

Post Judgment Rules Subcommittee

Proposed Rule Change Draft Memorandum

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Proposed Rule Change to C.R.C.P. 103 Section 1(f)(2) & 403 Section 1(f)(2)

Re: Clarification of Writ of Continuing Garnishment Priority

Statement of Purpose

In 2001, the General Assembly amended C.R.S. § 13-54.5-102 by increasing the duration of a continuing lien on wages from 90 days to 180 days¹. Accordingly, the Supreme Court adopted changes to continuing garnishment sections C.R.C.P. 103 and 403 by defining the “Effective Garnishment Period,” which incorporated the Assembly’s increase to a 180 day levy period, as follows:

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

¹ Later amended to 182 days. 2012 Colo. Legis. Serv. Ch. 208 (S.B. 12-175).

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

- (a) [*** NO CHANGE]
- (b) [*** NO CHANGE]
- (c) [*** NO CHANGE]

(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 17, 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 ~~any ninety (90) day~~ the Effective Garnishment ~~p~~Period. This restriction shall not preclude the issuance of a subsequent writ within the ~~ninety (90) day~~Effective Garnishment ~~p~~Period.

- (e) [*** NO CHANGE]
- (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 judgment is vacated, modified or satisfied in full, the writ is dismissed, or for ninety (90) days following service of the writ, if the judgment was entered prior to August 8, 2001, and one hundred eighty (180) days 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 ~~e~~Effective Garnishment ~~p~~Period of a prior writ, it shall be effective for the Effective Garnishment Period ~~ninety (90) days~~ following the ~~e~~Effective Garnishment ~~p~~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 ~~e~~Effective Garnishment ~~p~~Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

- (g) [*** NO CHANGE]
- (h) [*** NO CHANGE]
- (i) [*** NO CHANGE]

(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 ~~ninety (90) day e~~Effective Garnishment ~~p~~Period nor affect priorities.

While the 2001 rule change accomplished the task of incorporating the increased continuing levy duration into a readable format, the rule's language has led to confusion about the priority and duration of continuing writs.

The confusion is best explained by example. Consider the following: Judgment Creditor Primary serves Garnishee with a Writ of Continuing Garnishment on 1/1/2015 for a judgment entered on 1/1/2010. Under both statute and C.R.C.P. 103, this Writ is effective from 1/1/2015 to 7/2/2015, which is 182 days from the date of service.

But what happens when Judgment Creditor Secondary serves a Writ of Continuing Garnishment 90 days later on 4/1/2015? How long is Secondary's continuing lien effective? Under C.R.S. §13-54-102, the answer is clear: "[T]he second writ is a lien for one hundred eighty-two days following the expiration of any writs with a priority." So, by statute Secondary's continuing levy begins on the expiration of Primary's writ, 7/2/2015, and ends 182 days later on 12/21/2015.

A different result arises from the court rules. In such circumstance, C.R.C.P. 103 Section 1(f)(2) instructs that "[w]hen 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." As shown above, the Effective Garnishment Period is "182 days (26 weeks) ***following service of the writ*** if the judgment was entered on or after August 8, 2001." (Emphasis added.) In either case, Secondary's writ does not become effective until the expiration of Primary's writ on 7/2/2015. However, Garnishee is left to guess as to whether Secondary's writ is effective until 9/30/2015 under court rule (182 days following service) or 12/31/2015 under statute (182 days after the expiration of the writ with priority).

This confusion has led to increased disputes between garnishees and judgment creditors, increased attorney fees and hearings requiring court clarification of the garnishee's obligations. The costs and attorney fees that arise from this issue are often ultimately borne by the judgment debtor. To alleviate these costs, improve clarity, and promote judicial economy, the Subcommittee recommends the following rule changes to C.R.C.P. 103 Section 1(f)(2) and its companion, C.R.C.P. 403(f)(2):

C.R.C.P. 103 SECTION 1(f)(2) (Proposed):

(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 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 91 days (13 weeks) following the Effective Garnishment Period of any prior writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following the Effective Garnishment Period of any prior 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. ~~the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.~~

C.R.C.P. 403 SECTION 1(f)(2) (Proposed):

(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 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 91 days (13 weeks) following the Effective Garnishment Period of any prior writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following the Effective Garnishment Period of any prior 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. ~~the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.~~

Proposed Rule Change to C.R.C.P. 103 Section 7(b)(2) & 403 Section 7(b)(2)

RE: Clarification of available sanctions for garnishees that fail to appear for garnishee liability hearings