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TO: Colorado Supreme Court, Civil Rules Committee

FROM: Colorado Creditor Bar Association

DATE: April 9, 2020

RE: Wage Garnishment Forms & Rule Amendments Precipitated by HB19-1189

ATTACHMENT: Proposed Revisions to C.R.C.P. 103 and 403 (version 2 from sub-committee)

HISTORY & INTRODUCTION

Last year, the General Assembly passed House Bill 19-1189 reforming the wage garnishment process and taking effect on October 1, 2020. The Civil Rules Committee is now called upon to update both the applicable civil procedural rules (C.R.C.P. 103 and 403) and the corresponding court forms (JDF 26, 27 and 28) impacted by this legislation. To assist, a sub-committee, comprised solely of consumer-rights and collection industry advocates, was formed to review these items and make recommendations to this Committee, resulting in two separate and competing versions of the rules and forms being presented for consideration.

The Colorado Creditor Bar Association (CCBA), after reviewing these competing proposals, listening to this Committee's prior discussions on the topic,

and analyzing the statutory and legal frame work surrounding wage garnishment, urges adopting only the changes necessitated by the legislative reform and those that promote harmony and uniformity within the existing statutory scheme. To advance this proposition, the CCBA provides the Civil Rules Committee with the following information for this Committee's consideration.

EASY TO IMPLEMENT CHANGES

Enactment of HB 19-1189 mandates three easy-to-implement changes to the wage garnishment process. The first requires that the costs associated with employer-provided health insurance be exempted from the definition of *disposable earnings*; they will not be part of the calculation used to compute the wage attachment amount. *See*, C.R.S. §13-54.104(1)(a). The second change requires adjustments to the formulas used to calculate the attachable wages by reducing the current rate from twenty-five (25%) to twenty (20%) percent of disposable income and increasing the base level from thirty (30) to forty (40) times the federal¹ minimum hourly wage. *See*, C.R.S. §13-54-104(2)(a). Finally, the law requires the addition of a specific disclosure notice, in a substantially similar form to that which is recited within the statutory text, be provided by the Garnishee (i.e. Employer) to the judgment debtor prior to the wage attachment. *See*, C.R.S. §13-54.5-105.

To implement these three changes, only a few minor language revisions are needed in the existing forms, JDF26, JDF 27 and JDF 28. Both proposals of

¹ The law specifies whichever minimum wage, state or federal, that is the lowest. Presently, the state's minimum wage is higher than the federal minimum wage.

the sub-committee include these revisions; however, they also include additional textual elements that are unnecessary and increase the burden on employers, creditors, judgment debtors and judicial officers and their staff. Generally, those groups have become familiar with the existing documents over the previous decade; major changes in the forms would likely add to confusion.

AVOID ADOPTING SUPERFLUOUS TEXT

To prevent any unnecessary obfuscation and complications, the CCBA, unlike the Garnishment sub-committee, does not support the inclusion of those additional textual elements which are not needed to implement the recent legislative reforms. The inclusion of this superfluous language, which is present through the sub-committee's proposals, simply is not needed or justified by the legislative changes. The Judiciary should avoid intruding upon the legislative arena with the addition of unnecessary language. These textual additions also lengthen the forms, making them increasingly difficult to understand, especially by the judgment debtors, who are often *pro se* and unfamiliar with the legal system. Further, these longer forms place an increased burden on the innocent businesses—that were never afforded a seat on the sub-committee—by increasing the uncompensated time and energy expenditures needed to review and complete the longer garnishment forms that will be routinely served upon their organizations.

PROMOTE HARMONY AND UNIFORMITY THROUGH CLARIFICATION

Easily the most significant reform arising from the enactment of HB19-1189 is the creation of a new exemption applicable only to wage garnishments. Essentially, this exemption allows courts to reduce further the rate of wage garnishment when an individual establishes, through objective supporting documentary evidence, a case of financial hardship preventing them from being able to pay their actual and necessary living expenses. *See*, C.R.S. §13-54-104(2)(a)(I)(D).

Once raised, courts must, within fourteen (14) days of the judgment debtor's filing, set an evidentiary hearing – a requirement under the existing garnishment laws. *See*, C.R.S. §13-54.5-109(1)(a). This mandatory hearing concludes with the court determining whether the judgment debtor has met their burden of proof, and a reduction in the amount of disposable earnings subject to garnishment is justified. *See*, C.R.S. §13-54.5-109(2).

To implement changes in response to this newly created exemption, while maintaining uniformity and harmony within the overall statutory scheme and existing garnishment processes, the existing forms and rules must clearly identify this hardship wage garnishment reduction as an *exemption* applicable only to wage garnishments, as the Legislature specified in the text of C.R.S. §13-54.5-104(2)(a)(I)(D). Failure to make this clarification increases litigation expenses needlessly, delays resolution of judgments, and strains judicial resources. The subcommittee's explanation of the issue and competing versions blurs the important distinction between a claim of exemption and an objection to calculation of the amount of exempt earnings. Clarification on this issue will

reduce the number of hearings the courts are required to hold; a claim of exemption may typically be raised only once per garnishment term. Conversely, objections to calculation of exempt earnings, the means of redressing mathematical and computational errors made by Garnishees/Employers during the wage garnishment term, can be asserted each withholding cycle – generally affording a judgment debtor that is paid bi-monthly twelve separate hearing opportunities per writ term (182 days). *See*, §13-54.5-108(1)(a).

Clarifying that the reduction in wage garnishment is an exemption further promotes judicial uniformity and access to justice by eliminating confusion over the deadlines that judgment debtors, often *pro se* and unfamiliar with the laws and court rules, must generally comply with for their claims or objections to be viable; these time frames significantly differ under C.R.S. §13-54.5-108(1). Clarification on this point would also serve to advance the concept of finality of judgments, ensuring only one hearing and judicial ruling on the newly created hardship exemption per garnishment term (182 days). Of course, a judgment debtor may be entitled to raise a claim of exemption again during the same term if they can bring their claim under C.R.S. §13-54.5-108(3). This provision was created by the Legislature when excusable or unforeseen events impede a judgment's debtor's ability to seek relief in the normal time frame set in C.R.S. §13-54.5-108(1).

Although the Garnishment sub-committee has presented two separate proposals for the Civil Rules Committee's consideration, only the version of the rule that properly classifies the new wage garnishment reduction as an exemption

comports with intentions of the Legislature as set forth in C.R.S. §13-54.5-104(2)(a)(I)(D). This version is the only one that fits within the existing statutory framework and promotes harmony and uniformity within garnishment process, since the only purpose of an objection to calculation was to redress computational errors—which a financial hardship is not. *See*, C.R.S. §13-54.5-108(1)(a). It is, therefore, this version, a copy of which is attached hereto, that the CCBA urges the Civil Rules Committee to adopt.

CONCLUSION

To effectuate the reforms adopted by the General Assembly in House Bill 19-1189, it is incumbent upon the Civil Rules Committee to make amendments to the existing garnishment rules (C.R.C.P. 103 and 403) and forms (JDF26, JDF 27 and JDF 28). Three of the changes required by these reforms can easily be accomplished by making minor language revisions to the existing forms. To prevent interfering with the comprehensibility of these forms, the adopted amendments should be limited to the minimum necessary to effectuate the reforms while avoiding the encumbrances associated with the inclusion of superfluous text, which is detrimental to both judgment debtors and their employers that routinely have these forms served upon them. Additionally, the corresponding garnishment rules, C.R.C.P. 103 and 403, must clarify that the statutory text of C.R.S. §13-54.5-104(2)(a)(I)(D) identifies the reduction to the wage garnishment rate as an exemption, not an objection to calculation.

Failure to adopt these clarifications strains already limited judicial resources, limits access to justice by creating needless confusion, conflicts with

the existing statutory scheme, and undermines the finality of any court ruling on this newly created exemption. Accordingly, the CCBA now encourages the Committee to review the proposals submitted by the sub-committee and pare down the recommendations to only those necessary to implement these new reforms in a harmonious and uniform means within the existing statutory scheme applicable to wage garnishments.

C.R.C.P. 103

This document reflects changes received through December 9, 2019.

**CO - Colorado Local, State & Federal Court Rules > COLORADO RULES OF CIVIL PROCEDURE
> CHAPTER 13 SEIZURE OF PERSON OR PROPERTY > SEIZURE OF PERSON OR PROPERTY**

Rule 103. Garnishment.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) Definitions.

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Continuing Garnishment and Related Forms. A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 26, C.R.C.P. It shall also include at least one (1) "Calculation of Amount of Exempt Earnings" form to be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(c) When Writ of Continuing Garnishment Issues. After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request of the judgment creditor. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Continuing Garnishment. A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with *C.R.C.P. 4*, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) Jurisdiction. Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period.

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying

C.R.C.P. 103

judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.

(3) If a writ of garnishment for support pursuant to *C.R.S. 14-14-105* is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

(g) Exemptions. A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the Exemption Chart contained in the writ.

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings [that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor](#) and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings [or For Reduction of Withholding Pursuant to Section 13-54-104\(2\)\(a\)\(I\)\(D\)](#)" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), to the judgment debtor [not later than 7 days after the garnishee is served with the writ of continuing garnishment](#)~~at the time the judgment debtor receives earnings for the first pay period affected by such writ.~~

(2) For all pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings and the "Judgment Debtor's Objection to the Calculation of Amount of Exempt Earnings" to the judgment debtor at the time the judgment debtor receives earnings for that pay period.

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings [or object and request an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#) A judgment debtor's objection to calculation of exempt earnings [or objection and request for an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#), shall be in accordance with Section 6 of this rule.

(j) Suspension. A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file ~~the answer to the writ of continuing garnishment~~ with the clerk of the court and send a copy to the judgment creditor no less than 7 ~~nor more than 14~~ days [after the garnishee is served with the writ of continuing garnishment a response to the writ of continuing garnishment pursuant to section 13-54.5-105\(5\), C.R.S.](#)~~following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less.~~ However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall [send such response to the attorney or licensed collection agency](#)~~pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.~~

[\(2\) In the event the response required by Section 1\(k\)\(1\) of this rule is filed and served pursuant to section 13-54.5-105\(5\)\(b\), C.R.S., the garnishee shall begin garnishment of the disposable](#)

earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of continuing garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(32) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(43) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(l)(D), C.R.S., is filed by the judgment debtor within 217 days after the garnishee was served with the writ of continuing garnishment~~judgment debtor received earnings for a pay period,~~ the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) Definition. "Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."

(b) Form of Writ With Notice and Claim of Exemption. A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(c) When Writ With Notice Issues. After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.

(d) Service of Writ With Notice.

(1) Service of a writ with notice shall be made in accordance with *C.R.C.P. 4*.

(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with *C.R.S. 13-54.5-107 (2)*.

(e) Jurisdiction. Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.

(f) Claim of Exemption. A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

(h) Disbursement by Clerk of Court. The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

(i) Automatic Release of Garnishee. If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than \$50.00 and no traverse has been filed, the garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within 182 days from the date of service of such writ.

SECTION 3 WRIT OF GARNISHMENT FOR SUPPORT**(a) Definitions.**

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.

(2) "Earnings" shall be as defined in Section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Garnishment for Support. A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17A, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P.

(c) When Writ of Garnishment for Support Issues. Upon compliance with *C.R.S. 14-10-122 (1)(c)*, a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment for Support. Service of a writ of garnishment for support shall be in accordance with *C.R.C.P. 4*.

(e) Jurisdiction. Service of a writ of garnishment for support upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period and Priority.

(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.

(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.

(g) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.

(h) Disbursement of Garnished Earnings. The family support registry or the clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4 WRIT OF GARNISHMENT -- JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) Definition. "Writ of garnishment -- judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by a garnishee for payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment -- other than natural person."

(b) Form of Writ of Garnishment -- Other Than Natural Person. A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17A, Form 32, C.R.C.P.

(c) When Writ of Garnishment -- Other Than Natural Person Issues. When the judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the judgment creditor may garnish personal property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment -- Other Than Natural Person. Service of the writ of garnishment -- other than natural person shall be made in accordance with *C.R.C.P. 4*. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) Jurisdiction. Service of the writ of garnishment -- other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5 WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) Definition. "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a garnishee. For purposes of this rule, such writ is designated "writ of garnishment in aid of attachment."

(b) Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy. A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17A, Form 34, C.R.C.P.

(c) When Writ of Garnishment in Aid of Attachment Issues. At any time after the issuance of a writ of attachment in accordance with *C.R.C.P. 102*, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) Service of Writ of Garnishment in Aid of Attachment. Service of the writ of garnishment in aid of attachment shall be made in accordance with *C.R.C.P. 4*. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by *C.R.S. 13-55-102*. If the defendant in attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) Jurisdiction. Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer.

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall enter judgment in favor of the defendant in attachment/judgment debtor and against the garnishee for the use of the plaintiff in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING**(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.**

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection to the calculation of exempt earnings is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.

(4) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. Such objection and request must be filed within 14 days after receipt by the judgment debtor of a copy of the writ of continuing garnishment. ~~or receipt of the calculation of exempt earnings for any pay period subsequent to the first pay period when the judgment debtor's earnings were subject to garnishment.~~

~~(53)~~ The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

~~(64)~~ The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

~~(75)~~ Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2 (d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) Hearing on Objection or Claim of Exemption.

(1) Upon the filing of an objection pursuant to Section 6 (a) of this rule or the filing of a claim of exemption pursuant to Section 6 (b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

(2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.

(3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.

(4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.

(5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), [Section 6\(a\)\(4\)](#) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6 (a)(2) and Section 6 (b)(1).

(3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated or if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.

(e) Reinstatement of Judgment Debt. If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6 (c)(5) and 6

(d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7 FAILURE OF GARNISHEE TO ANSWER (ALL FORMS OF GARNISHMENT)

(a) Default Entered by Clerk of Court.

(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 42 days after service of a writ of garnishment upon the garnishee.

(b) Procedure After Default of Garnishee Entered.

(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.

(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with *C.R.C.P. 45* and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8 TRAVERSE OF ANSWER (ALL FORMS OF GARNISHMENT)

(a) **Time for Filing of Traverse.** The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) Procedure.

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with *C.R.C.P. 5*.

C.R.C.P. 103

(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.

(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with *C.R.C.P. 45*, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9 INTERVENTION (ALL FORMS OF GARNISHMENT)

Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in *C.R.C.P. 24* at any time prior to entry of judgment against the garnishee.

SECTION 10 SET-OFF BY GARNISHEE (ALL FORMS OF GARNISHMENT)

Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11 GARNISHEE NOT REQUIRED TO DEFEND CLAIMS OF THIRD PERSONS (ALL FORMS OF GARNISHMENT)

(a) **Garnishee With Notice.** A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) **Court to Issue Summons.** When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in *C.R.C.P. 12* to answer, set up, and assert a claim or be barred thereafter.

(c) **Delivery of Property by Garnishee.**

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the

service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to *C.R.C.P. 4*, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12 RELEASE AND DISCHARGE OF GARNISHEE (ALL FORMS OF GARNISHMENT)

(a) Effect of Judgment. A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) Effect of Payment. Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1 (k)(2) or 3 (g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) Release by Judgment Creditor or Plaintiff in Attachment. A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

EFFECTIVE DATE OF THIS RULE AND AMENDMENTS TO THIS RULE

SECTION 13

GARNISHMENT OF PUBLIC BODY (ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

Repealed October 31, 1991, effective November 1, 1991.

History

Source: Section 1(a)(2) and section 3(a)(2) amended, section 3(a)(2) committee comment added, and effective date repealed October 31, 1991, effective November 1, 1991; section 1(k)(1), (k)(2) and (l) amended and (m) added, section 6(a)(3), (a)(4), and (a)(5) amended, section 7(a)(1) amended, and section 12(b) amended and adopted October 30, 1997, effective January 1, 1998; entire section amended and adopted June 28, 2001, effective August 8, 2001; section 3(g) and (h) amended and adopted January 13, 2005, effective February 1, 2005; section 1(k)(1) and (k)(2) amended and effective November 18, 2010; section 1(f)(1), (k)(1), (k)(2), and (l)(1), section 2(g)(2) and (g)(4), section 3(g), section 6(a)(1), (a)(2), (b)(1), and (c)(1), section 7(a)(2), and section 8(a) amended and adopted December 14, 2011, effective July 1, 2012; section 2(g)(2) and (g)(4) corrected June 15, 2012, nunc pro tunc, December 14, 2011, effective July 1, 2012; section 2(g)(1) amended and effective June 7, 2013; section 4(f) amended and adopted January 29, 2016, effective March 1, 2016; section 1(b), (c), (g), (h)(1), (h)(2), (k)(1), (k)(2), (l)(1), and (l)(2), section 2(i), section 6 IP(d), (d)(1), and section 7(a)(2) amended and adopted January 12, 2017, effective March 1, 2017.

Annotations

Notes

Cross references:

For the minimum amount upon which garnishment shall issue, see § 13-52-108, C.R.S.; for group life insurance policy being exempt from garnishment, see § 10-7-205, C.R.S.; for provisions concerning service of process, see *C.R.C.P. 4(e)*; for presentation of defenses, see *C.R.C.P. 12*; for intervention, see *C.R.C.P. 24*.

Case Notes

I. General Consideration.

II. Provisions Applicable to All Forms of Garnishment.

III. Specific Forms of Garnishment.

Law reviews.

Garnishment is a deprivation of defendant's property,

The whole object of garnishment is to reach effects or credits in the garnishee's hands,

Garnishment is strictly a statutory remedy.

Garnishment proceedings cannot be sustained if they go beyond statute.

Garnishment proceedings fall under the equity arm of a court,

Writ of garnishment must be specific as to debtor.

When garnishment proceeding considered "determined".

This rule has no provision for release of cash.

Attorneys' fees not permitted in garnishment.

This rule creates an exception to the American rule in garnishment actions;

This rule is not applicable to spendthrift provisions of a will.

The intent of congress that social security benefits be exempt from seizure is not undercut or in any way compromised by this rule.

Amendment of answer.

Pending appellate review does not convert a judgment to a contingent liability or to a debt owing in the future.

Stay of further garnishment proceedings until garnished judgments were no longer subject to stays of execution is the proper procedure

A liability is not contingent

Unless a notice of garnishment properly runs with an accurate and sufficiently specific description against the individual to whom the garnishee may be indebted,

II. PROVISIONS APPLICABLE TO ALL FORMS OF GARNISHMENTS.

Annotator's note.

Before the turn of the century it was impossible to seize a debt owed by a nonresident garnishee

Under the present rule for garnishment, a court has jurisdiction for garnishment of a debt

Writ of garnishment can only be issued after issuance of a writ of attachment.

However, a proceeding by garnishment, though an independent suit, is auxiliary

A judgment is hypothetical when taken in advance

The issuance of a post-judgment writ of garnishment without a writ of execution is one alternative

When the principal judgment has been obtained, the validity of the judgment against the garnishee depends upon the validity of the judgment against the defendant.

Without jurisdiction of the defendant and a judgment against him, a judgment against the garnishee is void,

Garnishment is proper only after a valid judgment has been entered.

In the absence of statute, if the assessment or demand has not been previously made

Garnishee cannot be placed in a worse position than if defendant enforced his own claim.

Writ of garnishment impounds all moneys held by garnishee

A sheriff is not required to make diligent search for other property of defendant before writ may issue.

C.R.C.P. 103

An indebtedness only can be made the subject of garnishment,

Garnishment applies only to contracts and not to tort actions.

A court should dismiss the action when it appears beyond question that the action sounds in tort.

A tort claim cannot be adjudicated in a garnishment procedure,

Since there is nothing in an insurance policy, either expressly or impliedly, making a garnisher privy in contract with an insured,

Where one, for a valuable consideration, has assumed the obligation of another, he may be held liable as garnishee,

A widow's allowance is subject to garnishment.

A plaintiff in garnishment does not stand in the position of a purchaser in good faith

A garnishment proceeding cannot displace prior valid and bona fide existing right

For example, an attorney's lien is prior and superior to any right

Garnishment under executions is properly subordinated to garnishment under writs of attachment theretofore served

A creditor accepting provisions of assignment cannot reach funds of sale through garnishment.

Contingent liabilities are not garnishable.

Annotator's note.

Creditor must proceed in state where employment services rendered.

The fact that the employer is a railroad company operating a line through different states does not change this rule.

Where an order for a widow's allowance and service of garnishment summons affecting the same are made on the same day,

Content of summons not prescribed.

Writ of garnishment served upon garnishee is insufficient

A writ of garnishment pursuant to this rule and *C.R.C.P. 403* provides a judgment creditor with an efficient mechanism for garnishing property to satisfy a proper judgment,

Garnishment cannot be extended by construction to cases which are not within both its letter and spirit,

Where a garnishee is doing business within Colorado, service of a writ of garnishment upon it at its place of business properly brings it within the jurisdiction

Where it is claimed that the court does not have jurisdiction, but there was a judgment and execution in the main cause,

A garnishment can reach only such property as belongs to the debtor.

This rule shows an intent that every sort of interest of the debtor might be garnished.

The assertion by a garnishee of a jurisdictional defense

Dormancy of judgment in foreign state does not defeat rights of creditor under this rule.

Law reviews.

Absence of a creditor-debtor relationship between judgment debtor and garnishee

Garnishee is entitled to an evidentiary hearing concerning the validity of the garnished debt

Failure to comply with a court order does not supercede requirement to set a hearing.

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A garnishee's answer is made with reference to the facts existing

If, at that time, the garnishee owes the defendant a debt,

If, at that time, he is not indebted

Garnishee is not answerable for effects of the defendant coming into his hands, or indebtedness accruing from him to the defendant, after the garnishment.

It is only where the answer of a garnishee shows that he is indebted

In order to charge him upon his answer,

Where his answer is a substantial denial of indebtedness,

A delivery by the garnishee to the sheriff can be ordered only where

"Supplemental answer" held no answer at all where time to answer exhausted.

Note properly turned over to sheriff.

A contingent liability is not garnishable.

Payment to creditor's attorneys is payment to creditor.

Default for failure of garnishee "to answer or pay"

Annotator's note.

Previously, an order denying a motion to discharge a garnishee for failure of plaintiff to traverse answer of garnishee within required period was not appealable

Still garnishee cannot take advantage of his own delay.

A traverse stating only conclusions of law and not facts is insufficient.

The answer of the garnishee and the traverse of the plaintiffs are the only pleadings provided by this rule, and make up the issues in garnishment proceedings.

Any new matter pleaded in the traverse is deemed to be denied or avoided.

Where the garnishee has no opportunity to plead to a reply

A partner may set up nonjoinder of copartner as a defense.

Subsection 8(b)

An award of attorney fees

An award of attorney fees, costs, and expenses under section 8(b)

Annotator's note.

This section 9 is not mandatory,

In garnishment proceedings, intervention is governed by this rule

Allegations of the petition in intervention held sufficient to make out a prima facie case for intervening assignee.

With denial of right of intervention constituting reversible error.

Where in due time.

It is error for a trial court to quash a garnishment where

An intervention by definition involves third parties,

Law reviews.

Annotator's note.

By this section a garnishee is allowed to retain or deduct

Garnishee may plead as a defense or set-off

Garnishee is not to be placed in a worse position.

Bank receiver was entitled to set-off compensation due him.

A garnisheed bank may apply the amount on deposit to the credit of a debtor

Agreement after service of writ would be void.

Garnishee bank is entitled to claim set-off

Landlord's lien.

The rights and liabilities of a garnishee are to be determined as of the date of the garnishment

It is unreasonable to require a garnishee to claim a set-off immediately upon service of the writ of garnishment;

It is the responsibility of the trial court to determine the amounts and reasonableness of set-offs,

Law firm had statutory charging lien on settlement proceeds.

Annotator's note.

This section puts burden on claimant

When a garnishee in his answer states that a third party claims property in his possession

However, this rule refers to answers in good faith,

Payment to one other than judgment debtor held improper.

It is not essential that notice of an assignment be given in advance to a garnishee,

If, during the pendency of garnishment proceedings, it is established that an assignment of the subject-matter antedating the garnishment was actually executed,

A creditor is entitled to a fund owing defendant by his employer as against the claims of another creditor of which he had no notice

Once a third-party claimant has conceded that the disputed property may be garnished by a creditor,

A judgment in the principal proceeding is presumptively valid

Such judgment when not superseded by virtue of a failure to furnish the required bond

The reversal of a judgment upon which a garnishment is based leaves nothing

If the original judgment is reversed, a judgment in garnishment is deprived of a basis

The existence of a valid judgment is a jurisdictional prerequisite

Where the judgment in the main case has been reversed,

Since garnishee's liability is not established.

Court approval not required.

Law reviews.

Past-due child support payments in themselves constitute debt.

Amount defendant admittedly owed for past-due child support may be garnished by bank

Foreclosure sale excess proceeds

Law firm had statutory charging lien on settlement proceeds.

C. R.C.P. 102, this rule, and § 4-8-112 may be harmonized

ANNOTATION

I. General Consideration.

II. Provisions Applicable to All Forms of Garnishment.

A. When Writ Issues.

B. Service of Writ.

C. Jurisdiction.

D. Objection of Judgment Debtor - Exemptions.

E. Answer.

F. Traverse of Answer.

G. Intervention.

H. Set-off.

I. Claims of Third Persons.

J. Release and Discharge.

K. Disbursement of Funds.

III. Specific Forms of Garnishment.

Law reviews.

For article, "Seizure of Person or Property: Rules 101-104", see 23 Rocky Mt. L. Rev. 603 (1951). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962).

Garnishment is a deprivation of defendant's property,

or right to the use of his property. [*Bernhardt v. Commodity Option Co.*, 187 Colo. 89, 528 P.2d 919 \(1974\)](#), cert. denied, 421 U.S. 1004, 95 S. Ct. 2406, 44 L. Ed. 2d 673 (1975).

The whole object of garnishment is to reach effects or credits in the garnishee's hands,

and to subject them to the payment of such judgment as the plaintiff may recover against the defendant. It results necessarily that there can be no judgment against the garnishee until judgment against the defendant shall have been recovered. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

Garnishment is strictly a statutory remedy.

Troy Laundry & Mach. Co. v. City & County of Denver, 11 Colo. App. 368, 53 P. 256 (1898); [Black v. Plumb, 94 Colo. 318, 29 P.2d 708](#), 91 A.L.R. 133 (1934).

The remedy of garnishment was unknown at common law and exists only by reason of statute or rules of procedure enacted pursuant to statutory authority. [Worcester v. State Farm Mut. Auto. Ins. Co., 172 Colo. 352, 473 P.2d 711 \(1970\)](#).

Garnishment proceedings cannot be sustained if they go beyond statute.

[State v. Elkins, 84 Colo. 409, 270 P. 875 \(1928\)](#).

Garnishment proceedings fall under the equity arm of a court,

the purpose being to summarily reach ordinarily nonleviable evidences of debt, to prevent the loss or dissipation of such assets, to determine the ownership of such funds, and to provide for the equitable distribution thereof, such being triable by the court and not by a jury. [Worcester v. State Farm Mut. Auto. Ins. Co., 172 Colo. 352, 473 P.2d 711 \(1970\)](#); [Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC, 37 P.3d 485 \(Colo. App. 2001\)](#).

Writ of garnishment must be specific as to debtor.

Berns, Clancy & [Associates v. Bank of Boulder, 717 P.2d 1022 \(Colo. App. 1986\)](#).

When garnishment proceeding considered "determined".

A garnishment proceeding may not be considered "determined" until decisions regarding the rights of parties to the action can be made, and nothing but ministerial functions remain to be done. [Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 \(1978\)](#); *In re Seay*, 97 Bankr. 41 (Bankr. D. Colo. 1989).

Until the time for filing an exemption under § 13-54-106 expires, the garnishment proceedings are not determined. [Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 \(1978\)](#); *In re Seay*, 97 Bankr. 41 (Bankr. D. Colo. 1989).

This rule has no provision for release of cash.

This rule relates to garnishment and has no provision similar to C.R.C.P. 102 for release of cash in the hands of a garnishee. [Phoenix Assurance Co. v. Hughes, 367 F.2d 526 \(10th Cir. 1966\)](#).

Attorneys' fees not permitted in garnishment.

Neither this rule nor any other section or rule permits award of attorneys' fees for the garnishee in a garnishment. [Commercial Claims, Ltd. v. First Nat'l Bank, 649 P.2d 736 \(Colo. App. 1982\)](#).

This rule creates an exception to the American rule in garnishment actions;

hence, the trial court was authorized to make an award of attorney fees. [Hoang v. Monterra Homes \(Powderhorn\) LLC, 129 P.3d 1028 \(Colo. App. 2005\)](#), rev'd on other grounds sub nom. [Hoang v. Assurance Co. of Am., 149 P.3d 798 \(Colo. 2007\)](#).

This rule is not applicable to spendthrift provisions of a will.

[Brasser v. Hutchison, 37 Colo. App. 528, 549 P.2d 801 \(1976\)](#).

Funds under the control of a trustee subject to spendthrift provisions cannot be garnished. [Brasser v. Hutchison, 37 Colo. App. 528, 549 P.2d 801 \(1976\)](#).

The intent of congress that social security benefits be exempt from seizure is not undercut or in any way compromised by this rule.

[Ortiz v. Valdez, 971 P.2d 1076 \(Colo. App. 1998\).](#)

Amendment of answer.

Although this section is silent as to whether answers filed to a writ of garnishment may be amended, the guiding principle is that where the adverse party has not changed his position based on the original answer, the court, in its discretion should freely grant amendments. [Brown v. Schumann, 40 Colo. App. 336, 575 P.2d 443 \(1978\).](#)

Where the inability to amend would entirely foreclose the requesting party's case, and where the opposing party could show no prejudice to his case from the proposed amendment (other than the "prejudice" of having the garnishment determined on its merits), and where no prejudice to the court itself was evident from the record, the trial court abuses its discretion in ignoring the garnishee's amended answer. [Brown v. Schumann, 40 Colo. App. 336, 575 P.2d 443 \(1978\).](#)

Pending appellate review does not convert a judgment to a contingent liability or to a debt owing in the future.

Shawn v. 1776 Corp., 787 P.2d 183 (Colo. App. 1989).

Stay of further garnishment proceedings until garnished judgments were no longer subject to stays of execution is the proper procedure

and fully protects the interests of both garnishee and garnishor. Shawn v. 1776 Corp., 787 P.2d 183 (Colo. App. 1989).

A liability is not contingent

merely because the garnishee disputes whether it breached its contract with the debtor. [Walk-In Med. Centers, Inc. v. Breuer Capital Corp., 778 F. Supp. 1116 \(D. Colo. 1991\).](#)

Unless a notice of garnishment properly runs with an accurate and sufficiently specific description against the individual to whom the garnishee may be indebted,

a garnishee is totally unaffected by the notice served upon him. [Anderson Boneless Beef v. Sunshine Health Care Center, Inc., 852 P.2d 1340 \(Colo. App. 1993\).](#)

Applied in [Stone v. Chapels for Meditation, Inc., 33 Colo. App. 346, 519 P.2d 1233 \(1974\).](#)

II. PROVISIONS APPLICABLE TO ALL FORMS OF GARNISHMENTS.

Annotator's note.

Since section (b) of this rule was similar to § 129 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Before the turn of the century it was impossible to seize a debt owed by a nonresident garnishee

to a principal defendant where the court had no jurisdiction over the situs of the debt. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\).](#)

Under the present rule for garnishment, a court has jurisdiction for garnishment of a debt

upon obtaining jurisdiction over the garnishee. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\)](#).

Writ of garnishment can only be issued after issuance of a writ of attachment.

[Bernhardt v. Commodity Option Co., 187 Colo. 89, 528 P.2d 919 \(1974\)](#), cert. denied, 421 U.S. 1004, 95 S. Ct. 2406, 44 L. Ed. 2d 673 (1975).

However, a proceeding by garnishment, though an independent suit, is auxiliary

to the main suit. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

A judgment is hypothetical when taken in advance

of a judgment in the main suit, as it is dependent upon a judgment subsequently obtained. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

The issuance of a post-judgment writ of garnishment without a writ of execution is one alternative

authorized by *C.R.C.P. 69(a)*. *Warner/Elektra/Atlantic Corp. v. B & R Record & Tape Merchandisers, Inc.*, 40 Colo. App. 179, 570 P.2d 1320 (1977).

When the creditor and debtor have already participated in a complete hearing on the merits of the debt, as is the case with post-judgment garnishment, there is no due process advantage to be gained by forcing the garnishor to file an additional writ. *Warner/Elektra/Atlantic Corp. v. B & R Record & Tape Merchandisers, Inc.*, 40 Colo. App. 179, 570 P.2d 1320 (1977).

When the principal judgment has been obtained, the validity of the judgment against the garnishee depends upon the validity of the judgment against the defendant.

McPhee v. Gomer, 6 Colo. App. 461, 41 P. 836 (1895).

Without jurisdiction of the defendant and a judgment against him, a judgment against the garnishee is void,

and its payment will not protect the garnishee. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

Garnishment is proper only after a valid judgment has been entered.

[W. Med. Prop. Corp. v. Denver Opportunity, Inc.](#), 482 F. Supp. 1205 (D. Colo. 1980).

If the debtor could bring an immediate action to recover the debt from the garnishee, then the debt is due and payable within the meaning of the rule. [Martinez v. Dixon](#), 710 P.2d 498 (Colo. App. 1985); *Flanders Elec. v. Davall Controls & Eng.*, 831 P.2d 492 (Colo. App. 1992).

In the absence of statute, if the assessment or demand has not been previously made

in accordance with law, the garnishee is not liable. [Universal Fire Ins. Co. v. Tabor](#), 16 Colo. 531, 27 P. 890 (1891).

Garnishee cannot be placed in a worse position than if defendant enforced his own claim.

In the absence of fraud between defendant and a garnishee, the latter cannot be placed, through garnishment proceedings, in a worse position than if defendant's claim were enforced by defendant himself. [Universal Fire Ins. Co. v. Tabor](#), 16 Colo. 531, 27 P. 890 (1891).

Writ of garnishment impounds all moneys held by garnishee

and owing to the judgment debtor as of the date the writ is served. [Graybar Elec. Co. v. Watkins Elec. Co., 626 P.2d 1157 \(Colo. App. 1980\)](#), rev'd on other grounds, [662 P.2d 1064 \(Colo. 1983\)](#).

The trial court obtains jurisdiction over all the monies held by garnishee which are owing to the judgment debtor on the date of the service of the writ of garnishment. [Martinez v. Dixon, 710 P.2d 498 \(Colo. App. 1985\)](#).

A sheriff is not required to make diligent search for other property of defendant before writ may issue.

E. I. Du Pont De Nemours & [Co. v. Lednum, 82 Colo. 472, 260 P. 1017 \(1927\)](#).

An indebtedness only can be made the subject of garnishment,

and, in order that a liability may be an indebtedness within the meaning of the law, it must arise out of contract. Lewis v. City & County of Denver, 9 Colo. App. 328, 48 P. 317 (1897).

Garnishment applies only to contracts and not to tort actions.

The controlling characteristic of the remedy by garnishment is that the liability of the garnishee must originate in, and be dependent on, contract. A right of action for a tort is not, therefore, the subject of garnishment in most jurisdictions. A claim in tort, not reduced to judgment, is not a debt within the meaning of the statutes in reference to garnishment. And the rule is the same where as between the tortfeasor and the person to whom the wrong was done the latter might at his option either hold the tortfeasor to his liability in tort, or, waiving the tort, treat him as his debtor, since the creditor of the wronged person is not at liberty to exercise this option in his place and so evade the general rule as to garnishment of claims in tort by substituting therefor a liquidated claim "quasi ex contractu". [Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\)](#).

A court should dismiss the action when it appears beyond question that the action sounds in tort.

[Donald Co. v. Dubinsky, 74 Colo. 128, 219 P. 209 \(1923\)](#); [Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\)](#).

A tort claim cannot be adjudicated in a garnishment procedure,

for to do so compels the garnishee to enter into combat with an adversary other than its own and do battle with one who had never had any contract relation with him. Steen v. Aetna Cas. & [Sur. Co., 157 Colo. 99, 401 P.2d 254 \(1965\)](#).

Since there is nothing in an insurance policy, either expressly or impliedly, making a garnisher privy in contract with an insured,

a stranger to the insurance policy involved, as a garnisher, can have no claim against the company, as garnishee, unless and until such transpires. Steen v. Aetna Cas. & [Sur. Co., 157 Colo. 99, 401 P.2d 254 \(1965\)](#).

Where one, for a valuable consideration, has assumed the obligation of another, he may be held liable as garnishee,

and it is not necessary that the garnishee hold tangible real or personal property of the debtor, for the assumption of the debts of another when in proper form is a right, credit, or chose in action required to be reported in garnishment proceedings. [Field Family Constr. Co. v. Ryan, 145 Colo. 598, 360 P.2d 110 \(1961\)](#).

A widow's allowance is subject to garnishment.

Isbell-Kent-Oakes Dry Goods Co. v. Larimer County Bank & [Trust Co., 75 Colo. 451, 226 P. 293 \(1924\)](#).

A plaintiff in garnishment does not stand in the position of a purchaser in good faith

and for value, but is in no better position than a purchaser or assignee with notice. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

A garnishment proceeding cannot displace prior valid and bona fide existing right

and claims against the debt or property involved. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

For example, an attorney's lien is prior and superior to any right

acquired by a plaintiff in such proceedings. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

Garnishment under executions is properly subordinated to garnishment under writs of attachment theretofore served

on the same creditor, although the latter are, as a precautionary measure, again served on the same date as that issued under the writ of execution. Larimer County Bank & [Trust Co. v. Colo. Rubber Co., 79 Colo. 4, 243 P. 622 \(1926\).](#)

A creditor accepting provisions of assignment cannot reach funds of sale through garnishment.

If a creditor accepts, and acts under, the provisions of an assignment for the benefit of creditors, he may not thereafter repudiate his acceptance and claim property in the hands of the trustee for the satisfaction of his debt or reach funds derived from the sale thereof by proceedings in garnishment. [McMullin v. Keogh-Doyle Meat Co., 96 Colo. 298, 42 P.2d 463 \(1935\).](#)

Contingent liabilities are not garnishable.

Flanders Elec. v. Davall Controls & [Eng., 831 P.2d 492 \(Colo. App. 1992\).](#)

Annotator's note.

Since section (c) of the prior version of this rule was similar to § 130 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Creditor must proceed in state where employment services rendered.

The state in which services were rendered and in which the employer and employee reside is the situs of a chose and action for wages, and a creditor of the employee, who would reach the fund by garnishment, must proceed in that state. Atchison, T. & S. F. R. R. v. Maggard, 6 Colo. App. 85, 39 P. 985 (1895).

The fact that the employer is a railroad company operating a line through different states does not change this rule.

Atchison, T. & S. F. R. R. v. Maggard, 6 Colo. App. 85, 39 P. 985 (1895).

Where an order for a widow's allowance and service of garnishment summons affecting the same are made on the same day,

they are presumptively at the same time. Isbell-Kent-Oakes Dry Goods Co. v. Larimer County Bank & [Trust Co., 75 Colo. 451, 226 P. 293 \(1924\).](#)

Content of summons not prescribed.

This section contains no provision that the court set forth any particular matters in the summons. [Security State Bank v. Weingardt, 42 Colo. App. 219, 597 P.2d 1045 \(1979\).](#)

Writ of garnishment served upon garnishee is insufficient

if it fails to provide due process notice that a judgment could be entered against the garnishee based solely upon amount of judgment previously entered if garnishee fails to respond. [Don J. Best Trust v. Cherry Creek Nat. Bank, 792 P.2d 303 \(Colo. App. 1990\).](#)

A writ of garnishment pursuant to this rule and C.R.C.P. 403 provides a judgment creditor with an efficient mechanism for garnishing property to satisfy a proper judgment,

provides the judgment debtor with an expedited procedure to protect his or her exempt property, and affords the judgment debtor significantly more process than is required by the [United States and Colorado Constitutions. Ortiz v. Valdez, 971 P.2d 1076 \(Colo. App. 1998\).](#)

Garnishment cannot be extended by construction to cases which are not within both its letter and spirit,

although it is true that the garnishment statutes of Colorado specifically require that they shall be liberally construed so as to promote their objects. This applies, however, only to the enforcement of the remedy after jurisdiction has attached; it does not permit courts to enlarge or extend by implication the scope of the statutes, so as to bring within their jurisdiction any cases except those to which the statutes manifestly and clearly apply. As to this, the rule of strict construction prevails, the statutes being in derogation of the common law. *Troy Laundry & Mach. Co. v. City & County of Denver*, 11 Colo. App. 368, 53 P. 256 (1898); [Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\).](#)

Where a garnishee is doing business within Colorado, service of a writ of garnishment upon it at its place of business properly brings it within the jurisdiction

of the court in a garnishment proceeding. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\).](#)

Where it is claimed that the court does not have jurisdiction, but there was a judgment and execution in the main cause,

regularly obtained, a return of the writ of garnishment, showing due service, gives the court jurisdiction over the garnishee. *E.I. Du Pont De Nemours & Co. v. Lednum*, 82 Colo. 472, 260 P. 1017 (1927) (decided under § 135 of the former Code of Civil Procedure, which was replaced by the Rules of Civil Procedure in 1941).

A garnishment can reach only such property as belongs to the debtor.

[Denver Joint Stock Land Bank v. Moore, 93 Colo. 151, 25 P.2d 180 \(1933\); People ex rel. J.W., 174 P.3d 315 \(Colo. App. 2007\).](#)

This rule shows an intent that every sort of interest of the debtor might be garnished.

[Bank of Grand Junction v. Bank of Vernal, 81 Colo. 483, 256 P. 660 \(1927\).](#)

The assertion by a garnishee of a jurisdictional defense

to a judgment for which he is sought to be held is not a collateral but a direct attack upon the judgment. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Dormancy of judgment in foreign state does not defeat rights of creditor under this rule.

[Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\).](#)

Rather than reviving a judgment lien obtained in a foreign state and subsequently recorded in Colorado, garnishments created new and separate liens against the estate of the judgment debtor. Further, the garnishments were not an effort by the judgment creditor to maintain an action in Colorado that could not be maintained in the foreign state, but instead were ancillary to the judgment previously obtained. [Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\)](#).

Law reviews.

For note, "A Discussion of Garnishment and Its Exemptions", see 27 Dicta 453 (1950).

Absence of a creditor-debtor relationship between judgment debtor and garnishee

and the existence of an agreement between such parties which specifically negated garnishee's assumption of any of judgment debtor's liability precluded judgment creditors' proceeding against garnishee. [Coin Serv. Investors, Inc. v. Grooms, 743 P.2d 42 \(Colo. App. 1987\)](#).

Garnishee is entitled to an evidentiary hearing concerning the validity of the garnished debt

in order to afford due process to the garnishee. [Maddalone v. C.D.C., Inc., 765 P.2d 1047 \(Colo. App. 1988\)](#).

Failure to comply with a court order does not supercede requirement to set a hearing.

The court may not sanction a party for his or her failure to comply with a court order by refusing to set a hearing on an objection or claim of exemption. The setting of a hearing is mandatory, not discretionary. [Borrayo v. Lefever, 159 P.3d 657 \(Colo. App. 2006\)](#).

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where trial court conducted a timely and thorough hearing at which it heard argument and received evidence in the form of exhibits from the interested parties and at which the husband's counsel neither requested the opportunity to call witnesses nor objected to the proceeding. [In re Gedgudas, 978 P.2d 677 \(Colo. App. 1999\)](#).

A garnishee's answer is made with reference to the facts existing

at the time of the service of a writ of garnishment. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

If, at that time, the garnishee owes the defendant a debt,

or has personal property of the defendant in his possession or under his control, he must so answer and abide the judgment of a court. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

If, at that time, he is not indebted

to the defendant, or has not in his possession or under his control, any property of the defendant, he is entitled to a discharge. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

Garnishee is not answerable for effects of the defendant coming into his hands, or indebtedness accruing from him to the defendant, after the garnishment.

Bragdon v. Bradt, 16 Colo. App. 65, 64 P. 248 (1901).

It is only where the answer of a garnishee shows that he is indebted

to the defendant, has personal property in his possession or under his control belonging to the defendant, or where his answer denying indebtedness to the defendant or possession of his property is successfully controverted that a judgment against him is lawful. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

In order to charge him upon his answer,

it must contain a clear admission of a debt due to, or the possession of attachable property of the defendant. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

Where his answer is a substantial denial of indebtedness,

or possession of attachable property belonging to the defendant, he is entitled to a judgment of discharge, unless the force of the denial is overcome by other statements in the answer or unless the answer is shown to be untrue. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

A delivery by the garnishee to the sheriff can be ordered only where

the answer admits possession in the garnishee of property belonging to the defendant or where, upon a trial of issue joined upon the answer, such possession is found. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

"Supplemental answer" held no answer at all where time to answer exhausted.

Bragdon v. Bradt, 16 Colo. App. 65, 64 P. 248 (1901).

Note properly turned over to sheriff.

Where a note in the hands of a garnishee is held pending the result of litigation on final determination of which the note inures to the benefit of the judgment creditor, it is properly turned over to the sheriff with the order that he make disposition of it in the manner required by law. [*Union Deposit Co. v. Driscoll*, 95 Colo. 140, 33 P.2d 251 \(1934\)](#).

A contingent liability is not garnishable.

When a garnishee alleges a contingent liability in his answer to the writ of garnishment, the proper procedure is to allow the garnishor to traverse the garnishee's answer, followed by a trial on the issues framed. [*Haselden Langley Constructors, Inc. v. Graybar Elec. Co.*, 662 P.2d 1064 \(Colo. 1983\)](#).

Payment to creditor's attorneys is payment to creditor.

Where money is deposited in court by the garnishee in garnishment proceedings, payment of the fund to attorneys for the garnisheeing creditor is payment to the creditor, and an order to repay part of the fund is proper. [*Hahnewald v. Schlapfer*, 82 Colo. 313, 260 P. 105 \(1927\)](#).

Default for failure of garnishee "to answer or pay"

only applies if garnishee fails to answer or pay any nonexempt earnings. [*People ex rel. J.W.*, 174 P.3d 315 \(Colo. App. 2007\)](#).

Annotator's note.

Since sections (m) and (n) of the prior version of this rule were similar to §§144 and 145 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing those sections have been included in the annotations to this rule.

Previously, an order denying a motion to discharge a garnishee for failure of plaintiff to traverse answer of garnishee within required period was not appealable

as a "final judgment, decree or order" where no final judgment was entered and garnishee specifically saved right to further challenge court's jurisdiction and nothing in record indicated that court had passed on garnishee's answer. [Steel v. Revielle, 102 Colo. 271, 78 P.2d 980 \(1938\).](#)

Still garnishee cannot take advantage of his own delay.

A garnishee, by its own delay having made it impossible for the plaintiff to file the traverse within the time allowed by this section, is in no position to complain, since he cannot take advantage of a situation brought about by his own neglect. [Stollins v. Shideler, 91 Colo. 40, 11 P.2d 562 \(1932\).](#)

A traverse stating only conclusions of law and not facts is insufficient.

[Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

The answer of the garnishee and the traverse of the plaintiffs are the only pleadings provided by this rule, and make up the issues in garnishment proceedings.

General Accident Fire & [Life Assurance Corp. v. Mitchell, 120 Colo. 531, 211 P.2d 551 \(1949\).](#)

Any new matter pleaded in the traverse is deemed to be denied or avoided.

General Accident Fire & [Life Assurance Corp. v. Mitchell, 120 Colo. 531, 211 P.2d 551 \(1949\).](#)

Where the garnishee has no opportunity to plead to a reply

without further pleading, he can avail himself of any defense he might have to the new matter set up in the affidavit. [Jones v. Langhorne, 19 Colo. 206, 34 P. 997 \(1893\).](#)

A partner may set up nonjoinder of copartner as a defense.

Where a partner is sued individually for a firm debt he is usually required to plead the nonjoinder of his copartners in order that he may avail himself of this defense, but this general rule has no application to garnishment proceedings under this rule. [Jones v. Langhorne, 19 Colo. 206, 34 P. 997 \(1893\).](#)

Subsection 8(b)

making § 13-17-101 et seq. inapplicable. [United Bank v. State Treasurer, 797 P.2d 851 \(Colo. App. 1990\).](#)

An award of attorney fees

under this rule is at the trial court's discretion. [United Guar. Residential Ins. Co. v. Dimmick, 916 P.2d 638 \(Colo. App. 1996\).](#)

An award of attorney fees, costs, and expenses under section 8(b)

to those fees, costs, and expenses incurred to prepare and file the traverse and prosecute the traverse proceeding. [L & R Exploration Venture v. CCG, LLC, 2015 COA 49, 351 P.3d 569.](#)

Annotator's note.

Since section 9 of this rule is similar to § 146 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

This section 9 is not mandatory,

and thus, one asserting rights to property which is the subject of garnishment proceedings is free to ignore those garnishment proceedings and file an independent action to enforce those rights. *El Paso County Bank v. Charles R. Milisen & Co.*, [622 P.2d 594 \(Colo. App. 1980\)](#).

In garnishment proceedings, intervention is governed by this rule

which provides that a party shall proceed in accordance with C.R.C.P. 24. [Capitol Indus. Bank v. Strain](#), [166 Colo. 55, 442 P.2d 187 \(1968\)](#).

Allegations of the petition in intervention held sufficient to make out a prima facie case for intervening assignee.

[Denver Joint Stock Land Bank v. Moore](#), [93 Colo. 151, 25 P.2d 180 \(1933\)](#).

With denial of right of intervention constituting reversible error.

Where, in a garnishment proceeding, a third party files a petition in intervention claiming the property involved, he is entitled to have his claim tried and determined, and a denial of that right constitutes reversible error. *Burnett v. Jeffers*, [88 Colo. 613, 299 P. 18 \(1931\)](#).

Where in due time.

Where the intervention is before the judgment against the garnishee and it cannot be said that the garnishment proceedings have then been determined, the intervention, therefore, is in due time. [Hahnewald v. Schlapfer](#), [82 Colo. 313, 260 P. 105 \(1927\)](#).

It is error for a trial court to quash a garnishment where

the writ of garnishment is issued in accordance with this rule and the answer and return of the garnishee are made within the time prescribed by rule when the regularity of the garnishment proceeding is not attacked and a motion to quash is based wholly upon a claimed right to intervene; but the intervenor tacitly recognizes the validity of the proceedings by having filed its motion to intervene therein. [Capitol Indus. Bank v. Strain](#), [166 Colo. 55, 442 P.2d 187 \(1968\)](#).

An intervention by definition involves third parties,

and such strangers to the original garnishment proceeding, by asserting ownership of the disputed property, necessarily put their ownership status, and all related questions, at issue. [Great Neck Plaza, L.P. v. Le Peep Restaurants](#), [37 P.3d 485 \(Colo. App. 2001\)](#).

Applied in [Susman v. Exchange Nat'l Bank](#), [117 Colo. 12, 183 P.2d 571 \(1947\)](#).

Law reviews.

For article, "Setoff and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988).

Annotator's note.

Since section (p) of the prior version of this rule was similar to § 147 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

By this section a garnishee is allowed to retain or deduct

out of the property or credits of the defendant in his hands all demands against the defendant of which he could have availed himself had he not been summoned as garnishee. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Garnishee may plead as a defense or set-off

whatever he might have pleaded were the suit directly against him by his own creditor. [Sauer v. Town of Nevadaville, 14 Colo. 54, 23 P. 87 \(1890\); Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Garnishee is not to be placed in a worse position.

Under no circumstances shall a garnishee, by the operation of the proceedings against him, be placed in any worse condition than he would be if the defendant's claim against him were enforced by the defendant himself. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\); Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Bank receiver was entitled to set-off compensation due him.

Where an attempt is made in a garnishment proceeding to make a bank receiver liable for a judgment against the bank, such receiver is entitled to plead as a defense or set-off the compensation due him by the bank even though his appointment as such was void. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

A garnisheed bank may apply the amount on deposit to the credit of a debtor

to the payment of his note to it although not due. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Agreement after service of writ would be void.

An agreement by a garnishee to apply upon or deduct from credits of the defendant in his possession, a loan made by him to the defendant after service of the writ would be void and could not be enforced by any party thereto. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Garnishee bank is entitled to claim set-off

against debtor's account for moneys owed to bank even though moneys were not due at time of service of writ of garnishment. Colo. Nat. Bank - [Arvada v. Greaney, 720 P.2d 611 \(Colo. App. 1986\).](#)

Landlord's lien.

A lease may create a valid landlord's lien, enforceable under section 8 of this rule as a set-off. [Beneficial Fin. Co. v. Bach, 665 P.2d 1034 \(Colo. App. 1983\).](#)

The rights and liabilities of a garnishee are to be determined as of the date of the garnishment

and not upon a state of facts that existed theretofore or thereafter. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

It is unreasonable to require a garnishee to claim a set-off immediately upon service of the writ of garnishment;

the more reasonable approach allows a garnishee the same time period to claim set-off as allowed to file its answers to the garnishment interrogatories. Colo. Nat. Bank - [Arvada v. Greaney, 720 P.2d 611 \(Colo. App. 1986\)](#); Flanders Elec. v. Davall Controls & [Eng., 831 P.2d 492 \(Colo. App. 1992\).](#)

It is the responsibility of the trial court to determine the amounts and reasonableness of set-offs,

and, absent an abuse of discretion, its decision will not be overturned. *Flanders Elec. v. Davall Controls & Eng.*, 831 P.2d 492 (Colo. App. 1992).

Law firm had statutory charging lien on settlement proceeds.

State's lien for child support did not have priority over charging lien. State was entitled to net settlement proceeds after deduction of attorney fees. A garnishment can only reach property that belongs to the debtor. *People ex rel. J.W.*, 174 P.3d 315 (Colo. App. 2007).

Annotator's note.

Since section (i) and (j) of the prior version of this rule were similar to §§138 and 141 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing these sections have been included in the annotations to this rule.

This section puts burden on claimant

not only to assert an interest in the property but also to establish the extent of his interest. *Security State Bank v. Weingardt*, 42 Colo. App. 219, 597 P.2d 1045 (1979).

When a garnishee in his answer states that a third party claims property in his possession

belonging to the debtor, it is the duty of the court to issue a citation or summons to said party requiring him to appear and set up his claim. *Burnett v. Jeffers*, 88 Colo. 613, 299 P. 18 (1931).

However, this rule refers to answers in good faith,

so if a garnishee knows the truth he must tell it and if he tells a falsehood, at least if he tells it for a fraudulent purpose, he must pay damages. *International State Bank v. Trinidad Bean & Elevator Co.*, 79 Colo. 286, 245 P. 489 (1926).

Payment to one other than judgment debtor held improper.

Where garnishee-defendant, after answering writ of garnishment, discovers that a contract between it and judgment debtor requires that payments be made jointly to debtor and another, the garnishee-defendant then pays the latter part of the sum which it admitted in its answer was due and owing the judgment debtor, and he files an amended answer to that effect, such payment is improper without a release of garnishment or order of court. *Welbourne Dev. Co. v. Affiliated Clearance Corp.*, 28 Colo. App. 313, 472 P.2d 684 (1970).

It is not essential that notice of an assignment be given in advance to a garnishee,

although in the absence of knowledge or notice the latter would be protected against double payment. *Denver Joint Stock Land Bank v. Moore*, 93 Colo. 151, 25 P.2d 180 (1933).

If, during the pendency of garnishment proceedings, it is established that an assignment of the subject-matter antedating the garnishment was actually executed,

the absence of previous notice to the garnishee would be immaterial, and a judgment creditor would not be entitled to notice as such. *Denver Joint Stock Land Bank v. Moore*, 93 Colo. 151, 25 P.2d 180 (1933).

A creditor is entitled to a fund owing defendant by his employer as against the claims of another creditor of which he had no notice

where the claims of which said other creditor are not based on a contract sufficient to bind the fund. This being determined, then the only further action within the jurisdiction of the trial court is, on application, to order a judgment

against the employer in favor of the defendant for the use of the plaintiff pursuant to the terms of this section. [Meyer v. Delta Market, 98 Colo. 421, 57 P.2d 3 \(1936\)](#).

Once a third-party claimant has conceded that the disputed property may be garnished by a creditor,

the claimant is thereafter estopped from claiming the proceeds of the garnishment unless there is an agreement otherwise. *Securities Investor Protection Corp. v. Goldberg*, 893 F.2d 1139 (10th Cir. 1990).

Applied in [Susman v. Exchange Nat'l Bank, 117 Colo. 12, 183 P.2d 571 \(1947\)](#).

A judgment in the principal proceeding is presumptively valid

while lodged in an appellate court for review. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

Such judgment when not superseded by virtue of a failure to furnish the required bond

leaves a judgment creditor in the position to take usual steps to enforce collection of his judgment, precisely as if supersedeas has not been granted. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

The reversal of a judgment upon which a garnishment is based leaves nothing

to sustain the judgment against the garnishee. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

If the original judgment is reversed, a judgment in garnishment is deprived of a basis

and falls with it. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

The existence of a valid judgment is a jurisdictional prerequisite

to garnishment relief. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

Where the judgment in the main case has been reversed,

then, if it is made the basis of a garnishment, it must follow that a judgment in the garnishment proceeding cannot stand alone and must be reversed. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\)](#).

Since garnishee's liability is not established.

Where the case which found garnishee's liability is reversed and remanded for new trial, the garnishee's liability is not established, and garnishment should be vacated. [Mitchell v. Am. Family Mut. Ins. Co., 179 Colo. 372, 502 P.2d 79 \(1972\)](#).

Applied in *E.I. Du Pont De Nemours & Co. v. Lednum*, 82 Colo. 472, 260 P. 1017 (1927).

Court approval not required.

Subsection 2(h) requires the clerk to disburse funds to the judgment creditor without further application or order. The fact that the judgment debtor had applied for a stay had no effect on the clerk's authority to release the garnished funds. [Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\)](#).

Law reviews.

For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990).

Past-due child support payments in themselves constitute debt.

[Colo. State Bank v. Utt, 622 P.2d 584 \(Colo. App. 1980\).](#)

Amount defendant admittedly owed for past-due child support may be garnished by bank

which held judgment against former wife. [Colo. State Bank v. Utt, 622 P.2d 584 \(Colo. App. 1980\).](#)

Foreclosure sale excess proceeds

may be garnished. [TCF Equip. Fin. v. Pub. Trustee, 2013 COA 8, 297 P.3d 1048.](#)

Law firm had statutory charging lien on settlement proceeds.

State's lien for child support did not have priority over charging lien. State was entitled to net settlement proceeds after deduction of attorney fees. A garnishment can only reach property that belongs to the debtor. [People ex rel. J.W., 174 P.3d 315 \(Colo. App. 2007\).](#)

C. R.C.P. 102, this rule, and § 4-8-112 may be harmonized

so that stock certificates may be reached by a creditor either by actual physical seizure, by a writ of attachment, if actually seized, or by serving the person who possesses the certificate with a writ of garnishment. [Moreland v. Alpert, 124 P.3d 896 \(Colo. App. 2005\).](#)

COLORADO COURT RULES

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C.R.C.P. 403

This document reflects changes received through December 9, 2019.

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Rule 403. Garnishment.

NOTE: County Court Rule 403 is identical to *C.R.C.P. 103* except for cross references within the County Court Rule to other County Court Rules. Forms used with the County Court are identical to those used with *C.R.C.P. 103*, and because County Court Rule 403 cites to and incorporates *C.R.C.P.* Forms 26 through 34, they need not be duplicated in the County Court Forms Section.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) Definitions.

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in Section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Continuing Garnishment and Related Forms. A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 26, C.R.C.P. It shall also include at least one (1) "Calculation of Amount of Exempt Earnings" form to be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(c) When Writ of Continuing Garnishment Issues. After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request of the judgment creditor. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Continuing Garnishment. A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with *C.R.C.P. 304*, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) Jurisdiction. Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period.

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.

(3) If a writ of garnishment for support pursuant to *C.R.S. 14-14-105* is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

(g) Exemptions. A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the Exemption Chart contained in the writ.

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings [that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor](#) and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings [or For Reduction of Withholding Pursuant to Section 13-54-\(2\)\(a\)\(I\)\(D\)](#)" (Appendix to Chapters 1 to 17AA, Form 28, C.R.C.P.), to the judgment debtor [not later than 7 days after the garnishee is served with the writ of continuing garnishment](#) ~~at the time the judgment debtor receives earnings for the first pay period affected by such writ.~~

(2) For all pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings and the "Judgment Debtor's Objection to the Calculation of the Amount of Exempt Earnings" to the judgment debtor at the time the judgment debtor receives earnings for that pay period.

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings [or object and request an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#) A judgment debtor's objection to calculation of exempt earnings [or objection and request for an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#), shall be in accordance with Section 6 of this rule.

(j) Suspension. A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file ~~the answer to the writ of continuing garnishment~~ with the clerk of the court and send a copy to the judgment creditor no less than 7 ~~nor more than 14~~ days [after the garnishee is served with the writ of continuing garnishment a response to the writ of continuing garnishment pursuant to section 13-54.5-105\(5\), C.R.S.](#) ~~following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ~~

~~was served pursuant to section (1)(d) of this rule, whichever is less.~~ However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall [send such response to the attorney or licensed collection agency](#) ~~pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.~~

[\(2\) In the event the response required by Section 1\(k\)\(1\) of this rule is filed and served pursuant to section 13-54.5-105\(5\)\(b\), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.](#)

~~(32)~~ Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

~~(43)~~ Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

[\(1\) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(l\)\(D\), C.R.S., is filed by the judgment debtor within 21 days](#)~~7 days~~ after the [garnishee was served with the writ of continuing garnishment](#) ~~judgment debtor received earnings for a pay period~~, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) Definition. "Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."

(b) Form of Writ With Notice and Claim of Exemption. A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(c) When Writ With Notice Issues. After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.

(d) Service of Writ With Notice.

(1) Service of a writ with notice shall be made in accordance with *C.R.C.P. 304*.

(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with *C.R.S. 13-54.5-107 (2)*.

(e) Jurisdiction. Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.

(f) Claim of Exemption. A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness be paid to the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

(h) Disbursement by Clerk of Court. The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

(i) Automatic Release of Garnishee. If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than \$50.00 and no traverse has been filed, the

garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within 182 days from the date of service of such writ.

SECTION 3 WRIT OF GARNISHMENT FOR SUPPORT

(a) Definitions.

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.

(2) "Earnings" shall be as defined in Section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Garnishment for Support. A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17A, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P.

(c) When Writ of Garnishment for Support Issues. Upon compliance with *C.R.S. 14-10-122 (1)(c)*, a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment for Support. Service of a writ of garnishment for support shall be in accordance with *C.R.C.P. 304*.

(e) Jurisdiction. Service of a writ of garnishment for support upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period and Priority.

(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.

(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.

(g) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period to such writ.

(h) Disbursement of Garnished Earnings. The clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4 WRIT OF GARNISHMENT -- JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) Definition. "Writ of garnishment -- judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or

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money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by the garnishee for payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment -- other than natural person."

(b) Form of Writ of Garnishment -- Other Than Natural Person. A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17A, Form 32, C.R.C.P.

(c) When Writ of Garnishment -- Other Than Natural Person Issues. When the judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the judgment creditor may garnish personal property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment -- Other Than Natural Person. Service of the writ of garnishment -- other than natural person shall be made in accordance with *C.R.C.P. 304*. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) Jurisdiction. Service of the writ of garnishment -- other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5 WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) Definition. "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which the personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a garnishee. For the purposes of this rule such writ is designated "writ of garnishment in aid of attachment."

(b) Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy. A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17A, Form 34, C.R.C.P.

(c) When Writ of Garnishment in Aid of Attachment Issues. At any time after the issuance of a writ of attachment in accordance with *C.R.C.P. 402*, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) Service of Writ of Garnishment in Aid of Attachment. Service of the writ of garnishment in aid of attachment shall be made in accordance with *C.R.C.P. 304*. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by *C.R.S. 13-55-102*. If the defendant in attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) Jurisdiction. Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer.

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall enter judgment in favor of the defendant in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection to the calculation of exempt earnings is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.

(4) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. Such objection and request must be filed within 14 days after receipt by the judgment debtor of a copy of the writ of continuing garnishment, or receipt of the calculation of exempt earnings for any pay period subsequent to the first pay period when the judgment debtor's earnings were subject to garnishment.

(53) The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(64) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq, C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(75) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2 (d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

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(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) Hearing on Objection or Claim of Exemption.

(1) Upon the filing of an objection pursuant to Section 6 (a) of this rule or the filing of a claim of exemption pursuant to Section 6 (b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

(2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.

(3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.

(4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.

(5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), [Section 6\(a\)\(4\)](#) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings or property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6 (a)(2) and Section 6 (b)(1).

(3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated or if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.

(e) Reinstatement of Judgment Debt. If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6 (c)(5) and 6 (d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7 FAILURE OF GARNISHEE TO ANSWER (ALL FORMS OF GARNISHMENT)

(a) Default Entered by Clerk of Court.

(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 42 days after service of a writ of garnishment upon the garnishee.

(b) Procedure After Default of Garnishee Entered.

(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.

(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with *C.R.C.P. 345* and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8 TRAVERSE OF ANSWER (ALL FORMS OF GARNISHMENT)

(a) Time for Filing of Traverse. The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) Procedure.

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with *C.R.C.P. 305*.

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(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.

(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment of intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with *C.R.C.P. 345*, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9 INTERVENTION (ALL FORMS OF GARNISHMENT) Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in *C.R.C.P. 324* at any time prior to entry of judgment against the garnishee.

SECTION 10 SET-OFF BY GARNISHEE (ALL FORMS OF GARNISHMENT) Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11 GARNISHEE NOT REQUIRED TO DEFEND CLAIMS OF THIRD PERSONS (ALL FORMS OF GARNISHMENT)

(a) **Garnishee With Notice.** A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) **Court to Issue Summons.** When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in *C.R.C.P. 312* to answer, set up, and assert a claim or be barred thereafter.

(c) **Delivery of Property by Garnishee.**

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to *C.R.C.P. 304*, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12 RELEASE AND DISCHARGE OF GARNISHEE (ALL FORMS OF GARNISHMENT)

(a) Effect of Judgment. A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) Effect of Payment. Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1 (k)(2) or 3 (g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) Release by Judgment Creditor or Plaintiff in Attachment. A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

SECTION 13 GARNISHMENT OF PUBLIC BODY (ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

EFFECTIVE DATE OF RULE AND AMENDMENTS OF THIS RULE

Repealed October 31, 1991, effective November 1, 1991.

History

Source: Repealed and readopted November 5, 1984, effective January 1, 1985; section 1(d), (f)(1), (f)(2), and (h)(1), section 2(a), (d)(2), and (e), section 3(a)(1) and (c), section 4(a) and (d), section 5(a) and (d), section 7(a)(1), (b)(3), and (b)(4), section 8(b)(3), section 12, and effective date amended February 16, 1989, effective July 1, 1989; section 1(a)(2) and section 3(a)(2) amended, section 3(a)(2) committee comment added, and effective date repealed October 31, 1991, effective November 1, 1991; section 1(k)(1), (k)(2) and (l) amended and (m) added, section 6(a)(3), (a)(4), and (a)(5) amended, section 7(a)(1) amended, and section 12(b) amended and adopted October 30, 1997, effective January 1, 1998; section 1(d), (f), and (j) and section 3(f) and (g)(2) amended and adopted June 28, 2001, effective August 8, 2001; section 1(k)(1) and (k)(2) amended and effective November 18, 2010; section 1(f)(1), (k)(1), (k)(2), and (l)(1), section 2(g)(2) and (g)(4), section 3(g), section 6(a)(1), (a)(2), (b)(1), and (c)(1), section 7(a)(2), and section 8(a) amended and adopted December 14, 2011, effective July 1, 2012; section 2(g)(2) and (g)(4) corrected June 15, 2012, nunc pro tunc, December 14, 2011, effective July 1, 2012; section 2(g)(1) amended and effective June 7, 2013; section 4(f)(1) amended and adopted January 29, 2016, effective March 1, 2016; section 1(b), (c), (g), (h)(1), (h)(2), (k)(1), (k)(2), (l)(1), and (l)(2), section 2(i), section 6 IP(d), (d)(1), and section 7(a)(2) amended and adopted January 12, 2017, effective March 1, 2017.

Annotations

Notes

COMMITTEE COMMENT

C.R.C.P. 403

The Colorado Legislature amended Section 13-54-104 and 13-54.5-101, C.R.S. (Section 7 of Chapter 65, Session Laws of Colorado 1991), which changed the definition of "earnings" applicable only to actions commenced on or after May 1, 1991. The amendment impacts the ability to garnish certain forms of income, depending upon when the original action was commenced. Sections 1 and 3 of the Rule and Forms 26 and 31 have been revised to deal with this legislative amendment.

COLORADO COURT RULES

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