

Alabama Rules of Civil Procedure

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64B.

Contest of claim of exemption — Garnishment of money, choses 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 seventh day) after the 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.

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

[Adopted 6-18-85; Amended eff. 10-1-95; Amended 7-22-2010, eff. 10-1-2010; Amended 5-6-2015.]

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 timetable governing a contest of a claim of exemption. The requirements of the Alabama Rules of Civil

Procedure generally apply to such proceedings. See Rule 81(a)(3), Alabama Rules of Civil Procedure. Therefore, for example, the provisions of Rule 5 for service of a copy of pleadings filed with the Court on all parties and proof of such service by a certificate of service are applicable and afford a mechanism through which the plaintiff will receive notice of the defendant's claim of exemption and the court file will reflect the fact of service on the plaintiff. The plaintiff is required to institute a contest of the claim within ten (10) days after notice of the claim. Section 6-10-26, Code of Alabama (1975). Where notice of the defendant's claim of exemption is served on plaintiff by mail, plaintiff is entitled to three (3) additional days in which to institute a contest. Rule 6(e). The time period of fifteen (15) days for dissolution or modification is considered adequate to cover the ten (10) day time period plus time that might elapse through service by mail.

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

The amendment is technical. No substantive change is intended.

**Committee Comments to Amendment to Rule 64B
Effective May 6, 2015**

This amendment deletes what was the last sentence of Rule 64B, which read: "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." The requirement of service of notice of garnishment by the sheriff made it difficult to implement electronic filing of garnishments. The sentence was out of place in Rule 64B, which pertains to claiming exemptions, so its deletion does not leave a void. Service of notice of garnishment is covered elsewhere: When the defendant has not appeared, Rule 64A provides for service; when the defendant has appeared, Rule 5 provides for service.

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 64B, effective May 6, 2015, and adopting the Committee Comments to Amendment to Rule 64B Effective May 6, 2015, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.