

SECTION 3. GARNISHMENT

Rule GARN 1 (616). Application ~~and Order~~ for Writ of Garnishment Before Judgment ~~and Order~~

SCAC: Title changed to clarify.

- (a) *Issuance of Writ.* An application for a pre-judgment writ of garnishment may be filed at the initiation of a suit or at any time before final judgment. No writ shall issue before a final judgment except on written order of the court after a hearing, which may be ex parte.

Derived from Rule 658. Application and bond requirements have been stated separately for prejudgment and post-judgment garnishment.

- (b) *Application.* An application for a writ of garnishment before judgment must:
- (1) state the nature of the applicant's claim against the respondent in the underlying proceeding;
 - (2) state one or more statutory grounds for issuance of the writ as provided in Chapter 63 of the Civil Practice and Remedies Code and the specific facts supporting the statutory grounds for garnishment; and

SCAC suggestion: remove specific chapter reference and add "as provided by statute."

- (3) state the maximum dollar amount sought to be satisfied by garnishment.

Derived from Rule 658. Subsection (1) was added to provide the court with basic context. Subsection (2) was added to require a specific statement of the statutory basis for the garnishment. Subsection (3) was added to require the applicant to allege the dollar amount. The present rule does not require such an allegation, but the court is required to specify that amount in its order.

- (c) *Verification.* The application must be ~~verified or~~ supported by affidavit by one or more persons having personal knowledge of relevant facts that are admissible in evidence; however, facts may be stated based on information and belief if the grounds for the belief are specifically stated.

Derived from Rule 658.

- (d) *Effect of Pleading.* The application shall not be quashed because two or more grounds are stated conjunctively or disjunctively.

Derived from Rule 658.

(e) *Order.*

- (1) *Return.* The order must provide that the writ is returnable to the court that issued the writ.

Derived from Rule 663 but language is more specific.

- (2) *Findings of Fact.* The order must include specific findings of fact supporting the statutory grounds for issuance of the writ.

Derived from Rule 658.

- (3) *Amount of Property ~~to be Garnished~~.* The order must state the maximum dollar amount to be satisfied by garnishment.

Derived from Rule 658.

- (4) *Safekeeping.* The order must command that the property be kept safe and preserved subject to further order of the court.

New provision adapted from parallel rules in attachment and sequestration.

- (5) *Applicant's Bond.* The order must state the amount of the bond required from the applicant. The bond must be in an amount which, in the court's opinion, will adequately compensate the respondent in the event the applicant fails to prosecute the suit to effect and pay all damages and costs as may be adjudged against the applicant for wrongful garnishment.

Derived from Rules 658 and 658a.

- (6) *Respondent's Replevy Bond.* The order must set the amount of the respondent's replevy bond equal to the amount of the applicant's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court.

Derived from Rules 658 and 664 which provide the respondent with the option to replevy based on the value of the garnished property as estimated by the garnishing officer. Constables we consulted did not wish to be involved in determining the amount of the replevy bond by valuing the property. The stated option was therefore removed, but the respondent may still move the court to alter the bond amount.

- (f) *Multiple Writs.* Writs may issue at the same time, or in succession, without requiring the return of the prior writ or writs. In the event multiple writs are issued, the applicant must inform the officers or persons to whom the writs are delivered that multiple writs are

outstanding. Writs may be sent to different counties for service by the sheriffs, constables, **or other persons authorized by Rule 103 or Rule 536 to serve the writs.**

Derived from Rule 658 but expanded to clarify when multiple writs may issue and to impose a duty on the applicant to advise the officer of the existence of multiple writs to minimize the chance for excessive levy.

Second and third sentences were reversed.

PROPOSED COMMENT TO RULE **GARN 1(b)(1) (657(b)(1))**: In a garnishment action, the respondent is the defendant in the underlying action.

Rule GARN 2 (617). Applicant's Bond or Other Security for Writ of Garnishment Before Judgment

(a) *Requirement of Bond.* A writ of garnishment before judgment may not be issued unless the applicant has filed with the clerk or justice of the peace a bond:

(1) payable to the respondent in the amount set by the court's order;

(2) with sufficient surety or sureties as approved by the clerk or justice of the peace; and

(3) **conditioned on the applicant prosecuting the applicant's suit to effect and paying all damages and costs as may be adjudged against the applicant for wrongful garnishment.**

Derived from Rules 658 and 658a. "Wrongful garnishment" replaced "wrongfully suing out such writ of garnishment."

(b) *Other Security.* **In lieu of a bond, the applicant may deposit cash or other security in compliance with Rule 14c.**

New rule clarifies the applicability of Rule 14c.

(c) *Review of Applicant's Bond.* **On reasonable notice, which may be less than three days, any party shall have the right to prompt judicial review of the applicant's bond. Any party may move to increase or reduce the amount of the bond, or question the sufficiency of the surety or sureties. The court's determination may be made on the basis of affidavits setting forth uncontroverted facts as would be admissible in evidence. If the facts are controverted, the court must conduct an evidentiary hearing. After a hearing on the motion, the court must issue a written order.**

Derived from Rule 658a which provides that "After notice to the opposite party, either before or after the issuance of the writ, the defendant or

plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties. Upon hearing, the court shall enter its order with respect to such bond and the sufficiency of the sureties.” The language parallels the language of attachment and sequestration.

Rule GARN 3 (618). Application and Order for Writ of Garnishment After Judgment and Order

- (a) *Garnishment After Final Judgment.* At any time after final judgment, the applicant judgment creditor may file with the clerk or justice of the peace an application for a writ of garnishment. The judgment, whether based on a liquidated or unliquidated demand, shall be deemed final and subsisting for the purpose of garnishment from and after the date it is signed, unless a supersedeas bond shall have been filed and approved in accordance with the Texas Rules of Appellate Procedure or an appeal bond is filed and approved by the justice of the peace. No writ shall issue except on written order of the court after a hearing, which may be ex parte.

Derived from Rule 657. The reference to the CPRC has been removed.

“Judgment creditor” replaced by “applicant.”

- (b) *Application.* An application for a writ of garnishment after judgment must state:
- (1) that the applicant has a valid, subsisting judgment;
 - (2) that, within the applicant’s knowledge, the judgment debtor does not possess property in Texas subject to execution sufficient to satisfy the judgment; and
 - (3) the maximum dollar amount sought to be satisfied by garnishment.

Derived from CPRC 63.001(3). Subsection (3) of the proposed rule is derived from Rule 658.

- (c) *Verification.* The application must be ~~verified or~~ supported by affidavit by one or more persons having personal knowledge of relevant facts that are admissible in evidence; however, facts may be stated based on information and belief if the grounds for the belief are specifically stated.

Derived from Rule 658.

- (d) *Effect of Pleading.* The application shall not be quashed because two or more grounds are stated conjunctively or disjunctively.

Derived from Rule 658.

- (e) *Order.*

- (1) *Return.* The order must provide that the writ is returnable to the court that issued the writ.
- (2) *Findings of Fact.* The order must include specific findings of fact supporting the statutory grounds for issuance of the writ.
- (3) *Amount of Property ~~to be Garnished~~.* The order must state the maximum dollar amount to be satisfied by garnishment.
- (4) *Safekeeping.* The order must command that the property be kept safe and preserved subject to further order of the court.
- (5) *No Bond Required.* No bond shall be required to be posted by the applicant for a writ of garnishment after final judgment.
- (6) *Respondent's Replevy Bond.* The order must set the amount of the respondent's replevy bond equal to the amount of the applicant's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court.

Subsections (4) and (5) are new. Subsection (4) is adapted from parallel rules in attachment and sequestration. Subsection (5) is added to specify no bond requirement. Subsection (6) is derived from Rules 658 and 664 which provide the respondent with the option to replevy based on the value of the garnished property as estimated by the garnishing officer. Constables we consulted did not wish to be involved in determining the amount of the replevy bond by valuing the property. The stated option was therefore removed, but the respondent may still move the court to alter the bond amount.

(f) *Multiple Writs.* Writs may issue at the same time, or in succession, without requiring the return of the prior writ or writs. In the event multiple writs are issued, the applicant must inform the officers or persons to whom the writs are delivered that multiple writs are outstanding. Writs may be sent to different counties for service by the sheriffs, constables, or other persons authorized by Rule 103 or Rule 536 to serve the writs

Derived from Rule 658 but expanded to clarify when multiple writs may issue and to impose a duty on the applicant to advise the officer of the existence of multiple writs to minimize the chance for excessive levy.

SCAC: Placement of second and third sentences reversed.

Rule GARN 4 (619). Case Docketed

When ~~the foregoing requirements of these rules have been complied with,~~ an application has been filed, the clerk or justice of the peace shall docket the case in the name of the applicant

as plaintiff and of the garnishee as defendant, and, after the order has been issued, shall immediately issue a writ of garnishment directed to the garnishee.

Derived from the first part of Rule 659. The remainder of Rule 659 has been moved to the following section.

SCAC: highlighted language added to clarify.

Rule GARN 5 (620). Contents of Writ of Garnishment

- (a) *General Requirements.* A writ of garnishment must be dated and signed by the clerk or the justice of the peace, bear the seal of the court, and be directed to the garnishee.

Derived from Rule 662.

- (b) *Command of Writ.* The writ must command the garnishee to:
- (1) appear before the court out of which the writ is issued at 10 o'clock a.m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court, or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court; and

Derived from Rule 659.

- (2) answer under oath:
- (A) what, if anything, the garnishee was indebted to the respondent as of the date the writ was served;
- (B) what, if anything, the garnishee is indebted to the respondent as of the date the garnishee is required to appear pursuant to the writ;
- (C) what effects, if any, of the respondent the garnishee had in its possession as of the date the writ was served;
- (D) what effects, if any, of the respondent the garnishee has in its possession as of the date the garnishee is required to appear pursuant to the writ; and
- (E) what other persons, if any, within the garnishee's knowledge, are indebted to the respondent or have in their possession effects belonging to the respondent.

Derived from Rule 659 with language modified to clarify the dates with respect to which the garnishee must answer.

- (c) *Return of Writ.* The writ must be made returnable to the court that ordered the issuance of the writ in the same manner as a citation.

Derived from Rule 663.

- (d) *Notice to Respondent.* The face of the writ must display, in **not less than 12-point** type and in a manner calculated to advise a reasonably attentive person, the following notice:

"To _____, Respondent:

"YOU ARE HEREBY NOTIFIED THAT PROPERTY ALLEGED TO BE OWNED BY YOU HAS BEEN GARNISHED. IF YOU CLAIM ANY RIGHTS IN THE PROPERTY, YOU ARE ADVISED:

"YOUR FUNDS OR OTHER PROPERTY MAY BE EXEMPT UNDER FEDERAL OR STATE LAW.

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE **OR MODIFY** THIS WRIT."

Derived from Rule 663a. Specific language has been added regarding potential exemptions. "Modify" was added to parallel attachment and sequestration rules.

- (e) *Form of Writ.* The following form of writ may be issued, **but any form used must contain the Notice to Respondent:**

"The State of Texas.

"To _____, Garnishee, greetings:

"Whereas, in the _____ Court of _____ County (if a justice court, state also the number of the precinct), in a certain cause wherein _____ is plaintiff and _____ is defendant in the underlying proceeding and Respondent in this proceeding, the plaintiff, claiming an indebtedness against _____ [Respondent] of _____ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you; therefore you are hereby commanded to be and appear before that court at _____ in said county (if the writ is issued from the county or district court, here proceed: 'at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: 'at 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In

either event, proceed as follows:) then and there to answer under oath: (a) what, if anything, the garnishee was indebted to _____ [Respondent] as of the date the writ was served; (b) what, if anything, the garnishee is indebted to _____ [Respondent] as of the date the garnishee is required to appear pursuant to the writ; (c) what effects, if any, of _____ [Respondent] the garnishee had in its possession as of the date the writ was served; (d) what effects, if any, of _____ [Respondent] the garnishee has in its possession as of the date the garnishee is required to appear pursuant to the writ; and (e) what other persons, if any, within the garnishee's knowledge, are indebted to _____ [Respondent] or have in their possession effects belonging to _____ [Respondent]. You are further commanded NOT to pay to _____ [Respondent] any debt or to deliver to _____ [Respondent] any effects, pending further order of this court. Herein fail not, but make due answer as the law directs."

Derived from Rule 661.

SCAC: Suggestion was made that notice to the respondent be a separate document.

PROPOSED COMMENT TO RULE **GARN 5(b)(2) (620(b)(2))**. This rule has been modified to make clear that the garnishee must account for property of the respondent in the garnishee's possession or knowledge on two dates—the date the writ was served, and the date the garnishee is required to appear pursuant to the writ. *See First Nat'l Bank in Dallas v. Banco Longoria, S.A.*, 356 S.W.2d 192 (Tex. Civ. App.—San Antonio 1962, writ ref'd n.r.e.) (affirming judgment against garnishee that failed to account for funds held on both the date the writ was served and the date the garnishee was to answer pursuant to the writ).

PROPOSED COMMENT TO RULE **GARN 5(e) (620(e))**. The form of the writ has been modified as to justice courts to be consistent with **GARN 5(b)(2) (620(b)(2))**.

RULE GARN 6 (621). Delivery, Service, and Return of Writ

(a) *Delivery of Writ.* The clerk or justice of the peace issuing a writ of garnishment must deliver the writ to:

(1) the sheriff, constable, or other person authorized by Rule 103 or Rule 536; or

(2) the applicant, who must then deliver the writ to the sheriff, constable, or other person authorized by Rule 103 or Rule 536.

Derived from Rule 662. Language added to include others authorized to serve.

(b) *Service on Garnishee.* The sheriff, constable, or other person authorized by Rule 103 or Rule 536 who receives the writ of garnishment must immediately proceed to serve the

writ by delivering a copy of it to the garnishee. ~~; however, only a sheriff or constable may serve a writ of garnishment that requires the actual taking of possession of property.~~ If the garnishee is a financial institution, service of the writ is governed by the service provisions of the Texas Finance Code.

Derived from Rule 663. Language added to include others authorized to serve. The last sentence is derived from CPRC 63.008 providing that service of a writ of garnishment on a financial institution is governed by Section 59.008 of the Finance Code. The sentence has been added to alert the practitioner.

SCAC: A question was posed concerning the stricken language, and, in particular, whether there were instances when an officer actually took possession of garnished property. A writ of garnishment does not involve the officer's taking possession of the property; hence the language was stricken as unnecessary and confusing.

- (c) *Return of Writ.* The return must be in writing and signed by the sheriff or constable, ~~or must be in writing and signed under oath~~ by a person authorized by Rule 103 or Rule 536 who served the writ. The return must be filed with the issuing clerk or justice of the peace without delay in the same manner as a citation.

Derived from Rule 663.

~~Other authorized person must sign under oath.~~

- (d) *Service on Respondent.* As soon as practicable following service of the writ on the garnishee, the applicant must serve the respondent with a copy of the writ of garnishment, the application, accompanying affidavits, and orders of the court. Service may be in any manner prescribed for service of citation or as provided in Rule 21a. ~~A certificate of service evidencing service of a copy of the writ on the respondent by the applicant must be on file with the court for at least 10 days prior to the entry of a judgment on the garnishment.~~

Derived from Rule 663a. The last sentence is new and provides an additional safeguard to the respondent.

PROPOSED COMMENT TO RULE GARN 6 (621): See Section 63.008 of the Texas Civil Practice and Remedies Code and Section 59.008 of the Texas Finance Code.

Rule GARN 7 (622). Respondent's Replevy Rights

- (a) *General.* At any time before judgment ~~in the garnishment proceeding~~, if the garnished property has not been previously claimed or sold, the respondent may replevy some or all

of the property, or the proceeds from the sale of the property if it has been sold under order of the court, by filing a replevy bond with the court and serving the applicant with a copy of the bond. All motions regarding the garnished property must be filed with the court having jurisdiction of the ~~suit~~ garnishment proceeding.

Derived from Rule 664. Language was added to require service of the bond on the applicant. The final sentence was added to clarify where any motions must be filed.

SCAC: Suggestion: Add “in the garnishment proceeding” following “judgment. Change “suit” to “garnishment proceeding” to clarify.

- (b) *Amount and Form of Respondent’s Replevy Bond.* The respondent’s replevy bond must be made payable to the applicant in the amount set by the court’s order with sufficient surety or sureties, as provided by law, to be approved by the court. The bond must be conditioned on the respondent satisfying, to the extent of the penal amount of the bond, any judgment that may be rendered against the respondent in the suit.

Derived from Rule 664. As noted above, the option to replevy based upon the value has been removed.

- (c) *Other Security.* In lieu of a bond, the respondent may deposit cash or other security in compliance with Rule 14c.

New rule clarifies the applicability of Rule 14c.

- (d) *Review of Respondent’s Replevy Bond.* On reasonable notice, which may be less than three days, any party shall have the right to prompt judicial review of the respondent’s replevy bond. Any party may move to increase or reduce the amount of the bond, or question the sufficiency of the surety or sureties. The court’s determination may be made on the basis of affidavits setting forth uncontroverted facts as would be admissible in evidence. If the facts are controverted, the court must conduct an evidentiary hearing. After a hearing on the motion, the court must issue a written order.

Derived from Rule 664.

- (e) *Respondent’s Right to Possession.* If the respondent files a proper replevy bond, and the replevy bond is not successfully challenged in the court by the applicant, the court must order the release of the garnished property to the respondent as soon as practicable after a copy of the bond is delivered to the garnishee or, if applicable, to the sheriff or constable.

- (1) Before the property is released to the respondent, the respondent must pay all expenses incurred in connection with the transfer and storage of the property. These expenses may later be reassessed by the court as taxable costs.

- (2) When property has been replevied, and the replevy bond has been delivered to the sheriff or constable, the sheriff or constable must deliver

the replevy bond to the clerk or justice of the peace to be filed with the papers of the suit.

Derived from Rule 664. Highlighted provisions are adapted from similar rules in attachment and sequestration.

- (f) *Substitution of Property.* On reasonable notice, which may be less than three days, the respondent shall have the right to move the court for a substitution of property of equal value or greater value as the property garnished. Unless the court orders otherwise, no property on which a lien exists may be substituted.

Derived from Rule 664. “Greater value” was added to provide flexibility. The last sentence affords the court discretion regarding property with a pre-existing lien.

- (1) *Court Must Make Findings.* If sufficient property has been garnished to satisfy the writ, the court may by written order authorize substitution of one or more items of respondent’s property for all or part of the property garnished. The court must include in the order findings as to the value of the property to be substituted.

Derived from Rule 664.

- (2) *Method of Substitution.* No garnished personal property shall be deemed released until the property to be substituted is delivered to the location designated in the court’s order. The original property garnished may not be released until the respondent pays all costs associated with substitution of the property, including all expenses incurred in connection with the transfer and storage of the property.

New provision adapted from attachment rules to require delivery of substituted property and payment of expenses as prerequisites to release.

- (3) *Status of Garnishment.* Garnishment of substituted property shall be deemed to have existed from the date of service of the original writ of garnishment.

Derived from Rule 664, but made more clear.

- (g) *Judgment Against Respondent on Replevy Bond.* If the underlying suit is decided against a respondent who replevied the garnished property, final judgment must also be against all of the obligors on the respondent’s replevy bond, jointly and severally, according to the terms of the replevy bond.

New rule adapted from attachment and sequestration.

Rule GARN 8 (623). Garnishee's Answer to Writ of Garnishment

(a) *Garnishee's Answer.* The garnishee's answer must be in writing, sworn to, signed by the garnishee, ~~and respond to each matter inquired of in the writ of garnishment.~~ **and answer under oath:**

(A) what, if anything, the garnishee was indebted to the respondent as of the date the writ was served;

(B) what, if anything, the garnishee is indebted to the respondent as of the date the garnishee is required to appear pursuant to the writ;

(C) what effects, if any, of the respondent the garnishee had in its possession as of the date the writ was served;

(D) what effects, if any, of the respondent the garnishee has in its possession as of the date the garnishee is required to appear pursuant to the writ; and

(E) what other persons, if any, within the garnishee's knowledge, are indebted to the respondent or have in their possession effects belonging to the respondent.

The garnishee's answer may be filed as in any other civil case at any time before default judgment.

Derived from Rule 665. The last sentence has been added to clarify that the garnishee's answer may be filed as in other civil cases.

SCAC suggestion: Insert requirements of answer rather than "respond to each matter inquired of in the writ of garnishment."

(b) *Judgment by Default.* If the garnishee fails to file an answer to the writ of garnishment at or before the time directed in the writ, the court may, at any time after final judgment has been signed against the respondent, and on or after the garnishee's appearance day, sign a default judgment against the garnishee for the full amount of the judgment against the respondent together with all interest and costs that have accrued in the main case and also in the ancillary garnishment proceedings. **However, if the garnishee is a financial institution, default judgment must be determined is governed by the Texas Finance Code.**

Derived from Rule 667. Last sentence added to alert the practitioner to the different procedure regarding a financial institution.

SCAC: change "must be determined" to "is governed."

PROPOSED COMMENT TO RULE **GARN 8 (623)**: See Section 276.002 of the Texas Finance Code.

Rule GARN 9 (624). Garnishee's Answer May Be Controverted

- (a) *Either Party May Controvert the Answer.* If the applicant is not satisfied with the answer of any garnishee, the applicant may controvert the answer by affidavit stating that the applicant has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular the applicant believes the answer to be incorrect. The respondent may also, in like manner, controvert the answer of the garnishee.

Derived from Rule 673. The order of the rules has been changed to be more sequential.

SCAC suggestion: Require that a copy of the garnishee's answer be served on the respondent. Set a deadline by which any controverting party must file a controverting pleading.

- (b) *Place for Trial When Answer Controverted.* If the garnishee whose answer is controverted is a resident of the county in which the garnishment proceeding is pending, or a foreign corporation, the ~~matter~~ controverted issues shall be tried in the county in which the garnishment proceeding is pending. Otherwise, the ~~matter~~ controverted issues shall be transferred to, and tried in, the county in which the garnishee resides.

Derived from Rule 674 and CPRC 63.005 with clarifying language added. CPRC 63.005 provides that, if a party controverts the answer of a non-resident garnishee (who is also not a foreign corporation), the proceeding must be transferred to the county of the non-resident's residence. The statute is jurisdictional.

SCAC: change "matter" to "controverted issues." "Transferred to" added to clarify.

- (c) *Procedure for Docketing of Action Against Non-Resident Garnishee.* The clerk or the justice of the peace of the county of residence of the non-resident garnishee, on receipt of certified copies filed by the applicant under the provisions of section 63.005 of the Texas Civil Practice & Remedies Code, shall docket the case in the name of the applicant as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that the answer has been controverted, and that the issue will stand for trial on the docket of the court. The notice shall be directed to the garnishee, be dated and signed as other process from the court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, at ten o'clock a.m. of the Monday next after the expiration of ten days from the date of service. Upon the return of the notice served, the matter shall be tried as in other cases.

Derived from Rule 675 and CPRC 63.005 .

Rule GARN 10 (625). Judgment After Answer

(a) *Judgment When Answer Uncontroverted And Garnishee Is Neither Indebted Nor Has Effects.*

- (1) The court must enter **a take-nothing judgment** against the applicant and in favor of the garnishee if it appears from the garnishee's answer that:
 - (A) the garnishee is not indebted to the respondent, and was not indebted when the writ was served on the garnishee;
 - (B) the garnishee does not have in its possession any effects of the respondent and did not have such effects in its possession when the writ was served;
 - (C) the garnishee has either denied that any other persons within its knowledge are indebted to the respondent or have in their possession effects belonging to the respondent, or else has named all persons within its knowledge who are indebted to the respondent or have in their possession effects belonging to the respondent; and
 - (D) the answer of the garnishee has not been controverted.

SCAC suggestion: Add "custody or control" following each use of "possession."

- (2) *Costs.* Costs of the garnishment proceeding, including reasonable compensation to the garnishee, shall be taxed against the applicant.

Derived from Rules 666 and 677. "Take nothing" judgment was added to clarify meaning of "discharging the garnishee."

(b) *Judgment When Garnishee is Indebted.*

- (1) If the garnishee's answer admits, or the court finds, that the garnishee is indebted to the respondent in any amount, or was indebted when the writ of garnishment was served, the court must render judgment for the applicant against the garnishee. The judgment must be the lesser of:
 - (A) the amount admitted or found to be due to the respondent from the garnishee; or
 - (B) if that amount is in excess of the amount of the applicant's judgment against the respondent with interest and costs, for the full amount of the judgment already rendered against the respondent, together with interest and costs of the suit in the main case and also in the ancillary garnishment proceedings.

Derived from Rule 668 with clarifying language added.

(2) ***Costs.***

(A) If the garnishee's answer is not controverted, and the court enters judgment for the amount admitted by the garnishee, the judgment shall award the garnishee its costs, including reasonable compensation, out of the amount admitted by the garnishee. Those costs shall be taxed against the respondent.

SCAC: Judgment should allow garnishee to recover out of the garnished funds. Suggestion: There are various references to "costs" and whether they are "taxed," "awarded," or "apportioned," and they are not consistent. There should be a review of all of these provisions to make them consistent.

(B) If the garnishee's answer is successfully controverted, the garnishee is not entitled to recover its costs.

(C) If the garnishee's answer is not successfully controverted, the court may award and apportion the costs, including reasonable compensation to the garnishee, as may be appropriate.

(D) Notwithstanding the above, if the garnishee is determined to be indebted to the respondent for less than the amount of the costs of the garnishment proceeding, costs in the amount of the indebtedness shall be taxed against the respondent, and the balance of the costs, including reasonable compensation to the garnishee, shall be taxed against the applicant.

Derived from Rule 677 with clarifying language added to address different scenarios, and, in particular, to remove the unclear command that "costs shall abide the issue of such contest."

(3) If the garnishee fails or refuses to pay the judgment rendered against the garnishee, execution shall issue on the judgment in the same manner and under the same conditions as is provided for execution in other cases.

(c) ***Judgment When Garnishee Has Effects.***

(1) If the garnishee's answer admits, or the court finds, that the garnishee has in its possession, or had in its possession when the writ was served, any personal property of the respondent subject to execution, the court must order sale of the personal property by execution to satisfy the applicant's judgment against the respondent. The order must direct the garnishee to deliver so much of the

personal property necessary to satisfy the judgment to the sheriff or constable for execution.

Derived from Rule 669.

- (2) If the garnishee fails to deliver personal property to the sheriff or constable on demand, on motion of the applicant, the garnishee must be ordered to appear and show cause why it should not be held in contempt of court.

Derived from Rule 670 and shortened.

- (3) **Costs.**
- (A) If the garnishee's answer is not controverted, and the court enters judgment ordering the sale of any effects in the possession of the garnishee, costs, including reasonable compensation to the garnishee, shall be taxed against the respondent.
- (B) If the garnishee's answer is successfully controverted, the garnishee is not entitled to recover its costs.
- (C) If the garnishee's answer is not successfully controverted, the court may award and apportion the costs, including reasonable compensation to the garnishee, as may be appropriate.

Parallel provision derived from Rule 677 with clarifying language added to address different scenarios, and, in particular, to remove the unclear command that "costs shall abide the issue of such contest."

- (d) *Garnishee Discharged on Proof of Compliance with Order.* It shall be a sufficient answer to any claim of the respondent against the garnishee founded on an indebtedness of the garnishee, or on the possession by the garnishee of any effects, for the garnishee to show that the indebtedness has been paid, or that the effects, including any certificates of stock in any incorporated or joint stock company, have been delivered to any sheriff or constable as provided in these rules.

Derived from Rule 678.

- (e) *Costs If Writ Dissolved or Overturned.* If a writ of garnishment is dissolved or overturned on appeal, the costs of the garnishment proceeding, including reasonable compensation to the garnishee, shall be taxed against the applicant.

New provision to address this scenario.

Rule GARN 11 (626). Dissolution or Modification of Order or Writ

- (a) *Motion.* Any party, or any person who claims an interest in the garnished property, may move the court to dissolve or modify the order or writ, for any ground or cause, extrinsic or intrinsic. The motion must be verified and must admit or deny each finding set forth in the order directing the issuance of the writ. If the movant is unable to admit or deny a finding, the movant must set forth the reasons why the movant cannot do so.
- (b) *Time for Hearing.* Unless the parties agree to an extension of time, the motion must be heard promptly, after reasonable notice to all parties, which may be less than three days, and the motion must be determined not later than ten days after it is filed.

SCAC: If the motion has been filed by a third-party, the other parties should have additional time to respond to the motion.

- (c) *Stay of Proceedings.* The filing of the motion stays any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is held, and the motion is determined.
- (d) *Conduct of Hearing; Burden of Proof.*
 - (1) *Burden of Applicant.* The applicant has the burden to prove the statutory grounds relied on for issuance of the writ of garnishment. If the applicant fails to carry its burden, the writ must be dissolved and the underlying order set aside.
 - (2) *Burden of Movant.* If the applicant carries its burden, the movant has the burden to prove the grounds alleged to dissolve or modify the order or writ. If the movant seeks to modify the order or writ based upon the value of the property, the movant has the burden to prove that the reasonable value of the property garnished exceeds the amount necessary to secure the claim, interest for one year, and probable costs. The movant shall also have the burden to prove the facts to justify substitution of property.
 - (3) *Hearing.* The court's determination may be made on the basis of affidavits setting forth uncontroverted facts as would be admissible in evidence. If the facts are controverted, the court must conduct an evidentiary hearing. After a hearing on the motion, the court must issue a written order.

Derived from Rule 664a.

- (e) *Orders Permitted.* The court may order the dissolution or modification of the order or writ, and may make orders allowing for the care, preservation, disposition, or substitution of the property (or the proceeds if the property has been sold), as justice may require. If the court modifies its order granting garnishment, it must make further orders with respect to the bond, if any, that are consistent with the modification of the order. If the movant has given a replevy bond, an order to dissolve the writ must release the replevy bond and discharge the sureties thereon. If the writ is dissolved, the order must be set

aside, the garnished property must be released and all expenses incurred in connection with the transfer and storage of the property may be taxed as costs to the applicant.

Derived from Rule 664a. Last sentence added to parallel attachment and sequestration rules.

- (f) *Third-Party Claimant.* If the motion for an order of sale is filed by the applicant or respondent, no bond is required; the applicant or respondent may replevy the property at any time before the sale. If the motion for an order of sale is filed by any other person, the court may require a bond payable to the applicant or respondent, as ordered by the court, in an amount set by the court with sufficient surety or sureties and conditioned that the third-party claimant will pay, up to the amount of the bond, all damages and costs adjudged against the third-party claimant for wrongfully seeking the release of the property. If the court does not order the release of the property to the third-party claimant, the third-party claimant may follow the procedure for the trial of right of property.

This is a new rule to provide an expedited procedural vehicle for a third-party claimant as an alternative to the trial of right of property. The language parallels the attachment rules.

Rule GARN 12 (627). Perishable Property

- (a) *Definition of Perishable Property.* Property may be found to be perishable when it is in danger of serious and immediate waste or decay, or if the keeping of the property until the trial will necessarily be attended with expense or deterioration in value that will greatly lessen the amount likely to be realized therefrom. For the purposes of this rule, the word “property” refers to personal property garnished pursuant to court order.
- (b) *Trial Court Discretion.* The judge or justice of the peace may make any orders necessary for the property’s preservation or use.
- (c) *Motion and Affidavit for Sale of Perishable Property.* If the respondent has not replevied property after the garnishment, the applicant or other party claiming an interest in the property may file a motion with the clerk or justice of the peace, supported by affidavit, stating specific facts to support a finding that the property or any portion of the property is perishable. A copy of the motion and affidavit must be delivered to the person who is in possession of the property and served on all other parties in any manner prescribed for service of citation or as provided in Rule 21a.
- (d) *Hearing.* The judge or justice of the peace must hear the motion, with or without notice to the parties, as the urgency of the case may require. The judge or justice of the peace may, based on affidavits or oral testimony, order the sale of the perishable property, and must set the amount of the movant’s bond, if required.
- (a) *Movant’s Bond.* If the motion for an order of sale is filed by the applicant or respondent, no bond is required; the applicant or respondent may replevy the property at any time

before the sale. If the motion for an order of sale is filed by any other person, the court may require a bond payable to the applicant or respondent, as ordered by the court, in an amount set by the court with sufficient surety or sureties and conditioned that the third-party claimant will pay, up to the amount of the bond, all damages and costs adjudged against the third-party claimant upon a finding that the motion or sale was wrongful.

- (e) *Order.* An order to sell perishable property must be in writing, specifically describe the property to be sold, be directed to a sheriff or constable, and command the sheriff or constable to sell the property. If the property is being held by a person other than a sheriff or constable, then the sheriff or constable conducting the sale must deliver a copy of the order of sale to the person in possession of the property.
- (f) *Procedure for Sale of Perishable Property.* The sale of perishable property must be conducted in the same manner as sales of personal property under execution, provided that the judge or justice of the peace may set the time of advertising and sale at a time earlier than ten days, according to the exigency of the case, and in that event notice must be given in the manner directed by the order.
- (g) *Return of Order of Sale.* The sheriff or constable conducting the sale of perishable property must promptly remit the proceeds of the sale to the clerk or to the justice of the peace. The sheriff or constable must sign and file with the papers of the case a written return of the order of sale, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale.

Rule GARN 13 (628). Report of Disposition of Property

When garnished property is claimed, replevied, or sold, or otherwise disposed of after the writ has been returned, the sheriff or constable who had custody of the property must immediately complete and sign a report describing the disposition of the property. If the property was replevied, the report must also describe the condition of the property on the date and time of replevy. The report must be promptly filed with the clerk or justice of the peace.

New provision to parallel attachment rules.

Rule GARN 14 (629). Amendment of Errors

- (a) *Before Order.* Before the court issues an order on an application for writ of garnishment, the application and any supporting affidavits may be amended to correct any errors. Those amendments do not require leave of court or notice to the respondent, but must be filed with the clerk or justice of the peace at a time that will not operate as a surprise to the respondent.

- (b) *After Order, Before Service of Writ.* After the court issues an order on an application for writ of garnishment but before the writ of garnishment is served, the application, any supporting affidavits, and the bond may be amended to correct any clerical errors. Those amendments do not require leave of court or notice to the respondent, but must be filed with the clerk or justice of the peace at a time that will not operate as a surprise to the respondent. Clerical errors in the court's order for issuance of the writ and the writ of garnishment may also be corrected by the court, without notice.
- (c) *After Order and Service of Writ.* After service of the writ of garnishment, on motion, notice, and hearing, the court in which the suit is filed may grant leave to amend clerical errors in the application, any supporting affidavits, the bond, the writ of garnishment, or the sheriff or constable's return, for good cause, provided the amendment does not change or add to the grounds of garnishment stated in the original application.