

CIVIL PRACTICE AND PROCEDURE

GARNISHMENT

CHAPTER 77

77.01 Right to writ of garnishment.--Every person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person or any debt not evidenced by a negotiable instrument that will become due absolutely through the passage of time only to the defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person. The officers, agents, and employees of any companies or corporations are third persons in regard to the companies or corporations, and as such are subject to garnishment after judgment against the companies or corporations.

77.03 Issuance of writ after judgment.--After judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, the plaintiff's agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment. The motion may be filed and the writ issued either before or after the return of execution.

77.0305 Continuing writ of garnishment against salary or wages.--Notwithstanding any other provision of this chapter, if salary or wages are to be garnished to satisfy a judgment, the court shall issue a continuing writ of garnishment to the judgment debtor's employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order. A debtor's status as an employee of the state or its agencies or political subdivisions does not preclude a judgment creditor's right to garnish the debtor's wages. For the purposes of this section, the state includes the judicial branch and the legislative branch as defined in s. [216.011](#). The state, for itself and for its agencies and subdivisions, waives sovereign immunity for the express and limited purpose necessary to carry out this section. The court shall allow the judgment debtor's employer to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor's salary or wages and up to \$2 for each deduction thereafter. The funds collected by the state under this section must be deposited in the Department of Financial Services Administrative Trust Fund for purposes of carrying out this section.

77.04 Writ; form.--The writ shall require the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, plus sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion.

77.041 Notice to individual defendant for claim of exemption from garnishment; procedure for hearing.--

(1) Upon application for a writ of garnishment by a plaintiff, if the defendant is an individual, the clerk of the court shall attach to the writ the following "Notice to Defendant":

(2) **The plaintiff must mail, by first class, a copy of the writ of garnishment, a copy of the motion for writ of garnishment, and, if the defendant is an individual, the "Notice to Defendant" to the defendant's last known address within 5 business days after the writ is issued or 3 business days after the writ is served on the garnishee, whichever is later.** However, if such documents are returned as undeliverable by the post office, or if the last known address is not discoverable after diligent search, the plaintiff must mail, by first class, the documents to the defendant at the defendant's place of employment. **The plaintiff shall file in the proceeding a certificate of such service.**

(3) **Upon the filing by a defendant of a claim of exemption** and request for hearing, a hearing will be held as soon as is practicable to determine the validity of the claimed exemptions. **If the plaintiff does not file a sworn written statement that contests the defendant's claim of exemption within 3 business days after hand delivering the claim and request or, alternatively, 8 business days, if the claim and request were served by mail, no hearing is required and the clerk must automatically dissolve the writ** and notify the parties of the dissolution by mail.

77.055 Service of garnishee's answer and notice of right to dissolve writ.--
Within 5 days after service of the garnishee's answer on the plaintiff or after the time period for the garnishee's answer has expired, **the plaintiff shall serve, by mail, the following documents: a copy of the garnishee's answer, and a notice advising the recipient that he or she must move to dissolve the writ of garnishment within 20 days after the date indicated on the certificate of service** in the notice if any allegation in the plaintiff's motion for writ of garnishment is untrue. **The plaintiff shall serve these documents on the defendant** at the defendant's last known address and any other address disclosed by the garnishee's answer **and on any other person disclosed in the garnishee's answer to have any ownership interest in the deposit, account, or property controlled by the garnishee. The plaintiff shall file in the proceeding a certificate of such service.**

77.06 Writ; effect.--

(1) Service of the writ shall make garnishee liable for all debts due by him or her to defendant and for any tangible or intangible personal property of defendant in the garnishee's possession or control at the time of the service of the writ or at any time between the service and the time of the garnishee's answer. Service of the writ creates a lien in or upon any such debts or property at the time of service or at the time such debts or property come into the garnishee's possession or control.

(2) The garnishee shall report in its answer and retain, subject to the provisions of s. [77.19](#) and subject to disposition as provided in this chapter, any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee; and the answer shall state the name or names and addresses, if known to the garnishee, of the defendant and any other persons having or appearing to have an ownership interest in the involved property.

(3) In any case where a garnishee in good faith is in doubt as to whether any indebtedness or property is required by law to be included in the garnishee's answer or retained by it, the garnishee may include and retain the same, subject to the provisions of s. [77.19](#) and subject to disposition as provided in this chapter, and in such case the garnishee shall not be liable for so doing to the defendant or to any other person claiming the same or any interest therein or claiming to have sustained damage on account thereof.

(4) Service of a writ on a garnishee shall render him or her liable as provided in this chapter in any fiduciary or representative capacity held by him or her if the fiduciary or representative capacity is specified in the writ.

77.061 Reply.--When any garnishee answers and plaintiff is not satisfied with the answer, he or she shall serve a reply within 20 days thereafter denying the allegations of the answer as he or she desires. On failure of plaintiff to file a reply, the answer shall be taken as true and on proper disposition of the assets, if any are disclosed thereby, the garnishee is entitled to an order discharging him or her from further liability under the writ.

77.07 Dissolution of writ.--

(1) The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his or her favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action then shall proceed as if no writ had been issued.

(2) The defendant and any other person having an ownership interest in the property, as disclosed by the garnishee's answer, shall file and serve a motion to dissolve the garnishment within 20 days after the date indicated in the certificate of service on the defendant and such other person of the plaintiff's notice required by s. [77.055](#), stating that any allegation in plaintiff's motion for writ is untrue. On such motion this issue shall be tried, and if the allegation in plaintiff's motion which is denied is not proved to be true, the garnishment shall be dissolved. Failure of the defendant or other interested person to timely file and serve the motion to dissolve within such time limitation shall result in the striking of the motion as an unauthorized nullity by the court, and the proceedings shall be in a default posture as to the party involved.

(3) If the motion denies the debt demanded before judgment, the judge may require pleadings on motion of either party on the debt demanded to be filed in such time as he or she fixes.

(4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by defendant's motion to plaintiff's motion.

(5) If the plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ shall automatically be dissolved and the garnishee shall be discharged from further liability under the writ. The plaintiff has the right to extend the writ for an additional 6 months by serving the garnishee and the defendant a notice of extension and filing in the underlying proceeding a certification of such service.

77.082 No reply filed.--If no reply to garnishee's answer is served, garnishee may surrender any goods, chattels, or effects of defendant in garnishee's hands or possession to the sheriff and may pay any money or debt into registry of court. In such event or if garnishee prevails in the trial of any reply and after proper disposition of any property disclosed by garnishee's answer, the court shall discharge him or her from further liability under the writ.

77.16 Claims by third persons to garnisheed property.--

(1) If any person other than defendant claims that the debt due by a garnishee is due to that person and not to defendant, or that the property in the hands or possession of any garnishee is that person's property and shall make an affidavit to the effect, the court shall impanel a jury to determine the right of property between the claimant and plaintiff unless a jury is waived.

(2) If the verdict is against the claimant, plaintiff shall recover costs. If the verdict is in favor of the claimant, the claimant shall recover costs against plaintiff.

(3) If the claim is interposed after a levy on property, the officer making the levy shall return the execution with the officer's levy thereon and the affidavit of the claimant to the court from which execution issued, and the proceedings shall be as in other cases of claims made to property taken on execution.

77.17 Compensation to garnishee.--The garnishee shall be allowed the pay of a witness for the garnishee's attendance out of the debt owed to defendant or the property in the garnishee's possession. If there is no debt or property in the garnishee's possession, the allowance shall be against plaintiff.

77.19 Amount retained by garnishee.--No garnishee who is indebted to or has in his or her possession the money of a person whose money or credits may be garnisheed shall retain out of the money more than double the amount which the writ of garnishment specifies as the amount plaintiff expects to recover or more than double the amount of the judgment plaintiff has recovered.

77.28 Garnishment; attorney's fees, costs, expenses; deposit required.--Before issuance of any writ of garnishment, the party applying for it shall deposit \$100 in the registry of the court which shall be paid to the garnishee on the garnishee's demand at any time after the service of the writ for the payment or part payment of his or her attorney's fee which the garnishee expends or agrees to expend in obtaining representation in response to the writ. At the time of deposit, the clerk shall collect the statutory fee provided by s. [28.24](#)(10) in addition to the \$100 deposited into the registry of the court. On rendering final judgment, the court shall determine the garnishee's costs and expenses, including a reasonable attorney's fee, and in the event of a judgment in favor of the plaintiff, the amount shall be subject to offset by the garnishee against the defendant whose property or debt owing is being garnished. In addition, the court shall tax the garnishee's costs and expenses as costs. Plaintiff may recover in this manner the sum advanced by plaintiff and paid into registry of court, and if the amount allowed by the court is greater than the amount of the deposit, together with any offset, judgment for the garnishee shall be entered against the party against whom the costs are taxed for the deficiency.

IN THE COUNTY COURT, NINETEENTH
JUDICIAL CIRCUIT, IN AND FOR
COUNTY OF ST. LUCIE, STATE OF
FLORIDA - CIVIL DIVISION.

CASE NO. _____

PLAINTIFF,

VS

DEFENDANT,

AND

GARNISHEE.

_____/

FIRST NOTICE TO DEFENDANT

TO: _____

YOU WILL PLEASE TAKE NOTICE that, pursuant to Plaintiff's Motion for Issuance of Writ of Garnishment, the Clerk of the above-captioned Court issued a Writ of Garnishment, a copy of which is attached hereto. A copy of the Notice to Defendant of Right Against Garnishment of Wages, Money or Other Property is also attached hereto along with a Claim of Exemption Form.

I HEREBY CERTIFY that a true copy of the above and foregoing has been mailed to the Defendant at the address listed above by U.S. Mail on _____.

IN THE COUNTY COURT, NINETEENTH
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VS

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_____/

SECOND NOTICE TO DEFENDANT

TO: _____

YOU ARE NOTIFIED that a Writ of Garnishment has been served on the above named Garnishee, and the Garnishee has filed its answer.

You are hereby advised pursuant to Florida Statutes 77.055 that you must move to dissolve the Writ within the time period set forth in Florida Statutes Section 77.07(2)(twenty days after the date of service) or be defaulted. You may have exemptions from the Garnishment which must be asserted as a defense.

Plaintiff certifies that copies of this Notice of Garnishment and the Writ of Garnishment and the Garnishee's Answer have been served by mail on the Defendant(s) and all other persons who have or appear to have an ownership interest in the deposit, account, or other personal property in the possession or control of Garnishee at his or their address, as shown by the Answer of the Garnishee.

I HEREBY CERTIFY that a true copy of the above and foregoing has been mailed to the Defendant at the address listed above by U.S. Mail on _____.

