

Rule 64. Seizure of person or property

(A) Ancillary remedies to assist in enforcement of judgment.

(1) At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law and existing at the time the remedy is sought. The remedies thus available include, without limitation, arrest, attachment, attachment and garnishment, lis pendens notice, ejectment, replevin, sequestration, and other corresponding or equivalent legal or equitable remedies, however designated and regardless of whether by existing procedure the remedy is ancillary to an action or must be obtained by an independent action. Such remedies are subject to the provisions of this rule, and, except as herein otherwise provided, the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these rules.

(2) The court may issue a writ of attachment, bench warrant, or body attachment if:

- (a) a rule to show cause has been issued by the court and served upon the judgment debtor by delivering a copy of the same to the judgment debtor personally. Personal service under this rule includes certified mail signed by the judgment debtor;
- (b) if service is not made in open court, the person making service has filed a return or affidavit stating that personal service was made upon the judgment debtor and setting forth the time, place, and manner thereof; and
- (c) the judgment debtor has failed to appear at the rule to show cause hearing as ordered.

In addition to statutory requirements, the writ of attachment, bench warrant, or body attachment shall contain sufficient information to identify the judgment debtor.

(3) A person taken into custody in a civil action must be brought before the court that issued the writ, bench warrant or body attachment, or before a judicial officer having jurisdiction over the person within forty-eight (48) hours, excluding weekends and holidays, following the person being taken into custody. The person shall be advised of the procedures for release, including any bond, escrow amount set by the issuing court in the writ, bench warrant or body attachment.

(4) Effective January 1, 2020, a writ of attachment for a person expires one hundred eighty (180) days after it is issued and the expiration date shall appear on the face of the writ. A sheriff who has an expired writ of attachment for a person shall make a return on the writ stating it has expired and shall return it to the clerk of the court that issued it. The clerk shall enter the fact that the writ of attachment for a person has expired on the chronological case summary and notify the judgment creditor. The judgment creditor may request the court to issue another writ of attachment for a person as a part of a subsequent proceeding supplemental action. Writs of attachment for a person that are pending on the effective date of this rule will expire on July 1, 2020.

(B) Attachment or attachment and garnishment. Attachment or attachment and garnishment shall be allowed in the following cases in addition to those where such remedies prior to judgment are now permitted by law:

- (1) It shall be a cause for attachment that the defendant or one of several defendants is a foreign corporation, a nonresident of this state, or a person whose residence and whereabouts are unknown and cannot be determined after reasonable investigation before the commencement of the action.
- (2) Any interest in tangible or intangible property owned by the defendant shall be subject to attachment or attachment and garnishment, as the case may be, if it is subject to execution, proceedings supplemental to execution or any creditor process allowed by law. Wages or salaries shall not be subject to pre-judgment attachment and garnishment, except as otherwise provided by law.
- (3) Attachment or attachment and garnishment shall be allowed in favor of the plaintiff suing upon a claim for money, whether founded on contract, tort, equity or any other theory and whether it is liquidated, contingent or unliquidated; or upon a claim to determine the rights in the property or obligation attached or garnisheed.
- (4) It shall not be objectionable that the property or obligation being attached or garnisheed is in the possession of the plaintiff or is owing by the plaintiff to the defendant or by the defendant to the plaintiff.
- (5) A governmental organization, or a representative, including a guardian, receiver, assignee for the benefit of creditors, trustee or representative of a decedent's estate may be named as a garnishee and bound by the duties of a garnishee.
- (6) A writ of attachment against the defendant's real estate or his interest therein is effectively served by recordation of notice of the action in the appropriate *lis pendens* record, and, unless vacant, by serving the writ of attachment or notice thereof upon a person in possession of the land.

(C) Defendant's title raised by denial--Effect of dismissal. In action where the plaintiff is required to establish title to any fund or property, including without limitation any ejectment, replevin, quiet title, partition, equitable, legal or other action, the defendant in his answer may deny the plaintiff's claim of title and thereby place in issue the defendant's title or interest therein. If the defendant prevails under such an answer he shall be entitled to a judgment or decree enunciating his title or interest and any proper negative or affirmative relief against the plaintiff consistent with his proof.

Unless the defendant joins in the notice of dismissal, no voluntary dismissal by the plaintiff in such cases shall be allowed without prejudice after the plaintiff has obtained possession of the property or fund or other relief with respect thereto by posting bond, or after the defendant by answer (whether by denial, affirmative defense, counter-claim or cross-claim) has placed title in issue.