

Subchapter 3.100 Debtor-Creditor

Rule 3.101 Garnishment After Judgment

(A) Definitions. In this rule,

- (1) "plaintiff" refers to any judgment creditor,
- (2) "defendant" refers to any judgment debtor,
- (3) "garnishee" refers to the garnishee defendant,
- (4) "periodic payments" includes but is not limited to, wages, salary, commissions, bonuses, and other income paid to the defendant during the period of the writ; land contract payments; rent; and other periodic debt or contract payments. Interest payments and other payments listed in MCL 600.4012(4)(a)-(d) are not periodic payments.

(B) Postjudgment Garnishments.

(1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.

(a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:

- (i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ;
- (ii) the expiration of 182 days after the date the writ was issued;
- (iii) the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

(b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment. The plaintiff may seek a second writ after the first writ expires under subrule (B)(1)(a).

(c) If a writ of periodic garnishment is served on a garnishee who is obligated to make periodic payments to the defendant while another order that has priority under MCL 600.4012(2) is in effect, or if a writ or order with higher priority is served on the garnishee while another writ is in effect, the garnishee is not obligated to withhold payments pursuant to the lower priority writ until the expiration of the higher priority one. However, in the case of garnishment of earnings, the garnishee shall withhold pursuant to the lower priority writ to the extent that the amount being withheld pursuant to the higher priority order is less than the maximum that could be withheld by law pursuant to the lower priority writ (see, e.g., 15 USC 1673). Upon the expiration of the higher priority writ, the lower priority one

becomes effective until it would otherwise have expired under subrule (B)(1)(a). The garnishee shall notify the plaintiff of receipt of any higher priority writ or order and provide the information required by subrule (H)(2)(c).

(2) Nonperiodic garnishments are garnishments of property or obligations other than periodic payments.

(C) Forms. The state court administrator shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and disclosure filed in garnishment proceedings must be substantially in the form approved by the state court administrator.

(D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules and the Michigan statutes, and if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in MCR 2.114(A) stating:

(1) that a judgment has been entered against the defendant and remains unsatisfied;

(2) the amount of the judgment; the total amount of the postjudgment interest accrued to date; the total amount of the postjudgment costs accrued to date; the total amount of the postjudgment payments made to date, and the amount of the unsatisfied judgment now due (including interest and costs);

(3) that the person signing the verified statement knows or has good reason to believe that

(a) a named person has control of property belonging to the defendant,

(b) a named person is indebted to the defendant, or

(c) a named person is obligated to make periodic payments to the defendant.

(E) Writ of Garnishment.

(1) The writ of garnishment must have attached or must include a copy of the verified statement requesting issuance of the writ, and must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) Upon issuance of the writ, it shall be served upon the garnishee as provided in subrule (F)(1). The writ shall include the date on which it was issued and the last day by which it must be served to be valid, which is 182 days after it was issued.

(3) The writ shall direct the garnishee to:

(a) serve a copy of the writ on the defendant as provided in subrule (F)(2);

(b) within 14 days after the service of the writ, file with the court clerk a verified disclosure indicating the garnishee's liability (as specified in subrule [G][1]) to the defendant and mail or deliver a copy to the plaintiff and the defendant;

(c) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;

(d) pay no obligation to the defendant, unless allowed by statute or court rule; and

(e) in the discretion of the court and in accordance with subrule (J), order the garnishee either to

(i) make all payments directly to the plaintiff or

(ii) send the funds to the court in the manner specified in the writ.

(4) The writ shall direct the defendant to refrain from disposing of

(a) any negotiable instrument representing a debt of the garnishee (except the earnings of the defendant), or

(b) any negotiable instrument of title representing property in which the defendant claims an interest held in the possession or control of the garnishee.

(5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant,

(a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and

(b) periodic payments due to the defendant may be withheld until the expiration of the writ and in the discretion of the court paid directly to the plaintiff.

(6) The writ shall direct the plaintiff to serve the garnishee as provided in subrule (F)(1), and to file a proof of service.

(F) Service of Writ.

(1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 182 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105.

(2) The garnishee shall within 7 days after being served with the writ deliver a copy of the writ to the defendant or mail a copy to the defendant at the defendant's last known address by first class mail.

(G) Liability of Garnishee.

(1) Subject to the provisions of the garnishment statute and any setoff permitted by law or these rules, the garnishee is liable for

- (a) all tangible or intangible property belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the defendant;
- (b) all negotiable documents of title and all goods represented by negotiable documents of title belonging to the defendant if the documents of title are in the garnishee's possession when the writ is served on the garnishee;
- (c) all corporate share certificates belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee;
- (d) all debts, whether or not due, owing by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant;
- (e) all debts owing by the garnishee evidenced by negotiable instruments held or owned by the defendant when the writ of garnishment is served on the defendant, as long as the instruments are brought before the court before their negotiation to a bona fide purchaser for value;
- (f) the portion of the defendant's earnings that are not protected from garnishment by law (see, e.g., 15 USC 1673) as provided in subrule (B);
- (g) all judgments in favor of the defendant against the garnishee in force when the writ is served on the garnishee;
- (h) all tangible or intangible property of the defendant that, when the writ is served on the garnishee, the garnishee holds by conveyance, transfer, or title that is void as to creditors of the defendant, whether or not the defendant could maintain an action against the garnishee to recover the property; and
- (i) the value of all tangible or intangible property of the defendant that, before the writ is served on the garnishee, the garnishee received or held by conveyance, transfer, or title that was void as to creditors of the defendant, but that the garnishee no longer held at the time the writ was served, whether or not the defendant could maintain an action against the garnishee for the value of the property.

(2) The garnishee is liable for no more than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Property or debts exceeding that amount may be delivered or paid to the defendant notwithstanding the garnishment.

(H) Disclosure. The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.

(1) Nonperiodic Garnishments.

- (a) If indebted to the defendant, the garnishee shall file a disclosure revealing the garnishee's liability to the defendant as specified in subrule (G)(1) and claiming any setoff that the garnishee would have against the defendant, except for claims for unliquidated damages for wrongs or injuries.

(b) If not indebted to the defendant, the garnishee shall file a disclosure so indicating.

(c) If the garnishee is indebted to the defendant, but claims that withholding is exempt under MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the specific exemption. If the garnishee is indebted, but claims that withholding is exempt for some reason other than those set forth in MCR 3.101(I)(6), the garnishee shall indicate on the disclosure the basis for its claim of exemption and cite the legal authority for the exemption.

(2) Periodic Garnishments.

(a) If not obligated to make periodic payments to the defendant, the disclosure shall so indicate, and the garnishment shall be considered to have expired.

(b) If obligated to make periodic payments to the defendant, the disclosure shall indicate the nature and frequency of the garnishee's obligation. The information must be disclosed even if money is not owing at the time of the service of the writ.

(c) If a writ or order with a higher priority is in effect, in the disclosure the garnishee shall specify the court that issued the writ or order, the file number of the case in which it was issued, the date it was issued, and the date it was served.

(I) Withholding. This subrule applies only if the garnishee is indebted to or obligated to make periodic payments to the defendant.

(1) Except as otherwise provided in this subrule, the writ shall be effective as to obligations owed and property held by the garnishee as of the time the writ is served on the garnishee.

(2) In the case of periodic earnings, withholding shall commence according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall commence with the first full pay period after the writ was served.

(b) For garnishees with monthly pay periods, if the writ is served on the garnishee within the first 14 days of the pay period, withholding shall commence on the date the writ is served. If the writ is served on the garnishee on or after the 15th day of the pay period, withholding shall commence the first full pay period after the writ was served.

(3) In the case of periodic earnings, withholding shall cease according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall cease upon the end of the last full pay period prior to the expiration of the writ.

(b) For garnishees with monthly pay periods, withholding shall continue until the writ expires.

(4) At the time that a periodic payment is withheld, the garnishee shall provide the following information to the plaintiff and defendant:

- (a) the name of the parties;
- (b) the case number;
- (c) the date and amount withheld;
- (d) the balance due on the writ.

The information shall also be provided to the court if funds are sent to the court.

(5) If funds have not been withheld because a higher priority writ or order was in effect, and the higher priority writ ceases to be effective before expiration of the lower priority one, the garnishee shall begin withholding pursuant to the lower priority writ as of the date of the expiration of the higher priority writ.

(6) A bank or other financial institution, as garnishee, shall not withhold exempt funds of the debtor from an account into which only exempt funds are directly deposited and where such funds are clearly identifiable upon deposit as exempt Social Security benefits, Supplemental Security Income benefits, Railroad Retirement benefits, Black Lung benefits, or Veterans Assistance benefits.

(J) Payment.

(1) After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff or the court as directed by the court pursuant to subrule (E)(3)(e) unless notified that objections have been filed.

(2) For periodic garnishments, all future payments shall be paid as they become due as directed by the court pursuant to subrule (E)(3)(e) until expiration of the garnishment.

(3) Upon receipt of proceeds from the writ, the court shall forward such proceeds to the plaintiff.

(4) Payment to the plaintiff may not exceed the amount of the unpaid judgment, interest, and costs stated in the verified statement requesting the writ of garnishment. If the plaintiff claims to be entitled to a larger amount, the plaintiff must proceed by motion with notice to the defendant.

(5) In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.

(6) For periodic garnishments, within 14 days after the expiration of the writ or after the garnishee is no longer obligated to make periodic payments, the garnishee shall file with the court and mail or deliver to the plaintiff and the defendant, a final statement of the total amount paid on the writ. If the garnishee is the defendant's employer, the statement is to be filed within 14

days after the expiration of the writ, regardless of changes in employment status during the time that the writ was in effect. The statement shall include the following information:

- (a) the names of the parties and the court in which the case is pending;
- (b) the case number;
- (c) the date of the statement;
- (d) the total amount withheld;
- (e) the difference between the amount stated in the verified statement requesting the writ and the amount withheld.

(7) If the disclosure states that the garnishee holds property other than money belonging to the defendant, the plaintiff must proceed by motion (with notice to the defendant and the garnishee) to seek an appropriate order regarding application of the property to satisfaction of the judgment. If there are no pending objections to the garnishment, and the plaintiff has not filed such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

(K) Objections.

(1) Objections shall be filed with the court within 14 days of the date of service of the writ on the defendant. Objections may be filed after the time provided in this subrule but do not suspend payment pursuant to subrule (J) unless ordered by the court. Objections may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered.

(2) Objections shall be based on one or more of the following:

- (a) the funds or property are exempt from garnishment by law;
- (b) garnishment is precluded by the pendency of bankruptcy proceedings;
- (c) garnishment is barred by an installment payment order;
- (d) garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;
- (e) the judgment has been paid;
- (f) the garnishment was not properly issued or is otherwise invalid.

(3) Within 7 days of the filing of objections, notice of the date of hearing on the objections shall be sent to the plaintiff, the defendant, and the garnishee. The hearing date shall be within 21 days of the date the objections are filed. In district court, notice shall be sent by the court. In circuit and probate court, notice shall be sent by the objecting party.

(4) The court shall notify the plaintiff, the defendant, and the garnishee of the court's decision.

(L) Steps After Disclosure; Third Parties; Interpleader; Discovery.

(1) Within 14 days after service of the disclosure, the plaintiff may serve the garnishee with written interrogatories or notice the deposition of the garnishee. The answers to the interrogatories or the deposition testimony becomes part of the disclosure.

(2) If the garnishee's disclosure declares that a named person other than the defendant and the plaintiff claims all or part of the disclosed indebtedness or property, the court may order that the claimant be added as a defendant in the garnishment action under MCR 2.207. The garnishee may proceed under MCR 3.603 as in interpleader actions, and other claimants may move to intervene under MCR 2.209.

(3) The discovery rules apply to garnishment proceedings.

(4) The filing of a disclosure, the filing of answers to interrogatories, or the personal appearance by or on behalf of the garnishee at a deposition does not waive the garnishee's right to question the court's jurisdiction, the validity of the proceeding, or the plaintiff's right to judgment.

(M) Determination of Garnishee's Liability.

(1) If there is a dispute regarding the garnishee's liability or if another person claims an interest in the garnishee's property or obligation, the issue shall be tried in the same manner as other civil actions.

(2) The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. The facts stated in the disclosure must be accepted as true unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by subrule (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The defendant and other claimants added under subrule (L)(2) may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed.

(3) Even if the amount of the garnishee's liability is disputed, the plaintiff may move for judgment against the garnishee to the extent of the admissions in the disclosure. The general motion practice rules govern notice (including notice to the garnishee and the defendant) and hearing on the motion.

(4) The issues between the plaintiff and the garnishee will be tried by the court unless a party files a demand for a jury trial within 7 days after the filing of the disclosure, answers to interrogatories, or deposition transcript, whichever is filed last. The defendant or a third party waives any right to a jury trial unless a demand for a jury is filed with the pleading stating the claim.

(5) On the trial of the garnishee's liability, the plaintiff may offer the record of the garnishment proceeding and other evidence. The garnishee may offer evidence not controverting the disclosure, or in the discretion of the court, may show error or mistakes in the disclosure.

(6) If the court determines that the garnishee is indebted to the defendant, but the time for payment has not arrived, a judgment may not be entered until after the time of maturity stated in the verdict or finding.

(N) Orders for Installment Payments.

(1) An order for installment payments under MCL 600.6201 *et seq.* suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.

(2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and remains in force until it would have expired if the installment payment order had never been entered.

(O) Judgment and Execution.

(1) Judgment may be entered against the garnishee for the payment of money or the delivery of specific property as the facts warrant. A money judgment against the garnishee may not be entered in an amount greater than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Judgment for specific property may be enforced only to the extent necessary to satisfy the judgment against the defendant.

(2) The judgment against the garnishee discharges the garnishee from all demands by the defendant for the money paid or property delivered in satisfaction of the judgment. If the garnishee is sued by the defendant for anything done under the provisions of these garnishment rules, the garnishee may introduce as evidence the judgment and the satisfaction.

(3) If the garnishee is chargeable for specific property that the garnishee holds for or is bound to deliver to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution, who shall sell, apply, and account as in other executions.

(4) If the garnishee is found to be under contract for the delivery of specific property to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution according to the terms of the contract. The officer shall sell, apply, and account as in ordinary execution.

(5) If the garnishee is chargeable for specific property and refuses to expose it so that execution may be levied on it, the court may order the garnishee to show cause why general execution should not issue against the garnishee. Unless sufficient cause is shown to the contrary, the court may order that an execution be issued against the garnishee in an amount not to exceed twice the value of the specifically chargeable property.

(6) The court may issue execution against the defendant for the full amount due the plaintiff on the judgment against the defendant. Execution against the garnishee may not be ordered by separate writ, but must always be ordered by endorsement on or by incorporation within the writ of execution against the defendant. The court may order additional execution to satisfy the plaintiff's judgment as justice requires.

(7) Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant.

(P) Appeals. A judgment or order in a garnishment proceeding may be set aside or appealed in the same manner and with the same effect as judgments or orders in other civil actions.

(Q) Receivership.

(1) If on disclosure or trial of a garnishee's liability, it appears that when the writ was served the garnishee possessed,

(a) a written promise for the payment of money or the delivery of property belonging to the defendant, or

(b) personal property belonging to the defendant,

the court may order the garnishee to deliver it to a person appointed as receiver.

(2) The receiver must

(a) collect the written promise for payment of money or for the delivery of property and apply the proceeds on any judgment in favor of the plaintiff against the garnishee and pay any surplus to the garnishee, and

(b) dispose of the property in an amount greater than any encumbrance on it can be obtained, and after paying the amount of the encumbrance, apply the balance to the plaintiff's judgment against the garnishee and pay any surplus to the garnishee.

(3) If the garnishee refuses to comply with the delivery order, the garnishee is liable for the amount of the written promise for the payment of money, the value of the promise for the delivery of property, or the value of the defendant's interest in the encumbered personal property. The facts of the refusal and the valuation must be included in the receiver's report to the court.

(4) The receiver shall report all actions pertaining to the promise or property to the court. The report must include a description and valuation of any property, with the valuation to be ascertained by appraisal on oath or in a manner the court may direct.

(R) Costs and Fees.

(1) Costs and fees are as provided by law or these rules.

(2) If the garnishee is not indebted to the defendant, does not hold any property subject to garnishment, and is not the defendant's employer, the plaintiff is not entitled to recover the costs of that garnishment.