

## Service of Writs of Garnishment by Private Process

Rules affecting service of Writs of Garnishment:

Rule 15 – All writs are to be directed to Sheriff or Constable

Rule 103 – Persons Who May Serve restricts service of writs affecting taking of person property of thing or requiring enforcement action by the person serving the writ.

Rule 536 - Persons Who May Serve restricts service of writs affecting taking of person property of thing or requiring enforcement action by the person serving the writ.

Rule 662 – The writ shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent of attorney, for that purpose.

Rule 663 – The sheriff or constable receiving shall immediately proceed to execute the same by delivering a copy to the garnishee and shall make return thereof as of other citations.

Rule 664 – At any time before judgment.... The defendant may replevy the same .... by giving bond with sufficient sureties as provided by statute, to be approved by the officer who levied the writ.

Rule 670 – Refusal to deliver effects – Should the garnishee adjudged to have the effects of the defendant in his possession, as provided in the preceding rule, fail or refusal to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon motion of the plaintiff, the garnishee shall be cited for contempt of court for such failure or refusal, he shall be fined for contempt and imprisoned until he shall deliver such effects.

While the delivery of the writ of garnishment is considered by some as simply the delivery of a notice, considering service of this process by private process servers has ramifications well beyond the immediate physical delivery of the notice.

It would seem there are significant rules that would have to be changed or modified to permit this process to be accomplished by private process servers. Rule 15 calls for all writs to be directed to a sheriff or constable. Undoubtedly the language developed for this segment of process was done to limit delivery of court papers that impact possession of property, persons, or assets. In so delivering notice of the garnishment, the defendant is in effect deprived of access or possession of the property identified in the garnishment.

In situations where a defendant is to be served separately from the financial institution, the potential exists for the property to be disposed of prior to the garnishment being served on the financial institution. Should the defendant's service be accomplished prior

to the service on the bank, they would have that opportunity. In cases where a sheriff or constable is serving such separate notices some type of coordination is routine.

A defendant may replevy the property or assets by filing a bond to be approved by the officer who served, or “levied” the writ under rule 664, which would preclude the process server having the authority to serve such a writ. Should the writ be served by a private process server, who would authorize and file such bond? How would a defendant be able to file his replevy bond and obtain his property? The writ of garnishment is issued by the court as a means to ensure that due process is provided for both the plaintiff and the defendant until a final determination is made by the court on rightful possession. After judicial review, the court may modify the requirements of the “officer” in the writ of garnishment.

Also in Rule 670 the implications of the impact of failing or refusing to comply with the demands set forth in the writ of garnishment require the “officer”, who is identified as the sheriff or constable to take direct enforcement action and report to the court by return the failure or refusal to deliver. The court’s action following this notice is a contempt action with potential imprisonment for the failure or refusal. The severity of these potential actions would seem to require greater authority be present to serve such writs.

Not all writs of garnishment are simple notice delivery items. In some cases, we have seen where a writ of garnishment is issued to a business or financial institution that is in possession of property or assets of a third party. A writ may contain language in the order commanding the “officer” to seize and take possession of specified property.

Remedy for defects in service or actions by a process server may leave a plaintiff and defendant unprotected when a liability exists. Sheriff’s and Constables are backed by the liability of their official bond and the county for which they work. A process server company can go bankrupt and leave the parties hanging. Section 7.001, Civil Practice and Remedies Code makes the officer liable for refusal or neglect. An infrastructure of law is already in place to protect the parties for service provided by sheriffs and constables as officers of the court. No such protection for the parties is provided by process servers who aren’t even required to be insured.

Notwithstanding any specific statutory requirements in the Tax Code, Finance Code, Property or Tax Codes, the obligations on Sheriffs and Constables as officers of the court in serving these writs would seem to preclude service by process servers being good public policy.