

From: O.C. Hamilton Jr.

To: Chip Babcock Chair SCAC

Subject:

Report of Sub Committee on Constitutional Adequacy of Texas Garnishment Procedure

Attachment

Strickland vs Alexander in the United States District Court of the Northern District of Georgia

The subcommittee discussed the issues via telephone conference. The consensus was that the current garnishment rules could be improved. The following are suggested changes to the Final Report of the Ancillary Proceeding Task Force on Garnishment.

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

- a. *General Requirements.* A writ 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.
- 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 am of the Monday next following expiration of ~~ten~~ 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
 2. answer under oath:
 - A.
 - B.
 - C.
 - D.
 - E.
- c.
- 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 FROM GARNISHMENT UNDER FEDERAL OR STATE LAW. YOU SHOULD CONSULT A LAWYER TO DETERMINE IF YOUR PROPERTY IS EXEMPT.

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. HOWEVER, IF YOU BELIEVE YOUR PROPERTY IS EXEMPT FROM GARNISHMENT

UNDER STATE OR FEDERAL LAW, OR OTHERWISE HAS BEEN WRONGFULLY GARNISHED,
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.

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.~~1. The applicant, who must then deliver the writ to the sheriff, constable, or other person authorized by Rule 103 or Rule 536.
- b.
- c. *Return of Writ.* The return must be in writing and signed by the sheriff, constable, or other person authorized by Rule 103 or Rule 536 who served the writ. The return must be delivered to the applicant who must file it ~~filed~~ with the issuing clerk or justice of the peace without delay. ~~in the same manner as a citation.~~
- d. *Service on Respondent.* ~~Immediately 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.