

There are currently two sets of garnishment Rules - Rules 2-645 and 3-645, governing garnishments in general, and Rules 2-646 and 3-646, governing the garnishment of wages. The new federal regulation applies only to the garnishment of accounts of individuals in financial institutions into which protected federal benefits have been direct-deposited. It places certain specific requirements on such garnishment orders and on the response of financial institutions to them. Because of the discrete applicability of the regulation and its requirements, the Rules Committee recommends the adoption of new self-contained Rules 2-645.1 and 3-645.1 governing those garnishments, with conforming amendments to the general garnishment Rules. The Committee was greatly assisted in this endeavor by representatives of the Legal Aid Bureau, the Maryland Bankers Association, and the creditors' rights bar. Judge Marcella Holland, Chair of the Conference of Circuit Court Judges, Chief Judge Clyburn, and Chief Judge Krauser were sent copies of the drafts submitted to the Rules Committee and were apprised of the Committee's consideration of them at its April 15, 2011.

For the further guidance of the Court and the public, following each of the proposed new Rules and the proposed amendments to each of the existing Rules is a Reporter's Note describing in further detail the reasons for the proposals. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

Linda M. Schuett
Vice Chair

AMW/LMS:cdc

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 600 - JUDGMENT

ADD new Rule 2-645.1, as follows:

Rule 2-645.1. GARNISHMENT OF ACCOUNT IN FINANCIAL INSTITUTION

(a) Definitions

The definitions in 31 C.F.R. §212.3 apply to terms used in this Rule.

(b) Scope

This Rule applies to the garnishment of an account when the garnishee is a financial institution and the judgment debtor is a natural person.

(c) Application of Rule 2-645

Rule 2-645 applies to a garnishment subject to this Rule, except that this Rule prevails over Rule 2-645 to the extent of any inconsistency and the requirements, prohibitions, and limitations not contained in Rule 2-645 also apply.

Committee note: Federal regulations found in 31 C.F.R. Part 212 contain requirements, prohibitions, and limitations applicable to the garnishment of accounts of a judgment debtor in a financial institution which prevail over any inconsistent State law. Relevant terms are defined in 31 C.F.R. §212.3 including "account," "account review," "financial institution," and "protected amount." This Rule is intended to comply with the Federal requirements.

(d) Content of Writ

(1) Directions to Financial Institution

A writ of garnishment subject to this Rule shall direct

the financial institution:

(A) not to hold property of the judgment debtor that constitutes a protected amount;

(B) not to hold property of the judgment debtor that may come into the garnishee's possession following service of the writ if the account contains a protected amount; and

(C) to comply with other applicable requirements, prohibitions, and limitations contained in 31 C.F.R. Part 212.

(2) Notification to Judgment Debtor

A writ of garnishment subject to this Rule shall notify the judgment debtor that:

(A) some Federal benefit payments may be automatically protected from garnishment and will not be held in response to the writ of garnishment; and

(B) any claim for exemption for a non-protected amount must be filed with the court no later than 30 days after service of the writ of garnishment on the garnishee.

(e) Answer of Garnishee

(1) The answer of the garnishee shall state, if applicable, that a protected amount is in the judgment debtor's account but need not specify the amount.

Committee note: Subsection (e) (1) does not affect the requirement that the garnishee hold, subject to further proceedings, a non-protected amount that is in the garnishee's possession on the date of the account review and specify that amount in its answer.

(2) If the answer of the garnishee states that the property held by the garnishee consists only of a protected amount, the

garnishee shall include with the answer a request for a judgment in favor of the garnishee terminating the garnishment.

Source: This Rule is new.

REPORTER'S NOTE

The Department of the Treasury and several benefits-paying agencies announced a new federal regulation regarding garnishments that will take effect on May 1, 2011 and be codified at 31 C.F.R. §§212.1 to 212.12. The federal regulation will apply only to financial institutions, which the federal regulation defines as "state and federal banks and credit unions and any other entity chartered under federal or state law to engage in the business of banking."

The federal regulation restricts a creditor's ability to garnish accounts that contain certain specified federal benefit payments. The regulation requires a financial institution that receives a garnishment order pertaining to a judgment debtor who is an individual to review all accounts held by that individual and determine whether any federal benefit payments were electronically deposited into the account during the preceding two months. The federal regulation protects these benefit payments and precludes the financial institution from freezing them. If the account contains such benefit payments, the financial institution must calculate the "protected amount" and send the account holder notice of the protections from garnishment. There is a model notice contained in the appendix to the federal regulation for this purpose, which financial institutions may use.

The federal regulation preempts any state law that would prevent a financial institution from complying with the federal regulation. New Rule 2-645.1 is proposed to ensure compliance with the new federal regulation. Because the federal regulation applies only in limited circumstances, existing Rule 2-645 remains applicable to situations that do not involve financial institutions or federal benefit payments, or are otherwise not covered by the federal regulation.

Section (a) of proposed new Rule 2-645.1 incorporates the definitions contained in the federal regulation into the Rule. These definitions were incorporated because several terms used throughout the Rule, such as "account review," "benefit payment," "financial institution," and "protected amount," are intended to have the specific meanings set forth by the federal regulation.

Section (b) provides that the Rule is applicable to the garnishment of an individual's account in a financial institution.

Section (c) is added to comply with the federal regulation and to address Supremacy Clause issues by making clear that, if there are inconsistencies between Rule 2-645.1 and Rule 2-645, Rule 2-645.1 prevails.

Section (d) outlines required contents of the writ that are in addition to the requirements listed in Rule 2-645 and prevail over certain requirements in that Rule. Subsection (d)(1) directs the financial institution to comply with the requirements, prohibitions, and limitations of the federal regulation. The subsection highlights the requirement that the garnishee not hold certain property that it otherwise would be required to hold under Maryland law. Subsection (d)(2)(A) is added to ensure that the judgment debtor, in accordance with the federal regulation, is notified that some federal benefit payments may be protected. Subsection (d)(2)(B) is added to ensure that the judgment debtor is aware that redress in the courts must be sought in order to claim exemptions that are not part of the "protected amount."

Subsection (e)(1) is added to comply with the federal regulation, and subsection (e)(2) is added to address situations in which an account may consist only of funds that qualify as a "protected amount." Subsection (e)(2) is intended to provide a prompt resolution in such situations by requiring the garnishee, at the same time that it files its answer, to request an order for judgment in favor of the garnishee terminating the writ of garnishment.

Proposed new Rule 3-645.1 is applicable to garnishments in the District Court. It tracks the provisions of Rule 2-645.1.

Amendments to Rules 2-645 and 3-645 make those Rules subject to the provisions of Rule 2-645.1 and 3-645.1, respectively.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 600 - JUDGMENT

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(b) Scope

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(c) Application of Rule 3-645

Rule 3-645 applies to a garnishment subject to this Rule, except that this Rule prevails over Rule 3-645 to the extent of any inconsistency and the requirements, prohibitions, and limitations not contained in Rule 3-645 also apply.

Committee note: Federal regulations found in 31 C.F.R. Part 212 contain requirements, prohibitions, and limitations applicable to the garnishment of accounts of a judgment debtor in a financial institution which prevail over any inconsistent State law. Relevant terms are defined in 31 C.F.R. §212.3 including "account," "account review," "financial institution," and "protected amount." This Rule is intended to comply with the Federal requirements.

(d) Content of Writ

(1) Directions to Financial Institution

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the financial institution:

(A) not to hold property of the judgment debtor that constitutes a protected amount;

(B) not to hold property of the judgment debtor that may come into the garnishee's possession following service of the writ if the account contains a protected amount; and

(C) to comply with other applicable requirements, prohibitions, and limitations contained in 31 C.F.R. Part 212.

(2) Notification to Judgment Debtor

A writ of garnishment subject to this Rule shall notify the judgment debtor that:

(A) some Federal benefit payments may be automatically protected from garnishment and will not be held in response to the writ of garnishment; and

(B) any claim for exemption for a non-protected amount must be filed with the court no later than 30 days after service of the writ of garnishment on the garnishee.

(e) Answer of Garnishee

(1) The answer of the garnishee shall state, if applicable, that a protected amount is in the judgment debtor's account but need not specify the amount.

Committee note: Subsection (e) (1) does not affect the requirement that the garnishee hold, subject to further proceedings, a non-protected amount that is in the garnishee's possession on the date of the account review and specify that amount in its answer.

(2) If the answer of the garnishee states that the property held by the garnishee consists only of a protected amount, the

garnishee shall include with the answer a request for a judgment in favor of the garnishee terminating the garnishment.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-645.1.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 600 - JUDGMENT

AMEND Rule 2-645 to make the Rule subject to the provisions of Rule 2-645.1, as follows:

Rule 2-645. GARNISHMENT OF PROPERTY - GENERALLY

(a) Availability

Subject to the provisions of Rule 2-645.1, This this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. Upon the filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that the failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and

papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When no Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 2-613 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the

purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court pursuant to Rule 2-401 (d) at the time the answers are served. If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 2-643, except that a motion under Rule 2-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 2-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional property of the debtor that may come into its possession after the judgment was entered.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 2-626.

Source: This Rule is derived as follows:

Section (a) is new but is consistent with former Rules G47 a and G50 a.

Section (b) is new.

Section (c) is new.

Section (d) is in part derived from former Rules F6 c and 104 a (4) and is in part new.

Section (e) is in part new and in part derived from former Rule G52 a and b.

Section (f) is new.

Section (g) is new.

Section (h) is derived from former Rule G56.

Section (i) is new.

Section (j) is new.

Section (k) is new.

Section (l) is new.

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See the Reporter's note to Rule 2-645.1.

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