

STATE OF DELAWARE JUSTICE OF THE PEACE COURT

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PATRICIA WALTHER GRIFFIN CHIEF MAGISTRATE 820 N. FRENCH STREET 1:TH FLOOR WILMINGTON, DELAWARE 19801 TELEPHONE: (302) 577-8162

POLICY DIRECTIVE 80-026 (2nd SUPPLEMENT)

TO:

ALL JUSTICES OF THE PEACE

FROM:

PATRICIA W. GRIFFIN CHIEF MAGISTRATE

RE:

CALCULATION OF WAGE ATTACHMENTS

DATE:

AUGUST 14, 2001

Please be advised that J.P. Civ. Form No. 34 has been corrected to base exemptions from wage attachments on the Federal, rather than the Delaware, minimum wage. The current Federal minimum wage is \$5.15¹, rather than the \$6.15² which is the current Delaware minimum wage. This difference will, in many cases, increase the amount of wages which can be attached, since, as shown on the attached, revised form, the amount exempted will decrease in many cases.

The legal reasons for applying the Federal minimum wage are as follows.

Federal law provides the starting point for determining the amount of wages which can be withheld.

15 U.S.C.A. § 1673 (a) states:

Except as provided in subsection (b) of this section and in § 1675³ of this title, the maximum part of the aggregate disposable earnings of an

¹ See 29 U.S.C.A. § 206(a)(1).

² See 19 Del.C. § 902(a).

³ Section 1675 provides for the Secretary of Labor to exempt from the provisions of § 1673(a) and (b)(2) of Title 15 garnishments under the laws of any State if the Secretary determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in § 1673(a) and (b)(2). I have been unable to locate any such exemption for Delaware.

individual for any workweek which is subjected to garnishment may not exceed:

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for the week exceed thirty times the Federal minimum hourly wage prescribed by § 206(a)(1) of Title 29 in effect at the time the earnings are payable whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

However, the requirements of § 1673 are subject to any larger exemptions required under State law. 15 U.S.C.A. § 1677 states:

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

- (1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or
- (2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

Under Delaware law, only 15% of a debtor's wages may be garnished. 10 Del.C. § 4913(a) states:

(a) Eighty-five percent of the amount of the wages for labor or service of any person residing within the State shall be exempt from mesne attachment process and execution attachment process under the laws of this State; but such limitation shall be inapplicable to process issued for the collection of a fine or costs or taxes due and owing the State.

Thus, Delaware's 15 percent limitation on the amount of a debtor's wages which can be taken in garnishment, contained in 10 Del.C. § 4913(a), provides for a greater restriction on garnishments than does Federal law, which creates a 25% exemption. However, there is no provision of Delaware law which applies Delaware's minimum wage statute as a part of any garnishment calculation. That provision comes solely from federal law in 15 U.S.C.A. § 1673 (a) and provides that only the amount of wages which exceed 30 times the federal minimum wage may be garnished (unless that amount is larger than the amount resulting from applying the percentage exemption.)

A copy of revised J.P. Civ. Form 34 is attached, as well a copy of J.P. Civ. Form. No. 34-7% (for judgments on public welfare debts obtained by the Delaware Department of Health and Social Services for agency errors) and J.P. Civ. Form No. 34-10% (for judgments on public welfare debts obtained by the Delaware Department of Health and

Social Services for client errors). These forms are being reprinted by the Administration Office and will be revised as the Federal minimum wage is updated.

PWG/crm

cc: Hon. E. Norman Veasey

Hon. Joseph T. Walsh

Hon. Henry duPont Ridgely

Hon. Alex J. Smalls

Hon. Vincent J. Poppiti

Hon. Alicia Howard

Alderman's Courts

Thomas W. Nagle

Anna A. Lewis

H. John Betts

Larry Sipple

All Justice of the Peace Courts

Law Libraries: New Castle County, Kent County, Sussex County,

Widener University School of Law

Social Services for client errors). These forms are being reprinted by the Administration Office and will be revised as the Federal minimum wage is updated.

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Widener University School of Law

CHART FOR DETERMINING AMOUNT OF WAGES SUBJECT TO 15% ATTACHMENT

Below is a chart which explains how to determine the amount of wages subject to attachment. The applicable federal laws from which the information in the chart have been taken are: 10 Del.C. § 4913(a); 15 USC § 1673; 15 USC § 1677 and 29 USC § 206(a).1. The chart assumes that the wage earner is paid weekly. If paid twice per month, follow the same chart but use \$334.80 (\$154.50 x 2-1/6 weeks) in Step C. If paid every two weeks, use \$309.00 (\$154.50 x 2). If paid monthly, use \$669.45 (\$154.50 x 4-1/3) in Step C.

A. Calculate disposable earnings by subtracting from gross earning those items required by law to be deducted. For example:

GROSS EARNINGS

- Federal tax
- State tax
- FICA
- City tax (if any)

equals disposable earnings

- B. Calculate 15% of disposable earnings.
- C. Subtract \$154.50 (30 x \$5.15 the minimum wage) from the disposable earnings.
- D. The attached amount is the lesser of the figures calculated under B and C.

EXAMPLE 1

An individual's gross earnings in a week are \$250.00

\$250.00

- 30.00 (est. Fed. tax)

- 8.00 (est. State tax)

- 19.00 (est. FICA)

\$193.00 Disposable earnings

- B. 15% of \$193.00 = \$28.95
- C. \$193.00 \$154.50 = \$38.50
- D. \$28.95 is less than \$38.50 and is the amount attached.

EXAMPLE 2

An individual's gross earnings in a week are \$100.00

A. \$100.0

7.00 (est. Fed. Tax)1.00 (est. State Tax)

- 8.00 (est. FICA)

\$ 84.00 Disposable earnings

- B. 15% of \$84.00 = \$12.60
- C. \$84.00 \$154.50 = -\$70.50
- D. -\$70.50 is less than \$12.60; none of the wages can be attached.

Its is very important that employers and creditors understand the attachment process because a common practice is to simply attach 15% of the gross wages. As the chart indicates, that is not correct because it is very possible that in any given pay period none of an individual's wages can be attached.

CHART FOR DETERMINING AMOUNT OF WAGES SUBJECT TO 10% ATTACHMENT

Below is a chart which explains how to determine the amount of wages subject to attachment. The applicable federal laws from which the information in the chart have been taken are: 10 Del.C. § 4913(a); 15 USC § 1673; 15 USC § 1677 and 29 USC § 206(a).1. The chart assumes that the wage earner is paid weekly. If paid twice per month, follow the same chart but use \$334.80 (\$154.50 x 2-1/6 weeks) in Step C. If paid every two weeks, use \$309.00 (\$154.50 x 2). If paid monthly, use \$669.45 (\$154.50 x 4-1/3) in Step C.

A. Calculate disposable earnings by subtracting from gross earning those items required by law to be deducted. For example:

GROSS EARNINGS

- Federal tax
- State tax
- FICA
- City tax (if any)

equals disposable earnings

- B. Calculate 10% of disposable earnings.
- C. Subtract \$154.50 (30 x \$5.15 the minimum wage) from the disposable earnings.
- D. The attached amount is the lesser of the figures calculated under B and C.

EXAMPLE 1

An individual's gross earnings in a week are \$250.00

A.

\$250.00

- 30.00 (est. Fed. tax)
- 8.00 (est. State tax)
- 19.00 (est. FICA)

\$193.00 Disposable earnings

- B. 10% of \$193.00 = \$19.30
- C. \$193.00 \$154.50 = \$38.50
- D. \$19.30 is less than \$38.50 and is the amount attached.

EXAMPLE 2

An individual's gross earnings in a week are \$100.00

A.

\$100.00

- 7.00 (est. Fed. Tax)
- 1.00 (est. State Tax)
- 8.00 (est. FICA)

\$ 84.00 Disposable earnings

- B. 10% of \$84.00 = \$8.40
- C. \$84.00 \$154.50 = -\$70.50
- D. -\$70.50 is less than \$8.40; none of the wages can be attached.

Its is very important that employers and creditors understand the attachment process because a common practice is to simply attach 10% of the gross wages. As the chart indicates, that is not correct because it is very possible that in any given pay period none of an individual's wages can be attached.

CHART FOR DETERMINING AMOUNT OF WAGES SUBJECT TO 7% ATTACHMENT

Below is a chart which explains how to determine the amount of wages subject to attachment. The applicable federal laws from which the information in the chart have been taken are: 10 Del.C. § 4913(a); 15 USC § 1673; 15 USC § 1677 and 29 USC § 206(a).1. The chart assumes that the wage earner is paid weekly. If paid twice per month, follow the same chart but use \$334.80 (\$154.50 x 2-1/6 weeks) in Step C. If paid every two weeks, use \$309.00 (\$154.50 x 2). If paid monthly, use \$669.45 (\$154.50 x 4-1/3) in Step C.

A. Calculate disposable earnings by subtracting from gross earning those items required by law to be deducted. For example:

GROSS EARNINGS

- Federal tax
- State tax
- FICA
- City tax (if any)

Equals disposable earnings

- B. Calculate 7% of disposable earnings.
- C. Subtract \$154.50 (30 x \$5.15 the minimum wage) from the disposable earnings.
- D. The attached amount is the lesser of the figures calculated under B and C.

EXAMPLE 1

An individual's gross earnings in a week are \$250.00

A. \$250.00

- 30.00 (est. Fed. tax)

- 8.00 (est. State tax)

- 19.00 (est. FICA)

\$193.00 Disposable earnings

- B. 7% of \$193.00 = \$13.51
- C. \$193.00 \$154.50 = \$ 38.50
- D. \$13.51 is less than \$38.50 and is the amount attached.

EXAMPLE 2

An individual's gross earnings in a week are \$100.00

A. \$100.0

- 7.00 (est. Fed. Tax)

- 1.00 (est. State Tax)

- 8.00 (est. FICA)

\$ 84.00 Disposable earnings

- B. 7% of \$84.00 = \$ 5.88
- C. \$84.00 \$154.50 = -\$70.50
- D. -\$70.50 is less than \$5.88; none of the wages can be attached.

Its is very important that employers and creditors understand the attachment process because a common practice is to simply attach 7% of the gross wages. As the chart indicates, that is not correct because it is very possible that in any given pay period none of an individual's wages can be attached.



STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE B20 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON DELAWARE 19801

NORMAN A, BARRON CHIEF MAGISTRATE TELEF-ONE: (302) 571-2485

POLICY DIRECTIVE 80-026

TO:

ALL JUSTICES OF THE PEACE, STATE OF DELAWARE ALL CHIEF CLERKS, JUSTICE OF THE PEACE COURTS

FROM:

NORMAN A. BARRON

CHIEF MAGISTRAZE

DATE:

NOVEMBER 12, 1980

RE:

ATTACHMENT OF WAGES.

For a considerable period of time there has been a conflict between the formula for calculating the amount of an employee's wages subject to garnishment as reflected by Justice of the Peace Form No. 44 and as reflected by the Community Legal Aid Society's Chart For Determining Amount Of Wages Subject To Attachment, (the CLAS formula).

The difference in calculating the amount of an employee's wages subject to garnishment is shown below:

Justice of the Peace formula

The lesser of:

(a) Disposable earnings 1 minus \$93.00 (30 x \$3.10, the minimum wage)

CLAS formula

The lesser of:

(a) Disposable earnings minus \$93.00 (30 x \$3.10, the minimum wage)

^{1&}quot;Disposable earnings" are defined as gross wages minus mandatory deductions, (i.e., federal, state and city taxes and FICA). See: 15 U.S.C. 1672(b).

(b) 15% of gross wages

(b) 15% of <u>disposable</u> earnings

As a policy matter, it would seem prudent to have but one common formula. The CLAS formula attempts to reconcile both the federal and Delaware's statutory provisions². For the sake of simplification and also to ensure Delaware employers' compliance with both State and Federal law, it has been determined that the present Justice of the Peace formula should give way to the CLAS formula.

Therefore, effective January 1, 1981, the present Justice of the Peace Court formula as reflected in the present Civil Form No. 44 should no longer be used in calculating the amount of an employee's wages subject to garnishment. By January 1, 1981, all applicable Justice of the Peace Courts will have received a revised Civil Form No. 44 as well as CLAS charts which reflect the increase of the minimum wage from \$3.10 to \$3.35 which rate also becomes effective on January 1, 1981. At the time of the change-over, the CLAS chart should accompany each new Form No. 44 issued to a garnishee since said chart fully explains the method of calculation.

These statutory provisions are: 10 Del.C., §4913(a); 15 U.S.C. §1672(b); 15 U.S.C. §1673; 15 U.S.C. §1677; and 29 U.S.C. §206(a) (1).

³A copy of the CLAS chart which reflects the proper calculation based upon the minimum wage of \$3.35 per hour which, as mentioned, becomes effective January 1, 1981, is attached hereto as Exhibit A.

NAB:pm

Attachment

cc: The Honorable Daniel L. Herrmann John R. Fisher, Esquire Arthur R. Carello Files

CHART FOR DETERMINING AMOUNT OF WAGES SUBJECT TO ATTACHMENT

Below is a chart which explains how to determine the amount of wages subject to attachment. The applicable state and federal laws from which the information in the chart has been taken are: 10 Del. C. \$4913(a); 15 U.S.C.S. \$1672(b); 15 U.S.C.S. \$1673; 15 U.S.C.S. \$1677 and 29 U.S.C.S. \$206(a) (1). The chart assumes that the wage earner is paid weekly. If paid twice per month, follow the same chart but use \$217.75 (\$100.50 x 2 1/6 weeks) in Step C. If paid every two weeks, use \$201.00 (\$100.50 x 2) in Step C. If paid monthly, use \$435.50 (\$100.50 x 4 1/3) in Step C.

A. Calculate disposable earnings by subtracting from gross earnings those items required by law to be deducted. For example :

Gross earnings
-Federal tax
-State tax
-FICA
-City tax (if any)
equals
Disposable earnings

=

- B. Calculate 15% of disposable earnings.
- C. Subtract \$100.50 (30 x \$3.35, the minimum wage) from the disposable earnings.
- D. The attached amount is the <u>lesser</u> of the figures calculated under B and C.

EXAMPLE

An individual's gross earnings in a week are \$175.00,

- A. \$175.00 -20.00 (est. Fed. tax) -17.00 (est. State tax) -12.00 (est. FICA) \$126.00 disposable earnings
- B. 15% of \$126.00 = \$18.90
- C. \$126.00 \$100.50 = \$25.50
- D. \$18.90 is less than \$25.50 and is the amount attached.

EXAMPLE

An individual's gross earnings in a week are \$100.00.

- A. \$100.00 -11.00 (est. Fed. tax) - 3.00 (est. State tax) - 3.00 (est. FICA) \$83.00 disposable earnings
- B. 15% of \$83.00 = \$12.45
- C. \$83.00 \$100.50 = \$17.50
- D. -\$17.50 is less than \$12.45; none of the wages can be attached.

It is very important that employers and creditors understand the attachment process because a common practice is to simply attach 15% of the gross wages. As the chart indicates, that is not correct because it is very possible that in any given pay period none of an individual's wages can be attached.



STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE B20 NORTH FRENCH STREET, 1 1TH FLOOR WILMINGTON, DELAWARE 19801

NORMAN A, BARRON CHIEF MAGISTRATE TELEPHONE: (302) 571-2485

POLICY DIRECTIVE 80-026 (REVISED SUPPLEMENT)

TO:

ALL JUSTICES OF THE PEACE, STATE OF DELAWARE

ALL CHIEF CLERKS COURTS OF THE JUSTICES OF THE PEACE

FROM:

NORMAN A. BARRON

CHIEF MAGISTRATA

DATE:

OCTOBER 25, 1983

RE:

ATTACHMENT OF WAGES

This Revised Supplement to Policy Directive 80-026, dated November 12, 1980, updates the Supplement to Policy Directive 80-026, dated June 27, 1982. Said Supplement may be discarded and replaced with this Revised Supplement.

The formula for determining the amount of wages subject to attachment, as set forth in Policy Directive 80-026, was challenged by several banks and lending institutions as well as by several judgment debtors. By opinion dated October 20, 1983, the Delaware Supreme Court, in the case of Wilmington Trust Co., et al. v. Barron, et al., Del.Supr., ____ A.2d ____, No. 338, (1983), held that the method for computing the amount of wages subject to attachment, as set forth in Policy Directive 80-026,

is correct in that it satisfies both the reasoning of Delaware law in the enforcement of judgments, and federal and state law mandating the withholding of FICA and income taxes. A copy of the Court's decision which was written by Justice Moore is attached hereto for your perusal.

NAB:pn

Attachment

cc: The Honorable Daniel L. Herrmann John R. Fisher Files

IN THE SUPREME COURT OF THE STATE OF DELAWARE

5000

WILMINGTON TRUST COMPANY, BANK OF DELAWARE, SECURITY PACIFIC FINANCE CORP., and HOUSEHOLD FINANCE CORP.,

Plaintiffs Below, Appellants,

ν.

NORMAN A. BARRON.

Defendant Below, Appellee,

and

ELAINE SNYDER, MAXWELL WRIGHT, JESSE WRIGHT, and MICHAEL BUZZUTO,

Intervening Defendants Below, Cross-Appellees.

No. 338, 1982

Submitted: June 6, 1983 Decided: October 20, 1983

Before HERRMANN, Chief Justice, MOORE, Justice and LONGOBARDI, Vice Chancellor (by designation of the Chief Justice pursuant to Del. Const. art. IV, §12).

Upon appeal from Superior Court, in and for New Castle County. Affirmed.

Elwyn Evans, Jr., Wilmington, for appellants.

Malcolm S. Cobin, Deputy Attorney General, Wilmington, for appellee Honorable Norman A. Barron.

Kevin E. Walsh, Morris & Rosenthal, P.A., Wilmington, for cross-appellees.

!MOORE, Justice:

This mandamus action was brought in the Superior Court by certain banks and loan companies (lenders) to compel the Honorable Norman A. Barron, Chief Magistrate of the Justice of the Peace Courts to rescind a policy directive he issued regarding the calculation of wages subject to garnishment under Delaware's 85% statutory exemption. This involves an interpretation of 10 Del. C. §4913(a) & (c), which provides:

- (a) Eighty-five percent of the amount of the wages for labor or service of any person residing within the State shall be exempt from mesne attachment process and execution attachment process under the laws of this State; but such limitation shall be inapplicable to process issued for the collection of a fine or costs or taxes due and owing the State.
- (c) Wages shall include salaries, commissions and every other form of remuneration paid to an employee by an employer for labor or services, but shall not include payment made for services rendered by a person who is master of his own time and effort.

The lenders contend that the exemption must be applied to gross wages earned, irrespective of any sums withheld for federal, state or local taxes. The Chief Magistrate's policy directive based computation of the exemption upon disposable earnings after deduction of taxes mandated by statute.

Certain judgment debtors (debtors), represented by Community Legal Aid Society, Inc. (CLASI), sought and were granted leave to intervene as defendants because the Chief Magistrate's questioned policy directive had been issued upon the urging and at the behest of CLASI. The debtors counterclaimed for a declaratory judgment upholding the Chief Magistrate's policy

directive. But having caused this suit by convincing the Chief Magistrate to issue that directive, and gaining entrance to the trial court, purportedly to defend the action on the Chief Magistrate's behalf, CLASI abruptly renounced its position and declared the Chief Magistrate's policy contrary to Delaware law. Now, it wants the 85% exemption applied to gross wages, because under its present theory certain debtors' earnings will be totally immune from garnishment. The Chief Magistrate therefore reentered the action and is represented by the Attorney General.

Since the facts are not in dispute, the lenders moved for summary judgment on their mandamus claim. The Superior Court denied lenders' motion, but entered judgment declaring that the Chief Magistrate's policy directive correctly interprets Delaware's wage exemption law. We agree and affirm, although we are troubled by the manner in which this lawsuit arose and was permitted to continue by the trial court. Since the rulings of the Superior Court sustained the Chief Magistrate's challenged interpretation, the lenders have appealed, and the debtors have taken a cross appeal.

ī.

Delaware justices of the peace are not lawyers, but they nonetheless are judges who discharge the judicial functions of their courts of limited civil and criminal jurisdiction under the guidance of the Chief Magistrate, who is a member of the Bar. He is designated as the administrative

head of these courts by 10 <u>Del. C.</u> §9202(c). l Neces-sarily, his duties require him to advise the justices of the peace regarding interpretations of Delaware law.

Many small claims actions are filed in Justice of the Peace Courts, resulting in judgments which are satisfied by garnishment of the defendants' wages. Because Delaware exempts 85% of a person's earnings from execution, the Chief Magistrate issued a form for the convenience of the justices of the peace outlining the method of calculating wages subject to attachment. Prior to January 1, 1981, this form directed garnishees to deduct and remit 15% of a debtor's gross wages. However, in 1980 CLASI strongly argued, and eventually persuaded the Chief Magistrate, that the attachable wages of a debtor should only be 15% of net earnings, i.e., those remaining after deduction of federal, state and local taxes. Accordingly, the Chief Magistrate issued a revised form for, calculating the exemption, so that garnishees were instructed to deduct 15% of the debtor's "disposable earnings". It became effective on January 1, 1981.

^{1.} Under 10 Del. C. §9202(c), the Chief Magistrate's duties are defined as follows:

In addition to the number of justices specified by \$9203 of this title, the Governor, by and with the consent of a majority of all the members elected to the Senate, shall appoint a justice of the peace who shall serve as Chief Magistrate and administrative head of the justice of the peace court system throughout the State.

The respective positions of the parties are best described by the following examples, using hypothetical figures which also ignore any federal restrictions on garnishment:

(a) The Chief Magistrate's interpretation, originally adopted at CLASI's urging, is based on the concept of "disposable earnings" as defined in the Consumer Credit Protection Act, 15 U.S.C. \$1601, et. seq. (1976), i.e., "that part of earnings . . . remaining after the deduction from those earnings of any amount required by law to be withheld". 15 U.S.C. \$1672(b) (1976). The result is:

\$150.00 - gross earnings

- 35.00 - tax deductions

- 17.25 - wage attachment (15% of \$115)

\$ 97.75 - take home pay

(b) The lenders' position is that the garnishing creditor automatically receives 15% of the employee's gross wages. The result is:

s150.00 - gross earnings

- 35.00 - tax deductions

- 22.50 - wage attachment (15% of \$150)

s 92.50 - take home pay

(c) CLASI's new position, which would defeat any garnishment in certain cases, is that 85% of the debtor's gross wages is exempt from garnishment. However, CLASI

concedes that the employer's obligation to withhold federal, state and local taxes is superior to the rights of any attaching creditor. The result is:

- \$150.00 gross earnings
- 35.00 tax deductions
 - 0.00 wage attachment (since 85% of \$150 is \$127.50, the latter is greater than the amount left after tax withholding and thus totally exempt)

\$115.00 - take home pay (which is less than 85% of \$150).

In defending the Chief Magistrate, the Attorney General also attacks the lenders' choice of mandamus as a means of redress. He notes that the Chief Magistrate's issuance of a policy directive, interpreting a particular aspect of Delaware law for the benefit of the justices of the peace, is a purely discretionary act. Hence, mandamus is not an appropriate remedy. Instead, the lenders should have appealed a judgment based on the challenged interpretation of the wage exemption statute. Thus, the courts would have addressed these issues in a specific case and controversy rather than the wholly questionable way they now arise.

Moreover, the Attorney General asserts, the lenders further muddled their case by arguing to the trial court that if mandamus was not appropriate, then the cause was properly

founded on a theory of prohibition. But, the Attorney General argues, prohibition is an extraordinary writ which is only available in the absence of a legal remedy, and for the sole purpose of preventing an inferior court or tribunal from exercising jurisdiction over matters not legally within its cognizance. To all of this the lenders seem to say that even if they are wrong, their case is saved by the debtors' intervention and counterclaim for a declaratory judgment.

II.

We first turn to the Attorney General's procedural objections, which cause us concern. Were it not for the important public policy questions involved, we would be inclined to accept the Attorney General's arguments and order this case dismissed on the grounds that neither mandamus nor prohibition are proper vehicles for questioning a judicial officer's interpretation of Delaware law. What is really in issue is not the Chief Magistrate's purely advisory interpretation of a Delaware statute [10 Del. C. §4913(a) & (c)], since his views expressed under such circumstances have no force or effect of law, but the legal effect given that interpretation by judgments of the justices of the peace in actual cases and controversies. The proper course was to appeal any judgments upon which the Chief Magistrate's advisory interpretations were based, thereby permitting the issues to be litigated between the real parties in interest.

Indeed, this was urged upon the lenders, but they apparently were determined upon their present riskier course.

A judge has no cognizable personal interest before a higher tribunal in seeking to have his rulings sustained. The same is true of the Chief Magistrate's performance of his duties in advising justices of the peace of his views on issues of Delaware law. Thus, it was just as wrong to join him as a party to an action challenging his wholly advisory statements as it would have been to make him a party to an appeal from a judgment he rendered.

From a legal standpoint it is difficult to conceive of a more unsuitable case for mandamus. The Chief Magistrate's issuance of the challenged policy directive was not occasioned by some mandatory ministerial function, but was an act of discretion pursuant to his powers-as administrative head of the Justice of the Peace Courts. This, alone, precludes any issuance of the writ of mandamus. State v.

McDowell, Del. Supr., 57 A.2d 94 (1947); Hastings v. Henry, Del. Supr., 40 A. 1125 (1894); Capital Educators Ass'n v.

Camper, Del. Ch., 320 A.2d 72 (1974).

As for prohibition, the lenders find themselves in very rough waters at the edge of a shoal. Clearly, the Justice of the Peace Courts have jurisdiction over these small claims, to issue judgments thereon and to grant execution process to enforce the same. Moreover, the Chief Magistrate acted well within his statutory authority under 10 <u>Del. C.</u>

S9202(c), supra, in advising the justices of the peace on Delaware law. Finally, there can be no doubt that the lenders had a clear and adequate legal remedy of taking a direct appeal from a judgment based on the Chief Magistrate's advisory opinions. Under such circumstances no viable action could be founded upon any theory of prohibition. Matushefske v. Herlihy, Del. Supr., 214 A.2d 883, 885 (1965); Canaday v. Superior Court, Del. Supr., 116 A.2d 678 (1955).

For many of the same reasons, we do not believe that the debtors' intervention and counterclaim for a declaratory judgment normally saves the day. Here, the disputed issues arose from judgments issued by courts of competent jurisdiction, all of which could be resolved by direct appeal of the lenders and debtors. Suit against a judicial officer to challenge his rulings, and correct his perceived error, is not a circumstance for which a declaratory judgment is available, under Delaware law (10 Del. C. \$6501 et. seq.). This is made clear by 10 Del. C. \$6511, which states in pertinent part:

"Parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, . . . " (Emphasis added).

As we have noted, a judicial officer has no cognizable interest in seeking to have his rulings or legal interpretations sustained. Unless real and adverse interests are present, there is no basis for invoking declaratory relief against one who has no role in contesting a claim. Rollins

International, Inc. v. International Hydronics Corp., Del.
Supr., 303 A.2d 660, 662-663 (1973).

However, we view the merits of this controversy to be of such public importance that we address them despite the patent irregularities by which the lenders and debtors got them here. Thus, our decision to decide the core issues should not be considered precedent for overcoming similar errors in any other cases.

III:

Turning to the substantive questions, we begin with certain well established principles of Delaware law. When a creditor seeks to satisfy a judgment by the seizure of a debtor's wages, the writ employed for that purpose is entitled "Attachment Fieri facias (Attachment fi. fa.)". The purpose of this writ is to execute upon the defendant's property which is not in his legal possession, but in that of another. 2 V. Woolley, Practice in Civil Actions and Proceedings in the Law Courts of the State of Delaware \$1152 (1906). This execution process requires the sheriff to attach the defendant by "all his goods and chattels, rights and credits, lands and tenements in whose hands or possession, soever, the same may be found . . . ". The authority for this is founded upon 10 Del. C. \$5031, which provides in pertinent part:

"The plaintiff in any judgment in a court of record, or any person for him lawfully authorized, may cause an attachment, as well as any other execution, to be issued thereon, containing an order for the summoning of garnishees, to be proceeded upon and returned as in cases of foreign attachment. The attachment, condemnation, or judgment thereof, shall be pleadable

in bar by the garnishee in any action against him at the suit of the defendant in an attachment. . . . "

Thus, when the property attached is not to be physically seized, but is in the possession or control of another, or if the thing to be attached is not such property as is susceptible of seizure, such as rights and credits, the sheriff must summon the person who has the goods, chattels, rights, credits, money or effects of the defendant in his possession, who is termed the garnishee, to appear at the court to which the writ is returnable, and declare what property of the defendant he has in his hands. Significantly, the writ of attachment fi. fa. is not served upon the defendant, but upon the garnishee. 2 V. Woolley, supra, at \$1162.

Therefore, a creditor's right to recover from the garnishee is derived from, and no greater than, the debtor's right to recover from the garnishee in an action at law. As Judge Woolley stated:

An attaching creditor stands in no better position than the defendant in the judgment, as to the collection of a debt due to the latter from the garnishee. The right of such creditor to recover from the garnishee depends upon the subsisting rights between the garnishee and the debtor in the attachment; and the test of the garnishee's liability is that he has funds. property or credits in his hands belonging to the debtor, for which the latter would have a right to sue. The garnishee stands in every respect in the same position as if the suit had been brought by his own creditor. When a debt is due from a garnishee to a judgment debtor by virtue of an agreement existing between them, the garnishee is entitled to avail himself of all the defenses that could be made against the party to whom the debt is owing and with whom the contract was made. . .

If a debtor can not compel a third party to pay money or deliver certain property to him in an action at law, his creditor has no greater claim by way of garnishment against that third party. This, then, is the measure by which a garnishee's liability to the creditor is determined.

Thus, we face the question whether amounts required to be deducted from an employee's wages by federal and state law for such items as income and social security taxes are beyond the reach of the writ of attachment fi. fa. Under the Social Security Act, an employer is required to collect his employee's portion of the federal insurance contributions tax (FICA) by "deducting the amount of the tax from the wages [of the taxpayer] as and when paid." 26 U.S.C. §3102(a) (1976).

In the case of income taxes "every employer making payment of wages shall deduct and withhold upon such wages" an amount to be applied to the employee's federal income tax , liability. 26 U.S.C. §3402(a). Indeed, if the employer retains the sums withheld, he is liable to the federal government for that amount, and as federal law also makes clear, the employer "shall be not liable to any person for the amount of (the tax deductions)." 26 U.S.C. §3403 (1976).

Delaware law is to the same effect. Thus, every employer within this State is required to "deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, insofar as practicable, in withholding from the employee's wages during each calendar year an amount substan-

tially equivalent to the tax reasonably estimated to be due from the employee" 30 <u>Del. C.</u> \$1151(a). The employer is required to remit such deductions to the Division of Revenue [30 <u>Del. C.</u> \$1154(a)].

Based upon these statutory requirements, when an employer "withholds the tax from an employee's wage and pays him the balance, the employee has been paid in full. He has received his full wage." United States Fidelity & Guaranty Co. v. United States, 201 F.2d 118, 120 (10th Cir. 1952). Likewise, employees have no claim for the amounts withheld for taxes. Aetna Casualty & Surety Co. v. Port of New York Authority, 182 F. Supp. 671, 674 (S.D.N.Y. 1960).

Relating this to the scope of an attachment fi. fa., the trial court ruled that the garnishment formula devised by the Chief Magistrate satisfies both the reasoning of Delaware law in the enforcement of judgments, and federal and state law mandating the withholding of FICA and income taxes. We agree.

If the employee has no claim against his employer for the sums withheld pursuant to federal and state law, clearly the lenders have no greater claim to such funds under an attachment fi. fa.

The lenders argue that the exemption statute [10 Del. C. §4913(a) & (c), supra] speaks of "wages," and if the legislature had meant it to apply only to "net" wages, then the law would have been explicit on the point. According to the lenders, the unmodified use of the term "wages" can only refer to gross,

rather than net, salary due an employee. But to give the statute that meaning would change the scope of the writ of attachment fi. fa. without any indication that such was the General Assembly's clear purpose. In view of the historic role of the writ, which has been a part of our statutory law for well over 100 years (see Del. Revised Code 1874, Ch. 111, sec. 45), coupled with the long-standing tax withholding laws, we must presume that in the absence of a specific legislative mandate, these statutes pertaining to the same subject are to be harmonized. Monroe Park v. Metropolitan Life Ins. Co., Del. Supr., 457 A.2d 734, 737 (1983). Thus, we apply the following principle of statutory construction to the wage exemption law:

In terms of legislative intent it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.

2A Sutherland, Statutes and Statutory Construction §51.02, at 290. (3d rev. ed. 1973).

The lenders argue that this principle is inapplicable because for many years the Justice of the Peace Courts interpreted the exemption statute to apply to gross wages. But as we have noted, this was clearly an erroneous view of the law which was corrected by the Chief Magistrate's present policy directive. If anything, this former interpretation resulted from a failure to

harmonize all statutory provisions on the subject. An error of law does not become justified by mere passage of time.

As for the debtors' position, the interpretation which they now seek to give the law is wholly at odds with the statutory scheme. The best guide in construing attachment and garnishment legislation is to give it a reasonable interpretation with due regard for both the rights of the creditor and the debtor. 3 Sutherland, Statutes and Statutory Construction §69.05, at 275 (3d rev. ed. 1973). As for the exemption statute, its obvious purpose is to protect a debtor and the debtor's family, but the rights of the creditor cannot be overlooked in the process of interpretation. Exemption statutes are neither intended to provide a means of fraud by which debtors escape their just obligations nor enacted to provide a windfall to the debtor. Their sole purpose is to provide the necessaries by which to earn and make a living. 3 Sutherland, Statutes and Statutory Construction §69.06, at 280. Nothing in the statutory scheme indicates that the legislature intended the exemption statute to preclude all attachments of certain debtors' wages, and for that reason, we cannot accept the position which, if adopted, would have that effect. If we are in error on this point, then we call the matter to the General Assembly's attention for its prompt correction.

While we consider the means by which the trial court reached its decision to have been questionable in view of the procedural irregularities here, we nonetheless conclude that the

