

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 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, or (3) any person certified under order of the Supreme Court by the officer 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 664. Defendant May Replevy

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 who levied the writ, 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), 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 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 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 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 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

The 2005 amendments to Rule 103 generally allow private process servers to serve citation and other notices, writs, orders, and papers issued by the court, but private process servers are not authorized to serve writs that require the actual taking of property. Although a writ of garnishment may be served by a private process server under Rules 663 and 663a, only a sheriff or constable may accept delivery of the effects of the garnishee under Rule 669, make return of a garnishee's failure or refusal to deliver the effects under Rule 670, or conduct a sale of the effects under Rule 672.