

CHANGES IN GARNISHMENT FOR ALLEGHENY COUNTY

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On November 19, 1998, Judge Wettick mandated changes for the garnishment of bank accounts which significantly affect all Allegheny County financial institutions and judgment creditors. The cases involved in Judge Wettick's decision were Calabro v. Prothonotary, Sheriff, Equitable Gas and Mellon Bank, GD93-13381 and Hall v. Prothonotary, Sheriff, Associates Consumer Discount and Mellon Bank, GD94-12947. The issues in these cases involved the judgment debtors' right to the \$300.00 statutory exemption and the federal exemption of Social Security benefits.

Prior to Judge Wettick's decision, a financial institution was required to provide a judgment debtor with notice that his/her account had been frozen and that he/she could claim the statutory and federal exemptions by completing a Claim for Exemption form, demanding a hearing and mailing it to the Sheriff's office. Upon deciding the above-referenced cases on motions for summary judgment, Judge Wettick held that, absent a real controversy, the judgment debtor is not required to file a claim for a statutory exemption and that there is no need for a court hearing on the judgment debtor's right to such an exemption. Judge Wettick stated that the statutory exemption is automatic, in both a sheriff's sale and a garnishment, and that the bank can merely exempt the first \$300.00 in any account.

Judge Wettick also decided that direct deposit Social Security deposits could not be frozen to pay a judgment. Judge Wettick stated that, when Social Security benefits are paid into an account through direct deposit, there is no need for a hearing to determine whether the account contains

Social Security benefits, since the bank records reflect the source of the funds deposited into the account. It is only when there exists a real dispute, such as whether the judgment debtor has already claimed an exemption or whether funds in an account which have not been deposited directly are Social Security benefits, that a court hearing will be necessary.

In summary, Judge Wettick's order of court directs the following:

- A. Where an eligible debtor timely notifies the Sheriff that he/she is claiming his/her statutory exemption out of a garnished account, the sheriff shall automatically notify the bank to release \$300.00 to the debtor;
- B. The Prothonotary shall automatically reduce any judgment against a garnished account by \$300.00, unless the Creditor states that the statutory exemption has been previously claimed;
- C. A Writ of Execution issued to a financial institution against an individual must contain the following language: "If Social Security funds are directly deposited into an account of the Defendant, the levy and attachment shall not include any funds that may be traced to Social Security direct deposits."; and
- D. In a garnishment, the Prothonotary will not enter judgment against an individual, unless the financial institution garnishee states that the account does not include Social Security direct deposits or that it has identified the funds in the account as being from sources other than Social Security direct deposits.

Judge Wettick's ruling took effect on January 18, 1999 and no appeal has been taken even once you have a final judgment, you will not be able to execute against the checking account of a social security recipient or the first \$300.00 in that account in most cases! Hopefully, you tenants who owe back rent and damages have more than \$300.00 in their checking accounts and are not Social Security recipients.