

From: O.C. Hamilton, Jr.
To: Chip Babcock, Chair SCAC
Subject: Report of Sub-Committee on Constitutional Adequacy of Texas
Garnishment Procedure

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.

SECTION 3. GARNISHMENT

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

- (a) *Pending Suit Required for 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.
- (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
 - (3) state the maximum dollar amount sought to be satisfied by garnishment.
- (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 belief are specifically stated.
- (d) *Order.*
 - (1) *Issuance Without Notice.* No writ shall issue before a final judgment except on written order of the court after a hearing, which may be ex parte.
 - (2) *Effect of Pleading.* The application shall not be quashed because two or more grounds are stated conjunctively or disjunctively.

- (3) *Return.* The order must provide that the writ is returnable to the court that issued the writ.
- (4) *Findings of Fact.* The order must include specific findings of fact supporting the statutory grounds for issuance of the writ.
- (5) *Amount of Property to be Garnished.* The order must state the maximum dollar amount to be satisfied by garnishment.
- (6) *Safekeeping.* The order must command that the property be kept safe and preserved subject to further order of the court.
- (7) *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.
- (8) *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.
- (e) *Multiple Writs.* Writs may issue at the same time, or in succession, without requiring the return of the prior writ or writs. 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. 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.

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.
- (b) *Other Security.* In lieu of a bond, the applicant may deposit cash or other security in compliance with 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 uncontroverted affidavits setting forth facts as would be admissible in evidence; otherwise, the parties must submit evidence. After a hearing, the court must issue a written order on the motion.

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

- (a) *Garhishment After Final Judgment.* At any time after final judgment, the 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.
- (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.
- (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 belief are specifically stated.
- (d) *Order.*
- (1) *Issuance Without Notice.* No writ shall issue except on written order of the court after a hearing, which may be ex parte.
 - (2) *Effect of Pleading.* The application shall not be quashed because two or more grounds are stated conjunctively or disjunctively.
 - (3) *Return.* The order must provide that the writ is returnable to the court that issued the writ.
 - (4) *Findings of Fact.* The order must include specific findings of fact supporting the statutory grounds for issuance of the writ.

- (5) *Amount of Property to be Garnished.* The order must state the maximum dollar amount to be satisfied by garnishment.
- (6) *Safekeeping.* The order must command that the property be kept safe and preserved subject to further order of the court.
- (7) *No Bond Required.* No bond shall be required to be posted by the applicant for a writ of garnishment after final judgment.
- (8) *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.
- (9) *Multiple Writs.* Writs may issue at the same time, or in succession, without requiring the return of the prior writ or writs. 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. 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.

Rule GARN 4 (619). Case Docketed

When the foregoing requirements of these rules have been complied with, 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 shall immediately issue a writ of garnishment directed to the garnishee.

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.
- (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
 - (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.

(c) *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."

- (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. GARNISHMENT IS A COURT PROCEEDING WHEREBY AN ALLEGED CREDITOR OF YOURS IS SEEKING TO ACQUIRE FROM THE GARNISHEE FUNDS OR PROPERTY ALLEGEDLY OWNED BY YOU. IF YOU CLAIM ANY RIGHTS IN THE PROPERTY OR FUNDS, YOU ARE ADVISED:

“YOUR FUNDS OR OTHER PROPERTY MAY BE EXEMPT FROM GARNISHMENT UNDER FEDERAL OR STATE LAW. IT MAY BE IN YOUR BEST INTEREST TO CONSULT A LAWYER TO DETERMINE IF YOUR PROPERTY IS EXEMPT.

“PENDING A DECISION IN THE GARNISHMENT PROCEEDINGS, YOU CANNOT REGAIN POSSESSION OF YOUR PROPERTY UNLESS YOU FILE A BOND, WHICH IS CASH OR OTHER SECURITY IN AN AMOUNT SET BY THE COURT.

“HOWEVER, IF YOU BELIEVE YOUR PROPERTY IS EXEMPT FROM GARNISHMENT UNDER STATE OR FEDERAL LAW, OR 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.”

- (e) *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.

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(c)). 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.
- (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.
- (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.

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) *Where Filed.* At any time before judgment, 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.
- (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.
- (c) *Other Security.* In lieu of a bond, the respondent may deposit cash or other security in compliance with 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 uncontroverted affidavits setting forth facts as would be admissible in evidence; otherwise, the parties must submit evidence. After a hearing, the court must issue a written order on the motion.
- (e) *Respondent's Right to Possession.* If the respondent files a proper replevy bond, and the replevy bond is not successfully challenged by the applicant, the court must order the release of the garnished property to the respondent within a reasonable time after a copy of the court's order is delivered to the garnishee. Before the property is released to the respondent, the respondent must pay all expenses associated with storage of the property.
- (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.
 - (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.
 - (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 associated with storage of the property.
 - (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.
- (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, for the lesser of (1) the amount of the judgment plus interest and costs, or (2) the amount of the replevy bond.

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

- (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 by the Texas Finance Code.

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.
- (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 shall be tried in the county in which the garnishment proceeding is pending. Otherwise, the matter shall be tried in the county in which the garnishee resides.
- (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.

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

(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.

(2) *Costs.*

- (A) If the garnishee's answer is not controverted, and the court enters judgment for the amount admitted by 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.
- (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 shall be taxed against the applicant.

(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.
- (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.
- (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.
- (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.
- (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.

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.
- (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.

- (3) *Hearing.* The court's determination may be made after a hearing involving all parties, or upon the basis of affidavits setting forth facts as would be admissible in evidence. Additional evidence, if tendered by any party, may be received and considered.
- (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 associated with storage of the property may be taxed as costs to the applicant.
- (f) *Third-Party Claimant.* If any person other than the applicant or respondent in the original suit claims all or part of the garnished property, the court, on motion and hearing, may order the release of the property to that third-party claimant. 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.

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.
- (e) *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 or party, and the motion is granted, the court shall not issue the order unless the movant files with the court a bond payable to the applicant or respondent as ordered by the court, with one or more good and sufficient sureties to be approved by the court, conditioned that the movant will be responsible to the applicant or respondent as ordered by the court for any damages, up to the amount of the bond, sustained upon a finding that the motion or sale was wrongful.
- (f) *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.
- (g) *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.
- (h) *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 filed with the clerk or justice of the peace.

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.

Garnishment Statutes
Texas Civil Practice & Remedies Code

§ 63.001. Grounds

A writ of garnishment is available if:

- (1) an original attachment has been issued;
- (2) a plaintiff sues for a debt and makes an affidavit stating that:
 - (A) the debt is just, due, and unpaid;
 - (B) within the plaintiffs knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and
 - (C) the garnishment is not sought to injure the defendant or the garnishee; or
- (3) a plaintiff has a valid, subsisting judgment and makes an affidavit stating that, within the plaintiffs knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.

§ 63.002. Who May Issue

The clerk of a district or county court or a justice of the peace may issue a writ of garnishment returnable to his court.

§ 63.003. Effect of Service

- (a) After service of a writ of garnishment, the garnishee may not deliver any effects or pay any debt to the defendant. If the garnishee is a corporation or joint-stock company, the garnishee may not permit or recognize a sale or transfer of shares or an interest alleged to be owned by the defendant.
- (b) A payment, delivery, sale, or transfer made in violation of Subsection (a) is void as to the amount of the debt, effects, shares, or interest necessary to satisfy the plaintiffs demand.

§ 63.004. Current Wages Exempt

Except as otherwise provided by state or federal law, current wages for personal service are not subject to garnishment. The garnishee shall be discharged from the garnishment as to any debt to the defendant for current wages.

§ 63.005. Place for Trial

- (a) If a garnishee other than a foreign corporation is not a resident of the county in which the original suit is pending or was tried and a party to the suit files an affidavit controverting the garnishee's answer, the issues raised by the answer and controverting affidavit shall be tried in the county in which the garnishee resides. The issues may be tried in a court of that county that has jurisdiction of the amount of the original judgment if the plaintiff files with the court a certified copy of the judgment in the original suit and a certified copy of the proceedings in garnishment, including the plaintiff's application for the writ, the garnishee's answer, and the controverting affidavit.
- (b) If a garnishee whose answer is controverted is a foreign corporation, the issues raised by the answer and controverting affidavit shall be tried in the court in which the original suit is pending or was tried.

§ 63.006. Administrative Fee for Certain Costs Incurred by Employers

(a) An employer who is required by state or federal law to deduct from the current wages of an employee an amount garnished under a withholding order may deduct monthly an administrative fee as provided by Subsection (b) from the employee's disposable earnings in addition to the amount required to be withheld under the withholding order. This section does not apply to income withholding under Chapter 158, Family Code.

(b) The administrative fee deducted under Subsection (a) may not exceed the lesser of:

(1) the actual administrative cost incurred by the employer in complying with the withholding order; or

(2) \$ 10.

(c) For the purposes of this section, "withholding order" means:

(1) a withholding order issued under Section 488A, Part F, Subchapter IV, Higher Education Act of 1965 (20 U.S.C. Section 1095a); and

(2) any analogous order issued under a state or federal law that:

(A) requires the garnishment of an employee's current wages; and

(B) does not contain an express provision authorizing or prohibiting the payment of the administrative costs incurred by the employer in complying with the garnishment by the affected employee.

§ 63.007. Garnishment of Funds Held in Inmate Trust Fund

(a) A writ of garnishment may be issued against an inmate trust fund held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund.

(b) The state's sovereign immunity to suit is waived only to the extent necessary to authorize a garnishment action in accordance with this section.

§ 63.008. Financial Institution As Garnishee

Service of a writ of garnishment on a financial institution named as the garnishee in the writ is governed by Section 59.008, Finance Code.

§ 65.001. Application of Equity Principles

The principles governing courts of equity govern injunction proceedings if not in conflict with this chapter or other law.

§ 65.002. Restraining Order or Injunction Affecting Customer of Financial Institution

Service or delivery of a restraining order or injunction affecting property held by a financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Finance Code.

§ 65.003. to 65.010 [Reserved for expansion]