first paid. When a corporation is garnisheed such fee shall be paid to the person upon whom the garnishee summons and complaint is served. Such fee shall be taxed as costs in the action the same as witness fees are taxed.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.06; 1993 a. 213.

812.07 Service on garnishee and defendant. (1) Except as provided in s. 812.05 (4), the garnishee summons and complaint shall be served on the garnishee as required for the exercise

of personal jurisdiction under ch. 801, and notice of such service in substantial conformity with sub. (4), or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the principal defendant as required for the exercise of personal jurisdiction under ch. 801, not later than 10 days after service on the garnishee as provided in s. 801.11.

(4) Form of notice.

State of Wisconsin

.... Court

.... County

TO: .....

.....

.....

You are notified that an action has been commenced against you by .... on a claim of $.... and that your property in the hands of .... has been garnisheed to satisfy that claim.

Unless you demand a complaint as provided in the attached summons, or answer the garnishment complaint, a copy of which can be obtained from the undersigned, judgment will be taken against you and your property applied to pay the debt as provided by law.

Dated this .... day of .... (year)

Plaintiff by: ....

Plaintiff's attorney

Address ....

(5) Unless the notice, or a copy of the garnishee summons and complaint, is served, as provided in this section, the garnishee action shall be dismissed.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.07; 1993 a. 80, 213; 1997 a. 250.

812.08 Judgment; bond. (1) No judgment in the principal action shall be entered against the defendant for an amount in excess of the liability of the garnishee to the principal defendant, unless the defendant makes a general appearance or is personally served and defaults or unless the defendant appears without objecting to the jurisdiction of the court over his or her person. An in rem judgment shall not bar another action for any unpaid balance of the claim.

(2) No money shall be paid by the garnishee to the plaintiff to satisfy an in rem judgment within one year from entry of such judgment unless the plaintiff executes a bond or undertaking to the garnishee, to be filed in the garnishee action, for double the amount paid, or for double the value of the property delivered conditioned that if the principal defendant within one year from entry of judgment secures relief under s. 806.07, and, in due course prevails on the merits, the plaintiff will pay the amount or any part thereof found due to the principal defendant or to the garnishee defendant, as the court orders.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.08; 1993 a. 486.

812.11 Garnishee answer. The garnishee shall, within 20 days from the service of a garnishee summons and complaint, exclusive of the day of service, serve upon the attorney for the plaintiff, and file with the clerk of court, an answer in which the garnishee shall state:

(1) Whether the garnishee was, at the time of the service of the garnishee summons, indebted or under any liability to the defendant, naming the defendant, in any manner or upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and the facts necessary to a complete understanding of such indebtedness or liability. When the garnishee is in doubt respecting any liability or indebtedness to the defendant, the garnishee may set forth the facts concerning the possible liability or indebtedness.

(2) Whether the garnishee held, at the time of the service of the garnishee summons, title to, possession of or any other interest in any land or personal property or any instruments or papers relating to any such land or personal property belonging to the defendant or in which the defendant is interested. If the garnishee admits holding any interest in property described in this subsection or is in doubt respecting whether the garnishee holds an interest in property described in this subsection, the garnishee shall set forth a description of the property and the facts concerning the property, and the title, interest or claim of the defendant in or to the property.

(3) If the garnishee claims any setoff or defense to any debt or liability or any lien or claim to property described in sub. (2), the garnishee shall allege the facts.

(4) The garnishee may state any claim of exemption from execution on the part of the defendant or other objection, known to the garnishee, against the right of the plaintiff to apply upon the plaintiff's demand the debt or property disclosed.

(5) If the garnishee discloses any debt or the possession of any property to which the defendant and other persons make claim, the garnishee may allege the names and residences of such other claimants and, so far as known, the nature of their claims.

(7) In addition to the requirements of sub. (1), if the garnishee is indebted to or under any liability to the defendant for payment for the sale of any crops, livestock, dairy products or another product grown or produced by a person or by his or her minor children, the garnishee answer shall state the amount to be paid under s. 812.18 (2m) (b) to the defendant and the balance held by the garnishee.

(8) Service upon the attorney for the plaintiff may be effected by mailing a copy of the garnishee answer to the attorney for the plaintiff at the attorney's post−office address as shown on the summons.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.11; 1983 a. 92; 1993 a. 80, 486.

A garnishee's answer indicating that it had no assets of the debtor was proper when it held partnership property but the garnishee complaint only named the partners as individuals and in no way identified the partnership although the underlying judgment was against the partnership. Ag Services of America, Inc. v. Krejchik, 2002 WI App 6, 250 Wis. 2d 340, 640 N.W.2d 125, 00−3430.

812.13 Payments by garnishee; releases. (1) If the answer shows a debt due to the defendant, the garnishee may pay the debt or an amount sufficient to cover the plaintiff's claim, as stated in the garnishee complaint and disbursements, not to exceed $40, to the clerk of the court. If prior to so doing, the plaintiff in writing requests the garnishee to pay the sum to the clerk, the garnishee shall, within 5 days after receipt of the request, pay the sum to the clerk. The clerk shall give a receipt for payment to the garnishee. The payment shall discharge the garnishee of all liability for the amount paid.

(2) If the debt disclosed is not due, this section shall apply when it becomes due, with like effect.

(3) If the garnishee fails to pay such sum within 5 days after receipt of such request, the plaintiff shall be entitled to judgment against the garnishee for the amount disclosed, when due, either before or after judgment in the original action and may collect the same by execution; but in case no judgment has been rendered in the principal action the execution against the garnishee shall require the sheriff to pay the money collected into court to abide the event of the principal action. Moneys paid into court shall be paid to the plaintiff when final judgment is rendered in the plaintiff's favor, and to the extent of satisfying the same, upon order of the court, and any balance to the party entitled thereto.

(4) If no such request is made and the garnishee does not elect to pay such sum to the clerk, the garnishee shall hold the same until order of the court. Any stipulation between the plaintiff and defendant shall be filed with the court.

(5) If judgment is against the plaintiff such moneys shall be paid to the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.13; 1977 c. 80; 1983 a. 257; 1993 a. 486.

812.14 Answer conclusive if no reply by plaintiff; procedure following reply. (1) The answer of the garnishee shall be taken as true unless the plaintiff, within 20 days after the receipt of the answer of the garnishee, serves a reply upon the garnishee.

(2) Upon service of the reply, issue shall be joined between the plaintiff and garnishee, and the parties shall thereupon proceed as in ordinary civil actions.

(3) Trial of a garnishment issue shall be to the court.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.14.

812.15 Defendant or garnishee may defend both actions. (1) The defendant may, within 20 days from the service of the garnishee summons and complaint on the defendant, answer the garnishee complaint and defend the garnishment action upon any ground upon which a garnishee might defend, and may participate in the trial of any issue between the plaintiff and garnishee. The garnishee may, at the garnishee's option, defend the principal action for the defendant, if the latter does not defend.

(2) When any garnishee defends the principal action, the garnishee shall thereby become a party defendant in said action and shall be so entered of record by the clerk, but shall be liable only for the costs in said action.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.15; 1993 a. 486.

812.16 Principal action tried first; judgment. (1) No trial shall be had of the garnishment action until the plaintiff has judgment in the principal action and if the defendant has judgment the garnishment action shall be dismissed with costs.

(2) The court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff or any officer appointed by the judgment of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee shall discharge the garnishee from all demands by the defendant for all property paid, delivered or accounted for by the garnishee, by force of such judgment.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.16; 1993 a. 486.

Cross−reference: See s. 811.14 for sale of perishable property.

812.17 Impleader. When the answer of the garnishee discloses that any 3rd person claims the debt or property in the garnishee's hands and the name and residence of such claimant the court may order that such claimant be impleaded as a defendant in the garnishment action and that notice thereof, setting forth the facts, with a copy of such order and answer be served upon the 3rd−person claimant, and that after such service is made the garnishee may pay or deliver to the officer or the clerk such debt or property and have a receipt therefor, which shall be a complete discharge from all liability for the amount so paid or property so delivered. Such notice shall be served as required for service of a summons. Upon such service being made such claimant shall be deemed a defendant in the garnishee action, and within 20 days shall answer setting forth the claimant's claim or any defense that the garnishee might have made.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.17; 1993 a. 486; 2007 a. 97.

This section allows a 3rd party claiming an interest in property in the garnishee's possession to be impleaded in the garnishment action. Following impleader, the statute requires the 3rd−party claimant to file an answer setting forth its claim to the property. The impleaded party is not required to file a garnishment summons and complaint in order to assert its interest in the property. This section is not limited to situations in which the garnishee's answer discloses a third party's claim to property in the garnishee's possession. Prince Corporation v. Vandenberg, 2015 WI App 55, 364 Wis. 2d 457, 868 N.W.2d 599, 14−2097.

812.18 Liability of garnishee. (1) From the time of service upon the garnishee, the garnishee shall be liable to the creditor for the property then in the garnishee's possession or under his or her control belonging to the debtor or in which the debtor is interested to the extent of his or her right or interest therein and for all the garnishee's debts due or to become due to the debtor, except such as are exempt from execution, or are required by a court to be paid by the debtor as restitution under s. 973.20, but not in excess of the amount of the creditor's claim.

(2m) (a) In this section, "dependent" means any individual including a spouse who requires and is actually receiving substantial support and maintenance from the defendant.

(b) If the property which is the subject of a garnishment action is the proceeds from the sale of crops, livestock, dairy products or another product grown or produced by a person or by his or her minor children, the garnishee shall pay over to the defendant on the date when the payment would normally be made any exempt amount under s. 815.18 (3) (h).

(c) The restrictions of par. (b) do not apply in the case of:

1. An order of any court for the support of any person.

2. An order of any court of bankruptcy under chapter XIII of the bankruptcy act.

3. Any debt due for any state or federal tax.

4. An order of a court under s. 128.21.

(3) If the garnishee holds subject to the garnishment or pays pursuant to s. 812.13, moneys owed the principal defendant equal to the amount of the plaintiff's claim as set forth in the garnishee complaint and disbursements, then any excess moneys owed the defendant, and any garnisheed property in the garnishee's possession or control, shall no longer be subject to the garnishment. If the moneys owed by the garnishee to the defendant and so held are less than the amount claimed and disbursements, all property subject to the garnishment shall be held pending the further order of the court, subject to any rights of disposition that the garnishee may have, and all proceeds therefrom to which defendant would be entitled shall likewise be retained. The defendant may, on notice, petition the court for an order to release, from the garnishment, all property or its proceeds not reasonably required to assure payment of the plaintiff's claim and disbursements.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 778 (1975); Stats. 1975 s. 812.18; 1977 c. 29, 80; 1979 c. 221; 1983 a. 92, 257; 1987 a. 398; 1989 a. 278; 1993 a. 80, 213.

Cross−reference: See s. 16.53 (1) (d) 4. for provision as to authority of the secretary of administration in garnishment matters.

Cross−reference: See s. 425.106 for exemptions arising out of consumer credit transactions.

812.19 Nonliability as garnishee; judgment when rendered. (1) No person shall be liable as garnishee:

(a) By reason of his having drawn, accepted, made, endorsed or guaranteed any negotiable instrument; or

(b) By reason of anything received or collected by that person by execution or other process; or

(c) By reason of any money in his hands as a public officer; or

(d) By reason of anything owing by that person upon a contingency.

(5) Property in a safe deposit box in any bank or safe deposit company is not property in the possession or control of such bank or safe deposit company within the meaning of this subchapter.

(6) A debt owing by the owner of property subject to a construction lien, pursuant to s. 779.01, shall not be deemed absolutely due until the claims of subcontractors and employees under s. 779.01 have matured or expired.

(7) Except as provided in this section, judgment may be given for anything owing, although it has not become due in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); 1975 c. 198; Stats. 1975 s. 812.19; 1979 c. 32 s. 92 (9); 1993 a. 80, 213, 490.

Cross−reference: See s. 895.36, providing that no person shall be liable as garnishee of a public corporation.

Future profits of a corporation are a contingent liability as to a shareholder and are not subject to garnishment. Olen v. Phelps, 200 Wis. 2d 155, 546 N.W.2d 507 (Ct. App. 1996), 93−3302.

812.20 Action by defendant against garnishee stayed. Except upon the order of a judge no action shall be commenced by the defendant or the defendant's assignee against a garnishee upon any garnisheed claim or demand or to recover any property garnisheed, or execution be issued upon a judgment in favor of defendant against such garnishee, until the termination of the garnishment action; and if an action has been commenced or an execution issued it shall be stayed by the court or a judge thereof as to the garnishee upon the garnishee's application.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.20; 1993 a. 213.

812.21 Release of garnishment; bond. (1) The defendant may file with the clerk of the court a bond, executed by at least 2 sureties, resident freeholders of the state, to the effect that they will on demand pay to the plaintiff the amount of the judgment that may be recovered against such defendant not exceeding a sum specified, which shall be 1 1/2 times the amount of the debt specified in the garnishee complaint or in such less sum as the court directs. If the plaintiff fails to take issue with the garnishee answer the bond shall be conditioned to pay to the plaintiff the amount of the debt admitted or of the value of the property held by the garnishee.

(2) The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this state, above all the surety's liabilities and exclusive of property exempt from execution, the aggregate of which sums shall be double the amount specified in the bond. The defendant shall serve on the plaintiff a copy of such bond with a notice of where the same was filed. Within 3 days after the receipt thereof the plaintiff may notify the defendant that the plaintiff excepts to the sufficiency of the sureties, otherwise the plaintiff waives all objections to them. When the plaintiff excepts, the sureties shall justify in like manner as bail on arrest, and ss. 818.17, 818.18 and 818.19 shall be applicable thereto. Thereafter the garnishee shall be discharged and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if the plaintiff recovers.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759, 779 (1975); Stats. 1975 s. 812.21; Sup. Ct. Order, 83 Wis. 2d xiii; 1993 a. 486.

812.22 Costs. In case of a trial of an issue between the plaintiff and any garnishee, the prevailing party shall recover taxable costs.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975); Stats. 1975 s. 812.22.

812.24 Penalties. (1) Any creditor who violates s. 812.01 (3) or 812.02 (2) shall forfeit not more than $100 which forfeiture shall be paid to the county treasurer.

(2) The court before which the garnishment action is pending shall have summary jurisdiction under this section.

History: Sup. Ct. Order, 67 Wis. 2d 585, 759 (1975), 779; Stats. 1975 s. 812.24; 1977 c. 203.

SUBCHAPTER II

EARNINGS GARNISHMENT

812.30 Definitions. In this subchapter:

(1) "Business day" has the meaning given in s. 421.301 (6).

(2) "Court" includes a circuit court commissioner assigned to preside at a proceeding under this subchapter.

(3) "Creditor" means a person who has a claim against a debtor.

(4) "Debtor" means the person whose earnings are subject to the garnishment and who is either the judgment debtor or the judgment debtor's spouse whose earnings are marital property.

(5) "Dependent" means the debtor's spouse if living in the debtor's household and any other individual whom the debtor is legally required to support and to whom the debtor provides substantial support or maintenance.

(6) "Disposable earnings" means that part of the earnings of the debtor remaining after deducting social security taxes and federal and state income taxes listed on the person's wage statement.

(7) "Earnings" means compensation paid or payable by the garnishee for personal services, whether designated as wages, salary, commission, bonus or otherwise, and includes periodic payments under a pension or retirement program.

(8) "Household income" means the disposable earnings of the debtor and dependents during any month in which the garnishment is in effect, plus unearned income received by the debtor and dependents in that month, less any of the debtor's earnings assigned by court order under ch. 767.

(9) "Need−based public assistance" means aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps, or benefits received by veterans under s. 45.40 (1m) or under 38 USC 501 to 562 [38 USC 1501 to 1562].

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(10) "Poverty line" means the income guideline established under 42 USC 9902 (2).

History: 1993 a. 80; 1995 a. 27, 201; 2001 a. 61; 2005 a. 22; 2009 a. 113.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.31 Procedure. (1) The procedures in this subchapter govern the garnishment of earnings, regardless of the amount of the judgment debt. Except as otherwise provided in this subchapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions under this subchapter. Section 799.06 (2) shall apply to actions under this subchapter.

(2) Venue for earnings garnishment is prescribed by s. 801.50; the garnishee shall be deemed a defendant for purposes of that statute.

(3) An earnings garnishment action may not be commenced in a county other than the county where the judgment is entered unless a transcript of the judgment is entered in that county.

(4) Each pleading or other document in an earnings garnishment proceeding shall designate each party as creditor, debtor or garnishee.

History: 1993 a. 80; 1995 a. 224.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.32 Earnings garnishment generally. Earnings garnishment is an action to collect an unsatisfied civil judgment for money damages plus statutory interest and costs, from earnings payable by the garnishee to the debtor.

History: 1993 a. 80.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

How Do Creditors, Debtors and Overburdened Small Claims Courts Get Relief? 1993 Wisconsin Act 80. Fullin. Wis. Law. March 1994.

812.33 Garnishee fees. (1) The creditor shall pay a $15 fee to the garnishee for each earnings garnishment or each stipulated extension of that earnings garnishment. This fee shall be included as a cost in the creditor's claim in the earnings garnishment.

(2) In addition to the $15 garnishee fee under sub. (1), the garnishee shall receive a $3 fee for each payment delivered to the creditor under s. 812.39 after the first payment. That additional fee shall be deducted from the moneys delivered to the creditor. This subsection does not apply to a garnishment under s. 812.42.

History: 1993 a. 80; 2015 a. 55, 337.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.34 Exemption. (1) The exemptions provided in this section do not apply if the judgment debt meets one of the following conditions:

(a) Was ordered by a court under s. 128.21 or by any court of the United States under 11 USC 1301 to 1330.

(b) Is for the support of any person.

(c) Is for unpaid taxes.

(2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c) applies, 80 percent of the debtor's disposable earnings are exempt from garnishment under this subchapter.

(b) The debtor's earnings are totally exempt from garnishment under this subchapter if:

1. The debtor's household income is below the poverty line.

2. The debtor receives need−based public assistance, has received such assistance within 6 months prior to service of the earnings garnishment forms upon the garnishee or has been determined eligible to receive need−based assistance although actual receipt of benefits has not commenced.

(c) If the garnishment of 20 percent of the debtor's disposable income under this subchapter would result in the debtor's household income being below the poverty line, the amount of the garnishment is limited to the debtor's household income in excess of the poverty line before the garnishment is in effect.

(3) The judicial conference shall adopt and make available schedules and worksheets to assist debtors in computing their eligibility for exemption under sub. (2) (b) 1. The schedules shall divide the annual poverty line for families of various sizes by 12, rounding to the nearest dollar, and the worksheets shall assist debtors to compute their household incomes. The judicial conference shall develop separate schedules for debtors paid on a weekly, biweekly, semimonthly and monthly basis by dividing the annual poverty line by 52, 26, 24 and 12, respectively, and rounding to the nearest dollar. The judicial conference shall revise those schedules annually to reflect changes in the poverty line. The revised schedules shall take effect July 1 for earnings garnishments or extensions commencing thereafter.

History: 1993 a. 80; 1999 a. 119; 2003 a. 138.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.35 Commencement of action. (1) To commence an earnings garnishment proceeding, the judgment creditor shall file with the clerk of courts a garnishment notice under s. 812.44 (2).

(1a) No earnings garnishment action may be brought to recover the amount owed by a debtor for the payment of a payday loan, as defined in s. 138.14 (1) (k).

(2) Upon receipt of the notice under sub. (1) and payment of the fee under s. 814.62 (1), the clerk of courts shall issue 2 earnings garnishment forms under s. 812.44 (3) for each garnishee. Blank earnings garnishment forms may be issued, but they shall carry the court seal. A circuit court may permit, by rule, the clerk to issue earnings garnishment forms after payment of the fee but before the filing of the notice under sub. (1). That circuit court rule shall require the notice to be filed with the court at a later time, but no later than 5 business days after the date the garnishee is served under sub. (3).

(3) (a) Within 60 days after filing the notice under sub. (1) and as specified under sub. (4) (c), the creditor shall serve one of the 2 earnings garnishment forms upon the debtor by one of the following means:

1. First class mail.

2. Certified mail, return receipt requested.

3. Any means permissible for the service of a summons in a civil action, other than publication.

(b) Within 60 days after filing the notice under sub. (1), the creditor shall serve one of the 2 earnings garnishment forms upon the garnishee by one of the means listed under par. (a) 1. to 3., or by other means if the garnishee signs an admission of service.

(4) (a) The creditor shall tender the garnishee fee under s. 812.33 (1) to the garnishee at the time that the earnings garnishment form is served.

(b) The creditor shall serve all of the following on the debtor at the time that the earnings garnishment form is served:

1. An exemption notice under s. 812.44 (4).

2. An answer form under s. 812.44 (5).

3. The schedules and worksheets adopted under s. 812.34 (3).

(c) Service on the debtor shall be made within 7 business days after the date of service on the garnishee and at least 3 business days before the payday of the first pay period affected by the garnishment. Service by mail is complete upon mailing.

(5) Upon being served, the garnishee shall determine whether the garnishee may become obligated to the debtor for earnings earned within pay periods beginning within 13 weeks after the date of service. If it is unlikely that the garnishee will become so obligated, the garnishee shall send a statement of that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment form under sub. (3). The creditor shall send a copy of this statement to the court within 7 business days after receipt of the statement.

(6) If the garnishee may become obligated to the debtor for earnings earned within pay periods beginning within 13 weeks after the date of service, but one or more earnings garnishments against the debtor have already been served on the garnishee and not terminated, the garnishee shall retain the earnings garnishment form and place the garnishment into effect the pay period after the last of any prior earnings garnishments terminates. The garnishee shall notify the debtor of the amount of the garnishment and shall notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after receipt of the garnishment form under sub. (3). If, before the earnings garnishment takes effect, the garnishee determines that it is unlikely that the garnishee will continue to be obligated to the debtor for earnings, the garnishee shall notify the creditor and court under sub. (5) within 7 business days after making that determination.

History: 1993 a. 80; 2009 a. 405; 2015 a. 55, 337.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.37 Debtor's answer. (1) Except as provided in s. 812.34 (1), the debtor may claim an exemption under s. 812.34 (2) (b) or a limit to the garnishment under s. 812.34 (2) (c), or may assert any defense to the earnings garnishment, by completing the answer form and delivering or mailing it to the garnishee. The debtor or debtor's spouse may file an answer or an amended answer at any time before or during the effective period of the earnings garnishment.

(2) Whenever the garnishee receives a debtor's answer or amended answer, the garnishee shall mail a copy of the answer to the creditor by the end of the 3rd business day after receiving the debtor's answer, writing on that copy the date of receipt of the answer by the garnishee.

(3) Unless served with an order of the court directing otherwise, in determining whether to pay any part of the debtor's earnings to the creditor, the garnishee shall accept as true and binding any exemption claimed in the debtor's answer or any amended answer received before payment is made to the creditor under s. 812.39 (1).

History: 1993 a. 80; 1997 a. 291; 2003 a. 138.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

When sub.(3) is read in isolation, it appears to imply that although a garnishee is bound by an exemption claimed in an answer until the court rules on the exemption, the garnishee is free to disregard any defenses to the garnishment that are asserted in the answer. However, the official form embodied in s. 812.44(3) clearly states that a garnishee is bound by both exemptions and defenses. When these provisions of the garnishment statute are read together, it appears that the garnishee is required to accept both exemptions and defenses as true pending a court ruling on the answer. Whitehead v. Discover Bank, 118 F. Supp. 3d 1111 (2015).

812.38 Judicial hearing. (1) (a) The creditor may file with the court a motion for a hearing and a written objection to the debtor's answer.

(b) The debtor may file with the court a written petition for relief from the earnings garnishment if the exemption percentage under s. 812.34 (2) (a) is insufficient for the debtor to acquire the necessities of life for the debtor and his or her dependents. The petition shall state with reasonable specificity the grounds for the relief requested and shall include any additional information necessary to support the petition.

(c) Any party to the earnings garnishment may move the court to order any other party to comply with the provisions of this subchapter, or for other equitable relief.

(2) A motion or petition under sub. (1) may be made at any time during the pendency of the earnings garnishment. Within 5 business days after a motion or petition is filed under sub. (1), the court shall schedule the matter for a hearing to be held as promptly as practicable. The court shall notify the parties of the time and place of the hearing. Upon conclusion of the hearing, the court shall make findings of fact and conclusions of law. The court shall make such order as required by these findings and conclusions. If the order permits the garnishment to proceed, the date on which the order is served upon the garnishee shall substitute for the original date of service of the garnishment upon the garnishee under s. 812.35 (3) for the purpose of determining any 13−week period under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the order is served upon him or her.

(3) (a) If the court finds that the debtor's answer was asserted in bad faith, the court shall award the creditor actual damages, costs and reasonable attorney fees resulting from the additional proceedings.

(b) If the court finds that the creditor objected to the debtor's answer in bad faith, the court shall award the debtor actual damages, costs and reasonable attorney fees resulting from the additional proceedings.

(c) The court may order judgment for damages, costs and attorney fees assessed under this subsection. If the party in whose favor an attorney fee award is made is not indebted to his or her attorney for fees, the court shall award the attorney fee directly to the attorney and enter judgment in favor of the attorney. Upon motion of any party in interest, on notice, the court may make any order necessary to protect the rights of those interested.

History: 1993 a. 80; 2003 a. 138.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.39 Payment to creditor. (1) Between 5 and 10 business days after the payday of each pay period in which the debtor's earnings are subject to the earnings garnishment, the garnishee shall pay the creditor that portion of the debtor's nonexempt disposable earnings to which the creditor is entitled.

(2) Court−ordered assignments of the debtor's earnings for support or maintenance under ch. 767, regardless of the date the garnishee first receives notice of the assignment, take priority over an earnings garnishment under this subchapter. If the debtor's earnings are subject to assignment under s. 767.75, the creditor shall not be entitled to an amount greater than 25 percent of the debtor's disposable earnings less the amount assigned under s. 767.75.

(3) The garnishee shall provide written notice to the debtor of any amounts paid to a creditor under this subchapter, at the time that the debtor's earnings are paid to the creditor.

History: 1993 a. 80; 2005 a. 443 s. 265.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.40 Stipulated extension. At any time while an earnings garnishment is in effect, the debtor and creditor may stipulate in writing to an extension of the earnings garnishment for additional pay periods. The extension may commence on the first day after the earnings garnishment ends and shall end within 13 weeks after the last day of the last pay period affected by the earnings garnishment. The garnishee shall be bound by the extension if a copy of the stipulation is delivered or mailed to the garnishee, together with the additional garnishee fee under s. 812.33 (1), before the last day of the last pay period affected by the earnings garnishment or any prior stipulated extension of the earnings garnishment. A stipulated extension is void and the garnishee fee shall be refunded if, prior to the last day of the last pay period affected by the earnings garnishment, the garnishee is served under s. 812.35 (3) by a creditor seeking to satisfy a different judgment against the debtor.

History: 1993 a. 80; 2015 a. 55, 337.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.405 Garnishment of earnings to satisfy an order for restitution. Notwithstanding ss. 812.35 and 812.40, a garnishment of earnings payable to a debtor who owes victim restitution ordered under s. 973.20 (1r) remains valid and effective until the judgment is satisfied, unless sooner terminated by order of the court.

History: 2015 a. 355.

812.41 Garnishee liability. (1) If the garnishee fails to pay over funds to which the creditor is entitled under this subchapter within the time required under s. 812.39, the creditor may, upon notice to all of the parties, move the court for judgment against the garnishee in the amount of the unsatisfied judgment plus interest and costs. The garnishee may assert the affirmative defense that the amount of the debtor's nonexempt disposable earnings that the creditor should have been paid is less than the amount of the unsatisfied judgment balance. If the garnishee proves that defense, the garnishee's liability is limited to the amount the creditor should have been paid or $100, whichever is greater.

(2) The debtor may move the court for judgment against the garnishee for the debtor's actual damages if the garnishee deducts more from the debtor's earnings than is authorized by this subchapter.

(3) In any proceeding under sub. (2), the garnishee may assert the affirmative defense that the wrongful conduct of the garnishee was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. If the garnishee proves that defense, liability of the garnishee is limited to the return to the debtor of any exempt disposable earnings paid to the creditor.

History: 1993 a. 80.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

When a garnishee/employer failed to withhold any wages in an earnings garnishment, the plaintiffs action against the employer for its failure to respond to the garnishment complaint was an action against the employer only. Consequently, the bankruptcy law automatic stay provisions do not apply. Kenosha Hospital & Medical Center v. Garcia, 2004 WI 105, 274 Wis. 2d 338, 683 N.W.2d 851, 02−1727.

The notice of motion for judgment against the garnishee in an earnings garnishment procedure should be served like a summons in the present case rather than as a paper in a pending action. Kenosha Hospital v. Garcia, 2004 WI 105, 274 Wis. 2d 338, 683 N.W.2d 851, 02−1727.

812.42 Garnishment of earnings of public officers and employees. (1) (a) This section does not apply or extend to money due to an officer or employee for reimbursement for expenditures made by him or her in the discharge of his or her duties.

(b) Actions under this section are subject to rules promulgated under s. 16.53 (1) (d) 4.

(2) (a) Except as provided in this section, the procedures in earnings garnishment actions brought against the state or a political subdivision of the state shall be as provided in this subchapter. The creditor shall serve the earnings garnishment forms under s. 812.35 upon the department of administration if the state is the garnishee; upon the city treasurer if a 1st class city is the garnishee; and upon the secretary or clerk if any other political subdivision is the garnishee.

(b) Notwithstanding ss. 812.35 and 812.40, a garnishment of earnings payable to a debtor by the state or a political subdivision of the state shall remain valid and effective until the judgment is satisfied, unless sooner terminated by order of the court.

(c) In addition to the $15 garnishee fee, the garnishee shall receive a $3 fee for each payment delivered to the creditor under s. 812.39 after the first payment. That additional fee shall be deducted from the moneys delivered to the creditor. Those fees become part of the funds of the state if the department of administration is the garnishee, or funds of the appropriate governmental subdivision if any other governmental entity is the garnishee. The judgment creditor shall pay the initial garnishee fee to the secretary of administration or other governmental subdivision, as applicable.

History: 1993 a. 80; 2003 a. 33.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.43 Retaliation by garnishee for earnings garnishment forbidden. Unless permitted under any applicable collective bargaining agreement, a garnishee shall not impose any fee or take any adverse action against a debtor by reason of the garnishment of the debtor's earnings. If a garnishee violates this section, the debtor may bring an action for reinstatement, back wages and benefits, restoration of seniority, other relief allowed by law and reasonable attorney fees incurred in bringing this action.

History: 1993 a. 80.

NOTE: 1993 Wis. Act 80 contains judicial council notes.

812.44 Forms. (1) (a) The judicial conference shall review the forms in this subchapter and may periodically revise those forms. Those revisions may not alter the rights of the parties under this subchapter. The judicial conference shall notify the clerks of court and any interested person of any forms revised under this subsection.

(b) Except as provided under par. (bg), no party may use a form substantially different from those in this subchapter as revised under this subsection. No party may alter those forms in a manner that may mislead any other party. If the court finds that a party has used a misleading form, the court shall award the aggrieved party actual damages, costs and reasonable attorney fees resulting from the additional proceeding.

(bg) If the judgment debt meets one of the conditions under s. 812.34 (1), the creditor shall amend the forms used under this subchapter to inform the garnishee and debtor that the exemptions provided under s. 812.34 (1) do not apply.

(c) No garnishee is required to act as requested by any form in this subchapter that does not identify the parties as required by s. 812.31 (4) or that is illegibly completed or otherwise unintelligible. No garnishee is liable to any person for refusing to so act. The garnishee shall mail that form back to the sending party, if known, within 3 days after receipt. The garnishee shall include with the returned form a statement specifying the defect in the form and that the garnishee is not acting as requested by the form under the authority of this paragraph.

(2) The notice filed by the creditor to initiate an earnings garnishment under s. 812.35 (1) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

A.B., Creditor — File or Reference Number .....
vs. — EARNINGS
C.D., Debtor — GARNISHMENT
and — NOTICE
E.F., Garnishee

To the Clerk of Circuit Court:

Please take and file notice that the creditor has today commenced an earnings garnishment action under subchapter II of chapter 812 of the Wisconsin Statutes against the debtor and the garnishee to collect an unsatisfied civil judgment. The judgment was entered on the .... day of ...., ..., (year) by .... (County Circuit or Federal District) Court. The case number of the action in which the judgment is entered is .... [and a transcript of the judgment was entered in this county in file number ....]. The creditor's total claim for the unsatisfied portion of this judgment plus statutory interest and costs is $....

The names and addresses last known to the creditor of the parties to this proceeding are as follows:

Debtor
Name: ....
Address: ....
Garnishee
Name: ....
Address: ....
Creditor
Name: ....
Address: ....
Creditor's Attorney
Name: ....
Address: ....

Signature of Creditor or Creditor's Attorney: ....
Date: ....

(3) The earnings garnishment form issued by the clerk under s. 812.35 (2) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

A.B., Creditor
vs. — File or Reference Number ....
C.D., Debtor — EARNINGS
and — GARNISHMENT
E.F., Garnishee

THE STATE OF WISCONSIN, To the garnishee:

The creditor has been awarded a court judgment that has not been paid. As a result, the creditor claims that a total of $.... is owed by the debtor, as follows:

A. Unpaid balance on judgment	$....
B. Unpaid postjudgment interest	$....
C. Costs of this earnings garnishment (estimated)	$....
TOTAL	$....

The creditor believes that you will owe the debtor for earnings within the next 13 weeks. If the $15 fee is tendered with these papers, you are directed by the court to do the following:

DETERMINE WHETHER YOU WILL OWE THE DEBTOR EARNINGS

1. Determine if you are likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks.

2. If you are not likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms.

IF THE DEBTOR SENDS YOU AN ANSWER

3. Whenever you receive a debtor's answer form from the debtor, mail a copy of the answer form to the creditor by the end of the 3rd business day after receipt of that form. Include the date you received the answer form on the copy sent to the creditor.

4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

MULTIPLE EARNINGS GARNISHMENTS

5. If the debtor's earnings are already being garnisheed when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

EARNINGS GARNISHMENTS LAST 13 WEEKS, EXCEPT FOR PUBLIC EMPLOYEES

AND EXCEPT FOR GARNISHMENTS TO
SATISFY AN ORDER FOR VICTIM RESTITUTION

6. The garnishment of the earnings of employees of the state of Wisconsin and its political subdivisions, and a garnishment to satisfy an order for victim restitution under s. 973.20 (1r) for victim restitution remains in effect until the judgment is satisfied. The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnisheed. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.

PAYING THE CREDITOR

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. Payment is complete upon mailing.

EFFECT OF COURT−ORDERED
ASSIGNMENTS FOR SUPPORT

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtor's disposable earnings is assigned for support by court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned and garnisheed does not exceed 25% of the debtor's disposable earnings.

EXTENSIONS

9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.

(4) The notice of exemption served upon the garnishee under s. 812.35 (4) shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

A.B., Creditor
vs. File or Reference Number ....
C.D., Debtor EXEMPTION NOTICE
and EARNINGS GARNISHMENT
E.F., Garnishee

To the debtor:

The creditor was awarded a judgment against you or your spouse by .... (County Circuit or Federal District) Court on the .... day of ...., ... (year) That judgment not having been fully paid, the creditor has now filed a garnishment proceeding against your earnings from the garnishee. This means that the creditor is seeking to take some of your earnings to satisfy part or all of the judgment against you or your spouse.

The total amount of the creditor's claim is as follows:

Unpaid balance on judgment	$....
Unpaid postjudgment interest	$....
Costs:	
a. Garnishment filing fee	$....
b. Garnishee fee	$....
c. Service of process (estimate)	$....
TOTAL	$....

By law, you are entitled to an exemption of not less than 80% of your disposable earnings. Your "disposable earnings" are those remaining after social security and federal and state income taxes are withheld.

Your earnings are completely exempt from garnishment if:

1. Your household income is below the federal poverty level. See the enclosed schedules and worksheet to determine if you qualify for this exemption.

2. You receive aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under section s. 59.53 (21) of the Wisconsin Statutes, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 USC 501 to 562 [38 USC 1501 to 1562] or section 45.351 (1) of the Wisconsin Statutes, or have received these benefits within the past 6 months.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

3. At least 25% of your disposable earnings are assigned by court order for support.

If the garnishment of 20% of your disposable income would result in the income of your household being below the poverty line, the garnishment is limited to the amount of your household's income in excess of the poverty line.

If you qualify for a complete exemption or for a limit on the amount of the garnishment to the amount that your household's income exceeds the poverty line, you must give or mail a copy of the enclosed debtor's answer form to the garnishee in order to receive that increased exemption.

If your circumstances change while the garnishment is in effect, you may file a new answer at any time.

If you do not qualify for a complete exemption, but you will not be able to acquire the necessities of life for yourself and your dependents if your earnings are reduced by this earnings garnishment, you may ask the court in which this earnings garnishment was filed to increase your exemption or grant you other relief.

IF YOU NEED ASSISTANCE
CONSULT AN ATTORNEY

If you have earnings that are being garnisheed that are exempt or subject to a defense, the sooner you file your answer or seek relief from the court, the sooner such relief can be provided. This earnings garnishment affects your earnings in pay periods beginning within 13 weeks after it was served on the garnishee. You may agree in writing with the creditor to extend it for additional 13−week periods until the debt is paid.

PENALTIES

If you wrongly claim an exemption or defense in bad faith, or if the creditor wrongly objects to your claim in bad faith, the court may order the person who acted in bad faith to pay court costs, actual damages and reasonable attorney fees.

(5) The debtor's answer form under s. 812.37 shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

A.B., Creditor
vs. File or Reference Number ....
C.D., Debtor EARNINGS GARNISHMENT
and DEBTOR'S ANSWER
E.F., Garnishee

To the garnishee:

My earnings are COMPLETELY EXEMPT from earnings garnishment because:

... 1. The judgment has been paid or is void.

... 2. I receive, am eligible for, or have within 6 months received, aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under section 59.53 (21) of the Wisconsin Statutes, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under 38 USC 501 to 562 [38 USC 1501 to 1562] or section 45.351 (1) of the Wisconsin Statutes.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

... 3. At least 25% of my disposable earnings are assigned for support by court order.

... 4. My household income is less than the poverty line, or this garnishment would cause that to happen.

... 5. I have another defense to this earnings garnishment (explain briefly).

. . . . . .

. . . . . .

I understand that if I claim a complete exemption or defense in bad faith, I may be held liable to the creditor for actual damages, costs and reasonable attorney fees.

DATE .... Signature of Debtor ....

Address ....

Telephone Number ....

Date Received by Garnishee ....

(6) The creditor's objection to the debtor's answer and demand for hearing shall be in substantially the following form:

STATE OF WISCONSIN

CIRCUIT COURT: .... County

A.B., Creditor — File or Reference Number ....

vs. — OBJECTION TO

C.D., Debtor — DEBTOR'S ANSWER

and — AND DEMAND FOR HEARING

E.F., Garnishee — EARNINGS GARNISHMENT

To the Clerk of Circuit Court:

I hereby object to the debtor's answer and demand a hearing to resolve the issues in controversy. By statute, this hearing must be held as soon as practicable after this objection and demand are filed. I object to the debtor's answer for the following reasons (explain briefly):

. . . . . .

. . . . . .

Please schedule this hearing and notify all parties.

To the best of my knowledge, the debtor's current address:

.... is the same as that stated in the notice I filed to commence this earnings garnishment.

.... is now

I understand that if I object to the debtor's answer in bad faith, I may be held liable to the debtor for actual damages, costs and reasonable attorney fees.

Date: .... Creditor or Creditor's Attorney: ....

Address: .....

History: 1993 a. 80, 490; 1995 a. 27, 224; 1997 a. 35, 250, 291; 1999 a. 32; 2001 a. 38; 2003 a. 138; 2009 a. 28; 2015 a. 355; s. 35.17 correction in (3) (form), (4) (form), (5) (form).

NOTE: 1993 Wis. Act 80 contains judicial council notes.