

EM RIMANDO
CHIEF, APPELLATE COURTS
STATE OF HAWAII

2008 JUL 24 PM 1:41

FILED

In the Matter of
Forms for Use in the District Courts
of the State of Hawai'i

AMENDED¹

ORDER AMENDING AND ADOPTING FORMS

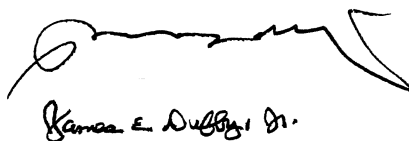
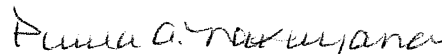
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that the attached (a) Forms #DC27 and #DC27B are amended and (b) Form #DC27C is adopted for use in the District Courts of the State of Hawai'i, effective July 24, 2008. The amended forms replace the prior forms bearing the same "DC" number;

IT IS FURTHER ORDERED that Form #1DC28 is repealed and reserved; and

IT IS FINALLY ORDERED that the district courts are authorized to (a) insert circuit identifiers, addresses, and contact information and (b) publish the form in print or electronic format.

DATED: Honolulu, Hawai'i, July 24, 2008.



¹ A correction was made to page 2 of DCRCP Form #DC27B (i.e., deleting the phrase "UNDER THE LAWS OF THE STATE OF HAWAII" in the Response to Motion section so that the sentence now reads "I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT:").

GARNISHEE INFORMATION

NOTICE TO THE DEBTOR

PLEASE TAKE NOTICE that a garnishee summons has been served upon your employer (who is called the “garnishee”) **without any further court proceedings or notice to you.** The garnishee summons was issued on the basis of a judgment against you in favor of the judgment creditor.

The amount of wages that may be garnished is limited by federal and Hawai‘i law. Therefore, some or all of your wages are exempt from garnishment. If your wages are garnished, you may request that your employer show you how the amount garnished was calculated.

If you claim the garnishment is incorrect you also have a right to request a hearing. In order to request a hearing, you must follow the procedures set forth in the rules of this Court and in Hawai‘i Revised Statutes Section 652-1(d).

NOTICE TO THE GARNISHEE

Wages of your employees may be subject to garnishment when you are served with a Motion for Issuance of Garnishee Summons After Judgment or Declaration of Judgment Creditor for Garnishment of Wages. If you are served with a Garnishee Summons, you, as the garnishee, are required to begin withholding immediately a part of your employee’s wages (including any salary, stipend, commission, annuity or net income or portion of net income under a trust). The money you withhold must then be paid to the judgment creditor (the person or business who is owed the money) or the judgment creditors’ attorney **after** you receive the garnishee order, which will be sent to you. If you are served with a Declaration of Judgment Creditor, you must begin paying the required portion of the garnished wages to the judgment creditor or the judgment creditors’ attorney immediately.

Making a Disclosure

State law allows, but does not require, you to make a disclosure after you are served. If you choose to make a disclosure, you may appear in Court or file with the Court a statement (form available from the Court) indicating whether the judgment debtor is: (1) your employee; and (2) whether you have any money which is due to the judgment debtor which can be garnished. *If you do not make a disclosure, it will be assumed that the judgment debtor is your employee and you will be required to comply with the Garnishee Summons and Order or the Declaration of Judgment Creditor.*

Amounts To Be Withheld

The amount of wages that may be deducted is limited by federal and Hawai‘i law. Therefore, you must calculate the amount of wages to be withheld in accordance with either federal or Hawai‘i law. **IMPORTANT: YOU MUST USE THE CALCULATION THAT IS MOST FAVORABLE TO YOUR EMPLOYEE.** A Garnishment Calculation Worksheet, Form# DC27C, is available if you need assistance with your calculation.

Calculation Pursuant to Hawai‘i Law: According to Hawai‘i Revised Statutes Chapter 652, the amount to be withheld from your employee’s wages is calculated as follows:

- (1) You must first calculate **the amount of wages remaining after the deduction of any amounts required by law to be withheld.**
- (2) From that amount, you must withhold five percent of the first \$100 per month, ten percent of the next \$100 per month, and twenty percent of all sums in excess of \$200 per month, or an equivalent portion of the above amount per week.

Calculation Pursuant to Federal Law: According to Title III of the Consumer Credit Protection Act (15 U.S.C. § 1673), the amount to be withheld from your employee’s wages is calculated as follows:

- (1) You must first calculate your employee’s **DISPOSABLE EARNINGS** for the applicable pay period. The term “**DISPOSABLE EARNINGS**” is defined as compensation paid or payable for personal services **after deducting any amounts required to be withheld by law** (such as taxes). The amount of Disposable Earnings subject to garnishment is determined by the restrictions which are in effect at the time such earnings are paid or payable.
- (2) From the **DISPOSABLE EARNINGS**, you must withhold an amount for the applicable pay period as follows:

EFFECTIVE JULY 24, 2008

Weekly	Bi-Weekly	Semi-Monthly	Monthly
\$196.50 or less: None	\$393.00 or less: None	\$425.75 or less: None	\$851.50 or less: None
More than \$196.50 but less than \$262.00: Amount above \$196.50	More than \$393.00 but less than \$524.00: Amount above \$393.00	More than \$425.75 but less than \$567.67: Amount above \$425.75	More than \$851.50 but less than \$1,135.33: Amount above \$851.50
\$262.00 or more: Maximum 25%	\$524.00 or more: Maximum 25%	\$567.67 or more: Maximum 25%	\$1,135.33 or more: Maximum 25%

Example: Employee's gross pay is \$310.00 per week, \$233.68 "disposable" after taxes and other deductions required by law.

Hawai'i Calculation: The amount to be withheld under Hawai'i law is based on monthly disposable earnings of \$1,012.61. Of this amount, 5% of the first \$100, 10% of the second \$100, and 20% of the remaining \$812.61, should be withheld monthly, for a total of \$177.52 per month.

$$[\$5.00 (5\% \times 1^{st} \$100.00) + \$10.00 (10\% \text{ of } 2^{nd} \$100.00) + \$162.52 (20\% \text{ of remaining } \$812.61) = \$177.52]$$

Federal Calculation: The amount to be withheld weekly under federal law is either the amount of disposable earnings over \$196.50, **or** 25% of disposable earnings if they are more than \$262.00, for a total of \$37.18 per week or \$161.11 per month.

$$[\$233.68 - \$196.50 = \$37.18 \times 52/12 = \$161.11]$$

Amount to be Withheld: Because the federal calculation is more favorable to the employee, \$161.11 per month, or \$37.18 per week, must be withheld.

Example: Employee's gross pay is \$320 per week, \$260.52 "disposable" after taxes and other deductions required by law.

Hawai'i Calculation: The amount to be withheld under Hawai'i law is based on monthly disposable earnings of \$1,128.92 (\$260.52 x 52/12). Of this amount, 5% of the first \$100, 10% of the second \$100, and 20% of the remaining \$928.92, should be withheld monthly, for a total of \$200.78 per month.

$$[\$5.00 (5\% \times 1^{st} \$100.00) + \$10.00 (10\% \text{ of } 2^{nd} \$100.00) + \$185.78 (20\% \text{ of remaining } \$928.92) = \$200.78]$$

Federal Calculation: The amount to be withheld weekly under federal law is **either** the amount of disposable earnings over \$196.50, **or** 25% of disposable earnings if they are more than \$262, for a total of \$64.02 per week or \$277.42 per month.

$$[\$260.52 - \$196.50 = \$64.02 \times 52/12 = \$277.42]$$

Amount to be Withheld: Because the Hawai'i calculation is more favorable to the employee, \$200.78 per month, or \$39.67 per week, must be withheld.

Other Information

The law prohibits an employer from discharging any employee because the employee's wages have been subjected to garnishment.

An employer's obligation to withhold is continuing. If there is a period where the employee has not earned sufficient income, you must begin to withhold again as soon as the earnings of your employee increase sufficiently.

Prior to making the final payment, you should contact the judgment creditor or the judgment creditors' attorney to obtain the final payoff amount which may include additional interest as allowed by law.



In accordance with the Americans with Disabilities Act, and other applicable State and Federal laws, if you require an accommodation for a disability when working with a court program, service, or activity please contact the District Court Administration Office at PHONE NO. _____, FAX _____, or TTY _____ at least ten (10) working days before your proceeding, hearing, or appointment date.

**JUDGMENT DEBTOR(S)'S MOTION FOR RETURN/RELEASE OF WAGES EXEMPT FROM GARNISHMENT;
 NOTICE OF MOTION; CERTIFICATE OF SERVICE;
 GARNISHMENT CALCULATION WORKSHEET; EXHIBIT "A"**

TWO-SIDED FORM
 Form # DC27B

IN THE DISTRICT COURT OF THE _____ CIRCUIT DIVISION STATE OF HAWAI'I	
Plaintiff(s)	Reserved for Court Use
Defendant(s)	Civil No. Filing Party(ies)/Filing Party(ies)' Attorney (Name, Attorney Number, Firm Name (if applicable), Address, Telephone and Facsimile Numbers)

**JUDGMENT DEBTOR(S)'S MOTION
 FOR RETURN/RELEASE OF WAGES EXEMPT FROM GARNISHMENT**

Filing Party(ies) moves this Court for an Order returning or releasing to the filing party all or a portion of wages which have been garnished because:

1. The amount garnished or withheld was excessive as the Federal Law State Law was more favorable to the filing party.
2. The Garnishee should have deducted \$ _____, rather than \$ _____ according to the Garnishment Calculation Worksheet, Form# DC27C, and a copy of applicable pay stub attached as Exhibit "A".
3. Other (specify) _____.

Date:	Signature of Declarant: Print/Type Name:
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NOTICE OF HEARING

TO: _____:

Please take notice that this Motion will be heard before the Presiding Judge of this Court in his/her Courtroom, at the address checked on page 2 on _____, _____, 20____, at _____ a.m. or as soon thereafter as parties may be heard.

(continued on reverse side)

SEE AND USE PAGE 2 TO RESPOND TO MOTION

COURT ADDRESS(ES)

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was served at the last known address(es) of the Opposing Party(ies) or Opposing Party(ies)' attorney on (date) _____ by Hand-delivery or Mail at the following address(es):
Judgment Creditor: _____ Employer/Garnishee _____

Signature of Filing Party(ies)/Filing Party(ies)' Attorney:

Date:

Print/Type Name:

RESPONSE TO MOTION/CERTIFICATE OF SERVICE

- I DO NOT OBJECT to this Motion.
- I DISAGREE with this Motion for the following reasons:

Reserved for Court Use

I have read this Motion, know the contents and verify that the statements are true to my personal knowledge and belief. **I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT:**

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was served at the last known address(es) of the Opposing Party(ies) or Opposing Party(ies)' attorney on (date) _____ by Hand-delivery or Mail at the following address(es):
Judgment Creditor: _____ Employer/Garnishee _____

Date:

Signature of Responding Party(ies)/Responding Party(ies)' Attorney:

Print/Type Name:



In accordance with the Americans with Disabilities Act, and other applicable State and Federal laws, if you require an accommodation for a disability when working with a court program, service, or activity please contact the District Court Administration Office at PHONE NO. _____, FAX _____, or TTY _____ at least ten (10) working days before your proceeding, hearing, or appointment date.

GARNISHMENT CALCULATION WORKSHEET

To determine the amount, if any, that can be garnished from a single paycheck, take the amount of disposable earnings on line 4 of this Disposable Earnings Worksheet and perform the calculations according to both Hawai'i Law and Federal Law using the Hawai'i Law Garnishment Worksheet and the Federal Law Garnishment Worksheet. Compare the two amounts, then use the *smaller* amount. If the *smaller* amount is zero, then no garnishment can be made from this paycheck.

Disposable Earnings Worksheet				
Enter amounts for one pay period only, according to frequency of pay schedule.	Weekly (52/yr)	Every Two Weeks (26/yr)	Twice Monthly (24/yr)	Monthly (12/yr)
1. Gross pay	\$	\$	\$	\$
2. Mandatory Deductions		\$	\$	\$
FICA	\$	\$	\$	
State Tax	\$	\$	\$	
Federal Tax	\$	\$	\$	
Medicare	\$	\$	\$	
Union dues, only if required by law	\$	\$	\$	
3. Subtotal, Mandatory Deductions.	\$	\$	\$	\$
4. Disposable Earnings Subtract line 3 from line 1. Take this amount and enter on line 1 of Hawai'i Law and Federal Law Worksheets	\$	\$	\$	\$

See Reverse Side for Hawai'i Law and Federal Law Worksheets



In accordance with the Americans with Disabilities Act, and other applicable State and Federal laws, if you require an accommodation for a disability when working with a court program, service, or activity please contact the District Court Administration Office at PHONE NO. _____, FAX _____, or TTY _____ at least ten (10) working days before your proceeding, hearing, or appointment date.

Hawai'i Law Garnishment Worksheet

Enter amounts for one pay period only , according to frequency of pay schedule.	Weekly (52/yr)	Every Two Weeks (26/yr)	Twice Monthly (24/yr)	Monthly (12/yr)
1. Enter amount from line 4, Disposable Earnings Worksheet	\$	\$	\$	\$
2. Multiply by this amount; place answer on line 3	x 52	x 26	x 24	
3. Annual equivalent Disposable Earnings	\$	\$	\$	
4. Divide amount on line 3 by 12 months; enter answer on line 5	/12	/12	/12	
5. Monthly Equivalent Disposable Earnings	\$	\$	\$	amt on line 1
6. Subtract 1 st \$200 of Monthly Equivalent Disposable Earnings from amount on line 5; enter answer on line 7	-\$200.00	-\$200.00	-\$200.00	-\$200.00
7. Disposable earnings in excess of \$200 per month.	\$	\$	\$	\$
8. Multiply amount on line 7 by 20%; enter answer on line 9	x 0.20	x 0.20	x 0.20	x 0.20
9. Garnishment on disposable earnings in excess of \$200 per month	\$	\$	\$	\$
10. Garnishment on first \$200 disposable earnings per month. Add this amount to amount on line 9. Enter answer on line 11.	+\$15.00	+\$15.00	+\$15.00	+\$15.00
11. Total monthly garnishment	\$	\$	\$	\$

To determine the amount, if any, to garnish from one paycheck, perform the calculations below for the correct pay period.

12. Multiply the amount on line 11 by 12 months; enter answer on line 13	x 12	x 12	x 12	
13. Annual equivalent amount of garnishment	\$	\$	\$	
14. Divide the amount on line 13 by the number of pay periods per year; enter answer on line 15	/52	/26	/24	
15. Garnishment amount for this pay period				amt on line 11

16. Compare amount on line 15 with amount on line 2 of Federal Law Garnishment Worksheet and use the *smaller* amount. If smaller amount is zero or less, do not garnish any amount from this pay period.

Federal Law Garnishment Worksheet

1. Enter the amount from line 4 of Disposable Earnings Worksheet. \$ _____

2. Choose the column below that applies to the pay period to find the amount that can be garnished. \$ _____

Weekly (52/yr)	Every Two Weeks (26/yr)	Twice Monthly (24/yr)	Monthly (12/yr)
\$196.50 or less; None	\$393.00 or less; None	\$425.75 or less; None	\$851.50 or less; None
More than \$196.50 but less than \$262.00; Amount above \$196.50	More than \$393.00 but less than \$524.00; Amount above \$393.00	More than \$425.75 but less than \$567.67; Amount above \$425.75	More than \$851.50 but less than \$1,135.33; Amount above \$851.50
\$262.00 or more; Maximum 25%	\$524.00 or more; Maximum 25%	\$567.67 or more; Maximum 25%	\$1,135.33 or more; Maximum 25%

3. Compare the amount from step 2 with the amount on line 15 of Hawai'i Law Garnishment Worksheet and use the *smaller* amount. If the smaller amount is zero or less, do not garnish any amount from this pay period.