

## Alabama Rules of Civil Procedure

### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Rule 64A.

#### **Notice to Defendant of Right to Claim Exemption from Garnishment.**

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 \$7,500.00 in personal property, including money (except wages, salaries, or other compensation), 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.

[Adopted 6-18-85; Amended 11-6-85, eff. 11-15-85; Amended 4-7-86, eff. 4-15-86; Amended eff. 10-1-95; Amended 7-22-2010, eff. 10-1-10; Amended eff. 4-7-2017; Amended eff. 7-6-2017.]

### **Committee Comments on 1985 Adoption**

The decision in *Green v. Harbin*, Civil Action No. 82-C-5598-NE, pending in the United States District Court for the Northern District of Alabama, as of the time of this committee's proposal regarding this rule was submitted to the Supreme Court makes it necessary to modify the procedure for giving notice to a defendant in most garnishment proceedings. The expanded notice is not necessary in proceedings to collect child or spousal support. The extremely limited rights of exemption in such instances caused these proceedings to be excluded from the requirements of *Green v. Harbin*.

This rule requires that the service of the notice take place contemporaneously with the service of the process of garnishment. This revision is not limited in applicability to residents of Alabama, as was its predecessor, since the order in *Green v. Harbin* requires notice of rights to exemptions under federal as well as state law and thus, a non-resident with federal exemptions only is potentially among persons entitled to notice.

**Committee Comments to Amendment  
Effective November 15, 1985**

The November 15, 1985, amendment added the last sentence to the second paragraph of the notice, in order to give some additional specific examples of benefits and payments which may be exempt from garnishment.

**Committee Comments to October 1, 1995,  
Amendment to Rule 64A**

The amendment is technical. No substantive change is intended.

**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.

**Committee Comments to Amendments to Rule 64A and Form 92  
Effective April 7, 2017**

In 2015, the Alabama Legislature amended § 6-10-6, Code of Alabama 1975, to increase the maximum dollar amount of personal property exempt from execution from \$3,000 to \$7,500. The amendments incorporate this change.

**Committee Comments to Rule 64A  
Effective December 2, 2022**

Rule 64A should be read in conjunction with Act No. 2022-397, Ala. Acts 2022, effective July 1, 2022, and codified at § 6-6-394.1, Ala. Code 1975. That statute provides procedures for serving notice of a garnishment by posting and mailing when other service methods on a defendant who has not appeared have failed.

## 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.

**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 40 So. 3d.

**Note from the reporter of decisions:** The order amending Rule 64A and Form 92, effective April 7, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.

**Note from the reporter of decisions:** The order amending Rule 64A, effective July 6, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.

**Note from the reporter of decisions:** The order adopting the Committee Comments to Rule 64A, Alabama Rules of Civil Procedure, effective December 2, 2022, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.