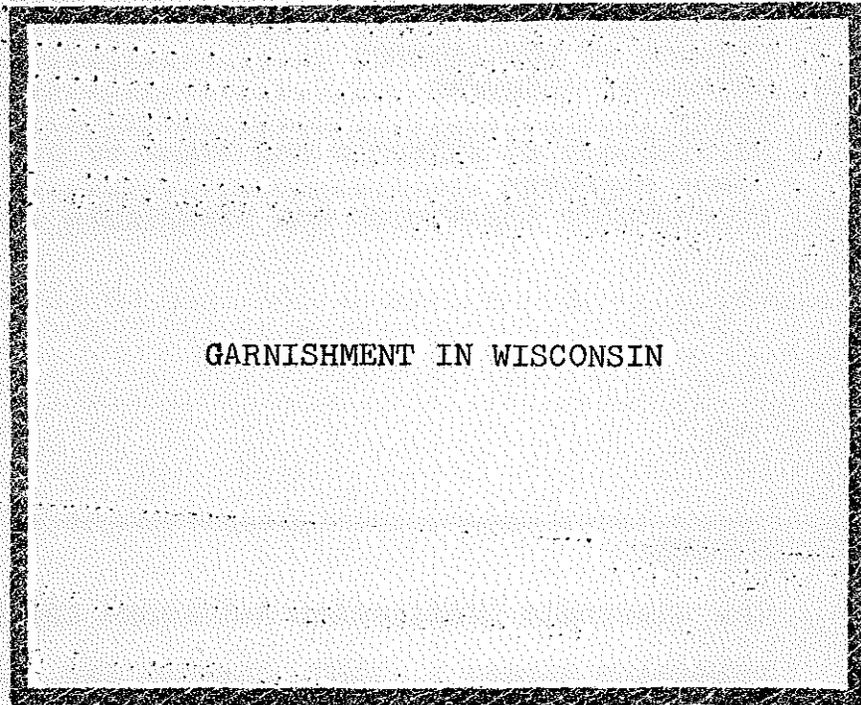


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GARNISHMENT IN WISCONSIN

WISCONSIN

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PLEASE NOTE:

The Wisconsin Legislative Reference Library has changed its name.

Beginning August 1, 1963, Chapter 149, Laws of 1963, renamed us "Legislative Reference Bureau". We are no longer under the Free Library Commission, but an independent agency in the legislative branch of Wisconsin state government, under the policy direction of the Joint Committee on Legislative Organization. Our services remain the same.

With the change in name, we have changed our method of numbering the reports issued by this agency. The Informational Bulletin Series (IB) was closed off with number 230; the Research Bulletin Series (RB) was closed off with number 141 (No. 139 was not used).

Our new numbers begin with the last two digits of the current year (for 1963 we used 63), and number each series consecutively through a single year. Thus, the first new Research Bulletin was numbered RB-63-1, the second, RB-63-2, etc.

GARNISHMENT IN WISCONSIN*

INTRODUCTION

The first Wisconsin Statutes in 1849 contained a remedy for creditors known as garnishment and, like taxes and death, it has been with us ever since. In recent sessions of the Legislature, there has been an increased interest in this subject, evidenced by many bills to change various aspects of garnishment, although very few of these bills became law.

In the belief that there may be general interest in an explanation of garnishment law, the Legislative Reference Bureau has prepared this bulletin. Persons with an interest in this field may wish to examine a companion bulletin published by the Bureau as Research Bulletin No. 64-1, which deals with 2 areas within this subject -- when garnishment may commence and what income exemptions are allowed -- and examines Wisconsin's legislative history and the law of other states in these areas.

Two chapters of the Wisconsin Statutes deal primarily with garnishment: Chapter 267 and Chapter 304. The application of Chapter 304 is limited to municipal justice of the peace courts (as authorized by Section 62.24 (2) (a) 8. of the statutes), and its procedure is substantially similar to that of Chapter 267 of the Wisconsin Statutes. For that reason, only Chapter 267 will be studied in detail.

Section 272.18 (15) is also important to an examination of garnishment in Wisconsin. The section pertains generally to property exempt from execution. Subsection (15) has special bearing on garnishment actions, as the subsection relates to income exemptions.

WISCONSIN GARNISHMENT LAW: CHAPTER 267

The main body of law pertaining to garnishment actions in circuit and county courts in Wisconsin is found in Chapter 267 of the statutes. The following is an outline of the procedure and law under that chapter, with additions from other sections of the statutes as noted.

I. Who May Commence a Garnishment Action?

Any creditor (including judgment creditors) may proceed against any person (except a municipal corporation) who is indebted to or has property in his possession or under his control belonging to the creditor's debtor. However, no garnishee action shall be brought to recover the price of beer or intoxicating liquors sold at retail. (Section 267.01 of the Wisconsin Statutes)

NOTE: The pertinent statutes, attorney generals' opinions and court decisions are cited in the text in parentheses.

*Prepared by Michael R. Vaughan, legal draftsman.

Garnishment is not a "cause of action," but is a statutory action available to parties when they have a cause of action. There is only a single cause of action, which is the primary right of plaintiff to collect the debt and corresponding duty of principal defendant to pay it. (Markman v. Becker, 6 Wis. 2d 438)

II. Procedure for Initiating Garnishment Actions

The plaintiff may commence a garnishment action at any time after the summons is issued in an action for damages founded upon contract, in an action under Section 266.03 or in an action upon a judgment, or when an execution against property has issued or is issuable. (Section 267.01)

Unless otherwise provided, the procedure in garnishment actions shall be the same as in ordinary civil actions. (Section 267.01) The action shall commence by the service of a summons and verified complaint (Section 267.02) on the garnishee and unless service in the main action is by publication or made outside the state, on the defendant or his attorney as well. The summons and complaint must be served on the defendant or his attorney or the proof of service must show that, after due diligence, such service could not be made within the state, or the service on the garnishee is void. (Section 267.06)

Where the garnishee summons and complaint were served on the garnishee but not on the defendant or his attorney, the failure of the sheriff's return to state that such latter service could not be made within the state rendered the service on the garnishee void and resulted in a loss of whatever jurisdiction the court had already acquired which could not be repaired by amending the return. (Mahrle v. Engle, 261 Wis. 485)

Any number of garnishees may be embraced in the same garnishment. If a joint liability is claimed it shall be stated in the complaint, otherwise the several garnishees shall be deemed to be proceeded against severally. (Section 267.03) The plaintiff may subsequently proceed against other garnishees or against the same garnishees if it appears that they have subsequently become liable. (Section 267.07)

The garnishee complaint must allege:

- A. The existence of one of the grounds for garnishment;
- B. The amount of the plaintiff's claim against the defendant above all offsets;
- C. That the plaintiff believes the named garnishee to be indebted to or have property in his possession or under his control belonging to the named defendant; and
- D. That such indebtedness or property is, to the plaintiff's best knowledge, not exempt from execution. (Section 267.03)

III. The Garnishee's Liability

From the time of the service of the summons and complaint upon the garnishee, he shall be liable to the plaintiff for the property

then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution, but not in excess of the amount of the plaintiff's claims as shown by his garnishee complaint. (Section 267.17)

A debt, owing by the owner of property subject to a mechanic's lien, shall not be deemed absolutely due until the claims of subcontractors, materialmen and laborers have matured or expired. With certain exceptions, judgment may be given for anything owing, although it has not become due, in which case the garnishee is not required to pay or deliver it before the time appointed by the contract. (Section 267.18)

The liability of the garnishee depends on whether at the time of service the defendant's right to the money has become fixed and absolute. The debts "to become due" to the defendant relate only to such as the garnishee owes absolutely at the time of such service, though payable subsequently. (Edwards v. Roepke, 74 Wis. 571)

Property in a safety deposit box in a bank or safe deposit company is not property in the possession or control of the bank or company under Chapter 267. (Section 267.025)

No person shall be liable as garnishee;

A. By reason of having drawn, accepted, made, indorsed or guaranteed any negotiable instrument;

B. By reason of anything received or collected by him by execution or other process;

C. By reason of any money in his hands as a public officer; or

D. By reason of anything owing by him on a contingency. (Section 267.18)

Except upon the order of a judge, no action shall be commenced by the defendant or his assignee against a garnishee upon any garnished claim or demand, or to recover any property garnished, or execution be issued on a judgment in favor of defendant against the garnishee, until the termination of the garnishment action. If an action has commenced or an execution issued, it shall be stayed by the court as to the garnishee upon his application. (Section 267.19)

IV. The Garnishee's Answer

A garnishee is entitled to a garnishee fee of \$3 and is not required to answer until the fee is paid. The fee is taxable as costs in the action. (Section 267.04)

The garnishee may answer within 20 days from service of the garnishee summons and complaint, denying his indebtedness or that he holds property of the defendant, if such is the case. (Section 267.08)

Unless the garnishee answers by such denial, he shall, again within 20 days, answer by stating whether he was, when served with the summons and complaint, indebted or under liability to the named defendant and, if so, specifying the amount, the interest thereon, the manner in which evidenced, whether an absolute or contingent liability and the facts necessary to a complete understanding of the liability or indebtedness. If the garnishee is in doubt concerning his liability or indebtedness to the defendant, he may set forth the facts concerning the same.* (Section 267.09)

The answer of the garnishee shall be taken as true unless the plaintiff serves a reply upon him within 20 days. (Section 267.12)

If a duly summoned garnishee fails to properly answer, the court may render judgment against him for the amount of the plaintiff's judgment against the defendant, together with costs of the garnishee action. (Section 267.10)

When the answer of the garnishee discloses that a third party claims the debt or property in his hands, the court may order that the claimant be impleaded as a defendant in the garnishee action, with notice thereof, setting forth the facts, and a copy of the order and answer served upon the claimant. After such service is made, the garnishee may deposit the debt or property with the officer or the clerk, which shall completely discharge the garnishee from liability for what was deposited. Within 20 days after being served, the claimant-defendant shall answer setting forth his claim or any defense which the garnishee might have made. (Section 267.16)

If the answer of the garnishee shows a debt due the defendant, the garnishee may pay the debt or as much thereof as is necessary to cover the claim, plus interest and costs, to the clerk of court. If the plaintiff makes written request that the sum be paid to the clerk, the garnishee shall do so within 5 days or have judgment in favor of the plaintiff against him for the amount disclosed, when due, before or after judgment in the principal action. If judgment has not been rendered in the principal action, the money shall be paid into the court.

Moneys paid into court shall be paid to the plaintiff upon final judgment for him, upon order of the court and to the extent of satisfying the judgment. Any balance shall be paid to the party entitled thereto. If judgment is against the plaintiff, the money shall be paid to the defendant.

If the debt disclosed is not due, this procedure shall apply when it becomes due. (Section 267.11)

The defendant may, within 20 days from service of the garnishee summons and complaint on him, answer the garnishee complaint and defend the garnishee action on any ground upon which a garnishee might defend. He may participate in the trial of any issue between the plaintiff and garnishee. The garnishee may, at his option, defend the principal action for the defendant, if the defendant does not do so. When a garnishee so defends the principal action, he becomes a defendant in the action but is liable only for costs. (Section 267.14)

*See also IX. A. The Subsistence Allowance.

V. Release of Garnishment (Section 267.20)

The defendant may file a bond with the court, executed by at least 2 sureties, stating that they will, on demand, pay the amount of the judgment that may be recovered against the defendant, not exceeding a specified sum which shall be double the amount of the debt specified in the garnishee complaint or such lesser sum as the court directs. If the plaintiff does not take issue with the garnishee's answer, the bond shall be in the amount disclosed by the answer.

The sureties shall justify their responsibility by an annexed affidavit. The defendant shall serve a copy of the bond upon the plaintiff and notify him where it is filed. Within 3 days of receipt, the plaintiff may except to the sufficiency of the sureties, in which case the sureties shall justify as for bail bonds. If the plaintiff does not so except, objection is waived.

The garnishee shall then be discharged and the garnishment proceedings deemed discontinued. Any property or money delivered or paid to any officer shall be surrendered to the person entitled to it, and the costs shall be taxable as disbursements of the plaintiff if he recovers in the principal action.

VI. Effect of Judgment

No trial of the garnishee action shall be had until the plaintiff has judgment in the principal action. If the defendant has judgment, the garnishee action shall be dismissed with costs. (Section 267.15) If judgment is against the plaintiff, any moneys or property deposited with the court shall be paid to the defendant. (Section 267.11)

In the garnishee action the court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff, or any officer appointed by the judgment, of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand, or the court may by judgment pass title thereto, and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee discharges him from all demands by the defendant for all property paid, delivered or accounted for by the garnishee by force of the judgment. (Section 267.15)

VII. Costs (Section 267.21)

If there is a trial of an issue between the plaintiff and a garnishee, the plaintiff shall recover costs against the garnishee if he recovers more than the garnishee admitted by his answer. If he does not, the garnishee shall recover costs.

In all other cases, the court may award costs for or against any party. When there is no issue and liability of the garnishee is disclosed, the costs of the garnishment proceedings shall be taxed for the plaintiff, if he recovers, in the principal action.

Judgment for costs may be rendered in favor of a defendant and a garnishee jointly. (Bank of Commerce v. Elliott, 109 Wis. 648)

Where the garnishee made a full and truthful answer, the taxation of costs against him was improper. (Liberty v. Liberty, 226 Wis. 136)

VIII. Garnishment of Salaries and Wages of Public Officers and Employes

When the state or a division thereof is the garnishee, the procedure shall be as prescribed by Section 267.22 or 304.215. (Section 267.08)

A. The State and Political Subdivisions except the City of Milwaukee (Section 267.22)

A judgment creditor may maintain a garnishment action against the state or any political subdivision thereof, except the City of Milwaukee, in the following manner to reach the unexempt wages or salary of the judgment debtor. There shall be no garnishee fee, but otherwise Chapter 267 shall apply so far as applicable.

The garnishee summons and complaint shall be served on the garnishee by delivering a copy to the Department of Administration, if the state is garnishee, or to the secretary or clerk of the political subdivision. Service on the judgment debtor shall be as is normally done. The complaint must allege that the plaintiff believes the garnishee to be indebted to the defendant for wages or salary and that the debt is not exempt.

The department, secretary or clerk shall answer the complaint, within 20 days of service, by delivering or mailing to the court his certificate of the amount owed the judgment debtor for wages or salary at the time of service. The answer shall be conclusive as to the amount owing the judgment debtor.

The salary or wages of the judgment debtor shall continue to issue as though no garnishment action were pending, but they shall be delivered to the court until the court notifies the department, secretary or clerk that the garnishment action has been dismissed or judgment therein satisfied.

The court may order its clerk to cash the pay checks and vouchers, to hold the proceeds and to disburse them as ordered. The nonexempt portion of the proceeds shall be applied on the creditor's judgment. The court may, upon the judgment debtor's application and with reasonable notice to the creditor, determine the exemptions to which the debtor is entitled and pay over the amount thereof, crediting the garnishee.

Other judgment creditors of the judgment debtor may intervene in the garnishment action.

Any proceeds remaining in the custody of the court after the creditor's demands, as determined by the court, are satisfied shall be ordered paid to the judgment debtor.

This process does not apply to money due a public officer or employe to reimburse him for expenditures he made in discharging his duties.

A judgment shall have precedence under this procedure over an assignment by the debtor filed with the garnishee subsequent to the service of the garnishee summons.

B. The City of Milwaukee (Section 304.215)

When any person recovers a judgment against a person who during the life of the judgment has money due or to become due from the City of Milwaukee, the judgment creditor may file a certified copy of the judgment with the city clerk.

The proper city officers shall, 30 days thereafter, pay to the judgment owner such sum as was due at the time of filing. Until the judgment is fully paid, such sums as become due shall be paid over to the judgment owner. If wages or salary constitute the sums due, the regular garnishment exemptions shall apply.

If the judgment debtor has appealed from the judgment at the date of filing the copy of the judgment, or if the time for appealing has not expired, then payment to the judgment owner shall not be made until the final determination of the appeal, if the judgment debtor, within 30 days of the date of filing, files an affidavit that an appeal has or will be taken. If the affidavit is not filed, such payment to the judgment owner is a final discharge of the city's liability to the judgment debtor to the extent of the payment.

Any repayments to a judgment debtor of disbursements made by the debtor in discharging his duties shall not be subject to this process.

Notwithstanding priority of filing, a judgment filed under this procedure shall have precedence over an assignment filed subsequent to the commencement of suit upon which such judgment is obtained.

IX. Subsistence Allowances and Exemptions

A. The Subsistence Allowance

If the garnishee is indebted or under liability to the defendant for wages, the garnishee answer shall contain the following information: (Section 267.08)

1. The amount owed by him to the defendant at the time of service of the garnishee summons;
2. The amount of the subsistence allowance paid over or to be paid over to the defendant; and
3. The balance held by the garnishee.

The subsistence allowance to be paid over to the defendant on the date when wages or salary would normally be paid shall be \$20 in the case of an individual without dependents or \$40 in the case of an individual with dependents, but in no event in excess of 50 per cent of the wages or salary owing. The subsistence allowance shall be applied to the first wages or salary earned in the period subject to the garnishment action. In determining the subsistence allowance due the defendant, the

garnishee is entitled to rely on the records then in its possession, and no garnishee shall be liable to a plaintiff if its determination of the amount of the subsistence allowance due the defendant is made in good faith and based on such records. (Section 272.18 (15) (e))

B. Exemptions

If the court determines that the defendant is entitled to an exemption in excess of the subsistence allowance, the subsistence allowance shall be set off and applied against the exemption. If the court determines that the defendant is entitled to an exemption less than the subsistence allowance, the subsistence allowance shall be the exemption to which the defendant is entitled. (Section 272.18 (15) (e))

For individuals without dependents, the basic exemption is 60 per cent of income for each 30-day period prior to service of process in the proceeding to collect a debt, but not less than \$75 nor more than \$100. For individuals with dependents, the basic exemption for similar periods is 60 per cent of income but not less than \$100 nor more than \$120, plus \$20 for each dependent. The amount allowed as exemption for dependents is limited to such an amount that the total exemption does not exceed 85 per cent of the income. In either case, the person claiming the exemption may elect to have the exemption computed on a 90-day basis. (Section 272.18 (15) (a) and (b))

A dependent is an individual (including a spouse) who requires and is actually receiving substantial support and maintenance from the debtor. (272.18 (15) (c)) A person who supports 3 of his grandchildren is entitled to exemption for them as his dependents. (20 Atty. Gen. 749) The use to which the income of anyone claimed as a dependent is put shall be considered by the court in determining whether the individual is in fact a dependent.

All Crops, livestock, dairy products and all other products grown or produced by a person to which his or his minor children's personal effort has contributed, and all proceeds from the sale of such things are deemed earnings, but such definition does not limit any other exemption which Section 272.18 (15) provides. Section 272.18 (15) (c))

The amount which may be reached by seizure, sale or execution, provisional or final process or proceedings in aid thereof, except as specially provided elsewhere is computed as follows:

1. The income for the 30 or 90-day period shall be considered reduced by the amount of any sum recovered during such period in any of said proceedings;
2. From the income thus reduced for the period, deduct the exemptions applicable thereto, subject to such prior proceedings and valid written assignments of nonexempt income;
3. The amount which remains after the above calculations is the amount subject to the proceedings before the court. (Section 272.18 (15) (d))