

AUDITOR OF STATE BULLETIN 99-012
June 25, 1999

TO: ALL MUNICIPAL & COUNTY COMMON PLEAS COURT CLERKS

SUBJECT: SUB. S.B. 170 (Eff. 3/30/99)

This bulletin addresses the effects of Sub. S.B. 170 on the accounting for the garnishee's fee that accompanies the required judgement creditor's affidavit at the beginning of the garnishment process as provided by Ohio Rev. Code §§ 2716.03 and 2716.04.

Prior to the enactment of Sub. S.B. 170, a judgment creditor or the judgment creditor's agent or attorney commenced a personal earnings garnishment proceeding by filing with the appropriate court a specified affidavit accompanied by a one dollar (\$1.00) fee for the employer's services in complying with the garnishment order. No part of the one dollar (\$1.00) fee was permitted to be charged as court costs. The practice for municipal and county common pleas courts was to accept checks, payable to the judgment debtor's employer, which were then forwarded to the employer. Because the one dollar fee was payable to the employer and the court received no monies payable to the court, the transaction was not recorded on the books of the court.

Sub. S.B. 170 does not substantively change the requirements for the affidavit that is filed to commence a personal earnings garnishment proceeding. However, it does require the affidavit to be made by the judgment creditor or the judgment creditor's attorney, no longer allowing the judgment creditor's agent to make the affidavit. The bill also increases the fee that must accompany the affidavit and that is paid to the judgment debtor's employer from one dollar (\$1.00) to ten dollars (\$10.00) and requires that the fee be charged as court costs.

Ohio Rev. Code § 2335.25 requires a clerk of a court to enter in a journal or cashbook an accurate account of all moneys collected or received in his official capacity, on the day of receipt, and in the order of time so received, with minute of the date and suit, or other matter, on account of which the money was received. Therefore, the garnishment fees should be recorded in the clerk of courts journal or cashbook.

The Auditor of State's Office has prescribed the following treatment for the ten dollar (\$10.00) employer's (garnishee's) fee. The check accompanying the judgment creditor's affidavit should be payable to the clerk of court and posted to a garnishee fee line item in the cash journal. The clerk of court should then immediately issue a check to the judgement debtor's employer with the garnishment order. As required by Sub. S.B. 170, the ten dollar fee (\$10.00) should then be charged as costs. To do this, the record of the case should be credited to reflect the deposit along with a corresponding assessment being made against the record of the case to reflect the payment to the employer and zero out the balance. This transaction will assure that the fee is accounted for on the books of the court and credited to the appropriate case.

If you have any questions about this bulletin, please contact the Legal Division at (800) 282-0370.