

AGENDA

COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, January 31, 2020 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203

Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of November 22, 2019 minutes [Pages 1 to 5]
- III. Announcements from the Chair
 - A. C.R.C.P. 56 [Page 6]
- IV. Present Business
 - A. C.R.C.P. 121, § 1-23 + C.R.C.P. 65.1—Federal Civil Rules Changes—(David DeMuro) [Pages 7 to 9]
 - B. JDF 601—District Court Civil Case Cover Sheet Modification to Include Associated Cases—(Bradley Levin)
 - C. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims)
 - D. JDF 105—Service of Pattern Interrogatories—(Mike Hofmann)
 - E. County Court Subcommittee Proposed Rule Changes (307, 341, and 412)—(Ben Vinci)
 - F. C.R.C.P. 103—Amendments Needed in Light of House Bill 19-1189—(Jose Vasquez) [Pages 10 to 61]
 - G. C.R.C.P. 8(c)—Amendments Needed in Light of *Orange Collar v. Mowery*—(John Palmeri)
 - H. C.R.C.P. 4(m)—(Judge Jones) [Pages 62 to 66]
 - I. Redaction of Court Filings by Parties/Counsel—(Judge Jones) [Pages 67 to 73]
 - J. C.R.C.P. 121, Section 1-24—Setting of Deadlines—(Judge Jones)
 - K. Local Rules—(Richard Holme) (Status Report Only)

- L. C.R.C.P. 304—Time Limit for Service from Attorney Daniel Vedra—(Ben Vinci)
- V. Adjourn—**Next meeting is MARCH 27, 2020 at 1:30 pm.**

Michael H. Berger, Chair
michael.berger@judicial.state.co.us
720 625-5231

Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 551050, followed by # key.

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
November 22, 2019 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m. in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X (phone)	
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X (phone)	
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X (phone)	
Cheryl Layne	X (phone)	
John Lebsack	X	
Bradley A. Levin	X	
David C. Little		X
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Judge Sabino Romano	X (phone)	
Stephanie Scoville	X (phone)	
Lee N. Sternal		X
Magistrate Marianne Tims	X (phone)	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci		X
Judge John R. Webb	X (phone)	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X (phone)	
Jeremy Botkins	X	

I. Attachments & Handouts

- November 22, 2019 agenda packet and supplements.

II. Announcements from the Chair

- The September 27, 2019 minutes were approved as presented.
- Judge Berger is forming a standing forms subcommittee as there are more and more issues related to forms that need attention. Judge Berger asked members to volunteer to serve.

III. Present Business

A. Local Rules

Subcommittee chair Richard Holme reported that the subcommittee is in the process of determining how to proceed. Mr. Holme requested additional subcommittee volunteers to allow the group to give better advice to the committee.

Judge Elliff commented that he does not want a rule that would tie the hands of trial judges who are trying to efficiently manage cases. He noted that every judge is different, every district will have unique needs, and that can well mean standing orders on certain issues.

B. C.R.C.P. 56

Mr. Holme brought to the committee the possibility of a change to C.R.C.P. 56 that calls for in-person discussions before a summary judgment motion is decided. The concept was inspired by the Institute for the Advancement of the American Legal System (IAALS). Mr. Holme shared that there don't appear to be rules anywhere around the country specifically authorizing a pre-hearing to talk about the substance of what would be included in a proposed summary judgment motion. Mr. Holme drafted some language, and with Judge Berger's permission, sent it to the trial judges on this committee. The results of the proposed language were mixed, but more positive than negative. Judge Berger took volunteers to serve on a subcommittee addressing these issues.

C. Colorado Municipal Court Rules of Procedure

Judge Frick noted that the Municipal Rules subcommittee is here today with five rule proposals. Once this committee has approved the rules, the Criminal Rules Committee will consider them as well.

Regarding rule 204: after making a few edits, the committee approved the proposal unanimously.

Regarding rule 210: Judge Frick shared that this rule reflects the court's duty to inform on the first appearance in court and on pleas of guilty. The proposed language changes respond to recent legislative changes. A motion was made to approve the rule and add *first appearance or arraignment* to the title, and it passed unanimously.

Regarding rule 223: Brad Levin suggested keeping in an *or* that had been removed. With

that small change, the committee approved the proposal unanimously.

Regarding rule 241: the subcommittee proposed changes to expand the authority of the Colorado Municipal Courts to issue a search warrant when it relates to a charter or ordinance violation involving a threat to public health, safety, or order. Lisa Hamilton-Fieldman queried whether these changes would necessitate that municipal judges be on call. Judge Frick replied that someone will need to be available, but that it probably wouldn't be a huge expansion. A motion was taken to adopt the proposed language with the addition that the court is a court of record to make the rule consistent with the statute. The committee voted 13-11 in favor of it passing. Judge Berger told the committee that the supreme court has rejected proposals in the past when the committee's vote was divided.

Regarding rule 254: Judge Frick explained that this rule restates and clarifies the law. The proposal passed unanimously.

D. JDF 601

Subcommittee chair Brad Levin reported that the group decided there should be a uniform rule discussing related cases. The subcommittee believes that for efficiencies and to avoid inconsistencies, it is important that judges know about related cases. The subcommittee is in favor of adding language to rule 121 and would like to obtain approval on that regard before tackling how exactly to do so.

Judge Dunkelman commented that in his court, related cases are an infrequent occurrence, but it is useful to have the cases together in order to avoid a single case using up more resources than is necessary. Judge Kane is in favor of a rule on this issue. In his court, they see a lot of these cases related to self-represented litigants. A rule on related cases would be very useful when someone is filing a lot of things with the court. Judge Davidson stated that related cases should include all related cases, not just those within a certain district. Judge Elliff shared that his district sees a list of related cases and that the related case information would be good to have. Judge Espinosa stated that currently, Denver County Court groups related cases informally; there, the oldest case tends to control all the new filings and the court doesn't have a form, but the staff seem to catch related filings and group them together. Hearing no opposition to the concept, Judge Berger directed the committee to move to the specifics of what a rule would look like.

Judge Dunkelman spoke in favor of a notice requirement in the rule, and Chief Judge Bernard noted that a rule should be simple but include a definition of related cases. A straw vote was taken and approved overwhelmingly to send this to the subcommittee to draft a rule that requires notice but does not suggest any specific action.

Judge Davidson noted that judicial education through the judges' benchbook could be helpful once a rule is proposed. Judge Elliff stated that there can be venue issues when there are two or three cases involved. Judge Berger shared that some of these preferences could be put into a comment. Judge Kane noted that on a family docket, he was required to contact other judges who had related cases. Judge Kane specified that contacting the

other judges shouldn't be mandatory in the rule, but a comment on the issue might be helpful.

The subcommittee will return with a proposal.

E. Colorado Rules for Magistrates

Subcommittee Chair Magistrate Tims reported that the subcommittee is still grappling with the issue of consent. The subcommittee has discussed the option of the rules saying something like: *in a civil case, this is what a magistrate can always do, can never do, etc.* The subcommittee has looked at five other states and determined that the federal rules aren't helpful. The subcommittee will continue their work.

F. JDF 105

Tabled until January.

G. County Court Rules 307, 341, and 412

Tabled until January.

H. C.R.C.P. 103

The subcommittee plans to meet in December and report to the full committee in January.

I. C.R.C.P. 8(c)

Judge Berger asked for volunteers for this subcommittee.

J. C.R.C.P. 4(m)

Judge Jones reported that the subcommittee will hopefully share a recommendation at the next meeting.

K. C.R.C.P. 304

Tabled until January.

L. Federal Rules Standing Subcommittee on C.R.C.P. 121, § 1-23 + C.R.C.P. 65.1

Subcommittee chair David DeMuro reported that this subcommittee had met and discussed changes recently made to the federal rules. This subcommittee has rejected some of the changes made to the federal rules but would like to amend the rule on bonds to be consistent with the federal approach. The subcommittee also recommends a repeal of rule 65.1. After Judge Webb asked if the subcommittee would be open to adding language about reasonable notice, a motion was made and unanimously passed to have the subcommittee tweak the language and return with it at the next meeting. Mr. Palmeri noted that rule 8 of the appellate rules uses similar language.

IV. Future Meetings

January 31, 2020

March 27, 2020

June 26, 2020

September 25, 2020

November 13, 2020

The Committee adjourned at 3:29 p.m.

michaels, kathryn

From: berger, michael
Sent: Thursday, January 16, 2020 7:26 AM
To: michaels, kathryn
Subject: FW: Proposed Amendment to Rule 56 re meetings with court concerning Summary Judgments

Kathryn,, please add to meeting packet.

From: Dick Holme <rpholme@live.com>
Sent: Wednesday, January 15, 2020 5:20 PM
To: berger, michael <michael.berger@judicial.state.co.us>; brody, karen <karen.brody@judicial.state.co.us>; elliff, j. eric <j.eric.elliff@judicial.state.co.us>; kane, thomas <thomas.kane@judicial.state.co.us>; dunkelman, paul <paul.dunkelman@judicial.state.co.us>; espinosa, adam - DCC Judge <adam.espinosa@denvercountycourt.org>; jpalmeri@gordonrees.com; jlebsack@wsteele.com; ddemuro@vaughandemuro.com; brent.owen@squirepb.com; christopher.mueller@colorado.edu; bal@levinsitcoff.com; stephanie.scoville@coagg.gov
Cc: Dick Holme <rpholme@live.com>
Subject: Proposed Amendment to Rule 56 re meetings with court concerning Summary Judgments

From: Dick Holme <rpholme@live.com>
Sent: Tuesday, January 14, 2020 2:43 PM
To: michael.berger@judicial.state.co.us:
Cc: Dick Holme <rpholme@live.com>
Subject: Proposed Amendment to Rule 56 re meetings with court concerning Summary Judgments

Judge Berger:

Following our November 2019 Civil Rules Committee meeting, you established a sub-committee to consider the benefits, weaknesses and practicality of a proposed amendment to encourage judges to meet with counsel prior to filing of motions for summary judgment. The subcommittee had 5 judges and 8 lawyers and I was serving as Chair (and draftsman). A draft of a proposed amendment was circulated and today a meeting of the subcommittee was held that was attended by 2 judges and 7 lawyers. (Murder trials kept two of the judges from attending.) We opened the meeting by raising the question of whether the subcommittee members were in favor of or in opposition to the concept of adopting such a rule change. To make a long story short, both judges and 5 of the 7 lawyers stated preferences against any such amendment. The negatives involved several different reasons, but the combined effect was such that I cannot recommend further work on this project given the strength and breadth of those against the idea.

The subcommittee members should be given genuine thanks for their study and efforts to understand some of the complexities of this issue.

Dick Holme

P.S. One thought that was floated was based on the suggestion that nothing in the current rules precludes a judge from having counsel meet in advance of filing motions for summary judgment. Thus, if there were a few judges who wanted to experiment with this concept we could gather their information as an unofficial (but useful) form of pilot project.

michaels, kathryn

From: David DeMuro <ddemuro@vaughandemuro.com>
Sent: Tuesday, January 14, 2020 11:37 AM
To: berger, michael
Cc: michaels, kathryn
Subject: Civil Rules Committee
Attachments: CRCP 121, section 1-23 - 01 08 2020 revision.docx

Judge Berger: At the last meeting of the committee, our subcommittee on federal rules changes presented its proposal to modify CRCP 121, § 1-23, on bonds and eliminate CRCP 65.1. The committee made two requests for changes and the proposal was returned to our subcommittee.

I am now submitting to you the revised rule which addresses the requested changes. In subparagraph 8 of the rule, we added a timing factor so that notice of a request to enforce a bond shall be given at the time the motion or other request is made. In subparagraph 9, we added a phrase to the end of the proposed rule to state expressly that the definition of "bond" includes security posted under CRCP 65.

Please add this item to the agenda for the meeting scheduled for January 31, 2020.

Dave

David R. DeMuro
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C.R.C.P. 121, § 1-23. Bonds in Civil Actions

1. Bonds Which Are Automatically Effective Upon Filing With The Court. The following bonds are automatically effective upon filing with the clerk of the court:

- (a) Cash bonds in the amount set by court order, subsection 3 of this rule, or any applicable statute.
- (b) Certificates of deposit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The certificate of deposit shall be issued in the name of the clerk of the court and payable to the clerk of the court, and the original of the certificate of deposit must be deposited with the clerk of the court.
- (c) Corporate surety bonds issued by corporate sureties presently authorized to do business in the State of Colorado in the amount set by court order, subsection 3 of this rule, or any applicable statute. A power of attorney showing the present or current authority of the agent for the surety signing the bond shall be filed with the bond.

2. Bonds Which Are Effective Only Upon Entry of an Order Approving the Bond.

- (a) Letters of credit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The beneficiary of the letter of credit shall be the clerk of the district court. The original of the letter of credit shall be deposited with the clerk of the court.
- (b) Any Other Proposed Bond.

3. Amounts of Bond.

(a) Supersedeas Bonds. Unless the court otherwise orders, or any applicable statute directs a higher amount, the amount of a supersedeas bond to stay execution of a money judgment shall be 125% of the total amount of the judgment entered by the court (including any prejudgment interest, costs and attorneys fees awarded by the court). The amount of a supersedeas bond to stay execution of a non-money judgment shall be determined by the court. Nothing in this rule is intended to limit the court's discretion to deny a stay with respect to non-money judgments. Any interested party may move the trial court (which shall have jurisdiction notwithstanding the pendency of an appeal) for an increase in the amount of the bond to reflect the anticipated time for completion of appellate proceedings or any increase in the amount of judgment.

(b) Other Bonds. The amounts of all other bonds shall be determined by the court or by any applicable statute.

4. Service of Bonds Upon All Parties of Record. A copy of all bonds or proposed bonds filed with the court shall be served on all parties of record in accordance with [C.R.C.P. 5\(b\)](#).

5. No Unsecured Bonds. Except as expressly provided by statute, and except with respect to appearance bonds, no unsecured bond shall be accepted by the court.

6. Objections to Bonds. Any party in interest may file an objection to any bond which is automatically effective under subsection 1 of this rule or to any proposed bond subject to subsection 2 of this rule. A bond, which is automatically effective under subsection 1 remains in effect unless the court orders otherwise. Any objections shall be filed not later than 14 days after service of the bond or proposed bond except that objections based upon the entry of any amended or additional judgment shall be made not later than 14 days after entry of any such amended or additional judgment.

7. Bonding Over a Lien. If a money judgment has been made a lien upon real estate by the filing of a transcript of the judgment record by the judgment creditor, the lien shall be released upon the motion of the judgment debtor or other interested party if a bond for the money judgment has been approved and filed as provided in this section 1-23. The order of the court releasing the lien may be recorded with the clerk and recorder of the county where the property is located. Once the order is recorded, all proceedings by the judgment creditor to enforce the judgment lien shall be discontinued, unless a court orders otherwise.

8. Proceedings against Surety or other Security Provider. When these rules require or permit the giving of a bond or other type of security, the surety or other security provider submits to the jurisdiction of the court. The liability of the surety or other security provider may be enforced on motion without the necessity of an independent action. At the time any party seeks to enforce such liability, it shall provide notice of its motion or other form of request to all parties of record and the surety or other security provider in accordance with C.R.C.P. 5(b).

9. Definition. The term “bond” as used in this rule includes any type of security provided to stay enforcement of a money judgment or any other obligation including providing security under C.R.C.P. 65.

COMMENTS

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[1] The Committee is aware that issues have arisen regarding the effective date of a bond, and thus the effectiveness of injunction orders and other orders which are conditioned upon the filing of an acceptable bond. Certain types of bonds are almost always acceptable and thus, under this rule, are automatically effective upon filing with the Court subject to the consideration of timely filed objections. Other types of bonds may or may not be acceptable and should not be effective until the Court determines the sufficiency of the bond. The court may permit property bonds upon such conditions as are appropriate to protect the judgment creditor (or other party sought to be protected). Such conditions may include an appraisal by a qualified appraiser, information regarding liens and encumbrances against the property, and title insurance.

[2] This rule also sets the presumptive amount of a supersedeas bond for a money judgment. The amount of a supersedeas bond for a non-money judgment must be determined in the particular case by the court and this rule is not intended to affect the court's discretion to deny a supersedeas bond in the case of a non-money judgment.

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January 22, 2020

To: Judge Michael H. Berger

From: Jose L. Vasquez

Date: January 22, 2020

Subject: Amending Colorado Rules of Civil Procedure to incorporate statutory changes to Colorado Wage Garnishment Statute per H.B. 1189

Under prior law, the amount of an individual's disposable earnings subject to garnishment was either 25% of the individual's disposable weekly earnings or the amount by which an individual's disposable earnings for a week exceed 30 times the state or federal minimum wage, whichever was less. The passage of H.B. 19-1189 changed the amount subject to garnishment to 20% of the individual's disposable weekly earnings or 40 times the amount by which an individual's disposable earnings for a week exceed the state or federal minimum wage.

The act also deducted from an individual's disposable earnings subject to garnishment the cost of any health insurance provided by the individual's employer and voluntarily withheld from the individual's earnings. This is in addition to deducting from the person's disposable earnings the cost of court-ordered health insurance for a child provided by an individual, which was required prior to the amendment.

The most substantive of the changes to the statute is the creation of an exemption that would permit individuals to prove that the amount of their pay subject to garnishment should be further reduced or eliminated altogether if the individual can establish that such reductions are necessary to support the individual or the individual's family. Further, to make sure that debtors have more notice to be able to respond properly, the act also required clearer and more timely notice to an individual whose wages are being garnished and gives the individual more time after receiving the notice before garnishment starts.

The act applies to all writs of garnishment issued on or after **October 1, 2020**, regardless of the date of the judgment that is basis of the writ of garnishment.

A subcommittee was formed of which I was appointed to chair for the purpose of addressing the need to make proposed changes to the Colorado Rules of Civil Procedure, to implement the changes from HB 19-1189. The subcommittee was comprised of a fairly equal representation of attorneys who represented debt collectors as well as attorneys that advocated on behalf of

consumers. After meeting to address this matter, the subcommittee assessed that the following rules and forms would need to be amended:

Rule 103 Garnishment

Form 26. Writ of Continuing Garnishment

Form 27. Calculation of the Amount of Exempt Earnings

Form 28. Objection to Calculation of the Amount of Exempt Earnings

Rule 103 is the rule which addresses the manner in which garnishment is executed, thus, the changes on the attached form comprise what was perceived to be the relevant and necessary changes. In examining the rule, it became apparent, however, that to properly implement these changes that the forms themselves would have to be changed. C.R.C.P. Section 1, subsection b. states that “a writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 26, C.R.C.P. It shall also include at least one (1) "Calculation of Amount of Exempt Earnings" form to be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.”

Form 26 is the Writ of Continuing Garnishment form which is used by the creditor to employ a garnishment and is served on the employer, the garnishee, which is then provided to the employee. The subcommittee agreed that it was important to make sure that the provisions of this amended form were read in their entirety, thus, adding under the caption that a person must read the whole form. This is to ensure that the debtor reads the last part of the form, which incorporates the notice requirements mandated by C.R.S. 13-54.5-105 which states that the notice must be “conspicuously labeled.” There are two versions of this form (on page 3 of 5), one which provides examples of what can be withheld from an employee’s paycheck and the other that merely provides a directive to check with the statute. The subcommittee was split with regards to whether to provide examples, as the forms currently do, or to delete them altogether for fear that by doing so something could be left out which should not be.

Form 27 is the Calculation of the Amount of Exempt Earnings form, which is being amended to change the way that disposable income is calculated. Again, there are two versions of this form which again are based on the same reasons set forth above for Form 26.

Form 28 is the Objection to Calculation of the Amount of Exempt Earnings, which is the vehicle by which the debtor can object to not only the employer’s calculations as to withholding but also to assert that their earnings should be exempt due to hardship circumstances. The subcommittee was unanimous in including a list of income and expenses in the form itself, and what is incorporated into that form is from the in form pauperis form that is currently used. Like the two forms above, there are two versions of this form which again are based on the same reasons set forth above for Form 26.

It is our hope that the entire committee can review the attached documents and provide any input on them which can be discussed at the January 31st meeting.

C.R.C.P. 103

This document reflects changes received through December 9, 2019.

**CO - Colorado Local, State & Federal Court Rules > COLORADO RULES OF CIVIL PROCEDURE
> CHAPTER 13 SEIZURE OF PERSON OR PROPERTY > SEIZURE OF PERSON OR PROPERTY**

Rule 103. Garnishment.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) Definitions.

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Continuing Garnishment and Related Forms. A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 26, C.R.C.P. It shall also include at least one (1) "Calculation of Amount of Exempt Earnings" form to be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(c) When Writ of Continuing Garnishment Issues. After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request of the judgment creditor. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Continuing Garnishment. A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with *C.R.C.P. 4*, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) Jurisdiction. Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period.

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying

C.R.C.P. 103

judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.

(3) If a writ of garnishment for support pursuant to *C.R.S. 14-14-105* is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

(g) Exemptions. A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the Exemption Chart contained in the writ.

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings [that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor](#) and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), to the judgment debtor [not later than 7 days after the garnishee is served with the writ of continuing garnishment](#) ~~at the time the judgment debtor receives earnings for the first pay period affected by such writ.~~

(2) For all pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings and the "Judgment Debtor's Objection to the Calculation of Amount of Exempt Earnings" to the judgment debtor at the time the judgment debtor receives earnings for that pay period.

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings [or object and request an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#) A judgment debtor's objection to calculation of exempt earnings [or objection and request for an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#) shall be in accordance with Section 6 of this rule.

(j) Suspension. A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file ~~the answer to the writ of continuing garnishment~~ with the clerk of the court and send a copy to the judgment creditor no less than 7 ~~nor more than 14~~ days [after the garnishee is served with the writ of continuing garnishment a response to the writ of continuing garnishment pursuant to section 13-54.5-105\(5\), C.R.S.](#) ~~following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less.~~ However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall [send such response to the attorney or licensed collection agency](#) ~~pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.~~

[\(2\) In the event the response required by Section 1\(k\)\(1\) of this rule is filed and served pursuant to section 13-54.5-105\(5\)\(b\), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21](#)

days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of continuing garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(32) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(43) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(l)(D), C.R.S., is filed by the judgment debtor within 217 days after the garnishee was served with the writ of continuing garnishment~~judgment debtor received earnings for a pay period~~, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) Definition. "Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."

(b) Form of Writ With Notice and Claim of Exemption. A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(c) When Writ With Notice Issues. After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.

(d) Service of Writ With Notice.

C.R.C.P. 103

(1) Service of a writ with notice shall be made in accordance with *C.R.C.P. 4*.

(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with *C.R.S. 13-54.5-107 (2)*.

(e) Jurisdiction. Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.

(f) Claim of Exemption. A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

(h) Disbursement by Clerk of Court. The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

(i) Automatic Release of Garnishee. If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than \$50.00 and no traverse has been filed, the garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within 182 days from the date of service of such writ.

SECTION 3 WRIT OF GARNISHMENT FOR SUPPORT

(a) Definitions.

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.

(2) "Earnings" shall be as defined in Section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Garnishment for Support. A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17A, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P.

(c) When Writ of Garnishment for Support Issues. Upon compliance with *C.R.S. 14-10-122 (1)(c)*, a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment for Support. Service of a writ of garnishment for support shall be in accordance with *C.R.C.P. 4*.

(e) Jurisdiction. Service of a writ of garnishment for support upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period and Priority.

(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.

(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.

(g) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.

(h) Disbursement of Garnished Earnings. The family support registry or the clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4 WRIT OF GARNISHMENT -- JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) Definition. "Writ of garnishment -- judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by a garnishee for payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment -- other than natural person."

(b) Form of Writ of Garnishment -- Other Than Natural Person. A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17A, Form 32, C.R.C.P.

(c) When Writ of Garnishment -- Other Than Natural Person Issues. When the judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the

judgment creditor may garnish personal property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment -- Other Than Natural Person. Service of the writ of garnishment -- other than natural person shall be made in accordance with *C.R.C.P. 4*. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) Jurisdiction. Service of the writ of garnishment -- other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5 WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) Definition. "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a garnishee. For purposes of this rule, such writ is designated "writ of garnishment in aid of attachment."

(b) Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy. A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17A, Form 34, C.R.C.P.

(c) When Writ of Garnishment in Aid of Attachment Issues. At any time after the issuance of a writ of attachment in accordance with *C.R.C.P. 102*, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) Service of Writ of Garnishment in Aid of Attachment. Service of the writ of garnishment in aid of attachment shall be made in accordance with *C.R.C.P. 4*. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by *C.R.S. 13-55-102*. If the defendant in

attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) Jurisdiction. Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer.

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall enter judgment in favor of the defendant in attachment/judgment debtor and against the garnishee for the use of the plaintiff in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by *C.R.S. 13-55-102*, the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request to Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection [to the calculation of exempt earnings](#) is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

[\(3\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.](#)

[\(4\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. Such objection and request must be filed within 14 days after receipt by the judgment debtor of a copy of the writ of continuing garnishment or receipt of the calculation of exempt earnings for any pay period subsequent to the first pay period when the judgment debtor's earnings were subject to garnishment.](#)

~~(5)~~ The written objection [made under Section 6\(a\)\(2\) or Section 6\(a\)\(4\) of this rule](#) shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

~~(6)~~ The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

~~(7)~~ Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2 (d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) Hearing on Objection or Claim of Exemption.

- (1) Upon the filing of an objection pursuant to Section 6 (a) of this rule or the filing of a claim of exemption pursuant to Section 6 (b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.
- (2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.
- (3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.
- (4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.
- (5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) Objection or Claim of Exemption Within 182 days.

- (1) Notwithstanding the provisions of Section 6 (a)(2), [Section 6\(a\)\(4\)](#) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.
- (2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6 (a)(2) and Section 6 (b)(1).
- (3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated or if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.

(e) Reinstatement of Judgment Debt. If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6 (c)(5) and 6 (d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7 FAILURE OF GARNISHEE TO ANSWER (ALL FORMS OF GARNISHMENT)**(a) Default Entered by Clerk of Court.**

(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 42 days after service of a writ of garnishment upon the garnishee.

(b) Procedure After Default of Garnishee Entered.

(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.

(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with *C.R.C.P. 45* and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8 TRAVERSE OF ANSWER (ALL FORMS OF GARNISHMENT)

(a) Time for Filing of Traverse. The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) Procedure.

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with *C.R.C.P. 5*.

(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.

(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4 (f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with *C.R.C.P. 45*, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9 INTERVENTION (ALL FORMS OF GARNISHMENT)

Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in *C.R.C.P. 24* at any time prior to entry of judgment against the garnishee.

SECTION 10 SET-OFF BY GARNISHEE (ALL FORMS OF GARNISHMENT)

Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11 GARNISHEE NOT REQUIRED TO DEFEND CLAIMS OF THIRD PERSONS (ALL FORMS OF GARNISHMENT)

(a) Garnishee With Notice. A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) Court to Issue Summons. When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in *C.R.C.P. 12* to answer, set up, and assert a claim or be barred thereafter.

(c) Delivery of Property by Garnishee.

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to *C.R.C.P. 4*, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12 RELEASE AND DISCHARGE OF GARNISHEE (ALL FORMS OF GARNISHMENT)

(a) Effect of Judgment. A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) Effect of Payment. Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1 (k)(2) or 3 (g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) Release by Judgment Creditor or Plaintiff in Attachment. A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

EFFECTIVE DATE OF THIS RULE AND AMENDMENTS TO THIS RULE

SECTION 13

GARNISHMENT OF PUBLIC BODY (ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

Repealed October 31, 1991, effective November 1, 1991.

History

Source: Section 1(a)(2) and section 3(a)(2) amended, section 3(a)(2) committee comment added, and effective date repealed October 31, 1991, effective November 1, 1991; section 1(k)(1), (k)(2) and (l) amended and (m) added, section 6(a)(3), (a)(4), and (a)(5) amended, section 7(a)(1) amended, and section 12(b) amended and adopted October 30, 1997, effective January 1, 1998; entire section amended and adopted June 28, 2001, effective August 8, 2001; section 3(g) and (h) amended and adopted January 13, 2005, effective February 1, 2005; section 1(k)(1) and (k)(2) amended and effective November 18, 2010; section 1(f)(1), (k)(1), (k)(2), and (l)(1), section 2(g)(2) and (g)(4), section 3(g), section 6(a)(1), (a)(2), (b)(1), and (c)(1), section 7(a)(2), and section 8(a) amended and adopted December 14, 2011, effective July 1, 2012; section 2(g)(2) and (g)(4) corrected June 15, 2012, nunc pro tunc, December 14, 2011, effective July 1, 2012; section 2(g)(1) amended and effective June 7, 2013; section 4(f) amended and adopted January 29, 2016, effective March 1, 2016; section 1(b), (c), (g), (h)(1), (h)(2), (k)(1), (k)(2), (l)(1), and (l)(2), section 2(i), section 6 IP(d), (d)(1), and section 7(a)(2) amended and adopted January 12, 2017, effective March 1, 2017.

Annotations

Notes

Cross references:

For the minimum amount upon which garnishment shall issue, see § 13-52-108, C.R.S.; for group life insurance policy being exempt from garnishment, see § 10-7-205, C.R.S.; for provisions concerning service of process, see *C.R.C.P. 4(e)*; for presentation of defenses, see *C.R.C.P. 12*; for intervention, see *C.R.C.P. 24*.

Case Notes

I. General Consideration.

II. Provisions Applicable to All Forms of Garnishment.

III. Specific Forms of Garnishment.

Law reviews.

Garnishment is a deprivation of defendant's property,

The whole object of garnishment is to reach effects or credits in the garnishee's hands,

Garnishment is strictly a statutory remedy.

Garnishment proceedings cannot be sustained if they go beyond statute.

Garnishment proceedings fall under the equity arm of a court,

Writ of garnishment must be specific as to debtor.

When garnishment proceeding considered "determined".

This rule has no provision for release of cash.

Attorneys' fees not permitted in garnishment.

This rule creates an exception to the American rule in garnishment actions;

This rule is not applicable to spendthrift provisions of a will.

The intent of congress that social security benefits be exempt from seizure is not undercut or in any way compromised by this rule.

Amendment of answer.

Pending appellate review does not convert a judgment to a contingent liability or to a debt owing in the future.

Stay of further garnishment proceedings until garnished judgments were no longer subject to stays of execution is the proper procedure

A liability is not contingent

Unless a notice of garnishment properly runs with an accurate and sufficiently specific description against the individual to whom the garnishee may be indebted,

II. PROVISIONS APPLICABLE TO ALL FORMS OF GARNISHMENTS.

Annotator's note.

Before the turn of the century it was impossible to seize a debt owed by a nonresident garnishee

Under the present rule for garnishment, a court has jurisdiction for garnishment of a debt

Writ of garnishment can only be issued after issuance of a writ of attachment.

However, a proceeding by garnishment, though an independent suit, is auxiliary

A judgment is hypothetical when taken in advance

The issuance of a post-judgment writ of garnishment without a writ of execution is one alternative

When the principal judgment has been obtained, the validity of the judgment against the garnishee depends upon the validity of the judgment against the defendant.

Without jurisdiction of the defendant and a judgment against him, a judgment against the garnishee is void,

Garnishment is proper only after a valid judgment has been entered.

In the absence of statute, if the assessment or demand has not been previously made

Garnishee cannot be placed in a worse position than if defendant enforced his own claim.

Writ of garnishment impounds all moneys held by garnishee

A sheriff is not required to make diligent search for other property of defendant before writ may issue.

An indebtedness only can be made the subject of garnishment,

Garnishment applies only to contracts and not to tort actions.

A court should dismiss the action when it appears beyond question that the action sounds in tort.

A tort claim cannot be adjudicated in a garnishment procedure,

Since there is nothing in an insurance policy, either expressly or impliedly, making a garnisher privy in contract with an insured,

C.R.C.P. 103

Where one, for a valuable consideration, has assumed the obligation of another, he may be held liable as garnishee,

A widow's allowance is subject to garnishment.

A plaintiff in garnishment does not stand in the position of a purchaser in good faith

A garnishment proceeding cannot displace prior valid and bona fide existing right

For example, an attorney's lien is prior and superior to any right

Garnishment under executions is properly subordinated to garnishment under writs of attachment theretofore served

A creditor accepting provisions of assignment cannot reach funds of sale through garnishment.

Contingent liabilities are not garnishable.

Annotator's note.

Creditor must proceed in state where employment services rendered.

The fact that the employer is a railroad company operating a line through different states does not change this rule.

Where an order for a widow's allowance and service of garnishment summons affecting the same are made on the same day,

Content of summons not prescribed.

Writ of garnishment served upon garnishee is insufficient

A writ of garnishment pursuant to this rule and *C.R.C.P. 403* provides a judgment creditor with an efficient mechanism for garnishing property to satisfy a proper judgment,

Garnishment cannot be extended by construction to cases which are not within both its letter and spirit,

Where a garnishee is doing business within Colorado, service of a writ of garnishment upon it at its place of business properly brings it within the jurisdiction

Where it is claimed that the court does not have jurisdiction, but there was a judgment and execution in the main cause,

A garnishment can reach only such property as belongs to the debtor.

This rule shows an intent that every sort of interest of the debtor might be garnished.

The assertion by a garnishee of a jurisdictional defense

Dormancy of judgment in foreign state does not defeat rights of creditor under this rule.

Law reviews.

Absence of a creditor-debtor relationship between judgment debtor and garnishee

Garnishee is entitled to an evidentiary hearing concerning the validity of the garnished debt

Failure to comply with a court order does not supercede requirement to set a hearing.

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A garnishee's answer is made with reference to the facts existing

If, at that time, the garnishee owes the defendant a debt,

If, at that time, he is not indebted

Garnishee is not answerable for effects of the defendant coming into his hands, or indebtedness accruing from him to the defendant, after the garnishment.

It is only where the answer of a garnishee shows that he is indebted

In order to charge him upon his answer,

Where his answer is a substantial denial of indebtedness,

A delivery by the garnishee to the sheriff can be ordered only where

"Supplemental answer" held no answer at all where time to answer exhausted.

Note properly turned over to sheriff.

A contingent liability is not garnishable.

Payment to creditor's attorneys is payment to creditor.

Default for failure of garnishee "to answer or pay"

Annotator's note.

Previously, an order denying a motion to discharge a garnishee for failure of plaintiff to traverse answer of garnishee within required period was not appealable

Still garnishee cannot take advantage of his own delay.

A traverse stating only conclusions of law and not facts is insufficient.

The answer of the garnishee and the traverse of the plaintiffs are the only pleadings provided by this rule, and

make up the issues in garnishment proceedings.

Any new matter pleaded in the traverse is deemed to be denied or avoided.

Where the garnishee has no opportunity to plead to a reply

A partner may set up nonjoinder of copartner as a defense.

Subsection 8(b)

An award of attorney fees

An award of attorney fees, costs, and expenses under section 8(b)

Annotator's note.

This section 9 is not mandatory,

In garnishment proceedings, intervention is governed by this rule

Allegations of the petition in intervention held sufficient to make out a prima facie case for intervening assignee.

With denial of right of intervention constituting reversible error.

Where in due time.

It is error for a trial court to quash a garnishment where

An intervention by definition involves third parties,

Law reviews.

Annotator's note.

By this section a garnishee is allowed to retain or deduct

Garnishee may plead as a defense or set-off

Garnishee is not to be placed in a worse position.

Bank receiver was entitled to set-off compensation due him.

A garnisheed bank may apply the amount on deposit to the credit of a debtor

Agreement after service of writ would be void.

Garnishee bank is entitled to claim set-off

Landlord's lien.

The rights and liabilities of a garnishee are to be determined as of the date of the garnishment

It is unreasonable to require a garnishee to claim a set-off immediately upon service of the writ of garnishment;

It is the responsibility of the trial court to determine the amounts and reasonableness of set-offs,

Law firm had statutory charging lien on settlement proceeds.

Annotator's note.

This section puts burden on claimant

When a garnishee in his answer states that a third party claims property in his possession

However, this rule refers to answers in good faith,

Payment to one other than judgment debtor held improper.

It is not essential that notice of an assignment be given in advance to a garnishee,

If, during the pendency of garnishment proceedings, it is established that an assignment of the subject-matter antedating the garnishment was actually executed,

A creditor is entitled to a fund owing defendant by his employer as against the claims of another creditor of which he had no notice

Once a third-party claimant has conceded that the disputed property may be garnished by a creditor,

A judgment in the principal proceeding is presumptively valid

Such judgment when not superseded by virtue of a failure to furnish the required bond

The reversal of a judgment upon which a garnishment is based leaves nothing

If the original judgment is reversed, a judgment in garnishment is deprived of a basis

The existence of a valid judgment is a jurisdictional prerequisite

Where the judgment in the main case has been reversed,

Since garnishee's liability is not established.

Court approval not required.

Law reviews.

Past-due child support payments in themselves constitute debt.

Amount defendant admittedly owed for past-due child support may be garnished by bank

Foreclosure sale excess proceeds

Law firm had statutory charging lien on settlement proceeds.
C. R.C.P. 102, this rule, and § 4-8-112 may be harmonized

ANNOTATION

I. General Consideration.

II. Provisions Applicable to All Forms of Garnishment.

- A. When Writ Issues.
- B. Service of Writ.
- C. Jurisdiction.
- D. Objection of Judgment Debtor - Exemptions.
- E. Answer.
- F. Traverse of Answer.
- G. Intervention.
- H. Set-off.
- I. Claims of Third Persons.
- J. Release and Discharge.
- K. Disbursement of Funds.

III. Specific Forms of Garnishment.

Law reviews.

For article, "Seizure of Person or Property: Rules 101-104", see 23 Rocky Mt. L. Rev. 603 (1951). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962).

Garnishment is a deprivation of defendant's property,

or right to the use of his property. [Bernhardt v. Commodity Option Co., 187 Colo. 89, 528 P.2d 919 \(1974\)](#), cert. denied, 421 U.S. 1004, 95 S. Ct. 2406, 44 L. Ed. 2d 673 (1975).

The whole object of garnishment is to reach effects or credits in the garnishee's hands,

and to subject them to the payment of such judgment as the plaintiff may recover against the defendant. It results necessarily that there can be no judgment against the garnishee until judgment against the defendant shall have been recovered. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

Garnishment is strictly a statutory remedy.

Troy Laundry & Mach. Co. v. City & County of Denver, 11 Colo. App. 368, 53 P. 256 (1898); [Black v. Plumb, 94 Colo. 318, 29 P.2d 708](#), 91 A.L.R. 133 (1934).

The remedy of garnishment was unknown at common law and exists only by reason of statute or rules of procedure enacted pursuant to statutory authority. [Worcester v. State Farm Mut. Auto. Ins. Co., 172 Colo. 352, 473 P.2d 711 \(1970\)](#).

Garnishment proceedings cannot be sustained if they go beyond statute.

[State v. Elkins, 84 Colo. 409, 270 P. 875 \(1928\).](#)

Garnishment proceedings fall under the equity arm of a court,

the purpose being to summarily reach ordinarily nonleviable evidences of debt, to prevent the loss or dissipation of such assets, to determine the ownership of such funds, and to provide for the equitable distribution thereof, such being triable by the court and not by a jury. [Worcester v. State Farm Mut. Auto. Ins. Co., 172 Colo. 352, 473 P.2d 711 \(1970\); Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC, 37 P.3d 485 \(Colo. App. 2001\).](#)

Writ of garnishment must be specific as to debtor.

Berns, Clancy & [Associates v. Bank of Boulder, 717 P.2d 1022 \(Colo. App. 1986\).](#)

When garnishment proceeding considered "determined".

A garnishment proceeding may not be considered "determined" until decisions regarding the rights of parties to the action can be made, and nothing but ministerial functions remain to be done. [Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 \(1978\);](#) In re Seay, 97 Bankr. 41 (Bankr. D. Colo. 1989).

Until the time for filing an exemption under § 13-54-106 expires, the garnishment proceedings are not determined. [Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 \(1978\);](#) In re Seay, 97 Bankr. 41 (Bankr. D. Colo. 1989).

This rule has no provision for release of cash.

This rule relates to garnishment and has no provision similar to C.R.C.P. 102 for release of cash in the hands of a garnishee. [Phoenix Assurance Co. v. Hughes, 367 F.2d 526 \(10th Cir. 1966\).](#)

Attorneys' fees not permitted in garnishment.

Neither this rule nor any other section or rule permits award of attorneys' fees for the garnishee in a garnishment. [Commercial Claims, Ltd. v. First Nat'l Bank, 649 P.2d 736 \(Colo. App. 1982\).](#)

This rule creates an exception to the American rule in garnishment actions;

hence, the trial court was authorized to make an award of attorney fees. [Hoang v. Monterra Homes \(Powderhorn\) LLC, 129 P.3d 1028 \(Colo. App. 2005\),](#) rev'd on other grounds sub nom. [Hoang v. Assurance Co. of Am., 149 P.3d 798 \(Colo. 2007\).](#)

This rule is not applicable to spendthrift provisions of a will.

[Brasser v. Hutchison, 37 Colo. App. 528, 549 P.2d 801 \(1976\).](#)

Funds under the control of a trustee subject to spendthrift provisions cannot be garnished. [Brasser v. Hutchison, 37 Colo. App. 528, 549 P.2d 801 \(1976\).](#)

The intent of congress that social security benefits be exempt from seizure is not undercut or in any way compromised by this rule.

[Ortiz v. Valdez, 971 P.2d 1076 \(Colo. App. 1998\).](#)

Amendment of answer.

Although this section is silent as to whether answers filed to a writ of garnishment may be amended, the guiding principle is that where the adverse party has not changed his position based on the original answer, the court, in its discretion should freely grant amendments. [Brown v. Schumann, 40 Colo. App. 336, 575 P.2d 443 \(1978\).](#)

Where the inability to amend would entirely foreclose the requesting party's case, and where the opposing party could show no prejudice to his case from the proposed amendment (other than the "prejudice" of having the garnishment determined on its merits), and where no prejudice to the court itself was evident from the record, the trial court abuses its discretion in ignoring the garnishee's amended answer. [Brown v. Schumann, 40 Colo. App. 336, 575 P.2d 443 \(1978\).](#)

Pending appellate review does not convert a judgment to a contingent liability or to a debt owing in the future.

Shawn v. 1776 Corp., 787 P.2d 183 (Colo. App. 1989).

Stay of further garnishment proceedings until garnished judgments were no longer subject to stays of execution is the proper procedure

and fully protects the interests of both garnishee and garnishor. Shawn v. 1776 Corp., 787 P.2d 183 (Colo. App. 1989).

A liability is not contingent

merely because the garnishee disputes whether it breached its contract with the debtor. [Walk-In Med. Centers, Inc. v. Breuer Capital Corp., 778 F. Supp. 1116 \(D. Colo. 1991\).](#)

Unless a notice of garnishment properly runs with an accurate and sufficiently specific description against the individual to whom the garnishee may be indebted,

a garnishee is totally unaffected by the notice served upon him. [Anderson Boneless Beef v. Sunshine Health Care Center, Inc., 852 P.2d 1340 \(Colo. App. 1993\).](#)

Applied in [Stone v. Chapels for Meditation, Inc., 33 Colo. App. 346, 519 P.2d 1233 \(1974\).](#)

II. PROVISIONS APPLICABLE TO ALL FORMS OF GARNISHMENTS.

Annotator's note.

Since section (b) of this rule was similar to § 129 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Before the turn of the century it was impossible to seize a debt owed by a nonresident garnishee

to a principal defendant where the court had no jurisdiction over the situs of the debt. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\).](#)

Under the present rule for garnishment, a court has jurisdiction for garnishment of a debt

upon obtaining jurisdiction over the garnishee. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\).](#)

Writ of garnishment can only be issued after issuance of a writ of attachment.

[Bernhardt v. Commodity Option Co., 187 Colo. 89, 528 P.2d 919 \(1974\),](#) cert. denied, 421 U.S. 1004, 95 S. Ct. 2406, 44 L. Ed. 2d 673 (1975).

However, a proceeding by garnishment, though an independent suit, is auxiliary

to the main suit. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

A judgment is hypothetical when taken in advance

of a judgment in the main suit, as it is dependent upon a judgment subsequently obtained. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

The issuance of a post-judgment writ of garnishment without a writ of execution is one alternative

authorized by *C.R.C.P. 69(a)*. *Warner/Elektra/Atlantic Corp. v. B & R Record & [Tape Merchandisers, Inc.](#), 40 Colo. App. 179, 570 P.2d 1320 (1977)*.

When the creditor and debtor have already participated in a complete hearing on the merits of the debt, as is the case with post-judgment garnishment, there is no due process advantage to be gained by forcing the garnishor to file an additional writ. *Warner/Elektra/Atlantic Corp. v. B & R Record & [Tape Merchandisers, Inc.](#), 40 Colo. App. 179, 570 P.2d 1320 (1977)*.

When the principal judgment has been obtained, the validity of the judgment against the garnishee depends upon the validity of the judgment against the defendant.

McPhee v. Gomer, 6 Colo. App. 461, 41 P. 836 (1895).

Without jurisdiction of the defendant and a judgment against him, a judgment against the garnishee is void,

and its payment will not protect the garnishee. *McPhee v. Gomer*, 6 Colo. App. 461, 41 P. 836 (1895).

Garnishment is proper only after a valid judgment has been entered.

W. Med. Prop. Corp. v. Denver Opportunity, Inc., 482 F. Supp. 1205 (D. Colo. 1980).

If the debtor could bring an immediate action to recover the debt from the garnishee, then the debt is due and payable within the meaning of the rule. *Martinez v. Dixon*, 710 P.2d 498 (Colo. App. 1985); *Flanders Elec. v. Davall Controls & Eng.*, 831 P.2d 492 (Colo. App. 1992).

In the absence of statute, if the assessment or demand has not been previously made

in accordance with law, the garnishee is not liable. *Universal Fire Ins. Co. v. Tabor*, 16 Colo. 531, 27 P. 890 (1891).

Garnishee cannot be placed in a worse position than if defendant enforced his own claim.

In the absence of fraud between defendant and a garnishee, the latter cannot be placed, through garnishment proceedings, in a worse position than if defendant's claim were enforced by defendant himself. *Universal Fire Ins. Co. v. Tabor*, 16 Colo. 531, 27 P. 890 (1891).

Writ of garnishment impounds all moneys held by garnishee

and owing to the judgment debtor as of the date the writ is served. *Graybar Elec. Co. v. Watkins Elec. Co.*, 626 P.2d 1157 (Colo. App. 1980), rev'd on other grounds, 662 P.2d 1064 (Colo. 1983).

The trial court obtains jurisdiction over all the monies held by garnishee which are owing to the judgment debtor on the date of the service of the writ of garnishment. *Martinez v. Dixon*, 710 P.2d 498 (Colo. App. 1985).

A sheriff is not required to make diligent search for other property of defendant before writ may issue.

E. I. Du Pont De Nemours & [Co. v. Lednum, 82 Colo. 472, 260 P. 1017 \(1927\).](#)

An indebtedness only can be made the subject of garnishment,

and, in order that a liability may be an indebtedness within the meaning of the law, it must arise out of contract. Lewis v. City & County of Denver, 9 Colo. App. 328, 48 P. 317 (1897).

Garnishment applies only to contracts and not to tort actions.

The controlling characteristic of the remedy by garnishment is that the liability of the garnishee must originate in, and be dependent on, contract. A right of action for a tort is not, therefore, the subject of garnishment in most jurisdictions. A claim in tort, not reduced to judgment, is not a debt within the meaning of the statutes in reference to garnishment. And the rule is the same where as between the tortfeasor and the person to whom the wrong was done the latter might at his option either hold the tortfeasor to his liability in tort, or, waiving the tort, treat him as his debtor, since the creditor of the wronged person is not at liberty to exercise this option in his place and so evade the general rule as to garnishment of claims in tort by substituting therefor a liquidated claim "quasi ex contractu". [Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\).](#)

A court should dismiss the action when it appears beyond question that the action sounds in tort.

[Donald Co. v. Dubinsky, 74 Colo. 128, 219 P. 209 \(1923\); Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\).](#)

A tort claim cannot be adjudicated in a garnishment procedure,

for to do so compels the garnishee to enter into combat with an adversary other than its own and do battle with one who had never had any contract relation with him. Steen v. Aetna Cas. & [Sur. Co., 157 Colo. 99, 401 P.2d 254 \(1965\).](#)

Since there is nothing in an insurance policy, either expressly or impliedly, making a garnisher privy in contract with an insured,

a stranger to the insurance policy involved, as a garnisher, can have no claim against the company, as garnishee, unless and until such transpires. Steen v. Aetna Cas. & [Sur. Co., 157 Colo. 99, 401 P.2d 254 \(1965\).](#)

Where one, for a valuable consideration, has assumed the obligation of another, he may be held liable as garnishee,

and it is not necessary that the garnishee hold tangible real or personal property of the debtor, for the assumption of the debts of another when in proper form is a right, credit, or chose in action required to be reported in garnishment proceedings. [Field Family Constr. Co. v. Ryan, 145 Colo. 598, 360 P.2d 110 \(1961\).](#)

A widow's allowance is subject to garnishment.

Isbell-Kent-Oakes Dry Goods Co. v. Larimer County Bank & [Trust Co., 75 Colo. 451, 226 P. 293 \(1924\).](#)

A plaintiff in garnishment does not stand in the position of a purchaser in good faith

and for value, but is in no better position than a purchaser or assignee with notice. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

A garnishment proceeding cannot displace prior valid and bona fide existing right

and claims against the debt or property involved. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

For example, an attorney's lien is prior and superior to any right

acquired by a plaintiff in such proceedings. [Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 \(1933\).](#)

Garnishment under executions is properly subordinated to garnishment under writs of attachment theretofore served

on the same creditor, although the latter are, as a precautionary measure, again served on the same date as that issued under the writ of execution. Larimer County Bank & [Trust Co. v. Colo. Rubber Co., 79 Colo. 4, 243 P. 622 \(1926\).](#)

A creditor accepting provisions of assignment cannot reach funds of sale through garnishment.

If a creditor accepts, and acts under, the provisions of an assignment for the benefit of creditors, he may not thereafter repudiate his acceptance and claim property in the hands of the trustee for the satisfaction of his debt or reach funds derived from the sale thereof by proceedings in garnishment. [McMullin v. Keogh-Doyle Meat Co., 96 Colo. 298, 42 P.2d 463 \(1935\).](#)

Contingent liabilities are not garnishable.

Flanders Elec. v. Davall Controls & [Eng., 831 P.2d 492 \(Colo. App. 1992\).](#)

Annotator's note.

Since section (c) of the prior version of this rule was similar to § 130 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Creditor must proceed in state where employment services rendered.

The state in which services were rendered and in which the employer and employee reside is the situs of a chose and action for wages, and a creditor of the employee, who would reach the fund by garnishment, must proceed in that state. Atchison, T. & S. F. R. R. v. Maggard, 6 Colo. App. 85, 39 P. 985 (1895).

The fact that the employer is a railroad company operating a line through different states does not change this rule.

Atchison, T. & S. F. R. R. v. Maggard, 6 Colo. App. 85, 39 P. 985 (1895).

Where an order for a widow's allowance and service of garnishment summons affecting the same are made on the same day,

they are presumptively at the same time. Isbell-Kent-Oakes Dry Goods Co. v. Larimer County Bank & [Trust Co., 75 Colo. 451, 226 P. 293 \(1924\).](#)

Content of summons not prescribed.

This section contains no provision that the court set forth any particular matters in the summons. [Security State Bank v. Weingardt, 42 Colo. App. 219, 597 P.2d 1045 \(1979\).](#)

Writ of garnishment served upon garnishee is insufficient

if it fails to provide due process notice that a judgment could be entered against the garnishee based solely upon amount of judgment previously entered if garnishee fails to respond. [Don J. Best Trust v. Cherry Creek Nat. Bank, 792 P.2d 303 \(Colo. App. 1990\).](#)

A writ of garnishment pursuant to this rule and C.R.C.P. 403 provides a judgment creditor with an efficient mechanism for garnishing property to satisfy a proper judgment,

provides the judgment debtor with an expedited procedure to protect his or her exempt property, and affords the judgment debtor significantly more process than is required by the [United States and Colorado Constitutions. Ortiz v. Valdez, 971 P.2d 1076 \(Colo. App. 1998\).](#)

Garnishment cannot be extended by construction to cases which are not within both its letter and spirit,

although it is true that the garnishment statutes of Colorado specifically require that they shall be liberally construed so as to promote their objects. This applies, however, only to the enforcement of the remedy after jurisdiction has attached; it does not permit courts to enlarge or extend by implication the scope of the statutes, so as to bring within their jurisdiction any cases except those to which the statutes manifestly and clearly apply. As to this, the rule of strict construction prevails, the statutes being in derogation of the common law. *Troy Laundry & Mach. Co. v. City & County of Denver*, 11 Colo. App. 368, 53 P. 256 (1898); [Black v. Plumb, 94 Colo. 318, 29 P.2d 708 \(1934\).](#)

Where a garnishee is doing business within Colorado, service of a writ of garnishment upon it at its place of business properly brings it within the jurisdiction

of the court in a garnishment proceeding. [Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 \(1971\).](#)

Where it is claimed that the court does not have jurisdiction, but there was a judgment and execution in the main cause,

regularly obtained, a return of the writ of garnishment, showing due service, gives the court jurisdiction over the garnishee. *E.I. Du Pont De Nemours & Co. v. Lednum, 82 Colo. 472, 260 P. 1017 (1927)* (decided under § 135 of the former Code of Civil Procedure, which was replaced by the Rules of Civil Procedure in 1941).

A garnishment can reach only such property as belongs to the debtor.

[Denver Joint Stock Land Bank v. Moore, 93 Colo. 151, 25 P.2d 180 \(1933\); People ex rel. J.W., 174 P.3d 315 \(Colo. App. 2007\).](#)

This rule shows an intent that every sort of interest of the debtor might be garnished.

[Bank of Grand Junction v. Bank of Vernal, 81 Colo. 483, 256 P. 660 \(1927\).](#)

The assertion by a garnishee of a jurisdictional defense

to a judgment for which he is sought to be held is not a collateral but a direct attack upon the judgment. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Dormancy of judgment in foreign state does not defeat rights of creditor under this rule.

[Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\).](#)

Rather than reviving a judgment lien obtained in a foreign state and subsequently recorded in Colorado, garnishments created new and separate liens against the estate of the judgment debtor. Further, the garnishments were not an effort by the judgment creditor to maintain an action in Colorado that could not be maintained in the foreign state, but instead were ancillary to the judgment previously obtained. [Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\).](#)

Law reviews.

For note, "A Discussion of Garnishment and Its Exemptions", see 27 Dicta 453 (1950).

Absence of a creditor-debtor relationship between judgment debtor and garnishee

and the existence of an agreement between such parties which specifically negated garnishee's assumption of any of judgment debtor's liability precluded judgment creditors' proceeding against garnishee. [Coin Serv. Investors, Inc. v. Grooms, 743 P.2d 42 \(Colo. App. 1987\).](#)

Garnishee is entitled to an evidentiary hearing concerning the validity of the garnished debt

in order to afford due process to the garnishee. [Maddalone v. C.D.C., Inc., 765 P.2d 1047 \(Colo. App. 1988\).](#)

Failure to comply with a court order does not supercede requirement to set a hearing.

The court may not sanction a party for his or her failure to comply with a court order by refusing to set a hearing on an objection or claim of exemption. The setting of a hearing is mandatory, not discretionary. [Borrayo v. Lefever, 159 P.3d 657 \(Colo. App. 2006\).](#)

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where trial court conducted a timely and thorough hearing at which it heard argument and received evidence in the form of exhibits from the interested parties and at which the husband's counsel neither requested the opportunity to call witnesses nor objected to the proceeding. [In re Gedgaudas, 978 P.2d 677 \(Colo. App. 1999\).](#)

A garnishee's answer is made with reference to the facts existing

at the time of the service of a writ of garnishment. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

If, at that time, the garnishee owes the defendant a debt,

or has personal property of the defendant in his possession or under his control, he must so answer and abide the judgment of a court. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

If, at that time, he is not indebted

to the defendant, or has not in his possession or under his control, any property of the defendant, he is entitled to a discharge. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

Garnishee is not answerable for effects of the defendant coming into his hands, or indebtedness accruing from him to the defendant, after the garnishment.

Bragdon v. Bradt, 16 Colo. App. 65, 64 P. 248 (1901).

It is only where the answer of a garnishee shows that he is indebted

to the defendant, has personal property in his possession or under his control belonging to the defendant, or where his answer denying indebtedness to the defendant or possession of his property is successfully controverted that a judgment against him is lawful. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

In order to charge him upon his answer,

it must contain a clear admission of a debt due to, or the possession of attachable property of the defendant. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

Where his answer is a substantial denial of indebtedness,

or possession of attachable property belonging to the defendant, he is entitled to a judgment of discharge, unless the force of the denial is overcome by other statements in the answer or unless the answer is shown to be untrue. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

A delivery by the garnishee to the sheriff can be ordered only where

the answer admits possession in the garnishee of property belonging to the defendant or where, upon a trial of issue joined upon the answer, such possession is found. *Bragdon v. Bradt*, 16 Colo. App. 65, 64 P. 248 (1901).

"Supplemental answer" held no answer at all where time to answer exhausted.

Bragdon v. Bradt, 16 Colo. App. 65, 64 P. 248 (1901).

Note properly turned over to sheriff.

Where a note in the hands of a garnishee is held pending the result of litigation on final determination of which the note inures to the benefit of the judgment creditor, it is properly turned over to the sheriff with the order that he make disposition of it in the manner required by law. [*Union Deposit Co. v. Driscoll*, 95 Colo. 140, 33 P.2d 251 \(1934\)](#).

A contingent liability is not garnishable.

When a garnishee alleges a contingent liability in his answer to the writ of garnishment, the proper procedure is to allow the garnishor to traverse the garnishee's answer, followed by a trial on the issues framed. [*Haselden Langley Constructors, Inc. v. Graybar Elec. Co.*, 662 P.2d 1064 \(Colo. 1983\)](#).

Payment to creditor's attorneys is payment to creditor.

Where money is deposited in court by the garnishee in garnishment proceedings, payment of the fund to attorneys for the garnisheeing creditor is payment to the creditor, and an order to repay part of the fund is proper. [*Hahnewald v. Schlapfer*, 82 Colo. 313, 260 P. 105 \(1927\)](#).

Default for failure of garnishee "to answer or pay"

only applies if garnishee fails to answer or pay any nonexempt earnings. [*People ex rel. J.W.*, 174 P.3d 315 \(Colo. App. 2007\)](#).

Annotator's note.

Since sections (m) and (n) of the prior version of this rule were similar to §§144 and 145 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing those sections have been included in the annotations to this rule.

Previously, an order denying a motion to discharge a garnishee for failure of plaintiff to traverse answer of garnishee within required period was not appealable

as a "final judgment, decree or order" where no final judgment was entered and garnishee specifically saved right to further challenge court's jurisdiction and nothing in record indicated that court had passed on garnishee's answer. [*Steel v. Revielle*, 102 Colo. 271, 78 P.2d 980 \(1938\)](#).

Still garnishee cannot take advantage of his own delay.

A garnishee, by its own delay having made it impossible for the plaintiff to file the traverse within the time allowed by this section, is in no position to complain, since he cannot take advantage of a situation brought about by his own neglect. [*Stollins v. Shideler*, 91 Colo. 40, 11 P.2d 562 \(1932\)](#).

A traverse stating only conclusions of law and not facts is insufficient.

[Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

The answer of the garnishee and the traverse of the plaintiffs are the only pleadings provided by this rule, and make up the issues in garnishment proceedings.

General Accident Fire & [Life Assurance Corp. v. Mitchell, 120 Colo. 531, 211 P.2d 551 \(1949\).](#)

Any new matter pleaded in the traverse is deemed to be denied or avoided.

General Accident Fire & [Life Assurance Corp. v. Mitchell, 120 Colo. 531, 211 P.2d 551 \(1949\).](#)

Where the garnishee has no opportunity to plead to a reply

without further pleading, he can avail himself of any defense he might have to the new matter set up in the affidavit. [Jones v. Langhorne, 19 Colo. 206, 34 P. 997 \(1893\).](#)

A partner may set up nonjoinder of copartner as a defense.

Where a partner is sued individually for a firm debt he is usually required to plead the nonjoinder of his copartners in order that he may avail himself of this defense, but this general rule has no application to garnishment proceedings under this rule. [Jones v. Langhorne, 19 Colo. 206, 34 P. 997 \(1893\).](#)

Subsection 8(b)

making § 13-17-101 et seq. inapplicable. [United Bank v. State Treasurer, 797 P.2d 851 \(Colo. App. 1990\).](#)

An award of attorney fees

under this rule is at the trial court's discretion. [United Guar. Residential Ins. Co. v. Dimmick, 916 P.2d 638 \(Colo. App. 1996\).](#)

An award of attorney fees, costs, and expenses under section 8(b)

to those fees, costs, and expenses incurred to prepare and file the traverse and prosecute the traverse proceeding. [L & R Exploration Venture v. CCG, LLC, 2015 COA 49, 351 P.3d 569.](#)

Annotator's note.

Since section 9 of this rule is similar to § 146 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

This section 9 is not mandatory,

and thus, one asserting rights to property which is the subject of garnishment proceedings is free to ignore those garnishment proceedings and file an independent action to enforce those rights. [El Paso County Bank v. Charles R. Milisen & Co., 622 P.2d 594 \(Colo. App. 1980\).](#)

In garnishment proceedings, intervention is governed by this rule

which provides that a party shall proceed in accordance with C.R.C.P. 24. [Capitol Indus. Bank v. Strain, 166 Colo. 55, 442 P.2d 187 \(1968\).](#)

Allegations of the petition in intervention held sufficient to make out a prima facie case for intervening assignee.

[Denver Joint Stock Land Bank v. Moore, 93 Colo. 151, 25 P.2d 180 \(1933\).](#)

With denial of right of intervention constituting reversible error.

Where, in a garnishment proceeding, a third party files a petition in intervention claiming the property involved, he is entitled to have his claim tried and determined, and a denial of that right constitutes reversible error. [Burnett v. Jeffers, 88 Colo. 613, 299 P. 18 \(1931\).](#)

Where in due time.

Where the intervention is before the judgment against the garnishee and it cannot be said that the garnishment proceedings have then been determined, the intervention, therefore, is in due time. [Hahnewald v. Schlapfer, 82 Colo. 313, 260 P. 105 \(1927\).](#)

It is error for a trial court to quash a garnishment where

the writ of garnishment is issued in accordance with this rule and the answer and return of the garnishee are made within the time prescribed by rule when the regularity of the garnishment proceeding is not attacked and a motion to quash is based wholly upon a claimed right to intervene; but the intervenor tacitly recognizes the validity of the proceedings by having filed its motion to intervene therein. [Capitol Indus. Bank v. Strain, 166 Colo. 55, 442 P.2d 187 \(1968\).](#)

An intervention by definition involves third parties,

and such strangers to the original garnishment proceeding, by asserting ownership of the disputed property, necessarily put their ownership status, and all related questions, at issue. [Great Neck Plaza, L.P. v. Le Peep Restaurants, 37 P.3d 485 \(Colo. App. 2001\).](#)

Applied in [Susman v. Exchange Nat'l Bank, 117 Colo. 12, 183 P.2d 571 \(1947\).](#)

Law reviews.

For article, "Setoff and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988).

Annotator's note.

Since section (p) of the prior version of this rule was similar to § 147 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

By this section a garnishee is allowed to retain or deduct

out of the property or credits of the defendant in his hands all demands against the defendant of which he could have availed himself had he not been summoned as garnishee. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Garnishee may plead as a defense or set-off

whatever he might have pleaded were the suit directly against him by his own creditor. [Sauer v. Town of Nevadaville, 14 Colo. 54, 23 P. 87 \(1890\); Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

Garnishee is not to be placed in a worse position.

Under no circumstances shall a garnishee, by the operation of the proceedings against him, be placed in any worse condition than he would be if the defendant's claim against him were enforced by the defendant himself. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\); Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Bank receiver was entitled to set-off compensation due him.

Where an attempt is made in a garnishment proceeding to make a bank receiver liable for a judgment against the bank, such receiver is entitled to plead as a defense or set-off the compensation due him by the bank even though his appointment as such was void. [Tabor v. Bank of Leadville, 35 Colo. 1, 83 P. 1060 \(1905\).](#)

A garnisheed bank may apply the amount on deposit to the credit of a debtor

to the payment of his note to it although not due. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Agreement after service of writ would be void.

An agreement by a garnishee to apply upon or deduct from credits of the defendant in his possession, a loan made by him to the defendant after service of the writ would be void and could not be enforced by any party thereto. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

Garnishee bank is entitled to claim set-off

against debtor's account for moneys owed to bank even though moneys were not due at time of service of writ of garnishment. Colo. Nat. Bank - [Arvada v. Greaney, 720 P.2d 611 \(Colo. App. 1986\).](#)

Landlord's lien.

A lease may create a valid landlord's lien, enforceable under section 8 of this rule as a set-off. [Beneficial Fin. Co. v. Bach, 665 P.2d 1034 \(Colo. App. 1983\).](#)

The rights and liabilities of a garnishee are to be determined as of the date of the garnishment

and not upon a state of facts that existed theretofore or thereafter. [Day v. Bank of Del Norte, 76 Colo. 223, 230 P. 785 \(1924\).](#)

It is unreasonable to require a garnishee to claim a set-off immediately upon service of the writ of garnishment;

the more reasonable approach allows a garnishee the same time period to claim set-off as allowed to file its answers to the garnishment interrogatories. Colo. Nat. Bank - [Arvada v. Greaney, 720 P.2d 611 \(Colo. App. 1986\)](#); Flanders Elec. v. Davall Controls & [Eng., 831 P.2d 492 \(Colo. App. 1992\).](#)

It is the responsibility of the trial court to determine the amounts and reasonableness of set-offs,

and, absent an abuse of discretion, its decision will not be overturned. Flanders Elec. v. Davall Controls & [Eng., 831 P.2d 492 \(Colo. App. 1992\).](#)

Law firm had statutory charging lien on settlement proceeds.

State's lien for child support did not have priority over charging lien. State was entitled to net settlement proceeds after deduction of attorney fees. A garnishment can only reach property that belongs to the debtor. [People ex rel. J.W., 174 P.3d 315 \(Colo. App. 2007\).](#)

Annotator's note.

Since section (i) and (j) of the prior version of this rule were similar to §§138 and 141 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing these sections have been included in the annotations to this rule.

This section puts burden on claimant

not only to assert an interest in the property but also to establish the extent of his interest. [Security State Bank v. Weingardt, 42 Colo. App. 219, 597 P.2d 1045 \(1979\).](#)

When a garnishee in his answer states that a third party claims property in his possession

belonging to the debtor, it is the duty of the court to issue a citation or summons to said party requiring him to appear and set up his claim. *Burnett v. Jeffers, 88 Colo. 613, 299 P. 18 (1931).*

However, this rule refers to answers in good faith,

so if a garnishee knows the truth he must tell it and if he tells a falsehood, at least if he tells it for a fraudulent purpose, he must pay damages. *International State Bank v. Trinidad Bean & Elevator Co., 79 Colo. 286, 245 P. 489 (1926).*

Payment to one other than judgment debtor held improper.

Where garnishee-defendant, after answering writ of garnishment, discovers that a contract between it and judgment debtor requires that payments be made jointly to debtor and another, the garnishee-defendant then pays the latter part of the sum which it admitted in its answer was due and owing the judgment debtor, and he files an amended answer to that effect, such payment is improper without a release of garnishment or order of court. [Welbourne Dev. Co. v. Affiliated Clearance Corp., 28 Colo. App. 313, 472 P.2d 684 \(1970\).](#)

It is not essential that notice of an assignment be given in advance to a garnishee,

although in the absence of knowledge or notice the latter would be protected against double payment. [Denver Joint Stock Land Bank v. Moore, 93 Colo. 151, 25 P.2d 180 \(1933\).](#)

If, during the pendency of garnishment proceedings, it is established that an assignment of the subject-matter antedating the garnishment was actually executed,

the absence of previous notice to the garnishee would be immaterial, and a judgment creditor would not be entitled to notice as such. [Denver Joint Stock Land Bank v. Moore, 93 Colo. 151, 25 P.2d 180 \(1933\).](#)

A creditor is entitled to a fund owing defendant by his employer as against the claims of another creditor of which he had no notice

where the claims of which said other creditor are not based on a contract sufficient to bind the fund. This being determined, then the only further action within the jurisdiction of the trial court is, on application, to order a judgment against the employer in favor of the defendant for the use of the plaintiff pursuant to the terms of this section. [Meyer v. Delta Market, 98 Colo. 421, 57 P.2d 3 \(1936\).](#)

Once a third-party claimant has conceded that the disputed property may be garnished by a creditor,

the claimant is thereafter estopped from claiming the proceeds of the garnishment unless there is an agreement otherwise. *Securities Investor Protection Corp. v. Goldberg, 893 F.2d 1139 (10th Cir. 1990).*

Applied in [Susman v. Exchange Nat'l Bank, 117 Colo. 12, 183 P.2d 571 \(1947\).](#)

A judgment in the principal proceeding is presumptively valid

while lodged in an appellate court for review. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

Such judgment when not superseded by virtue of a failure to furnish the required bond

leaves a judgment creditor in the position to take usual steps to enforce collection of his judgment, precisely as if supersedeas has not been granted. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

The reversal of a judgment upon which a garnishment is based leaves nothing

to sustain the judgment against the garnishee. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

If the original judgment is reversed, a judgment in garnishment is deprived of a basis

and falls with it. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

The existence of a valid judgment is a jurisdictional prerequisite

to garnishment relief. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

Where the judgment in the main case has been reversed,

then, if it is made the basis of a garnishment, it must follow that a judgment in the garnishment proceeding cannot stand alone and must be reversed. [Zurich Ins. Co. v. Bonebrake, 137 Colo. 37, 320 P.2d 975 \(1958\).](#)

Since garnishee's liability is not established.

Where the case which found garnishee's liability is reversed and remanded for new trial, the garnishee's liability is not established, and garnishment should be vacated. [Mitchell v. Am. Family Mut. Ins. Co., 179 Colo. 372, 502 P.2d 79 \(1972\).](#)

Applied in E.I. Du Pont De Nemours & [Co. v. Lednum, 82 Colo. 472, 260 P. 1017 \(1927\).](#)

Court approval not required.

Subsection 2(h) requires the clerk to disburse funds to the judgment creditor without further application or order. The fact that the judgment debtor had applied for a stay had no effect on the clerk's authority to release the garnished funds. [Ryan v. Duffield, 899 P.2d 378 \(Colo. App. 1995\).](#)

Law reviews.

For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990).

Past-due child support payments in themselves constitute debt.

[Colo. State Bank v. Utt, 622 P.2d 584 \(Colo. App. 1980\).](#)

Amount defendant admittedly owed for past-due child support may be garnished by bank

which held judgment against former wife. [Colo. State Bank v. Utt, 622 P.2d 584 \(Colo. App. 1980\).](#)

Foreclosure sale excess proceeds

may be garnished. [TCF Equip. Fin. v. Pub. Trustee, 2013 COA 8, 297 P.3d 1048.](#)

Law firm had statutory charging lien on settlement proceeds.

State's lien for child support did not have priority over charging lien. State was entitled to net settlement proceeds after deduction of attorney fees. A garnishment can only reach property that belongs to the debtor. [*People ex rel. J.W.*, 174 P.3d 315 \(Colo. App. 2007\)](#).

C. R.C.P. 102, this rule, and § 4-8-112 may be harmonized

so that stock certificates may be reached by a creditor either by actual physical seizure, by a writ of attachment, if actually seized, or by serving the person who possesses the certificate with a writ of garnishment. [*Moreland v. Alpert*, 124 P.3d 896 \(Colo. App. 2005\)](#).

COLORADO COURT RULES

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End of Document

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ COURT USE ONLY ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
WRIT OF CONTINUING GARNISHMENT	

READ THIS WHOLE DOCUMENT

Judgment Debtor's name, last known physical and mailing addresses or a statement that Judgment Debtor's physical and mailing addresses are not known, and other identifying information: _____

1. Original or Revived Amount of Judgment Entered on _____ (date) for \$ _____
 - a. Effective Garnishment Period
 - 91 days (Judgment entered prior to August 8, 2001)
 - 182 days (Judgment entered on or after August 8, 2001)
2. Plus any Interest Due on Judgment (currently _____ % per annum) \$ _____
3. Taxable Costs (including estimated cost of service of this Writ) \$ _____
4. Less any Amount Paid \$ _____
5. Principal Balance/Total Amount Due and Owing \$ _____

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Print Judgment Creditor's Name

Address: _____

By: _____

Signature (Type Name, Title, Address and Phone)

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:

You are directed to serve ~~TWO COPIES~~ of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no **later than 7 days after you have been served with this writ.** ~~not more than 14 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 42 days following service of this Writ upon you, whichever is less.~~ **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an Explanation Of Wage Garnishment In Colorado to Judgment Debtor on the same day the copy of this Writ and Calculation of the Amount of Exempt Earnings are sent to Judgment Creditor the first time you pay the Judgment Debtor.
- d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.
- e. **MAKE CHECKS PAYABLE AND MAIL TO:** Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.); Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.)

Name: _____
 Address: _____

PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**
- b. "Earnings" includes all forms of compensation for Personal Services. Also read "Notice to Judgment Debtor" below.
- c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.
- d. **If you determine that the judgment debtor is your employee and the Writ of Continuing Garnishment contains all required information, you are required to send the judgment debtor this Writ of Continuing Garnishment and the document attached to it titled "EXPLANATION OF WAGE GARNISHMENT IN COLORADO" on the same day that you send your answer to this Writ of Continuing Garnishment to the judgment creditor.**

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

- a. Is the judgement debtor your employee?

- 1. Yes
- 2. No

- b. Does the Writ of Continuing Garnishment contain: the name of the Judgment Debtor, the last-known physical and mailing addresses of the Judgment Debtor or a statement that the information is not known, the amount of the Judgment, information

sufficient to identify the judgment on which the continuing garnishment is based, an Explanation of Wage Garnishment in Colorado?

- 1. Yes
- 2. No

c. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

- 1. WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES **NOT INCLUDING TIPS** (Earnings)
- 2. Health, Accident or Disability Insurance Funds or Payments
- 3. Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)
- 4. Health insurance coverage provided by you and withheld from the individual's earnings

If you marked any box above, indicate how the Judgment debtor is paid: weekly bi-weekly semi-monthly monthly other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ), starting at least twenty-one days after you were served with this Writ of Garnishment: _____

d. Are you under one or more of the following writs of garnishment? (Mark appropriate box(es)): Are the Judgment Debtor's earnings subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended? If so mark the appropriate boxes and list the nature, number, and amounts of these deductions and the relative priority of this Writ of Garnishment (Mark appropriate box(es)):

- Writ of Continuing Garnishment (Expected Termination Date: _____)
- 5. Writ of Garnishment for Support (Expected Termination Date: _____)
- 6. Writ of Continuing Garnishment (Expected Termination Date: _____)
- 7. Any additional deductions (Expected Termination Date: _____)

e. If you marked Box 1 and you did NOT mark either Box 4 or 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

f. If you marked Box 2 or 3, 2, 3, or 4 and you did NOT mark either Box 4 or 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 4 or 5, 6, or 7, you must complete Calculations beginning with the first pay period following termination of the prior writ(s) that is at least twenty-one days after service of this writ on you. However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earnings are totally exempt, please mark box 8 below:**

- 8. The earnings are totally exempt because: _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA)	- \$ _____
Disposable Earnings (Gross Earnings less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount to be withheld and paid	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD Weekly Bi-weekly Semi-monthly Monthly	AMOUNT EXEMPT IS THE GREATER OF: 40 x Minimum Hourly Wage or 80% of Disposable Earnings 80 x Minimum Hourly Wage or 80% of Disposable Earnings 86.67 x Minimum Hourly Wage or 80% of Disposable Earnings 173.3 x Minimum Hourly Wage or 80% of Disposable Earnings
--	---	---

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings and an a blank Objection to Calculation of the Amount of Exempt Earnings form, and an EXPLANATION OF WAGE GARNISHMENT IN COLORADO form to the Judgment Debtor, at the time earnings were paid for each pay period (if earnings were paid).

Name of Garnishee (Print) _____
Address _____
Phone Number _____

Name of Person Answering (Print)

Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR

- a. ~~The Garnishee may only withhold nonexempt earnings from the amount due you, but in no event more than the amount on Line 5 on the front of this Writ, UNLESS YOUR EARNINGS ARE TOTALLY EXEMPT, in which case NO EARNINGS CAN BE WITHHELD. You may wish to contact a lawyer who can explain your rights.~~
- b. ~~If you disagree with the amount withheld, you must talk with the Garnishee within 7 days after being paid.~~
- c. ~~If you cannot settle the disagreement with the Garnishee, you may complete and file the attached Objection with the Clerk of the Court issuing this Writ within 14 days after being paid. YOU MUST USE THE FORM ATTACHED or a copy of it.~~
- d. ~~You are entitled to a court hearing on your written objection.~~
- e. ~~Your employer cannot fire you because your earnings have been garnished. If your employer discharges you in violation of your legal rights, you may, within 91 days, bring a civil action for the recovery of wages lost because you were fired and for an order requiring that you be reinstated. Damages will not exceed 6 weeks' wages and attorney fees.~~

EXPLANATION OF WAGE GARNISHMENT IN COLORADO

NOTICE OF GARNISHMENT TO JUDGMENT DEBTOR

MONEY WILL BE TAKEN FROM YOUR PAY IF YOU FAIL TO ACT

1. Why am I getting this notice?

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe?

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the Writ of Garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid?

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado Rules About Garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options?

Yes, you have several options, here are three of them:

- A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.
- B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.
- C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything?

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under **4. Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$ _____ will be withheld from each paycheck that is subject to garnishment.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ COURT USE ONLY ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
WRIT OF CONTINUING GARNISHMENT	

READ THIS WHOLE DOCUMENT

Judgment Debtor's name, last known physical and mailing addresses or a statement that Judgment Debtor's physical and mailing addresses are not known, and other identifying information: _____

1. Original or Revived Amount of Judgment Entered on _____ (date) for \$ _____
 - a. Effective Garnishment Period
 - 91 days (Judgment entered prior to August 8, 2001)
 - 182 days (Judgment entered on or after August 8, 2001)
2. Plus any Interest Due on Judgment (currently _____ % per annum) \$ _____
3. Taxable Costs (including estimated cost of service of this Writ) \$ _____
4. Less any Amount Paid \$ _____
5. Principal Balance/Total Amount Due and Owing \$ _____

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Print Judgment Creditor's Name

Address: _____

By: _____

Signature (Type Name, Title, Address and Phone)

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:

You are directed to serve ~~TWO COPIES~~ of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no **later than 7 days after you have been served with this writ.** ~~not more than 14 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 42 days following service of this Writ upon you, whichever is less.~~ **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an Explanation Of Wage Garnishment In Colorado to Judgment Debtor on the same day the copy of this Writ and Calculation of the Amount of Exempt Earnings are sent to Judgment Creditor ~~the first time you pay the Judgment Debtor.~~
- d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.
- e. **MAKE CHECKS PAYABLE AND MAIL TO:** Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.); Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.)

Name: _____
 Address: _____

PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**
- b. "Earnings" includes all forms of compensation for Personal Services. Also read "Notice to Judgment Debtor" below.
- c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.
- d. **If you determine that the judgment debtor is your employee and the Writ of Continuing Garnishment contains all required information, you are required to send the judgment debtor this Writ of Continuing Garnishment and the document attached to it titled "EXPLANATION OF WAGE GARNISHMENT IN COLORADO" on the same day that you send your answer to this Writ of Continuing Garnishment to the judgment creditor.**

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

- a. Is the judgement debtor your employee?

- 1. Yes
- 2. No

- b. Does the Writ of Continuing Garnishment contain: the name of the Judgment Debtor, the last-known physical and mailing addresses of the Judgment Debtor or a statement that the information is not known, the amount of the Judgment, information

sufficient to identify the judgment on which the continuing garnishment is based, an Explanation of Wage Garnishment in Colorado?

- 1. Yes
- 2. No

c. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

- 1. WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES **NOT INCLUDING TIPS** (Earnings)
- 2. Health, Accident or Disability Insurance Funds or Payments
- 3. Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)
- 4. Health insurance coverage provided by you and withheld from the individual's earnings

If you marked any box above, indicate how the Judgment debtor is paid: weekly bi-weekly semi-monthly monthly other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ), starting at least twenty-one days after you were served with this Writ of Garnishment: _____

d. Are you under one or more of the following writs of garnishment? (Mark appropriate box(es)): Are the Judgment Debtor's earnings subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended? If so mark the appropriate boxes and list the nature, number, and amounts of these deductions and the relative priority of this Writ of Garnishment (Mark appropriate box(es)):

- Writ of Continuing Garnishment (Expected Termination Date: _____)
- 5. Writ of Garnishment for Support (Expected Termination Date: _____)
- 6. Writ of Continuing Garnishment (Expected Termination Date: _____)
- 7. Any additional deductions (Expected Termination Date: _____)

e. If you marked Box 1 and you did NOT mark either Box 4 or 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

f. If you marked Box 2 or 3, 2, 3, or 4 and you did NOT mark either Box 4 or 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 4 or 5, 6, or 7, you must complete Calculations beginning with the first pay period following termination of the prior writ(s) that is at least twenty-one days after service of this writ on you. However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earnings are totally exempt, please mark box 8 below:**

- 8. The earnings are totally exempt because: _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes , FICA, Employer Provided Health Insurance That Is Withheld From Earnings)	- \$ _____
Disposable Earnings (Gross Earnings less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount to be withheld and paid	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD Weekly Bi-weekly Semi-monthly Monthly	AMOUNT EXEMPT IS THE GREATER OF: 40 x Minimum Hourly Wage or 80% of Disposable Earnings 80 x Minimum Hourly Wage or 80% of Disposable Earnings 86.67 x Minimum Hourly Wage or 80% of Disposable Earnings 173.3 x Minimum Hourly Wage or 80% of Disposable Earnings
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I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings ~~and an~~ a blank Objection to Calculation of the Amount of Exempt Earnings form, **and an EXPLANATION OF WAGE GARNISHMENT IN COLORADO form** to the Judgment Debtor, ~~at the time earnings were paid for each pay period (if earnings were paid).~~

Name of Garnishee (Print) _____
Address _____
Phone Number _____

Name of Person Answering (Print)

Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR

- ~~a. The Garnishee may only withhold nonexempt earnings from the amount due you, but in no event more than the amount on Line 5 on the front of this Writ, UNLESS YOUR EARNINGS ARE TOTALLY EXEMPT, in which case NO EARNINGS CAN BE WITHHELD. You may wish to contact a lawyer who can explain your rights.~~
- ~~b. If you disagree with the amount withheld, you must talk with the Garnishee within 7 days after being paid.~~
- ~~c. If you cannot settle the disagreement with the Garnishee, you may complete and file the attached Objection with the Clerk of the Court issuing this Writ within 14 days after being paid. YOU MUST USE THE FORM ATTACHED or a copy of it.~~
- ~~d. You are entitled to a court hearing on your written objection.~~
- ~~e. Your employer cannot fire you because your earnings have been garnished. If your employer discharges you in violation of your legal rights, you may, within 91 days, bring a civil action for the recovery of wages lost because you were fired and for an order requiring that you be reinstated. Damages will not exceed 6 weeks' wages and attorney fees.~~

EXPLANATION OF WAGE GARNISHMENT IN COLORADO

NOTICE OF GARNISHMENT TO JUDGMENT DEBTOR

MONEY WILL BE TAKEN FROM YOUR PAY IF YOU FAIL TO ACT

1. Why am I getting this notice?

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe?

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the Writ of Garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid?

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado Rules About Garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options?

Yes, you have several options, here are three of them:

- A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.
- B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.
- C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything?

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under **4. Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$ _____ will be withheld from each paycheck that is subject to garnishment.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____		\$ _____
Less Deductions Required by Law	-	\$ _____
Disposable Earnings	=	\$ _____
Less Statutory Exemption	-	\$ _____
Net Amount Subject to Garnishment	=	\$ _____
Less Wage/Income Assignment (If Any)	-	\$ _____
AMOUNT PAID	=	\$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____		\$ _____
Less Deductions Required by Law	-	\$ _____
Disposable Earnings	=	\$ _____
Less Statutory Exemption	-	\$ _____
Net Amount Subject to Garnishment	=	\$ _____
Less Wage/Income Assignment (If Any)	-	\$ _____
AMOUNT PAID	=	\$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____		\$ _____
Less Deductions Required by Law	-	\$ _____
Disposable Earnings	=	\$ _____
Less Statutory Exemption	-	\$ _____
Net Amount Subject to Garnishment	=	\$ _____
Less Wage/Income Assignment (If Any)	-	\$ _____
AMOUNT PAID	=	\$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____		\$ _____
Less Deductions Required by Law	-	\$ _____
Disposable Earnings	=	\$ _____
Less Statutory Exemption	-	\$ _____
Net Amount Subject to Garnishment	=	\$ _____
Less Wage/Income Assignment (If Any)	-	\$ _____
AMOUNT PAID	=	\$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes , FICA, Employer Provided Health Insurance That Is Withheld From Earnings)	- \$ _____
Disposable Earnings (gross earnings less deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment (If Any)	- \$ _____
AMOUNT PAID	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes , FICA, Employer Provided Health Insurance That Is Withheld From Earnings)	- \$ _____
Disposable Earnings (gross earnings less deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment (If Any)	- \$ _____
AMOUNT PAID	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes , FICA, Employer Provided Health Insurance That Is Withheld From Earnings)	- \$ _____
Disposable Earnings (gross earnings less deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment (If Any)	- \$ _____
AMOUNT PAID	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

_____ COURT, _____ COUNTY _____,

COLORADO

CASE NO. _____ DIV./CT .RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S):

DEFENDANT(S):

Gross Pay for _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes , FICA, Employer Provided Health Insurance That Is Withheld From Earnings)	- \$ _____
Disposable Earnings (gross earnings less deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment (If Any)	- \$ _____
AMOUNT PAID	= \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado		▲ COURT USE ONLY ▲
Court address: _____		
Plaintiff(s): _____ v. Defendant(s): _____		
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): _____		Case Number: _____
Phone Number: _____	E-mail: _____	Division _____ Courtroom _____
FAX Number: _____	Atty.Reg. #: _____	
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS OR FOR REDUCTION OF WITHHOLDING PURSUANT TO SUBSECTION 13-54-104(2)(a)(i)(D)		

Instructions to Judgment Debtor: Use this form to object to the calculations of your exempt earnings.

Name: _____ Phone Number: _____

Street Address: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	30-40 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Bi-Weekly	60-80 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Semi-monthly	65-86.67 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Monthly	130-173.3 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings

1. Judgment Debtor's objection to the Garnishee's Calculation of the Amount of Exempt Earnings because I believe that the correct calculation is:

Gross Earnings for My Pay Period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA, <u>employer-provided health insurance</u>)	
_____	- \$ _____
Disposable Earnings (Gross Earnings Less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart on Writ)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount which should be withheld	= \$ _____

OR

2. The earnings garnished are pension or retirement benefits/deferred compensation/health, accident or disability insurance and they are totally exempt because:

I understand that I must make a good faith effort to resolve my dispute with the Garnishee.

I have have not attempted to resolve this dispute with the Garnishee.

Name of Person I Talked to: _____

Position: _____ Phone Number: _____

OR

3. A greater portion of my disposable earnings should be exempt from garnishment for the support of me or my family that is supported in whole or in part by me. I request a court hearing to determine whether my earnings subject to garnishment, together with any other income received by my family, are insufficient to pay the actual and necessary living expenses of me and/or my family based upon proof of such expenses incurred during the 60 days prior to the hearing. In support of this I state the following:

<u>Gross Monthly Income</u>		<u>Monthly Expenses</u>	
<u>Self (wages, salary, commission)</u>	\$	<u>Rent or Mortgage</u>	\$
<u>Spouse/Partner, Other Household Members</u>	\$	<u>Groceries</u>	\$
<u>Parents (if same household)</u>	\$	<u>Utilities</u>	\$
<u>Unemployment Benefits</u>	\$	<u>Clothing</u>	\$
<u>Social Security/Retirement Funds</u>	\$	<u>Maintenance/Alimony and/or Child Support</u>	\$
<u>Maintenance/Alimony</u>	\$	<u>Medical/Dental</u>	\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	\$
<u>Total Income</u>	\$	<u>Total Expenses</u>	\$

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Debtor's Notice to Garnishee: Even though I am filing this Objection, you are directed to send my nonexempt earnings to the Court at the address noted instead of to the party designated in paragraph "e" on the front of the Writ of Continuing Garnishment. The Court will hold my nonexempt earnings in its registry until my Objection is resolved.

I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, certified mail (return receipt requested) to the Judgment Creditor's Attorney or E-Service to the Judgment Creditor's Attorney.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Garnishee

Address: _____

Judgment Creditor or Attorney

Address: _____

Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court address: _____ Plaintiff(s): _____ v. Defendant(s): _____		▲ COURT USE ONLY ▲
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): _____ Case Number: _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty.Reg. #: _____ Division _____ Courtroom _____		
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS OR FOR REDUCTION OF WITHHOLDING PURSUANT TO SUBSECTION 13-54-104(2)(a)(i)(D)		

Instructions to Judgment Debtor: Use this form to object to the calculations of your exempt earnings.

Name: _____ Phone Number: _____

Street Address: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	30-40 x Minimum Hourly Wage or 75 80 % of Disposable Earnings
	Bi-Weekly	60-80 x Minimum Hourly Wage or 75 80 % of Disposable Earnings
	Semi-monthly	65-86.67 x Minimum Hourly Wage or 75 80 % of Disposable Earnings
	Monthly	130-173.3 x Minimum Hourly Wage or 75 80 % of Disposable Earnings

1. Judgment Debtor's objection to the Garnishee's Calculation of the Amount of Exempt Earnings because I believe that the correct calculation is:

Gross Earnings for My Pay Period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA) _____	- \$ _____
Disposable Earnings (Gross Earnings Less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart on Writ) _____	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount which should be withheld	= \$ _____

OR

2. The earnings garnished are pension or retirement benefits/deferred compensation/health, accident or disability insurance and they are totally exempt because:

I understand that I must make a good faith effort to resolve my dispute with the Garnishee.

I have have not attempted to resolve this dispute with the Garnishee.

Name of Person I Talked to: _____

Position: _____ Phone Number: _____

OR

3. A greater portion of my disposable earnings should be exempt from garnishment for the support of me or my family that is supported in whole or in part by me. I request a court hearing to determine whether my earnings subject to garnishment, together with any other income received by my family, are insufficient to pay the actual and necessary living expenses of me and/or my family based upon proof of such expenses incurred during the 60 days prior to the hearing. In support of this I state the following:

<u>Gross Monthly Income</u>		<u>Monthly Expenses</u>	
<u>Self (wages, salary, commission)</u>	\$	<u>Rent or Mortgage</u>	\$
<u>Spouse/Partner, Other Household Members</u>	\$	<u>Groceries</u>	\$
<u>Parents (if same household)</u>	\$	<u>Utilities</u>	\$
<u>Unemployment Benefits</u>	\$	<u>Clothing</u>	\$
<u>Social Security/Retirement Funds</u>	\$	<u>Maintenance/Alimony and/or Child Support</u>	\$
<u>Maintenance/Alimony</u>	\$	<u>Medical/Dental</u>	\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	\$
<u>Total Income</u>	\$	<u>Total Expenses</u>	\$

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I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, certified mail (return receipt requested) to the Judgment Creditor's Attorney or E-Service to the Judgment Creditor's Attorney.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Garnishee

Address: _____

Judgment Creditor or Attorney

Address: _____

Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

MEMORANDUM

To: Rule 4(m) Subcommittee
From: Judge Jerry N. Jones
Date: Nov. 19, 2019
Re: Potential revisions to Rule 4(m)

Based on our discussion last week, I've come up with the following potential revisions to Rule 4(m). Potential revisions 1-3 are essentially alternatives to each other, while potential revisions 4 and 5 are independent of each other and all other potential revisions and could therefore be combined with any of the others. New language is bolded.

Potential Revision 1:

If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court — on motion or on its own after notice of the plaintiff **(served at any time after the complaint is filed)** — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

Potential Revision 2:

If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the

court — on motion or on its own after notice of the plaintiff — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. **A notice to the plaintiff under this subdivision (m) shall be sufficient if it is served on the plaintiff any time after the complaint is filed and informs the plaintiff that the court may dismiss the action without prejudice, and without further notice, if the plaintiff fails to serve the defendant in accordance with this subdivision (m).** ~~But~~ If the plaintiff shows good cause for the failure **to serve the defendant within 63 days**, the court shall extend the time for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

Potential Revision 3:

If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court — on motion or on its own after notice of the plaintiff — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. **Such notice may be served on the plaintiff by the court no sooner than 42 days (six weeks) after the complaint is filed.** ~~But~~ If the plaintiff shows good cause for the failure **to serve the defendant within 63 days**, the court shall extend the time for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

Potential Revision 4:

If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court — on motion or on its own after notice of the plaintiff — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for an appropriate period. **If the court dismisses the action under this subdivision (m), it shall promptly serve the order dismissing the action without prejudice in accordance with C.R.C.P. 121, § 1-26, or, in the case of a plaintiff proceeding pro se who has not subscribed to the E-System, by United States mail to the plaintiff's last indicated address.** This subdivision (m) does not apply to service in a foreign country under rule 4(d).

Potential Revision 5:

If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court — on motion or on its own after notice of the plaintiff — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if **after the 63 days has expired but before the action has been dismissed,** the plaintiff shows good cause for the failure, the court shall extend the time for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

MEMORANDUM

To: Civil Rules Committee

From: Judge Jones

Re: Subcommittee on C.R.C.P. 4(m)

This subcommittee was created to look at how C.R.C.P. 4(m) — which deals with dismissal of an action if the plaintiff fails to timely serve the defendant — might be amended to clarify whether language in a standard delay reduction order can qualify as “notice” under the rule when a court considers dismissal on its own. But the subcommittee took a difference tack: the focus became the timing of such notice (rather than the nature or content of the notice). As well, the subcommittee looked at making explicit that a court that has dismissed an action under the rule must notify the parties of that dismissal.

To those ends, the subcommittee considered a number of potential revisions, which are shown in my memorandum to the subcommittee of November 19, 2019. *See Attachment 1.* Consensus emerged over the latter issue: notice of the dismissal should be expressly required by the rule. There was a lesser degree of agreement over the notice-timing issue. (Indeed, one district court judge, who didn’t serve on the subcommittee, suggested that the notice provision be eliminated. *See Attachment 2.*) But there is significant support on the subcommittee for saying when the court must give the required notice, as well as for making explicit that the provisions of C.R.C.P. 6(b) apply to requests for extensions of time to effect service.

The proposed amendments appear as follows, with new material shown in italics:

(m) Time Limit for Service. If a defendant is not served within 63 days ~~(nine weeks)~~ after

the complaint ~~is~~ *was* filed, the court — on motion or on its own after notice of the plaintiff — shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. *Any such notice by the court shall be served on the plaintiff no sooner than 35 days after the complaint was filed and no later than 7 days before the case is dismissed.* But if the plaintiff shows good cause or excusable neglect in accordance with C.R.C.P. 6(b) before the court dismisses the action under this subdivision (m), the court shall extend the time for service for an appropriate period. *If the court dismisses the action under this subdivision (m), the court shall immediately serve the order of dismissal on all parties in accordance with C.R.C.P. 5.* This subdivision (m) does not apply to service in a foreign country under rule 4(d).

If these amendments are approved, a standard case management order sent out at the beginning of the case likely wouldn't satisfy the notice requirement (because it would be sent out too soon). Any such notice would have to be in some separate, subsequent document. That would be consistent with *Curry v. Zag Built LLC*, 2018 COA 66, ¶ 38, which held that a boilerplate delay reduction order doesn't satisfy Rule 4(m)'s notice requirement. The object is to assure that a plaintiff is clearly aware that the court will dismiss the case if the plaintiff fails to serve the defendant within the sixty-three-day period. Hopefully, that will spur plaintiffs to get their cases moving.

The requirement to notify the plaintiff of a dismissal in accordance with C.R.C.P. 5 is also new. It appears that some courts simply enter an order of dismissal and close the case without any such notice, potentially impacting the plaintiff's ability to seek to set aside the judgment.

1 Federal Rules of Civil Procedure, Rules and Commentary Rule 5.2

Federal Rules of Civil Procedure, Rules and Commentary | February 2019 Update
Steven S. Gensler

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

Rule 5.2. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 5.2(c) or (d); and
- (6) a pro se filing in an action brought under [28 U.S.C. §§ 2241, 2254, or 2255](#).

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

- (1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;
- (2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:
 - (A) the docket maintained by the court; and
 - (B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

CREDIT(S)

(Adopted April 30, 2007, eff. December 1, 2007.)

PRACTICE COMMENTARY

Overview

Rule 5.2 was added in 2007. It addresses the growing risk that persons might abuse the public's right to view the contents of court files. While that risk is not new, it is heightened by the fact that court files are now kept electronically and made available over the internet. To address the risk of abuse, Rule 5.2 generally requires lawyers to redact certain categories of sensitive information from their court filings. It applies to both paper and electronic filings, since paper filings are likely to be scanned by court personnel and thereby made available electronically to the public. Pursuant to Judicial Conference policy, the redaction provisions now also apply to transcripts of court proceedings when they are filed with the court and made remotely available to the public. Lawyers should check their Local Rules to see what specific responsibilities they have for ensuring the redaction of filed transcripts.

Background

E-Government Act of 2002—Generally. In the E-Government Act of 2002, Congress ordered the federal courts to develop and maintain websites.¹ In addition to general information about the court and local rules, the statute requires that courts provide online access to docket information and to publicly available (i.e., non-sealed) documents that are either filed with the court electronically or scanned into the court's electronic docket.²

E-Government Act of 2002—Privacy rules mandate. Congress recognized that remote access to electronic court files presents substantial privacy and security issues, but (with a few exceptions discussed below) chose not to legislate specific standards for addressing those issues. Rather, Congress ordered the Supreme Court to prescribe rules—through the Rules Enabling Act process—to address those issues.³

Judicial Conference policy. In 1997, the Judicial Conference began studying the issue of privacy and public access to electronic case files. The Judicial Conference adopted a policy in September 2001.⁴ With respect to civil case files, the principal provisions of the policy were: (1) that remote access should be the same as access at the courthouse; but that (2) the litigants should modify or remove/redact certain personal identifiers from their filings; and (3) Social Security cases should not be accessible online. The last recommendation was withdrawn in December 2006. In March 2008, in light of Rule 5.2, the Judicial Conference generally declared its privacy policy “no longer operative”; as discussed below, however, the policy continues in effect insofar as it requires redaction of electronic transcripts of court proceedings.⁵

Mechanics of Rule 5.2

General redaction requirement—Paper and electronic filings. Rule 5.2(a) creates a general redaction requirement that applies to *all filings*, whether electronic or paper.⁶ Unless the court orders otherwise,⁷ the following items of information must be limited as follows:

- (1) *social-security and taxpayer-identification numbers*: last four digits only;
- (2) *birth date*: year of birth only;
- (3) *name of an individual known to be a minor*: minor's initials only; and
- (4) *financial-account numbers*: last four digits only.

These redaction requirements apply to any person making court filings, whether a party or a nonparty.⁸ Trial exhibits come under the rule when they are filed with the court.⁹

Names of parents. Many courts also permit parents proceeding on behalf of minors to litigate using their initials instead of their full names on the grounds that the privacy protection afforded to the minor under [Rule 5.2\(a\)](#) would be lost if the full

names of the parents are used.¹⁰ In doing so, however, the courts appear to be applying the general test for permitting pseudonymous litigation under Rule 10(a), rather than recognizing a blanket extension of [Rule 5.2\(a\)](#) to the names of parents. Thus, the courts are looking on a case-by-case basis at the privacy interests underlying the litigation in order to determine whether the need to prevent a de facto disclosure of the minor's identity justifies a departure from the strong presumption of open judicial proceedings.

Exemptions. [Rule 5.2\(b\)](#) exempts six categories of items from the general redaction requirement:

- (1) financial-account numbers that identify property subject to forfeiture in forfeiture proceedings;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal that was not subject to the redaction requirement when originally filed;
- (5) filings covered by [Rule 5.2\(c\)](#) [limited remote access] or (d) [sealed]; and
- (6) pro se habeas filings under [28 U.S.C.A. §§ 2241, 2254, or 2255](#).

Special remote access rules for Social Security Appeals and Immigration Cases. [Rule 5.2\(c\)](#) presumptively limits nonparty remote access to the electronic file in social security appeals and immigration cases. Party access is not limited.¹¹ Nonparty access is not limited *at the courthouse*.¹² However, nonparty remote electronic access is limited to the docket and the court's orders, opinions, and judgment.¹³ In other words, while non-parties will have access only to the items listed above if they seek to view the case file remotely, they will have full access to all public (i.e., non-sealed) materials if they seek to view the case file at the courthouse.¹⁴ These cases were given special treatment because of their volume and the fact that they are very likely to contain sensitive information.¹⁵ While full access remains available at the courthouse, it is only full access to the public file; courts may seal particular items in these cases under the general standards for sealing court records.¹⁶

Rule 5.2 does not address whether items may be redacted in discovery. [Rule 5.2](#) has a narrow and specific role. It imposes requirements for redacting specified categories of private information from materials before they are filed with the court. [Rule 5.2](#) has nothing to do with the discovery of those materials or whether a producing party may be permitted to redact information before producing documents in discovery.¹⁷ Redaction in the discovery context is governed by Rule 26, which might permit redaction of information prior to production on the basis that the information is not relevant or pursuant to a protective order upon a showing of good cause.

Relationship between redaction requirement and filing materials under seal. Nothing in [Rule 5.2](#) disturbs the court's power to accept filings under seal or the standards the courts have developed for determining when filing under seal is appropriate.¹⁸ However, the court's power to accept sealed filings does intersect with the redaction requirement. As [Rule 5.2\(d\)](#) explicitly notes, if the court is going to accept a filing under seal, then it may order that the filing be made without redaction.¹⁹ Conversely, the operation of the redaction requirements—or further redactions as ordered by the court—may provide an alternative to sealing.²⁰ Finally, in a case exempt from the redaction requirement, the presence of unredacted personal information may support a sealing order.²¹

Seeking additional protection. Parties or filers who believe that additional protection is appropriate may seek a protective order under [Rule 5.2\(e\)](#). For good cause, the court may order additional redactions²² or may limit or prohibit remote electronic access.²³ The Advisory Committee Notes make clear that the listing of specified protections in [Rule 5.2](#) was not intended to signify that further protections are unwarranted.²⁴ Rather, courts should consider on a case-by-case basis whether further redactions or remote access limits are needed. [Rule 5.2\(e\)](#) specifies that these additional protections be set forth in an "order in the case," signaling that courts and judges should not establish expanded redaction requirements or limit remote access by local rule or via standing orders. The Advisory Committee Notes are careful to state that [Rule 5.2](#) does not disturb any protections that courts might give under separate authority, mentioning Rule 16 and Rule 26(c) as examples.

Filing options. A person who makes a redacted filing also has the right to file an unredacted version under seal.²⁵ A person who makes a redacted filing also may file a reference list under seal and then use the specific identifiers in further filings or proceedings in the case.²⁶

Electronic transcripts of court proceedings. [Rule 5.2](#) does not directly cover electronic transcripts of court proceedings that the court may make remotely available to the public. Such transcripts, however, may contain the type of sensitive information subject to redaction under [Rule 5.2](#). In order to provide a parallel protection, the Judicial Conference has adopted a policy that

requires such transcripts to conform to [Rule 5.2\(a\)](#).²⁷ The Policy places responsibility on the attorneys for reviewing transcripts and providing court reporters with statements of the redactions to be made. Many district courts are now formulating Local Rules to further clarify and define this obligation. Lawyers should check their Local Rules for further details.

Filers' Obligations and Waiver

Waiver of protection for person's own information. A person may include his own information in unsealed and unredacted filings. Doing so, however, waives the protections provided by [Rule 5.2\(a\)](#).²⁸ In other words, [Rule 5.2](#) allows a person to avoid any expense or hassle caused by redacting one's own personal information, but with the knowledge that as a result the information will be available on the internet.²⁹ It must be emphasized that a person may waive the protection only for the person's own information.

Seeking relief after mistakenly including protected information. If a person makes a filing that, by mistake, includes unredacted information, that person may seek relief from the court.³⁰ One remedy, for example, would be for the court to seal the initial filing, order the return or sequestration of any copies distributed to the parties, and accept a redacted filing in its place. Neither the Rule nor the Advisory Committee Notes directly address whether courts should provide relief to a party who intentionally waives the protection but later has a change of heart.

Remedies for violations of [Rule 5.2](#) involving other person's protected information. [Rule 5.2](#) does not specify what courts may or should do in the event that a party makes a filing that, without authorization, includes another person's information protected by [Rule 5.2\(a\)](#). It undoubtedly lies within the court's power to take corrective action, which might include ordering the party to correct the error,³¹ having the clerk make the needed redactions,³² sealing the offending filing,³³ or some combination thereof.³⁴ Presumably, courts also have inherent authority to impose appropriate sanctions where warranted.³⁵ However, violations of [Rule 5.2](#) do not give rise to a private cause of action.³⁶

Responsibility lies with the filer, not the clerk. The Advisory Committee Notes speak clearly on this point: "The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or the non-party making the filing."³⁷

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Footnotes

- ¹ [Public Law 107-347](#), 116 Stat. 2913. *See also* 44 U.S.C.A. § 3501 note (text appears in the legislative note material).
- ² [Public Law 107-347](#), § 205(b), (c)(1).
- ³ [Public Law 107-347](#), § 205(c)(3). *See also* [Crossman v. Astrue](#), 714 F. Supp. 2d 284, 289-290 (D. Conn. 2009) (describing requirements of the Act and the history leading to the development of Rule 5.2).
- ⁴ *See* Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files (as amended December 2006), available at <http://www.privacy.uscourts.gov/Policy.htm>.
- ⁵ *See* Judicial Conference Policy on Privacy and Public Access to Electronic Case Files (March 2008), available at http://www.privacy.uscourts.gov/privacypolicy_Mar2008Revised.htm.
- ⁶ The privacy concerns at issue derive from the fact that court files can be accessed remotely via the internet. Since most paper filing will be scanned into the electronic file by the clerk's office, a paper filing raises the same privacy and security concerns as an electronic filing. *See* [Fed. R. Civ. P. 5.2](#) advisory committee's note (2007).
- ⁷ *See, e.g.,* [Dawn L. v. Greater Johnstown School Dist.](#), 586 F. Supp. 2d 332, 339 n.3, 239 Ed. Law Rep. 1015 (W.D. Pa. 2008) (exempting month and day of birth year where those items were "necessary pieces of evidence").

8 Fed. R. Civ. P. 5.2(a).

9 Fed. R. Civ. P. 5.2 advisory committee's note (2007).

10 See *S.F. v. Archer Daniels Midland Co.*, 594 Fed. Appx. 11, 11 n.1 (2d Cir. 2014); *M. T. v. Olathe Public Schools USD 233*, 2018 WL 806210, *2 (D. Kan. 2018); *J.W. v. District of Columbia*, 318 F.R.D. 196, 199, 340 Ed. Law Rep. 907, 95 Fed. R. Serv. 3d 851 (D.D.C. 2016); *P.M. v. Evans-Brant Central School Dist.*, 2008 WL 4379490, *3 (W.D. N.Y. 2008) ("Since a parent must proceed on behalf of a minor child, the protection afforded to the minor would be eviscerated unless the parent was also permitted to proceed using initials.").

11 Fed. R. Civ. P. 5.2(c)(1).

12 Fed. R. Civ. P. 5.2(c)(2).

13 Fed. R. Civ. P. 5.2(c)(2).

14 See *Crossman v. Astrue*, 714 F. Supp. 2d 284, 289-290 (D. Conn. 2009).

15 See Fed. R. Civ. P. 5.2 advisory committee's note (2007).

16 See *Crossman v. Astrue*, 714 F. Supp. 2d 284, 288-291 (D. Conn. 2009) (rejecting request for blanket order placing all social security materials under seal but pointing out that item-specific motions would be proper).

17 See *Castellani v. City of Atlantic City*, 102 F. Supp. 3d 657, 662 n.1 (D.N.J. 2015) (Rule 5.2 irrelevant to whether party can redact individual names from materials produced in discovery).

18 Fed. R. Civ. P. 5.2 advisory committee's note (2007) (stating that the rule "does not limit or expand the judicially developed rules that govern sealing"). See *Skky, LLC v. Facebook, Inc.*, 191 F. Supp. 3d 977, 980 (D. Minn. 2016) (invoking Rule 5.2(d) but analyzing request under traditional test applied to sealing requests); *Rega v. Wetzel*, 2015 WL 540051, *2 (W.D. Pa. 2015) (Rule 5.2 does not govern request to file under seal).

19 Fed. R. Civ. P. 5.2(d). This provision works in conjunction with the court's power under Rule 5.2(a) to "order otherwise" to override the redaction requirement, Fed. R. Civ. P. 5.2(a), and the exemption of sealed filings from the redaction requirement. Fed. R. Civ. P. 5.2(b)(5).

20 See Fed. R. Civ. P. 5.2 advisory committee's note (2007). See, e.g., *Winkler v. Grant*, 370 Fed. Appx. 145, 147 (2d Cir. 2010), cert. denied, 131 S. Ct. 823, 178 L. Ed. 2d 576 (2010) (vacating district court's denial of motion to seal record that contained unredacted children's names and remanding for trial court to determine what steps to take to protect the identities of the children).

21 See *Caldwell v. Bartow*, 2015 WL 3669981, *1 (E.D. Wis. 2015) (finding good cause to seal materials in pro se habeas action due to unredacted personal information).

22 Fed. R. Civ. P. 5.2(e)(1). See *Krumtum v. Crawford*, 2016 WL 2894929, *2 (W.D. Va. 2016) (state-court records exempt from redaction requirement but ordering redaction and sealing in judge's discretion).

23 Fed. R. Civ. P. 5.2(e)(2). See *Coleman v. Zaccari*, 2011 WL 2607941, *1 (D.N.H. 2011) (prohibiting remote access of document with minor's birthdate).

24 Fed. R. Civ. P. 5.2 advisory committee's note (2007).

25 Fed. R. Civ. P. 5.2(f).

26 Fed. R. Civ. P. 5.2(g).

27 See Judicial Conference Policy on Privacy and Public Access to Electronic Case Files (March 2008), available at http://www.privacy.uscourts.gov/privacypolicy_Mar2008Revised.htm.

28 Fed. R. Civ. P. 5.2(h). See *Gibson v. American Cyanamid Co.*, 760 F.3d 600, 604 n.1 (7th Cir. 2014), cert. denied, 135 S. Ct. 2311, 191 L. Ed. 2d 1000 (2015); *Thomas v. Nationwide Children's Hospital*, 2017 WL 2226611 (S.D. Ohio

2017), *aff'd*, 882 F.3d 608 (6th Cir. 2018) (parents waived protection by using their children's full names); *Liberty Life Ins. Co. v. Myers*, 2013 WL 593870, *1 (D. Ariz. 2013) (party that included own information could not complain that other party failed to redact that same information); *Evans v. Larchmont Baptist Church Infant Care Center, Inc.*, 956 F. Supp. 2d 695, 706 n.6 (E.D. Va. 2013); *Musick v. Dorel Juvenile Group, Inc.*, 818 F. Supp. 2d 960, 961 n.1 (W.D. Va. 2011) (court uses minor plaintiff's full name where already used in the plaintiff's complaint and other filings); *Wells v. EMF Corp.*, 757 F. Supp. 2d 791, 798 (N.D. Ind. 2010) (plaintiffs waived protection by including their social security numbers in their own filings).

29 See Fed. R. Civ. P. 5.2 advisory committee's note (2007).

30 Fed. R. Civ. P. 5.2 advisory committee's note (2007).

31 See *Minette v. Minette*, 162 F. Supp. 3d 643, 654 (S.D. Ohio 2016) (striking paper and ordering party to file a corrected version); *In re Fort Totten Metrorail Cases*, 960 F. Supp. 2d 2 (D.D.C. 2013).

32 See *Cortezano v. Salin Bank & Trust Co.*, 680 F.3d 936, 942 (7th Cir. 2012) (affirming on the merits but remanding for district court to strike the names of minors from a memorandum filed in support of summary judgment); *Payne v. Missoula*, 2010 WL 3081270, *1 (D. Mont. 2010) (ordering clerk to make redactions in lieu of granting motion to seal).

33 See *Jacobson v. American Honda Motor Co., Inc.*, 2010 WL 3075339, *2 (D. Or. 2010) (ordering affidavit that contained personal information sealed).

34 See *Sahoo v. Gleaton*, 2017 WL 353971, *2 (E.D. N.C. 2017) (ordering redacted filings and sealing the originals); *Offor v. Mercy Medical Center*, 167 F. Supp. 3d 414, 447, 94 Fed. R. Serv. 3d 303 (E.D. N.Y. 2016), *aff'd in part*, vacated in part, remanded, 676 Fed. Appx. 51 (2d Cir. 2017) (ordering redacted filings and sealing the original filings); *Hale v. State Farm Mut. Auto. Ins. Co.*, 2014 WL 6673550, *2 (S.D. Ind. 2014) (ordering corrected filing and sealing the original filings); *Preuss v. Kolmar Laboratories, Inc.*, 970 F. Supp. 2d 171, 179 n.11 (S.D. N.Y. 2013) (ordering corrected filings and ordering the clerk to withdraw the unredacted documents); *Kinard v. Kinard*, 821 F. Supp. 2d 1228, 1229 n.1 (D. Colo. 2011) (ordering corrected filings and sealing the original filings); *Poparic v. European Music and Video Store*, 2009 WL 6318212, *6 n.3 (E.D. N.Y. 2009), supplemented, 2009 WL 6316252 (E.D. N.Y. 2009), report and recommendation adopted, 2010 WL 1260598 (E.D. N.Y. 2010) (sealing the unredacted filing and ordering the party to file a properly redacted version for the public docket).

35 See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27, 19 Fed. R. Serv. 3d 817 (1991) (discussing inherent powers of the courts). See, e.g., *Reed v. AMCO Ins. Co.*, 2012 WL 1964094, *1 (D. Nev. 2012) (awarding \$4,500 in attorney's fees incurred to file motions to remedy repeated Rule 5.2 violations); *Weakley v. Redline Recovery Services, LLC*, 2011 WL 1522413, *1-2 (S.D. Cal. 2011) (invoking inherent authority and ordering defendant who disclosed plaintiff's social security number to pay plaintiff \$900 to cover the cost of credit monitoring for five years); *Engeseth v. County of Isanti, Minn.*, 665 F. Supp. 2d 1047, 1048-49 (D. Minn. 2009) (ordering plaintiff's counsel who made filing containing full names, social security numbers, and birthdates for 179 plaintiffs to notify them of the disclosure, provide each one with credit reports and credit monitoring, and pay \$5,000 to a food bank).

36 See *Good v. Khosrowshahi*, 296 Fed. Appx. 676, 680 (10th Cir. 2008) (stating that "rules governing procedures in federal courts do not give rise to private causes of action").

37 Fed. R. Civ. P. 5.2 advisory committee's note (2007). See also *Carpenters' Dist. Council of Greater St. Louis and Vicinity v. Neier Services Co., Inc.*, 2015 L.R.R.M. (BNA) 185563, 2015 WL 3971070, *2 (E.D. Mo. 2015) (emphasizing that duty rests with the parties not the clerk); *Evans v. Larchmont Baptist Church Infant Care Center, Inc.*, 956 F. Supp. 2d 695, 706 n.6 (E.D. Va. 2013) ("Simply put, it is the parties' obligation, not the Court's, to ensure that filings comply with these Rules.").

POTENTIAL REDACTED FILINGS RULE

(a) Redacted Filings. Unless otherwise required by statute or court order, a party filing an electronic or paper document with the court that contains an individual's social-security number; taxpayer-identification number; financial-account number; driver's license number; or other personal identification number, including, but not limited to, passport number, student identification number, or state identification number, may include only the last four digits of any such number. In addition, a party filing an electronic or paper document with the court that includes a person's date of birth may include only the year of the individual's birth, and a party filing any such document with the court that includes the name of a person known to be a minor may include only the minor's initials.

(b) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) Option for Additional Unredacted Filing Under Seal. A party making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(d) Sanctions. A court may impose sanctions for a violation of this rule only if it finds that the violation was knowing and willful.