

IN THE SUPREME COURT OF ALABAMA  
July 22, 2010

ORDER

IT IS ORDERED that Rule 64A and Rule 64B, Alabama Rules of Civil Procedure, be amended to read in accordance with Appendices A and D, respectively, attached to this order;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 64A Effective October 1, 2010, the District Court Committee Comments to Rule 64A, and the District Court Committee Comments to Rule 64B are adopted to read in accordance with Appendices B, C, and E, respectively, attached to this order;

IT IS FURTHER ORDERED that the amendment of these rules and the adoption of the comments are effective October 1, 2010;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 64A and Rule 64B:

"Note from the reporter of decisions: The order amending Rule 64A and Rule 64B, Alabama Rules of Civil Procedure, effective October 1, 2010, and adopting the Committee Comments to Amendment to Rule 64A Effective October 1, 2010, the District Court Committee Comments to Rule 64A, and the District Court Committee Comments to Rule 64B is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 3d."

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 22<sup>nd</sup> day of July, 2010

*Robert G. Esdale, Sr.*  
Clerk, Supreme Court of Alabama

APPENDIX A

RULE 64A. NOTICE TO DEFENDANT OF RIGHT TO CLAIM EXEMPTION  
FROM GARNISHMENT.

(Replacing § 6-6-394, Code of Alabama 1975)

When a garnishment is issued on a judgment in which an appearance has not been entered for the defendant, the officer issuing the garnishment must issue notice to the defendant contemporaneously with the service of process of garnishment on the garnishee. The notice to the defendant must be served on the defendant at least five days before judgment is issued against the garnishee and shall identify the name of the parties, the court in which the action is pending, and the case number. In addition, except in proceedings to collect child or spousal support, the notice shall also contain the statement concerning rights of exemption set forth below:

RIGHT TO CLAIM EXEMPTION FROM GARNISHMENT

A process of garnishment has been delivered to you. This means that a Court may order your wages, money in a bank, sums owed to you, or other property belonging to you, to be paid into Court to satisfy a judgment against you.

Laws of the State of Alabama and of the United States provide that in some circumstances certain money and property may not be taken to pay certain types of court judgments, because certain money or property may be "exempt" from garnishment. For example, under State law, in some circumstances, up to \$3,000.00 in wages, personal property, including money, bank accounts, automobiles, appliances, etc., may be exempt from process of garnishment. Similarly, under Federal law, certain benefits and certain welfare payments may be exempt from garnishment. Benefits and payments ordinarily exempt from garnishment include, for example, Social Security payments, SSI payments, veteran's benefits, AFDC (welfare) payments, unemployment compensation payments, and workers' compensation payments.

THESE EXAMPLES ARE FOR PURPOSES OF ILLUSTRATION ONLY. WHETHER YOU WILL BE ENTITLED TO CLAIM ANY EXEMPTION FROM THE PROCESS OF GARNISHMENT AND, IF SO, WHAT PROPERTY MAY BE EXEMPT, WILL BE DETERMINED BY THE FACTS IN YOUR PARTICULAR

CASE. IF YOU ARE UNCERTAIN AS TO YOUR POSSIBLE EXEMPTION RIGHTS, YOU SHOULD CONSULT A LAWYER FOR ADVICE.

TO CLAIM ANY EXEMPTION THAT MAY BE AVAILABLE TO YOU, YOU MUST PREPARE A "CLAIM OF EXEMPTION" FORM LISTING ON IT ALL YOUR WAGES AND PERSONAL PROPERTY; HAVE THE CLAIM OF EXEMPTION NOTARIZED; AND FILE IT IN THE CLERK'S OFFICE. ALSO, IT IS YOUR RESPONSIBILITY TO MAIL OR DELIVER A COPY OF THE CLAIM OF EXEMPTION TO THE PLAINTIFF WHO HAS A JUDGMENT AGAINST YOU. YOU MUST INDICATE ON THE CLAIM OF EXEMPTION THAT YOU FILE IN THE CLERK'S OFFICE WHETHER YOU MAILED OR DELIVERED THE COPY TO THE PLAINTIFF AND THE DATE ON WHICH YOU MAILED OR DELIVERED IT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED ASSISTANCE YOU SHOULD SEE A LAWYER.

If you file a claim of exemption, the plaintiff will have approximately ten (10) days to file a "contest" of your claim of exemption. If a contest is filed, a Court hearing will be scheduled and you will be notified of the time and place of the hearing. If the plaintiff does not file a contest, the property claimed by you as exempt will be released from the garnishment.

If you do not file a claim of exemption, your property may be turned over to the court and paid to the plaintiff on the judgment against you.

TO PROTECT YOUR RIGHTS, IT IS IMPORTANT THAT YOU ACT PROMPTLY. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT A LAWYER.

(dc) District Court Rule. Rule 64A applies in the district courts.

APPENDIX B

Committee Comments to Amendment to  
Rule 64A Effective October 1, 2010

This amendment added language to provide specifically for service of the notice of garnishment on the defendant at least five days before judgment is issued against the garnishee. This change is in accordance with the provisions of § 6-6-394, Code of Alabama 1975, which this rule replaced. The five-day period allows the defendant time to contest the garnishment or to file a claim of exemption before any order of condemnation issues.

APPENDIX C

District Court Committee Comments

The addition of subparagraph (dc) confirms, in compliance with Rule 1(a), Ala. R. Civ. P., that this rule is applicable in the district courts.

APPENDIX D

RULE 64B. CONTEST OF CLAIM OF EXEMPTION--GARNISHMENT OF  
MONEY, CHOSSES IN ACTION, OR PERSONAL PROPERTY.

(Replacing § 6-10-37, Code of Alabama 1975)

When money, choses in action, or personal property are garnished and the defendant claims the same, or any part thereof, as exempt, the defendant shall file a claim thereto in writing, verified by oath, in the court in which such proceedings are pending, accompanied by a statement setting forth the personal property, choses in action, and money and the location and value thereof as required in the statement to be filed under the provisions of § 6-10-29, Code of Alabama 1975. The plaintiff, in person or by agent or attorney, may contest such claim as in contest after declaration filed, and such contest shall be tried and determined as other contests of claims of exemption are tried and determined. If the plaintiff fails to make timely contest after notice of the defendant's claim of exemption, after fifteen (15) calendar days from the filing of such claim, the process of garnishment and any writ of garnishment issued therein shall be dismissed or, where appropriate, modified to the extent necessary to give effect to the claimed exemptions. If a timely contest of a claim of exemption is filed, the hearing to determine said contest must be initially scheduled within seven (7) calendar days (or on the next business day thereafter if the court is not open on the said seventh day) after said contest is filed. If the defendant has notice of the garnishment, the claim of exemption must be interposed before judgment of condemnation, but, if not, such judgment shall not operate to impair or affect the defendant's claim of exemption. Notice of the garnishment must be in writing and may be given by the plaintiff or garnishee, but must be served by the sheriff contemporaneously with the service of process of garnishment on the garnishee.

(dc) District Court Rule. Rule 64B applies in the district courts.

APPENDIX E

District Court Committee Comments

The addition of subparagraph (dc) confirms, in compliance with Rule 1(a), Ala. R. Civ. P., that this rule is applicable in the district courts.