

## Garnishment Revisions

Draft 4  
July 30, 2007

### SECTION 4. GARNISHMENT

#### Rule 658a. Bond for Garnishment

No writ of garnishment shall issue before final judgment until the party applying therefore has filed with the ~~officer~~ clerk of a district or county court or a justice of the peace authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of garnishment.

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.

Should it be determined from the garnishee's answer if such is not controverted that the garnishee is indebted to the defendant, or has in his hands effects belonging to the defendant, in an amount or value less than the amount of the debt claimed by the plaintiff, then after notice to the defendant the court in which such garnishment is pending upon hearing may reduce the required amount of such bond to double the sum of the garnishee's indebtedness to the defendant plus the value of the effects in his hands belonging to the defendant.

#### Rule 661. Form of Writ

The following form of writ may be used:

"The State of Texas

To E. F., Garnishee, greeting:

Whereas, in the \_\_\_\_\_ Court of \_\_\_\_\_ County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff claiming an indebtedness against the said C.D. of \_\_\_\_\_ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said 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 or before 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 upon oath what, if anything, you are indebted to the said C.D., and were when this writ was served upon you, and what effects, if any, of the said C.D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to

defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs.”

#### **Rule 662. Delivery of Writ**

The writ of garnishment shall be ~~dated and tested~~ attested with the seal of the office of the clerk or justice of the peace as other writs, and may be delivered to ~~the~~ (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, (3) any person certified under order of the Supreme Court by the ~~officer~~ clerk of the district or county court or justice of the peace who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

#### **Rule 663. Execution and Return of Writ**

The writ of garnishment may be executed by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than 18 years of age, or (3) any person certified under order of the Supreme Court. The ~~sheriff or constable~~ person receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

#### **Rule 663a. Service of Writ on Defendant**

The defendant shall be served in any manner prescribed for service of citation or as provided in Rule 21a with a copy of the writ of garnishment, the application, accompanying affidavits and orders of the court as soon as practicable following the service of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

“To \_\_\_\_\_, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been Garnished. If you claim any rights in such property, you are advised:

“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 DISOLVE THIS WRIT.”

#### **Rule 664. Defendant May Replevy**

##### **VERSION # 1**

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~officer~~ sheriff or constable who levied the writ, the court, or the clerk of a county or district court, payable to plaintiff, in the amount fixed by the court’s order, or, at the defendant’s option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~officer~~ sheriff or constable, court or

the clerk of a county or district court), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or the clerk of the county or district court or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

## **VERSION # 2**

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~officer~~ sheriff or constable who levied the writ, or the court, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~officer~~ sheriff or constable, or the court ), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

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of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

### **VERSION # 3**

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the ~~officer~~ sheriff or constable who levied the writ, the court, or the clerk of a county or district court, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness, sought to be replevied (to be estimated by the ~~officer~~ sheriff or constable if the writ of garnishment was served by the sheriff or constable), plus one year's interest thereon at the current legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the ~~officer~~ sheriff or constable, or the clerk of the county or district court or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

### **Rule 669. Judgment for Effects**

Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, the court shall

render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper ~~officer~~ sheriff or constable for that purpose.

#### **Rule 670. Refusal to Deliver Effects**

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the ~~officer~~ sheriff or constable shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

#### **Rule 672. Sale of Effects**

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the ~~officer~~ sheriff or constable making such sale shall execute a transfer of such effects or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

Comment-----2007

#### **VERSION # 1**

The 2006 amendments to Rule 103 allows private process servers to serve citation and other notices, writs, orders and papers issued by the court, except for writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rule 663 and Rule 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 670, or conduct a sale of the effects under Rule 672. The replevy bond in Rule 664 may be approved by the sheriff or constable who levied the writ, or by the clerk of the county or district court or by the court.

#### **VERSION # 2**

The 2006 amendments to Rule 103 allows private process servers to serve citation and other notices, writs, orders and papers issued by the court, except for writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rule 663 and Rule 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 670, or conduct a sale of the effects under Rule 672. The replevy bond in Rule 664 may be approved by the sheriff or constable who levied the writ, or by the court.