

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS, THE RULES OF CIVIL PROCEDURE FOR THE MAGISTRATE
COURTS, THE RULES OF CIVIL PROCEDURE FOR THE METROPOLITAN
COURTS, AND THE CIVIL FORMS**

PROPOSAL 2024-005

March 13, 2024

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rules 1-065.1, 1-065.2, 2-801, 2-802, 3-801, and 3-802 NMRA, amendments to Forms 4-805 and 4-805A NMRA, and the adoption of new Forms 4-803A, 4-806A, 4-807A, 4-808B, 4-808C, 4-809A, 4-810B, and 4-812A NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 12, 2024, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

1-065.1. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

- (1) if the judgment debtor is not a natural person, at any time after the filing of the judgment; or
- (2) if the judgment debtor is a natural person:
 - (a) upon filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:
 - (i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and
 - (ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;
 - (b) upon entry of an order finding that the property to be seized and sold is not exempt from execution; or

(c) upon filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property that may be seized and sold to satisfy the debt.

B. **Service of notice of right to claim exemptions from execution.** If the judgment debtor is a natural person, [~~unless a shorter time is ordered by the court,~~] not later than ten (10) days prior to the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve upon each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 1-005 NMRA;

(2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 1-004 for service of the summons and complaint; or

(3) if service cannot be made on the judgment debtor pursuant to Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. **Claim of exemptions from execution.** Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

D. **Service of claim of exemption.** At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor pursuant to Rule 1-005.

E. **Failure to file claim of exemption.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for cases on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

F. **Dispute of claimed exemption.** Within ten (10) days after service of a claim of exemption on the judgment creditor pursuant to Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

G. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

H. **Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

I. **Issuance and executions of writ.** A writ of execution issued pursuant to Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an

execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued pursuant to this rule may be served in the manner provided by law.

J. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

K. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed or after _____.]

1-065.2. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. **Service of writ of garnishment.** A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 1-004 NMRA for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be transmitted to the judgment debtor’s last known address, or, if counsel remains of record in the proceeding, to the last known address of the judgment debtor’s counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

C. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form; and

(3) a copy of the answer by garnishee form approved by the New Mexico Supreme Court.

D. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

E. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

F. **Service on judgment debtor by garnishee.** On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

G. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

H. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 1-005 NMRA.

I. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages. Notwithstanding the foregoing, for cases filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a depository or investment account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

J. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

K. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

L. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

M. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

N. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Approved, effective January 1, 1996; as amended, effective February 15, 1999; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

2-801. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

- (1) if the judgment debtor is not a natural person, at any time after the filing of the judgment;
- (2) if the judgment debtor is a natural person:
 - (a) upon filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:
 - (i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and
 - (ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;
 - (b) upon entry of an order finding that the property to be seized and sold is not exempt from execution; or
 - (c) upon filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property which may be seized and sold to satisfy the debt.

B. **Service of notice of right to claim exemptions from execution.** If the judgment debtor is a natural person, [~~unless a shorter time is ordered by the court,~~] not later than ten (10) days prior to the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve upon each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

- (1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 2-203;
- (2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 2-202 for service of the summons and complaint; or
- (3) if service cannot be made on the judgment debtor pursuant to Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. **Claim of exemptions from execution.** Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

D. **Service of claim of exemption.** At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor.

E. **Failure to file claim of exemption.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for cases filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

F. **Dispute of claimed exemption.** Within ten (10) days after service of a claim of exemption on the judgment creditor pursuant to Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

G. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

H. **Hearing on disputed claim of exemptions.** Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

I. **Issuance and executions of writ.** A writ of execution issued pursuant to Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued pursuant to this rule may be served in the manner provided by law.

J. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

K. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

2-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, including an affidavit from the judgment creditor that the judgment creditor has made reasonable investigation and has no knowledge that

the judgment debtor owns property within the state subject to execution, the clerk of the court shall issue a writ of garnishment.

B. Service of writ of garnishment. Within thirty (30) days of its issuance, a writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 2-202 NMRA for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be transmitted to the judgment debtor's last known address, or, if counsel remains of record in the proceeding, to the last known address of the judgment debtor's counsel. A separate transmission of the writ on the judgment debtor.

C. Service of additional forms on garnishee. In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

(1) a copy of the application for writ of garnishment and the writ of garnishment; and

(2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

D. Answer by garnishee. The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

E. Appearance by garnishee. A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

F. Service on judgment debtor by garnishee. On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

G. Exemption from garnishment. A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

H. Service of the claim of exemption. The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 2-203 NMRA.

I. Failure to file claim of exemption other than wages. If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages. Notwithstanding the foregoing, for cases filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

J. Notice of dispute. Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice

of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

K. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

L. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

M. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment. Interest shall continue to accrue on the judgment until the date the judgment is satisfied.

N. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996; as amended by Supreme Court Order No. 08-8300-046, effective December 31, 2008; as amended by Supreme Court Order No. 14-8300-019, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

3-801. Writs of execution.

A. **Issuance of writs of execution.** Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute:

(1) if the judgment debtor is not a natural person, at any time after the filing of the judgment;

(2) if the judgment debtor is a natural person:

(a) upon filing of either a certificate by an attorney for the judgment creditor or an affidavit by the judgment creditor stating that:

(i) the judgment creditor served the judgment debtor with a notice of right to claim exemptions as required by this rule; and

(ii) the judgment debtor has not filed a claim of exemption for the property to be seized and sold as provided by this rule;

(b) upon entry of an order finding that the property to be seized and sold is not exempt from execution; or

(c) upon filing of a waiver of the right to claim a statutory exemption from execution. The judgment debtor's written waiver shall specifically describe the property which may be seized and sold to satisfy the debt.

B. Service of notice of right to claim exemptions from execution. If the judgment debtor is a natural person, [~~unless a shorter time is ordered by the court,~~] not later than ten (10) days prior to the date of seizure of property to be sold under a writ of execution, the judgment creditor shall serve upon each judgment debtor a notice of right to claim exemptions and a claim of exemption form in the following manner:

(1) if the judgment debtor has entered an appearance in the proceeding, service shall be made and proof of service filed with the court in the manner provided by Rule 3-203;

(2) if the judgment debtor has not entered an appearance in the proceeding, service shall be made and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint; or

(3) if service cannot be made on the judgment debtor pursuant to Subparagraph (1) or (2) of this Paragraph, service shall be made on the judgment debtor in a manner reasonably calculated to ensure actual notice of the right to claim exemptions.

C. Claim of exemptions from execution. Within ten (10) days after service of a notice of right to claim exemptions, a judgment debtor who is a natural person may claim a statutory exemption by filing a claim of exemption form with the court.

D. Service of claim of exemption. At the time of filing of the claim of exemption, the judgment debtor shall serve a copy of the claim of exemption on the judgment creditor.

E. Failure to file claim of exemption. If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim an exemption. Notwithstanding the foregoing, for cases filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 NMSA 1978.

F. Dispute of claimed exemption. Within ten (10) days after service of a claim of exemption on the judgment creditor pursuant to Paragraph D of this rule, the judgment creditor may dispute any claimed exemption and request a hearing. If the judgment creditor does not dispute a claimed exemption, the property shall be exempt and the judgment creditor may proceed against any other property as provided in Paragraph A of this rule. If the judgment creditor files a notice of dispute and request for hearing, the judgment creditor shall at the time of filing of the notice serve a copy on the judgment debtor.

G. Notice of hearing on dispute. If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the parties.

H. Hearing on disputed claim of exemptions. Within ten (10) days after the filing of a notice of dispute and request for hearing, the court shall hold a hearing on the disputed claim. At

the hearing the court may determine the merits of the dispute or may postpone decision pending such discovery as may be required to determine the status of the property.

I. **Issuance and executions of writ.** A writ of execution issued pursuant to Paragraph A of this rule shall be served by the sheriff within sixty (60) days from the date issued. If an execution is not served within that time, upon request of the judgment creditor, a second or subsequent writ shall be issued by the clerk. A writ of execution issued pursuant to this rule may be served in the manner provided by law.

J. **Sheriff's sale.** A sale shall be conducted in the manner provided by law.

K. **Form of writs, notices and claim of exemptions.** Applications for writs of execution, writs of execution, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[Withdrawn and new rule adopted, effective January 1, 1996; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

3-802. Garnishment.

A. **Garnishment procedure.** After the filing of the judgment on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.

B. **Service of writ of garnishment.** A writ of garnishment issued pursuant to this rule shall be served by the judgment creditor on the garnishee wherever the garnishee may be found in the State of New Mexico. The writ shall be served and return of service filed in the same manner as provided by Rule 3-202 for service of the summons and complaint. At the same time as the writ of garnishment is served on the garnishee, a copy of the writ of garnishment shall be transmitted to the judgment debtor's last known address, or, if counsel remains of record in the proceeding, to the last known address of the judgment debtor's counsel. A separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.

C. **Service of additional forms on garnishee.** In addition to the writ, the following forms shall be served by the judgment creditor on the garnishee:

- (1) a copy of the application for writ of garnishment and the writ of garnishment; and
- (2) unless the garnishment is for wages, a copy of the notice of right to claim exemptions and a copy of the claim of exemption form.

D. **Answer by garnishee.** The garnishee shall answer the writ of garnishment within twenty (20) days of service as required by Section 35-12-4 NMSA 1978.

E. **Appearance by garnishee.** A garnishee may appear in person in any garnishment proceeding. If the garnishee is a partnership, the garnishee may appear by one of its general partners. If the garnishee is a corporation, an officer, director or general manager of the corporation may answer the writ; however, any other appearance shall be through an attorney representing the garnishee corporation. The court shall award reasonable attorney fees and costs to the garnishee.

F. **Service on judgment debtor by garnishee.** On or before the fourth business day following service of the writ of garnishment, the garnishee shall mail or otherwise deliver to each named judgment debtor or to the judgment debtor's attorney of record a copy of the forms served on the garnishee by the judgment creditor pursuant to Paragraph C of this rule.

G. **Exemption from garnishment.** A judgment debtor who is a natural person:

(1) shall receive an exemption from garnishment of wages to the extent provided by law; and

(2) may claim a statutory exemption from garnishment other than wages by filing with the court a claim of exemption within ten (10) days after service by the garnishee of notice of the right to claim exemptions.

H. **Service of the claim of exemption.** The judgment debtor shall serve a copy of the completed and signed claim of exemption form upon the judgment creditor and the garnishee in the manner provided by Rule 3-203 NMRA.

I. **Failure to file claim of exemption other than wages.** If the judgment debtor fails to file a claim of exemption within ten (10) days after service of the notice of the right to claim exemptions, the judgment debtor shall be deemed to have waived the right to claim a statutory exemption other than wages. Notwithstanding the foregoing, for cases filed on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account. Nor shall any failure to assert a claim of exemption constitute waiver of any protections for Unemployment Compensation pursuant to Section 51-1-37 1978.

J. **Notice of dispute.** Within ten (10) days after service on the judgment creditor of a claim of exemption, the judgment creditor may dispute any claimed exemption by filing a notice of dispute and request for hearing with the court. If the judgment creditor fails to file the notice of dispute and request for hearing within the time permitted, the judgment debtor's claim of exemption is granted. If the judgment creditor files a notice of dispute, the judgment creditor shall at the time of filing of the notice serve a copy of the notice of dispute and request for hearing on the judgment debtor.

K. **Notice of hearing on dispute.** If the judgment creditor files a notice of dispute and request for hearing, the court shall promptly give notice of the date and time of the hearing to the judgment creditor, garnishee and the judgment debtor. The judgment creditor shall serve a copy of the notice of dispute and request for hearing on the judgment debtor and the garnishee.

L. **Hearing.** A hearing on the claim of exemption shall be held within ten (10) days after the filing of a notice of dispute and request for hearing. At the hearing, the court must determine the merits of the dispute unless the court postpones decision pending such discovery as may be required to determine the status of the property.

M. **Judgment on writ of garnishment.** If a notice of dispute and request for hearing is filed pursuant to this rule, judgment on the writ of garnishment shall not enter until a hearing has been held on the dispute. If the court finds that the property is not exempt from garnishment, the court shall enter a judgment on the writ of garnishment requiring the garnishee to turn over to the judgment creditor the property or amount of money set forth in the judgment.

N. **Form of writs, notices and claim of exemptions.** Applications for writs of garnishment, writs, answers, notices of right to claim exemptions, claims of exemptions, notices of dispute of claimed exemptions and request for hearing, and judgments shall be substantially in the form approved by the Supreme Court.

[As adopted, effective January 1, 1996.; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

4-803A. Claim of exemptions on execution.

[For use with District, Magistrate and Metropolitan Court Rules of Civil Procedure 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

[_____ JUDICIAL DISTRICT COURT]

[_____ COURT]

_____, Plaintiff

v.

No. _____

_____, Defendant

CLAIM OF EXEMPTIONS ON EXECUTION

A JUDGMENT HAS BEEN ENTERED AGAINST YOU. ALL OF THE PROPERTY YOU POSSESS MAY BE SEIZED AND SOLD TO PAY THIS JUDGMENT. YOU MUST COMPLETE AND RETURN THIS FORM WITHIN TEN (10) DAYS TO CLAIM ANY STATUTORY EXEMPTION FROM THIS SEIZURE AND SALE.

(check only applicable boxes)

Part I. Homestead exemption

(This part is for use only in the district court)

[] Judgment debtor owns, leases or is purchasing a dwelling house which judgment debtor occupies and is entitled to hold exempt a homestead in the amount of one hundred fifty thousand dollars (\$150,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption

(Parts II and III are for use in the district court, magistrate court and metropolitan court)

[] Judgment debtor is a resident of this state who does not claim a homestead exemption, but claims an exemption of real or personal property in the amount of fifteen thousand dollars (\$15,000) under Section 42-10-10 NMSA 1978. The property claimed to be exempt is as follows:

LIST PROPERTY	STATED VALUE
_____	\$ _____
_____	\$ _____

(Attach additional page if necessary)

Part III. Personal property exemptions

Unless the judgment debtor files a written waiver of exemption, the sheriff may not seize the judgment debtor's personal clothing, furniture or books.

In addition to the property claimed or listed as exempt above, the judgment debtor hereby claims the following exemptions:

(check only applicable boxes)

[] household goods and furnishings, worth up to seventy-five thousand dollars (\$75,000) in the aggregate;

LIST ITEMS	STATED VALUE
_____	\$ _____

(Attach additional page if necessary)

[] tools of the trade worth up to fifteen thousand dollars (\$15,000) in the aggregate;
Occupation of judgment debtor: _____

LIST ITEMS	STATED VALUE
_____	\$ _____

(Attach additional page if necessary)

[] one motor vehicle worth up to ten thousand dollars (\$10,000) or that amount of equity in a more valuable vehicle;

MAKE, MODEL AND YEAR OF VEHICLE	FAIR MARKET VALUE
_____	\$ _____

Amount of any lien on vehicle: \$ _____ .

[] jewelry worth up to five thousand dollars (\$5,000) in the aggregate;

LIST JEWELRY ITEMS	STATED VALUE
_____	\$ _____

(Attach additional page if necessary)

- works of art worth up to two thousand five hundred dollars (\$2,500) in the aggregate;

LIST WORKS OF ART

STATED VALUE

(Attach additional page if necessary)

\$ _____

- medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession; *(Attach separate sheet setting forth items claimed and the name of the household member and the medical condition of the member.)*

- interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan and any other retirement account;

- social security benefits;

- veteran's benefits;

- not more than fifty thousand dollars (\$50,000) in benefits from a benevolent association of which the judgment debtor is a member;

- building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;

- a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978;

- worker's compensation benefits subject to the limitations of Section 52-1-52;

- occupational health benefits as provided by Section 52-3-37 NMSA 1978;

- unemployment compensation benefits

- alimony, family or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;

- public benefits such as medicaid, medicare, food stamps or other aid from a government public assistance program;

- refundable federal and state tax credits;

- exempt wages as defined by Section 35-12-7 NMSA 1978;

- any stimulus payment held by or payable to the person or the person's dependents in any form;

- cash surrender values and benefits of life insurance contracts;
- payment from life, accident and health insurance policies or annuity contracts;
- crime victims' reparation fund payments;
- fraternal benefit society benefits;
- the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- an individual retirement account that would qualify for tax exemptions under 26 U.S.C. 408 or any similar individual retirement account;
- an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;
- a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account;
- funds held in a depository or investment account, not otherwise exempt, worth up to two thousand four hundred dollars (\$2,400);
- interests in personal property worth up to fifteen thousand dollars (\$15,000), tangible or intangible, not otherwise specified in this subsection, including any deposits in financial or investments accounts or personal property that exceeds the monetary limits set forth in this section;

LIST INTERESTS IN PERSONAL PROPERTY

STATED VALUE

(Attach additional page if necessary)

\$ _____

THIS LIST MAY NOT BE COMPLETE. YOU MAY CLAIM ANY OTHER EXEMPTION PERMITTED BY LAW BY COMPLETING THE FOLLOWING:

[] other exemption (*specify*) _____
_____.

I am aware of my exemption rights:

[] I desire to claim my exemption rights

[] I waive my right to claim my exemption rights to the following property

LIST ITEMS

STATED VALUE

(*Attach additional page if necessary*)

\$ _____

I understand that by waiving my statutory right to exempt property, this property may be seized and sold.

YOU MUST RETURN A COMPLETED AND SIGNED COPY OF THIS FORM TO THE CLERK OF THE COURT WHOSE ADDRESS IS SHOWN BELOW. YOU MUST ALSO SERVE A COPY ON THE JUDGMENT CREDITOR.

_____, _____

Signature of judgment debtor

Return to clerk of the court

Name of court

Printed name of judgment debtor

Address

Street address or P.O. box

City, state & zip code

City, state & zip code

Telephone number

USE NOTES

The judgment creditor may dispute any of the claimed exemptions. If the judgment creditor disputes claimed exemptions and files a request for hearing on the claimed exemptions, the clerk will schedule a hearing on the claimed exemptions.

[Adopted by Supreme Court Order No. _____, effective _____.] For cases filed on or after July 1, 2023. For cases filed prior to July 1, 2023 use Form 4-803 NMRA.

4-805. Application for writ of garnishment.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT
_____, Plaintiff

v. _____, Defendant No. _____

APPLICATION FOR WRIT OF GARNISHMENT

The judgment creditor, _____, states:

- (1) The judgment creditor has a judgment dated _____ against the judgment debtor whose name is _____, and whose last known address is _____.
- (2) The total amount of the judgment including the principal, interest, costs, and attorney fees awarded by the judgment was \$ _____.
- (3) From the date the judgment was filed through the date this Application was signed, additional interest at the rate of _____% totals \$ _____. Judgment creditor has incurred additional costs of \$ _____ and additional attorney fees of \$ _____.
- (4) Payments totaling \$ _____ have been received.
- (5) The unpaid balance now due is \$ _____ (*Insert this amount on Civil Form 4-806 NMRA as "Balance Due upon Application for Writ."*) plus interest from the date this Application is filed.
- (6) Estimated costs would equal \$ _____ and the judgment creditor will seek \$ _____ in attorney fees.
- (7) Judgment debtor, to my knowledge, does not have sufficient property within New Mexico subject to execution to satisfy the judgment. I understand that I have a duty

to make a reasonable investigation into the truth of this statement and have done so as follows:¹

(This allegation is not necessary prior to garnishment of funds for child support or alimony obligations.)

_____,
_____,
_____.

(8) I have reason to believe, and do believe, that the garnishee, _____ (*name of garnishee*), _____ (*address*), holds or controls money or personal property which belongs to the judgment debtor or is indebted to the judgment debtor.²

(9) The money or property held by the garnishee is not exempt from garnishment.

The judgment creditor, _____, states:

Therefore the judgment creditor requests a Writ of Garnishment.

Judgment creditor or attorney for judgment creditor

Judgment creditor's or attorney's name printed

Address of judgment creditor or attorney

City, state, and zip code (*print*)

Telephone number of judgment creditor or attorney

Date of signing

AFFIDAVIT

(application must be sworn to
unless signed by an attorney)

Subscribed and sworn to before me this _____ day of _____,
_____.

(seal)

Notary or other officer authorized
to administer oaths

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; as amended
by Supreme Court Order No. 09-8300-024, effective September 4, 2009; by Supreme Court Order
No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013.]

USE NOTES

1. The judgment creditor shall list any steps taken to investigate whether the judgment
debtor possesses property within New Mexico subject to execution to satisfy the judgment. A
reasonable investigation may be made, for example, by conducting a credit check or by asking the
judgment debtor to identify all of the judgment debtor’s assets during a court hearing.

2. See *Jemko v. Liaghat*, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987)
(providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize
property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M.
146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

3. Applications for writs of garnishment or execution are timely if filed “within seven
years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20
(1971). But no writ of garnishment or execution may issue “after fourteen years from the date of
the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Adopted by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or
after January 7, 2013; as amended by Supreme Court Order No. _____, effective for all cases
pending or filed on or after _____.]

4-805A. Application for writ of execution.

[For use with Magistrate Court Rule 2-801 NMRA
and Metropolitan Court Rule 3-801 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
IN THE _____ COURT

Plaintiff

v.

No. _____

Defendant

APPLICATION FOR WRIT OF EXECUTION

_____, the judgment creditor, states:

(1) The judgment creditor has a judgment dated _____ (*date judgment filed*) against the judgment debtor whose name is _____, and whose last known address is _____. The total of the principal, interest, costs and attorney's fees awarded by the judgment was \$_____. Since the judgment was entered, additional interest at the judgment rate of _____% and costs total \$_____. Payments totaling \$_____ have been received. The unpaid balance now due is \$_____ (*insert this amount on Civil Form 4-801 NMRA as "Balance Due upon Application for Writ"*) plus interest from the date this Application is executed. The estimated costs would equal \$_____; and the judgment creditor will seek \$_____ in attorney fees.

(2) (*check one of the following*)

I served the judgment debtor with a notice of right to claim exemptions more than ten (10) days prior to filing this application for writ of execution and the judgment debtor has not filed a claim of exemption for the property to be seized and sold.¹

The judgment debtor has filed a waiver of the right to claim exemption for the property to be seized and sold.²

The judgment debtor is not a natural person.

The judgment creditor requests the court to issue a Writ of Execution for non-exempt property for the judgment debt.

Judgment creditor or
attorney for judgment creditor

Judgment creditor's name printed

Address of judgment creditor

Printed name of person signing for judgment creditor

Telephone of judgment creditor

Printed name of judgment creditor's attorney
(if any)

Mailing address of judgment creditor's attorney
(number and street or P.O. box)

City, State, zip code

Telephone number of judgment creditor's attorney

AFFIDAVIT

(This application must be sworn to unless it is signed by an attorney.)

I declare under penalty of perjury that the foregoing is true and correct.

Subscribed and sworn to before me this _____ day of _____, _____.

(seal)

Notary or other officer authorized
to administer oaths

USE NOTES

1. If the judgment debtor is a natural person Civil Form 4-808A NMRA, Notice of Right to Claim Exemptions from Execution, must have been served on the judgment debtor.

2. This alternative may be checked if the judgment debtor filed a waiver of the right to claim exemptions. See Civil Form 4-803, Claim of Exemptions, also contains the waiver form.

3. Applications for writs of garnishment or execution are timely if filed “within seven years after the rendition or revival of the judgment” in the case. NMSA 1978, Section 39-1-20 (1971). But no writ of garnishment or execution may issue “after fourteen years from the date of the original judgment upon which it is founded.” NMSA 1978, Section 37-1-2 (2021).

[Approved, effective May 15, 2003; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

4-806A. Writ of garnishment.

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v. _____ No.

_____, Defendant

Balance Due Upon Application for Writ: \$ _____

Includes Interest at _____%

Through _____, _____ (date)

WRIT OF GARNISHMENT

THE STATE OF NEW MEXICO to _____, garnishee.

You are ordered to appear before the magistrate court located at _____ within twenty days from the service of this writ upon you to answer under oath the following questions, as of the date of service and as of the date of your answer:

1. What, if anything, are you indebted to the defendant in this action and on what account?
2. What, if any, personal property of the defendant is in your possession or under your control?
3. What other persons, if any, within your knowledge are indebted to the defendant or have personal property of the defendant in their possession?

_____ is the judgment debtor in this case and owes the amount set out above to the judgment creditor, _____, whose address is _____.

The above judgment creditor believes that you hold or control money or property that belongs to the judgment debtor.

YOU ARE ORDERED to file a written answer with the _____ court located at _____ within twenty (20) days from the day you receive this writ. Your answer must be under oath and on the attached form (*answer by garnishee*).

Service of this writ upon you has the effect of attaching all nonexempt personal property, money, rights, credits, bonds, bills, notes, drafts and other choses in action of the defendant in your possession or under your control at the time of service and that may come into your possession or under your control or be owing by you between the time of service and the time of making your answer.

This writ was issued in (advance) (aid of execution) of judgment against the defendant. If this writ was issued in advance of judgment, it does not attach any wages or salary due from you to the defendant.

If this writ was issued in aid of execution of judgment, it attaches to wages or salary due from you to the defendant IN EXCESS OF THE GREATER OF THE FOLLOWING EXEMPT portions of the defendant's disposable earnings:

- A. seventy-five percent of the defendant's disposable earnings for any pay period; or
- B. an amount each week equal to forty times the highest applicable minimum hourly wage rate at the place the wages were earned. A table giving equivalent exemptions for pay periods of other than one week may be obtained from the director of the financial institutions division of the regulation and licensing department. "Disposable earnings" means that part of the defendant's wage or salary remaining after deducting the amounts that are required by law to be withheld. "Highest applicable minimum hourly wage rate" means the highest federal, state or local minimum hourly wage rate for an eight-hour day or a forty-hour week. It is immaterial whether you are exempt under federal, state or local law from paying the highest applicable minimum hourly wage rate.

ANY WAGES IN EXCESS OF THE LARGER EXEMPTION AMOUNT ABOVE THAT YOU OWE THE EMPLOYEE, OR THAT YOU MAY COME TO OWE THE EMPLOYEE, MUST BE KEPT BY YOU UNTIL FURTHER ORDER OF THIS COURT.

If the debt is for child support or spousal support payments, you shall pay the judgment debtor fifty percent (50%) of the debtor's disposable earnings (*salary less social security, federal, and state withholding*).

If employee's wages or salary are subject to more than one garnishment or wage withholding proceeding, the writs shall be satisfied in the order they have been served on you.¹

In no event may you withhold from your employee's net disposable earnings more than fifty percent (50%) of the employee's net disposable earnings if one of the writs is for child or spousal

support or more than twenty-five percent (25%) if none of the garnishments is for child or spousal support.²

Any wages you owe the employee in excess of that amount or that you may come to owe the employee in excess of that amount must be kept by you until further order of this court. (*A table giving equivalent exemptions for pay periods of other than one (1) week may be obtained from the Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michaels Drive, Santa Fe, New Mexico 87503.*)

3. If you have any property that belongs to the judgment debtor, including any rights, credits, bonds, bills, notes, drafts, and other rights to property or money that belongs to the judgment debtor, or if you acquire any such property, money, or rights to property or money before filing your answer, you must keep a sufficient amount of that property to satisfy the existing judgment and costs and not turn it over to the judgment debtor unless the court enters an order releasing the property or money.
4. If you hold property or money belonging to the judgment debtor, within four (4) business days after service of this writ, you are to mail or deliver a copy of this writ and the application for writ provided by the judgment creditor. If you hold property or money of the judgment debtor's other than wages and the debtor is a natural person, you shall also mail or deliver to the judgment debtor, the attached notice of right to claim exemptions and a copy of the attached claim of exemption forms to each person identified as a judgment debtor. You shall also send or deliver a copy of your answer to this writ to the judgment debtor and to the judgment creditor.
5. The court will be asked to enter an order awarding \$_____ for the judgment creditor's costs relative to the service of the writ of garnishment and \$_____ for judgment creditor's attorney fees in connection with the writ of garnishment in addition to \$_____, the "Balance Due Application for Writ."

FINANCIAL INSTITUTION WRITS

If you are a financial institution, the defendant who is an individual or sole proprietor has an exemption totaling two thousand four hundred dollars (\$2,400) in depository and investment accounts. This writ attaches only to money in excess of two thousand four hundred dollars (\$2,400). You may rely on the representations of the person executing this writ as to whether the exemption amount has already been satisfied with other accounts held by other financial institutions. This provision shall not prevent the individual or sole proprietor from claiming that additional money in depository or investment accounts is exempt under any other available exemption provided by law.

It is unlawful to pay or deliver to the defendant any item attached by this writ. If you fail to appear and answer as directed, or if you unlawfully dispose of any item attached by this writ, judgment may be rendered against you for the full amount of the plaintiff's claim against the defendant in this action.

THIS IS A COURT ORDER. If you fail to file the answer, or if you disobey any of these orders, a judgment may be entered against you for the full amount of the unpaid judgment in this case.

(Seal)

Judge or clerk

RETURN

STATE OF NEW MEXICO)

)ss

COUNTY OF _____)

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:

I certify that I served this writ in said county on the _____ day of _____, _____, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor, and a copy of the claim of exemption form for each judgment debtor to _____, garnishee.

(For garnishment of wages, serve only copies of the application for writ of garnishment, writ of garnishment, and answer form. For garnishment other than wages, if the judgment debtor is a natural person, serve the application for writ of garnishment, the writ of garnishment, a copy of the notice of right to claim exemptions, a copy of the claim of exemption form, and a copy of the answer by garnishee. Judgment debtors who are not natural persons are not entitled to garnishment exemptions.)

By _____
Name

Title

Fees:

SHERIFF OF _____

COUNTY, State of New Mexico

By _____
Deputy

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE:

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this writ in said county on the _____ day of

_____, _____, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor, and a copy of the claim of exemption form for each judgment debtor to _____ garnishee.

By _____
Name

Title

Signature of private person
making service

Subscribed and sworn to before me this
_____ day of _____, _____

Judge, notary, or other officer
authorized to administer oaths

Official title

USE NOTES

1. Section 35-12-9 NMSA 1978 provides that if an employee's wages are subject to more than one garnishment proceeding, the writs shall be satisfied in the order in which they are served on the garnishee.

2. Section 35-12-7(C) NMSA 1978 provides that the maximum amount that may be taken from a person's disposable earnings is fifty percent (50%) of the employee's disposable earnings.

3. For cases filed on or before July 1, 2023 use Form 4-806.
[Adopted by Supreme Court Order No. _____, effective for all cases filed on or after July 1, 2023.]

[NEW MATERIAL]

4-807A. Answer by garnishee.

[For use with Rules 1-065.2, 2-802, and 3-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff,
v. _____ No. _____
_____, Defendant.

Garnishee

ANSWER BY GARNISHEE

In answer to the writ of garnishment, garnishee states:
(Complete only applicable parts of this form.)

1. Wages

- I do not employ the judgment debtor or pay the judgment debtor any wages.
- The judgment debtor was my employee but the employment ended _____, _____.
- Calculated on a weekly basis, I pay the judgment debtor \$ _____ as NET WAGES (see definition below). I pay the judgment debtor [weekly] [every other week] [twice a month] [monthly].
- The place where the judgment debtor earns these wages is _____. The applicable minimum hourly wage rate in that location is _____.
- NET WAGES equal GROSS WAGES less Federal income tax, F.I.C.A., State income tax, and other deductions required by law. They do not include voluntary deductions.
- 75% of judgment debtor's NET WAGES per week is \$ _____
- 40 times highest applicable minimum hourly wage per week is \$ _____

2. Money other than wages

- I do not now owe the judgment debtor any money.
- I owe the judgment debtor \$ _____.

3. Property other than money

I have no property of the judgment debtor in my possession and have not received any since receiving the writ of garnishment.

I have in my possession the following property that belongs to the judgment debtor:

(description)

(approximate value)

_____ \$ _____

_____ \$ _____

4. **Other Persons Possessing Property Belonging to Judgment Debtor**

To my knowledge the following persons are indebted to the defendant or have personal property of the defendant in their possession:

5. **Prior Garnishments and/or Support Enforcement Orders**

I am withholding judgment debtor's NET WAGES due to other writs or orders to withhold wages. *(If you have been served with other writs of garnishment or court orders to withhold wages of the above judgment debtor, you must attach and file a copy of each writ or order with this answer.)*

6. **Service requirements to judgment debtor**

I have sent the following papers which have been provided to me by the judgment creditor to the judgment debtor, or if the judgment debtor has an attorney, to the judgment debtor's attorney:

If wages withheld: a copy of the application for a writ of garnishment; the writ of garnishment; and a copy of this answer have been mailed to each judgment debtor.

If money or property other than wages withheld: a copy of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form; and a copy of this answer have been mailed to each judgment debtor.

I am not aware of the location or address of the judgment debtor and therefore am unable to serve the notices set forth in this paragraph.

7. **Service requirements to judgment creditor**

[] A copy of this answer has been mailed or delivered to the judgment creditor, or if the judgment creditor has an attorney, to the judgment creditor's attorney.

8. **Attorney fees**

[] The garnishee has incurred \$ _____ in attorney fees in preparing this answer.

The undersigned verifies under penalty of perjury that the above foregoing answer by garnishee is true to the best of the garnishee's knowledge and belief.

Signature of garnishee or attorney

Printed name of person signing

Address

City, state, and zip code (*print*)

Telephone number

Subscribed and sworn to before
me this _____ day of _____,
_____.

Judge, notary, or other officer
authorized to administer oaths

[As amended, effective June 15, 1986; January 1, 1987; July 1, 1992; January 1, 1996; December 3, 2001; as amended by Supreme Court Order No. 12-8300-030, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

USE NOTES

See Jemko v. Liaghat, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987) (providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts).

[Adopted by Supreme Court Order No. _____, effective for all cases filed or pending on or after July 1, 2023.]

[NEW MATERIAL]

4-808B. Notice of right to claim exemptions (*garnishment*).

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____

[IN THE [MAGISTRATE] [METROPOLITAN] COURT]

[_____ JUDICIAL DISTRICT]

_____, Plaintiff

v. _____ No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS (GARNISHMENT)

1. THE JUDGMENT CREDITOR IS GARNISHING YOUR PROPERTY, WHICH MAY INCLUDE YOUR BANK ACCOUNT:

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor has started to collect that money from your property, which may include your bank account.

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. These funds or property are protected under federal or state law. Money or property that may not be taken is called "exempt" property. You may claim an exemption by filing with the court a claim of exemption (*garnishment*) form. There are limits on how much of your wages may be taken. You do not need to file a claim of exemption form to protect your exempt wages. Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

YOU MAY WISH TO CONSULT AN ATTORNEY BEFORE COMPLETING AND FILING THIS FORM.

3. PARTIAL LIST OF EXEMPTIONS:

- a. social security benefits (OASDI, SSI);

- b. public assistance benefits, which include Cash Assistance or TANF payments from the New Mexico Human Services Department-Income Support Division or their equivalents;
- c. life, accident or health insurance proceeds;
- d. workers' compensation benefits (*part may be garnished for child or spousal support*);
- e. occupational health benefits;
- f. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978;
- g. veterans' benefits;
- h. pensions or retirement funds;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978 [repealed];
- j. crime victims' reparation fund payments;
- k. a family allowance to a decedent's surviving spouse and children, subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- l. the minimum amount of shares necessary for certain cooperative associations as provided by Section 53-4-28 NMSA 1978;
- m. fraternal benefit society payments;
- n. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978.
- o. the aggregate of two thousand four hundred dollars (\$2,400) held by any banking institution;
- p. a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account;
- q. an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;
- r. any refundable tax credit payments from the Internal Revenue Service (IRS) or the New Mexico Taxation and Revenue Department.

4. HOW TO PROTECT EXEMPT PROPERTY:

A "claim of exemption (*garnishment*)" form is attached for you to complete and file with the court. YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS (*GARNISHMENT*) FORM ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions (*garnishment*) form within ten (10) days and attend the hearing, your money or property may be turned over to the judgment creditor. DO NOT FILE THE CLAIM OF EXEMPTION FORM TO PROTECT ONLY WAGES.

YOU SHOULD COMPLETE AND RETURN THE CLAIM OF EXEMPTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS FORM UPON YOU. MAKE A COPY OF THE COMPLETED FORM FOR YOUR RECORDS AND SERVE A COPY ON THE JUDGMENT CREDITOR AND ON THE GARNISHEE.

USE NOTE

This form is for cases filed on or after July 1, 2023 only. For cases filed prior to July 1, 2023 use Form 4-808.

[Approved by Supreme Court Order No. _____, effective for cases filed on or after July 1, 2023.]

[NEW MATERIAL]

4-808C. Notice of right to claim exemptions from execution.

[For use with District, Magistrate and Metropolitan Court Rules of Civil Procedure Rules 1-065.1, 2-801 and 3-801 NMRA]

STATE OF NEW MEXICO

COUNTY OF _____
[_____ JUDICIAL DISTRICT COURT]
[_____ COURT]

_____, Plaintiff

v. No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS FROM EXECUTION

1. THE JUDGMENT CREDITOR (*IS SEIZING*) (*HAS A RIGHT TO SEIZE*)¹ YOUR PROPERTY

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor may collect that money from seizure and sale of your property. (Before the judgment creditor has the sheriff seize your property, you may have a right to claim exemptions of certain property.)

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. This property is protected under state law. The property which may not be taken is called "exempt property".

YOU MUST FILE A CLAIM OF EXEMPTION FORM TO CLAIM ANY EXEMPT PROPERTY. YOU MAY WISH TO CONSULT WITH AN ATTORNEY BEFORE COMPLETING AND FILING THE CLAIM OF EXEMPTION FORM.

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

3. PARTIAL LIST OF EXEMPTIONS FROM EXECUTION.

Part I. Homestead exemption.

(This exemption may only be used in the district court.)

A judgment debtor who owns, leases or is purchasing a dwelling occupied by the judgment debtor is entitled to hold as exempt property a homestead in the amount of one hundred fifty thousand dollars (\$150,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption.

(Parts II and III are for use in the district court, magistrate court and metropolitan court.)

Residents of this state who do not claim a homestead exemption are entitled to an exemption of real or personal property in the amount of fifteen thousand dollars (\$15,000) under Section 42-10-10 NMSA 1978. You may not claim this exemption if you claimed a homestead exemption above.

Part III. Personal property exemptions.

In addition to the property claimed as exempt above, judgment debtors are entitled to claim certain personal property exemptions. Most of those exemptions are listed below:

- a. your aggregate interest in household goods and furnishings, not exceeding a value of seventy-five thousand dollars (\$75,000);
- b. your aggregate interest in motor vehicles, not exceeding ten thousand dollars (\$10,000) in value;
- c. your interest in a wedding band and an engagement ring, and your interest in additional jewelry held primarily for your use, the use of your spouse or any dependent of yours, with an aggregate value not exceeding five thousand dollars (\$5,000) for that additional jewelry;
- d. your aggregate interest in, or the interest of any relative of yours, in any artwork, with an aggregate value not exceeding a value of two thousand five hundred dollars (\$2,500) in the aggregate;
- e. your aggregate interest in tools, equipment, implements, professional books, instruments, inventory, supplies and materials reasonably necessary for use in your trade, profession or occupation, or that of your spouse not exceeding fifteen thousand dollars (\$15,000);
- f. pension or retirement funds;
- g. not more than fifty thousand dollars (\$50,000) in benefits from a benevolent association of which the judgment debtor is a member;
- h. veteran's benefits;
- h. building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978 [repealed];
- j. worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;
- k. occupational health benefits as provided by Section 52-3-37 NMSA 1978;
- l. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;

- m. public benefits such as medicaid, medicare, food stamps or other aid from a government public assistance program;
- n. cash surrender values and benefits of life insurance contracts;
- o. payment from life, accident and health insurance policies or annuity contracts;
- p. crime victims' reparation fund payments;
- q. fraternal benefit society benefits;
- r. the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- s. the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- t. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- u. allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- v. a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account;
- w. an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;
- x. an individual retirement account that would qualify for tax exemptions under 26 U.S.C. 408 or any similar individual retirement account;
- y. alimony, family or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;
- z. any refundable tax credit payments from the Internal Revenue Service (IRS) or the New Mexico Taxation and Revenue Department;
- aa. exempt wages as defined by Section 35-12-7 NMSA 1978;
- aa. any stimulus payment held by or payable to the person or the person's dependents in any form;
- ab. the aggregate of not more than two thousand four hundred dollars (\$2,400) held in any bank account by or for your benefit.

- ac. interests in personal property worth up to fifteen thousand dollars (\$15,000), tangible or intangible, not otherwise specified in this subsection, including any deposits in financial or investments accounts or personal property that exceeds the monetary limits set forth in this section;

You may not claim an exemption for personal property which is subject to a security interest under the Uniform Commercial Code given to the judgment creditor.

4. HOW TO PROTECT EXEMPT PROPERTY.

The sheriff may not seize your personal clothing, furniture and books or any jewelry unless the total value of each category exceeds the values specified above or in state law. For other property, you must claim an exemption or it may be seized and sold. A claim of exemptions on execution form is attached for you to complete and file with the court.

YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS ON EXECUTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS ON EXECUTION FORM ON THE JUDGMENT CREDITOR.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions on execution form within ten (10) days and attend the hearing, your property may be seized and sold by the sheriff.

FAILURE TO COMPLETE AND FILE A CLAIM OF EXEMPTIONS ON EXECUTION FORM WITHIN TEN (10) DAYS AND SERVE A COPY ON THE JUDGMENT CREDITOR WILL RESULT IN THE LOSS OF YOUR RIGHT TO CLAIM AN EXEMPTION.

(The following proof of service may be used ONLY if the judgment debtor has entered an appearance in the case.)

AFFIDAVIT OF SERVICE

I declare, under penalty of perjury, that this notice, a claim of exemptions on execution form and a copy of the judgment in the above cause of action were mailed on the ____ day of _____, _____ from _____ (street address or post office branch) in _____, New Mexico.

[] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, who at the time of such service was absent therefrom. Abode located at _____.

[] by posting a copy of the Notice of Right to Claim Exemptions in the most public part of the premises of defendant _____ (*used if no person found at dwelling house or usual place of abode*). Abode located at _____.

[] to _____, an agent authorized to receive service of process for defendant _____.

[] to _____, (*parent*) (*guardian*) of defendant _____ (*used when defendant is a minor or an incompetent person*).

[] after due diligence I was unable to serve this notice.

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn² to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Strike out the inapplicable alternative.
 2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.
 3. Use this form only for cases filed on or after July 1, 2023. For cases filed prior to July 1, 2023 use Form 4-808A.
- [Adopted by Supreme Court Order No. _____, effective _____.]

[NEW MATERIAL]

4-809A. Claim of exemption from garnishment.

[For use with Rules 1-065.2, 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

_____, Plaintiff

against _____, Defendant

_____, Garnishee

CLAIM OF EXEMPTION FROM GARNISHMENT

Judgment debtor claims the following exemptions:

(check box next to exemption)

- a. social security benefits (OASDI, SSI);
- b. public benefits such as medicaid, medicare, food stamps or other aid from a government public assistance program;
- c. life, accident or health insurance proceeds;
- d. workers' compensation awards;
- e. unemployment compensation benefits;
- f. veterans' benefits;
- g. pensions and retirement funds;
- h. crime victims' reparation fund payments;
- i. allowances to surviving spouse and children from deceased's estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978;
- j. the minimum amount of shares necessary for certain non-profit cooperative associations as provided by Section 53-4-28 NMSA 1978;
- k. fraternal benefit society payments as provided by Section 59A-44-18 NMSA 1978.
- l. alimony, family or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person;

- m. payment pursuant to a stock bonus, pension, profit-sharing individual retirement account, annuity or similar plan or contract on account of illness, disability, death or length of service, to the extent reasonably necessary for the support of the person or any dependent of the person, unless such plan or contract does not qualify pursuant to Section 401(a), 403(a), 403(b) or 408 of the Internal Revenue Code of 1986;
- n. refundable federal and state tax credits;
- o. exempt wages as defined by Section 35-12-7 NMSA 1978;
- p. any stimulus payment held by or payable to the person or the person's dependents in any form;
- q. an interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan and any other retirement account;
- r. an individual retirement account that would qualify for tax exemptions under 26 U.S.C. 408 or any similar individual retirement account;
- s. an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;
- t. a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account;
- u. money held in a depository or investment account, which is not otherwise exempt, up to two thousand four hundred dollars (\$2,400).

A completed and signed copy of this form must be returned to the Clerk of the Court whose address is

A completed and signed copy of the claim of exemption form shall be served on the judgment creditor and the garnishee named above. If the judgment creditor disputes a claimed exemption, a court hearing will be scheduled to consider the disputed exemptions. At this hearing you must bring evidence supporting each of your claims of exemption.

 Date

 Signature of judgment debtor

Printed name of judgment debtor

Number and street or P.O. box

City, state, zip code

Telephone number

USE NOTE

For cases filed on or before June 30, 2023 use Form 4-809.

[Adopted by Supreme Court Order No. _____, effective _____, for cases filed on or after July 1, 2023.]

[NEW MATERIAL]

4-810B. Motion for default judgment against garnishee.

[For use with Rules 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO

IN THE _____ COURT No. _____

COUNTY
_____, Plaintiff

v.
_____, Defendant
_____, Garnishee

MOTION FOR DEFAULT JUDGMENT AGAINST GARNISHEE

Judgment creditor moves the court to enter a default judgment against the garnishee.

The Writ of Garnishment was served on the garnishee on _____ (*date*) and the return of service of the writ on the garnishee has been filed with the court.

The writ was sent to the judgment debtor's last known address on _____ (date). The garnishee has not filed an answer or other responsive pleading with the court nor has the judgment creditor been served with a responsive pleading.

The judgment creditor requests the court to set a hearing on this motion on not less than three (3) days notice to the garnishee.

Date

Attorney for plaintiff

*If the plaintiff is not represented
by an attorney, this motion must be
sworn to or affirmed by the plaintiff.*

I, _____, upon my oath or affirmation do solemnly declare or affirm that this motion contains a complete, accurate statement of the facts to the best of my knowledge. I understand that if I make a material misstatement of fact, I may be prosecuted and punished for perjury.

Signature of plaintiff

Signature of Judge, Notary or Other
Officer Authorized to Administer
Oaths

Official title

My commission expires:

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____, this motion was

[mailed by United States mail, postage prepaid, and addressed to:

Name: _____

Address: _____

City, State
and zip code: _____]

[faxed by _____ (name of person who faxed) to
_____ (defendant or defendant's attorney). The transmission was
reported as complete and without error. The time and date of the transmission was _____
(a.m.) (p.m.) on _____ (date).]

[e-mailed by _____ (name of person who transmitted) to
_____ at _____ (electronic address of
recipient) who agreed to service in this manner. The transmission was successful. The time and
date of the transmission was _____ (a.m.) (p.m.) on _____ (date).]

Signature of attorney

*If this notice was served by a person other than an attorney, the following must also be completed
and filed with the court:*

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a copy of this motion was served by [mail] [fax]
[electronic transmission] as described above on this _____ day of _____, _____.

Signature of person who made service

Subscribed and sworn to before me
this _____ day of _____, _____.

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

For cases filed on or before June 30, 2023 use Form 4-810.

[Adopted by Supreme Court Order No. _____, effective _____, for cases filed on or after
July 1, 2023.]

[NEW MATERIAL]

4-812A. Judgment on writ of garnishment, claim of exemption and order to pay.

[For use with Rules 2-802 and 3-802 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____

IN THE [MAGISTRATE] [METROPOLITAN] COURT

_____, Plaintiff (*Judgment Creditor*),

v. _____ No. _____

_____, Defendant (*Judgment Debtor*).

_____, Garnishee.

**JUDGMENT ON WRIT OF GARNISHMENT, CLAIM OF
EXEMPTION, AND ORDER TO PAY**

This matter coming before the court, the court finds:

1. The judgment creditor, _____, has a judgment dated _____ against the judgment debtor, _____.
2. The total amount of the judgment including the principal, interest, costs, and attorney fees awarded by the judgment was \$_____.
3. From the date the judgment was filed through the date this Application was signed, additional interest at the rate of _____% totals \$_____. Judgment creditor has incurred additional costs of \$_____ and additional attorney fees of \$_____. Payments totaling \$_____ have been received.
4. The unpaid balance now due is \$_____ plus interest from the date this Application is filed. Interest at _____% shall continue to accrue on any outstanding balance until the judgment is fully paid.
5. The judgment debtor:

has not filed a claim of exemption;

has filed a claim of exemption, which was not disputed. Therefore, the property or money shown on the claim of exemption is exempt;

has filed a claim of exemption that has been disputed and after hearing, the court finds that the following property is not exempt from garnishment:
_____;

6. The garnishee:

is in default;

is indebted to the judgment debtor for wages;

is indebted to the judgment debtor in the amount of \$ _____;

is not indebted to the judgment debtor;

holds property of the judgment debtor;

does not hold property of the judgment debtor.

7. The garnishee:

is garnishing wages, and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.

is garnishing property or money other than wages, and has certified that it has mailed copies of the application for a writ of garnishment; the writ of garnishment; a notice of right to claim exemptions; a claim of exemption form; and a copy of its answer to the judgment debtor(s) or their attorney of record, if any.

8. Pursuant to the Support Enforcement Act, the garnishee:

is withholding \$ _____ of the judgment debtor's income pursuant to a notice to withhold income.

THE COURT ORDERS:

1. **Default judgment against garnishee**
The garnishee having failed to answer the writ, the judgment creditor shall recover from the garnishee the sum of \$_____ plus interest at _____% per year from the date this judgment is filed.
2. **Payment of money other than wages**
The judgment creditor shall recover from the garnishee the sum of \$_____ plus interest at _____% per year from the date this judgment is filed, such sum being held by garnishee other than as wages.
3. **Wage withholding other than child or spousal support**
The judgment being other than for child or spousal support, the judgment creditor shall recover from the garnishee the sum of \$_____, plus interest at _____% per year from the date this judgment is filed, until paid in full, to be deducted from the judgment debtor's wages.

The garnishee **SHALL PAY THE JUDGMENT DEBTOR**, whichever amount is greater, one of the following:

- (a) seventy-five percent (75%) of the judgment debtor's disposable earnings (*salary less social security, federal and state tax withholdings, and any other deduction required by law*) for any pay period; **OR**
- (b) an amount each week equal to forty times the highest applicable minimum hourly wage rate at the place the wages were earned. A table giving equivalent exemptions for pay periods of other than one week may be obtained from the director of the financial institutions division of the regulation and licensing department. "Disposable earnings" means that part of the defendant's wage or salary remaining after deducting the amounts that are required by law to be withheld. "Highest applicable minimum hourly wage rate" means the highest federal, state or local minimum hourly wage rate for an eight-hour day or a forty-hour week. It is immaterial whether you are exempt under federal,

state or local law from paying the highest applicable minimum hourly wage rate.

The remaining balance of the judgment debtor's disposable earnings shall be paid over to the judgment creditor each payday until the judgment herein is paid in full. If the wages of the judgment debtor are not enough to garnish because of the application of the formula set forth above, this order shall continue and shall automatically take effect when the wages of the judgment debtor shall increase to an amount that creates disposable earnings based upon the formula set forth above.

If wages are being withheld pursuant to a notice to withhold income under the Support Enforcement Act, this garnishment shall continue in effect until the notice to withhold income has been voided, modified, suspended or terminated, at which time the full amount allowed for garnishment shall be paid to the judgment creditor.

If the wages are being withheld pursuant to a notice to withhold income under the Support Enforcement Act, but are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, the difference between the amount withheld for child or spousal support and the amount equal to twenty-five percent (25%) of the judgment debtor's disposable earnings shall be paid to the judgment creditor until the child or spousal support notice to withhold income has been voided, modified, suspended, or terminated, at which time the full amount allowed for this garnishment shall be paid to the judgment creditor.

If wages are being withheld pursuant to a prior garnishment and/or a prior demand warrant for unpaid taxes, the prior garnishment and/or prior demand warrant shall be paid first and upon full payment of the prior garnishment and/or prior demand warrant, the full amount allowed for this garnishment shall be paid to the judgment creditor.

[] 4. **Money or property other than wages**

[] The money or property held by the garnishee is exempt from garnishment and the writ of garnishment in this case is hereby released and discharged; and the garnishee no longer has any obligation to withhold wages, money, or property from the judgment debtor on account of that writ.

The garnishee, having no money or property of the judgment debtor, is discharged and released from the writ of garnishment.

The garnishee shall turn over to the judgment creditor the property of the judgment debtor shown on Exhibit A attached hereto.

5. Costs and fees of garnishee

The garnishee shall be reimbursed \$_____ for its costs and \$_____ for its attorney fees to be paid by the _____. If paid by the judgment debtor, said sum shall be paid from the first money otherwise payable to the judgment creditor but shall not reduce the amount due the judgment creditor as determined above.

6. Payments

Payments under this order shall be sent to:

(name of judgment creditor)

(address of judgment creditor)

(city, state, and zip code)

(phone number of judgment creditor)

Date

Judge

USE NOTES

See Jemko v. Liaghat, 106 N.M. 50, 52, 738 P.2d 922, 925 (Ct. App. 1987) (providing that a judgment creditor, acting pursuant to a writ of garnishment, may only seize property belonging to the judgment debtor); *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966 (discussing garnishment procedures in the case of joint bank accounts). For Cases filed on or before June 30, 2023 use form 4-812.

[Adopted by Supreme Court Order No _____, effective for all cases filed on or after July 1, 2023.]



New Mexico
Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Proposal 2024-005

'Cheryl Siler' via Supreme Court Rules <rules.supremecourt-grp@nmcourts.gov>

Mon, Mar 25, 2024 at 3:41 PM

Reply-To: cheryl.siler@aderant.com

To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Hello,

I am writing to comment on the proposed revisions to the New Mexico Civil Forms that published in Proposal 2024-005. My comments relate specifically to new forms 4-803A and 4-806A.

Form 4-803A Claim of exemptions on execution.

As proposed, new Form 4-803A contains, in part, the language, "You must complete and return this form within ten (10) days to claim any statutory exemption from this seizure and sale."

The proposed new form indicates it is for use with District, Magistrate and Metropolitan Court Rules of Civil Procedure 1-065.1, 2-801 and 3-801 NMRA. Those rules specifically state the claim of exemptions must be filed within 10 days after service of the notice of right to claim exemptions. See Rules 1-065.1C, E, 2-801C, E and 3-801C, E.

To avoid any confusion and to make the language of the form consistent with the Rules, I suggest that the wording in Form 4-803A be revised to state, "You must complete and return this form within ten (10) days after service to claim any statutory exemption from this seizure and sale."

Form 4-806A Writ of Garnishment.

-

As proposed, new Form 4-806A contains, in part, the language, "You are ordered to file a written answer with the _____ court located at _____ within twenty (20) days from the day you receive this writ."

The proposed new form indicates it is for use with Rules 1-065.2, 2-802 and 3-802 NMRA. Those rules specifically state the garnishee shall answer within 20 days of service. See Rules 1-065.2D, 2-802D, and 3-802D.

To avoid any confusion and to make the language of the form consistent with the Rules, I suggest that the wording in Form 4-806A be revised to state, "You are ordered to file a written answer with the _____ court located at _____ within twenty (20) days from the day ~~you receive~~ of service of this writ."

Thank you for your time and consideration.

Cheryl Siler
Director, Docketing Operations

Direct: +1-209-431-4397
Email: cheryl.siler@aderant.com



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[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

1 message

Supreme Court <noreply@nmcourts.gov>

Thu, Apr 4, 2024 at 10:01 AM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Joshua

Allison

Phone Number 505-841-7529

Email albddiv23proposedtxt@nmcourts.gov

Proposal Number 2024-005

Comment Regarding proposal number 2024-005, I write to both support the proposed committee commentary to the various rules governing writs of execution and garnishment and to offer a modest, corresponding change to each rule to make clear that these writs shall only be issued upon the filing of a timely application.

In quoting NMSA 1978, Sections 39-1-20 (1971) and 37-1-2 (2021), the proposed committee commentary correctly states that (a) applications for writs of garnishment or execution are timely if filed within 7 years after the rendition or the revival of the judgment, and (b) no writs of garnishment or execution may be issued after 14 years from the date of the original judgment. I agree with both of those statements. However, I think it would be helpful for the clerks of our courts if these rules made clear that writs of garnishment and execution shall not issue for untimely applications.

Take, for example, Rule 1-065.1 NMRA (writs of execution) and Rule 1-065.2 NMRA (writs of garnishment). Both of those Rules as presently written provide that the clerk of the court “shall issue” the requested writ without reference to the timeliness of the application. See Rule 1-065.1(A) (“Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute[.]”); Rule 1-065.2(A) (“After the filing of the judgement on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.”).

Without reference to the timeliness of the application, both Rules could be read to require the court clerks to issue the writs of garnishment or execution for untimely applications, even with the proposed new committee commentary. It seems to me that adding the phrase “upon the filing of a timely application” to the text of each rule will clarify any possible ambiguity between the rule and the commentary.

I therefore suggest that the Rules be revised in light of the proposed (and correct) committee commentary to make clear that the clerk of the court “shall issue” the proposed writ only upon receipt of a timely application. This would eliminate any possible ambiguity between the committee

commentary and the mandatory language of each Rule as to when these writs “shall” be issued. In turn, the rules will provide clear direction to the clerks of the court as to when those writs “shall” be issued.

My suggested changes are as follows in ALL CAPS:

- For writs of execution under Rules 1-065.1, 2-801, and 3-801: “A. Issuance of writs of execution. Unless the judgment has been stayed, AND UPON THE FILING OF A TIMELY APPLICATION BY THE JUDGMENT CREDITOR, the clerk of the court shall issue a writ of execution . . . [.]”
- For writs of garnishment under Rule 1-065.2, 2-802, and 3-802: “A. Garnishment procedure. After the filing of the judgment on the underlying dispute and upon THE FILING OF A TIMELY application of the judgment creditor . . . the clerk of the court shall issue a writ of garnishment.”

Thank you for your consideration of these proposed changes. I am certainly available to discuss with the committee if anyone thinks that would be helpful.

Name Joshua Allison

Phone Number 505-841-7529

Email albdiv23proposedtxt@nmcourts.gov

Proposal Number 2024-005

Comment

Regarding proposal number 2024-005, I write to both support the proposed committee commentary to the various rules governing writs of execution and garnishment and to offer a modest, corresponding change to each rule to make clear that these writs shall only be issued upon the filing of a timely application.

In quoting NMSA 1978, Sections 39-1-20 (1971) and 37-1-2 (2021), the proposed committee commentary correctly states that (a) applications for writs of garnishment or execution are timely if filed within 7 years after the rendition or the revival of the judgment, and (b) no writs of garnishment or execution may be issued after 14 years from the date of the original judgment. I agree with both of those statements. However, I think it would be helpful for the clerks of our courts if these rules made clear that writs of garnishment and execution shall not issue for untimely applications.

Take, for example, Rule 1-065.1 NMRA (writs of execution) and Rule 1-065.2 NMRA (writs of garnishment). Both of those Rules as presently written provide that the clerk of the court “shall issue” the requested writ without reference to the timeliness of the application. See Rule 1-065.1(A) (“Unless the judgment has been stayed, the clerk of the court shall issue a writ of execution for seizure of property to satisfy a judgment on an underlying dispute[.]”); Rule 1-065.2(A) (“After the filing of the judgement on the underlying dispute and upon application of the judgment creditor, the clerk of the court shall issue a writ of garnishment.”).

Without reference to the timeliness of the application, both Rules could be read to require the court clerks to issue the writs of garnishment or execution for untimely applications, even with the proposed new committee commentary. It seems to me that adding the phrase “upon the filing of a timely application” to the text of each rule will clarify any possible ambiguity between the rule and the commentary.

I therefore suggest that the Rules be revised in light of the proposed (and correct) committee commentary to make clear that the clerk of the court “shall issue” the proposed writ only upon receipt of a timely application. This would eliminate any possible ambiguity between the committee commentary and the mandatory language of each Rule as to when these writs “shall” be issued. In turn, the rules will provide clear direction to the clerks of the court as to when those writs “shall” be issued.

My suggested changes are as follows in ALL CAPS:

- For writs of execution under Rules 1-065.1, 2-801, and 3-801: “A. Issuance of writs of execution. Unless the judgment has been stayed, AND UPON THE FILING OF A TIMELY APPLICATION BY THE JUDGMENT CREDITOR, the clerk of the court shall issue a writ of execution . . . [.]”

- For writs of garnishment under Rule 1-065.2, 2-802, and 3-802: “A. Garnishment procedure. After the filing of the judgment on the underlying dispute and upon THE FILING OF A TIMELY application of the judgment creditor . . . the clerk of the court shall issue a writ of garnishment.”

Thank you for your consideration of these proposed changes. I am certainly available to discuss with the committee if anyone thinks that would be helpful.



[rules.supremecourt-grp] Comments by NMJC Legislation and Rules Subcommittee

Judge Emilio Chavez <taodejc@nmcourts.gov>

Thu, Apr 11, 2024 at 9:49 AM

Reply-To: taodejc@nmcourts.gov

To: rules.supremecourt@nmcourts.gov, Angie Schneider <aladaks@nmcourts.gov>, Thomas Pestak <tpestak@sierraco.org>, Jennifer Attrep <coajla@nmcourts.gov>

Attached is NMJC L&R Subcommittee's comments regarding the current proposed rule changes. Please kindly confirm receipt.

Thank you,

Emilio J. Chavez

Chief Judge

Eighth Judicial District

[105 Albright Street, Suite N](#)

[Taos, NM 87571](#)



NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS (1).docx

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NEW MEXICO JUDICIAL COUNCIL LEGISLATION AND RULES SUBCOMMITTEE COMMENTS

1. Proposal 2024-002 – Permanency Review Hearings [comments begin on p. 4]
 - The proposed changes to Rules 10-345 NMRA and 10-346 are mostly stylistic and appropriate.
2. Proposal 2024-003 – Child’s First Appearance on a Delinquency Petition
 - The proposed changes to Form 10-711 NMRA: The form is for use with Rule 10-224 NMRA and should indicate at the top of the form similar to other delinquency forms. It makes sense to change arraignment to first appearance.
 - However, in the comparable criminal forms the language indicates “I understand that I am charged with the following criminal offense or offenses.” *See e.g.* 9-405 NMRA. Although the suggested change “I understand the allegations in the petition” is correct, it insert “allegations” rather than “offense,” which is the language indicated in Rule 10-224(A) NMRA. A suggestion might be to amend the language to “I understand that I am charged with the following ~~criminal~~ offense or offenses” to track the language of the rule and to be consistent with the criminal form.
 - Rule 10-224(G) NMRA reads, “the right to remain silent, and that any statement made by the respondent child may be used against the respondent child.” The proposed change to Form 10-711 regarding right to remain silent is appropriate but the change should omit “in court”. The proposed changed language might be modified as follows “the RIGHT to remain silent with the understanding that any statement I make may be used against me ~~in court~~, except any “**confidential**” statements I make to my attorney.”
See e.g. Rules 11-503 NMRA; 6-501 NMRA.
3. Proposal 2024-004 – Water Settlement Agreements
 -
4. Proposal 2024-005 – Garnishment [comments begin on p. 50]
 - Rule 1-065.1(E): The word “filed” is missing in the following sentence: “Notwithstanding the foregoing, for cases **filed** on or after July 1, 2023, it shall not be necessary for a judgment debtor to assert an exemption to the first two thousand four hundred dollars (\$2,400.00) held in a [depository or investment] account.”
 - Rule 2-802(B): The phrase “certificate of service shall be filed by the judgment creditor indicating” is missing in the following sentence: “A separate **certificate of**

service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor.”

5. Proposal 2024-006 – Political Activity and Elections

- The proposed changes are stylistic and appropriate. The inclusion in 21-401(C)(7) of the language “express and implied” is superfluous.

6. Proposal 2024-007 – Lawyer Succession Rule [comments begin on p. 4]

- The proposed changes are necessary and appropriate.

7. Proposal 2024-008 – Surreptitious Recordings of Clients, Third Parties

-

8. Proposal 2024-009 – Providing Financial Assistance to Clients

- The proposed change to Rule 16-108 NMRA is a much needed exception, but perhaps modest gift should be defined.

9. Proposal 2024-010 – Incorporation of Plea Deadlines [comments begin on p. 6]

- The proposed change to Rule 5-304(E) NMRA is important to define a set timeframe for plea deadlines. Instead of creating (F), the new proposed (E) might read no plea agreement shall be entered into later than five (5) days before the scheduled date for jury selection or commencement of a bench trial **unless a written finding of good cause is made by the judge that excuses the untimely submission of the agreement.**
- (F) might also include language “In addition, to finding good cause excusing the untimely plea agreement, the court may consider sanctions against the state and defense counsel.”
- In (F), the phrase “the scheduled date for jury selection or commencement of a bench” might be added in the following sentence for consistency: “A request for the court to approve an untimely plea agreement less than five (5) days before **the scheduled date for jury selection or commencement of a bench** trial shall not be granted except on a written finding by the judge of good cause that excuses the untimely submission of the agreement.”
- In the “Notwithstanding” sentence the committee may want to consider including “a defendant may plead guilty to all **legally permissible** charges . . .” There are often times where a criminal information implicates double jeopardy or there is not a factual basis supporting the allegation.

10. Proposal 2024-011 – Filing of Criminal Complaint Upon Arrest

- The proposed change to Rule 5-210 NMRA providing a definitive timeframe is a much needed change.

11. Proposal 2024-012 – Consolidated Cases [comments begin on p. 5]

- The proposal seeks to create Rule 5-305 NMRA. The proposed new rule is generally accomplished under Rule 5-203(A) or filing a superseding indictment. Rather than creating a new rule, the same purpose might be done by amending in 5-203(A) NMRA to include similar language to 5-203(B) NMRA.
- For example after separate count “**or a separate complaint, indictment or information may be consolidated on motion of a party.**” The language “whether felonies or misdemeanors or both:” is likely unnecessary and could be removed.

12. Proposal 2024-013 – Plea Deadlines, Suppression Hearings, and Extensions for Trial [comments begin on p. 14]

- The proposed change to the committee commentary to Rule 5-212 NMRA should be included in the substantive part of the rule under (D) rather than commentary. The committee may want to consider 7-10 day requirement to allow the court time to rule and the parties to timely enter a plea after the ruling under the new proposed deadline for Rule 5-304 NMRA.

13. Proposal 2024-014 – Kinship Guardianship Forms

- The proposed changes to the forms appear to be appropriate and add consistency.

14. Proposal 2024-015 – Parentage Forms

-

15. Proposal 2024-016 – Human Rights Act Intentional Discrimination

-

16. Proposal 2024-017 – Firearm Enhancement

- The proposed change to UJI Special Verdict Form 14-6013 NMRA is needed to track the language of NMSA 1978 §31-18-16. The definitions are likewise clear and important for the determination. Likewise, the use note is necessary to provide clarification regarding the changes to the statute. The committee may want to consider an additional sentence to the firearm instruction that the defendant can use a gun without brandishing it

- On the sample verdict form, the committee may want to consider that there may be cases where the jury needs to determine if the firearm was either used, brandished, or discharged.
- Depending on the facts of the case the form might have Used _____ (Yes or No; Brandished _____ (Yes or No); or Discharged _____ (Yes or No)

The sentencing judge would use the highest of the three alternatives to sentence.

17. Proposal 2024-018 – Multiple Defendants

- Prior to changing UJI 14-6003 NMRA the committee should consider if the instruction is necessary? UJI 14-6005 NMRA is short and simple and illustrates the point that the counts should be considered separately as to each defendant. Also, the committee may want to look at UJI’s 14-6010 and 14-6012 that include some of the proposed language.
- If a change is necessary, the proposed change to UJI 14-6003 NMRA might be clearer if the instruction read, “In this case, involving multiple defendants, you must consider separately whether each defendant is guilty or not guilty. The state must prove to your satisfaction beyond a reasonable doubt each of the elements of a crime against a defendant to render a verdict of guilty. You should analyze what the evidence in the case shows with respect to each individual defendant. [[Both] [All] defendants are charged with the same crimes.] [The defendants are charged with different offenses. Please review the verdict forms to clarify the offense(s) that [is][are] applicable to each defendant.
- The last two proposed sentences for 14-6003 are redundant as to instructions UJI 14-6010 “If you have agreed upon one verdict [as to a particular charge] [as to a defendant], that form of verdict is the only form to be signed [as to that charge] [as to that defendant] and UJI 14-6012.

Respectfully submitted,

New Mexico Judicial Council Legislation and
Rules Subcommittee

Hon. Jennifer Attrep
Hon. Emilio Chavez
Hon. Thomas Pestak
Hon. Angie Schneider



[rules.supremecourt-grp] Comments on Proposal 2024-005 (garnishment and execution)

1 message

Stephen Waller <swaller@wallernm.com>

Fri, Apr 12, 2024 at 12:45 PM

Reply-To: swaller@wallernm.com

To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Thank you for the opportunity to comment on Proposal 2024-005 regarding garnishment and execution. My comments and concerns are presented below. For the potential ease of readers, I have bold-texted some portions of these comments to emphasis the key points presented below.

Committee commentary regarding execution and garnishment is inconsistent with the cited statutes.

On page 3 (of the PDF file dated March 13, 2024 containing Proposal 2025-005 only), the **first sentence** of the **proposed Committee commentary to Rule 1-065.1 (Writs of execution)** states that “Applications for writ of garnishment or execution are timely if filed ‘within seven years after the rendition or revival of the judgment’ in the case.”

The Committee commentary then cites NMSA 1978, Section 39-1-20 (1971). However, that referenced **Section 39-1-20 concerns only execution, and does not pertain to garnishment.**

I therefore respectfully submit that the **first sentence of the proposed Committee commentary to Rule 1-065.1 improperly applies the seven-year limit regarding execution (pursuant to Section 39-1-20) to the statutorily-separate issue of garnishment procedures and timeliness.**

Put another way, **the proposed amendment to Rule 1-065.1 (via its Committee commentary) appears to create a new, seven-year limitation (on filing applications for writs of garnishment) that does not exist in the New Mexico Statutes**, and I respectfully disagree with such a substantial limitation on the rights of New Mexico judgment creditors. I have searched the New Mexico Statutes and cannot find any authority establishing or supporting a seven-year limit (following judgment) on applications for writs of garnishment.

To the contrary, the Supreme Court noted in 2005 that “[j]udgments in New Mexico may be enforced in the state for fourteen years by, among other things, attaching real estate or garnishing wages.” See *State Farm Mut. Auto. Ins. Co. v. Fennema*, 2005-NMSC-010, ¶ 15, 137 N.M. 275, 110 P.3d 491 (emphasis added).

Also on page 3, the **second sentence** of the **proposed Committee commentary to Rule 1-065.1** states that “no writ of garnishment or execution may issue ‘after fourteen years from the date of the original judgment upon which it is founded.’” The Committee commentary then cites NMSA 1978, **Section 37-1-2.**

However, **the cited Section 37-1-2 does not contain any mention of garnishment or execution.** Instead, Section 37-1-2 refers **only to “[a]ctions founded upon** a judgment of a court of the state” [or other states or territories, or federal courts].

Furthermore, the Court of Appeals explained in *Fischhoff v. Tometich*, 1991-NMCA-144, ¶ 8, 113 N.M. 271, 824 P.2d 1073, that it has been established since 1919 that **execution is not an “action on the judgment” and is therefore not subject to the limitation period of Section 37-1-2.** [The section-heading to this discussion in *Fischhoff* actually reads, in all-caps: “EXECUTION IS NOT AN ACTION FOUNDED UPON A JUDGMENT WITHIN THE MEANING OF SECTION 37-1-2.”] See also *id.* at ¶ 8 [quoting *Crowell v. Kopp*, 1919-NMSC-065, ¶ 7, 26 N.M. 146, 189 P. 652, for its statement that “[t]his proceeding is not an action on the judgment any more than an execution to enforce a common-law judgment would be an action on the judgment”].

Garnishment, too, is a remedy that is not an “action founded upon” a judgment. *See Fischhoff*, 1991-NMCA-144, ¶ 8 (explaining that the former statute referring to “actions founded upon any judgment” “refers to and controls actions in regular form, brought upon judgments to revive them or to recover upon them or upon foreign judgments, and the like” (emphasis added)).

Because execution and garnishment are not “actions founded upon a judgment” as that term is used in Section 37-1-2, that statutory section does not support or otherwise have any bearing on the proposed Committee commentary stating that “no writ of garnishment or execution” may issue after fourteen years.

I therefore respectfully submit that the second sentence of the proposed Committee commentary to Rule 1-065.1 improperly cites to Section 37-1-2 as support for the proposed Rule amendment.

The comments and concerns presented above (regarding proposed Committee commentary for Rule 1-065.1) also apply to the identical proposed Committee commentary regarding **Rules 1-065.2, 2-801, 2-802, 3-801, and 3-802**, as well as the proposed amended **Use Notes in Forms 4-805 and 4-805A** (which, again, I respectfully submit are incorrect in stating that an application for writ of garnishment must be filed within seven years).

The proposed Rule amendments do not acknowledge the special circumstances of Stipulated Judgments.

In *Cook v. Rockett*, 2023-NMCA-044, ¶ 15, 534 P.3d 199, *cert. denied*, No. S-1-SC-39848, 2023 N.M. LEXIS 150 (N.M. June 27, 2023). the Court of Appeals held that “stipulated judgments that reflect contractual arrangements between parties are not subject to the statute of limitations in Section 37-1-2.” Proposal 2024-005 is therefore arguably imprecise in referring to the 14-year limitations period for “actions found upon judgments” without noting that the 14-year period does not apply to contractual provisions in stipulated judgments.

[It is possible that a stipulated-judgment provision awarding monetary damages might be subject to the 14-year limitations period, while a stipulated-judgment contractual provision (such as a declared right of first refusal) might not be, but for present purposes the key point is that under *Cook v. Rockett* an “action founded upon” a stipulated judgment may not be automatically time-barred even after 14 years.]

Requiring service (of a copy of a writ of garnishment) to the judgment creditor literally “at the same time” as service on the garnishee would be unworkable and counterproductive. Instead, a short safe-harbor period would better balance the interests of judgment creditors and judgment debtors.

The proposed amendment to **Rule 1-065.2 (Garnishment)** states in Paragraph B that a copy of the writ of garnishment “shall be transmitted to the judgment debtor’s last known address” and that a certificate of service shall be filed “indicating transmission of the writ on the judgment debtor.” The phrase “last known address” connotes the use of the U.S. Mail. However, **the word “transmission” is not defined in this Rule**, and in other parts of the Rules of Civil Procedure the word “transmission” connotes only electronic transmission or facsimile transmission rather than the U.S. Mail. *See, e.g.*, Rule 1-006(E) (referring to service “made by mail, facsimile, [or] electronic transmission”).

If the Committee intends to require that a copy of the writ of garnishment be served on the judgment debtor by mail, **then the amendment to Rule 1-065.2(B) should specify the use of “mail”** to provide clarity to judgment creditors.

The proposed amendment to Rule 1-065.2(B) also requires that the copy of the writ of garnishment be transmitted (as discussed above) to the judgment debtor’s last known address “[a]t the same time as the writ of garnishment is served on the garnishee[.]” I respectfully submit that **this requirement should be**

changed to be a safe-harbor period such as “within three (3) days following the service of the writ of garnishment on the garnishee.” I mention this for the two reasons discussed below.

First, when service is made on a garnishee through authorized methods such as the U.S. Mail, courier service, or in-person delivery, it is often not immediately known (to judgment creditors or their counsel) when the service is completed, and a requirement for mailing a copy to the judgment debtor “at the same time” is not practically feasible. [As just one example, some national banks require that garnishment writs be sent to their centralized garnishment-processing departments, far from New Mexico, and the delivery-date and -hour to such locations is not always predicable.]

Second, in connection with my representation of judgment creditors, I have experienced multiple occasions in which an individual judgment debtor (the target of the garnishment) is the **same person** who is the registered agent and sole officer or member of a closely-held business entity that is the named garnishee. But the requirements for completing service on the garnishee (per Rule 1-004) are more stringent than merely mailing a copy of the writ to the garnishee. Requiring judgment creditors and their counsel to transmit or mail a copy of the writ of garnishment to the judgment debtor “at the same time” that the garnishee is served will sometimes result in the judgment debtor (an individual) taking steps to make it more difficult for the same individual to be served (in Rule 1-004-compliant manner) in his or her capacity as registered agent or company officer. Moreover, if a judgment debtor (wearing his or her “judgment-debtor hat”) receives the required “notice copy” of the writ of garnishment before service of the writ can be completed (pursuant to Rule 1-004) on the same person (wearing his or her “registered agent or company officer/member hat”), then that individual can take immediate steps to transfer assets away from the garnishee entity -- so that by the time the garnishee entity’s registered agent or officer/member is served with the writ of garnishment) the garnishee entity can truthfully state that the entity “does not” then hold any money or property of the judgment debtor.

I therefore respectfully submit that **requiring the judgment creditor to mail, transmit, or hand-deliver the writ-of-garnishment copy to the judgment debtor at or within three days [meaning three business days] after service on the garnishee would properly balance the goals of providing judgment creditors with timely notice of the garnishment writ without frustrating proper efforts to get garnishment writs served on garnishees.**

Also, in situations where “counsel remains of record in the proceeding,” **the proposed Rule amendment should authorize a judgment creditor’s attorney to effectuate service (of a copy of the writ of garnishment) on that counsel through the Court’s electronic filing and service system or via the U.S. Mail.**

For an illustration of the foregoing points (but without intending to suggest that the following is the only way to address these concerns), here is some potential language that could be utilized instead:

Prior to, at the same time as, or within no more than three days following the service of the writ of garnishment on the garnishee, a copy of the writ of garnishment (together with copies of all attachments served on the garnishee) shall be mailed to the judgment debtor’s last known mailing address (if known to the judgment creditor), or, if counsel for the judgment debtor remains of record in the proceeding, then such copies shall be served on the judgment debtor’s counsel via the Court’s electronic filing and service system or via mailing to counsel’s last known address. Judgment creditor shall promptly file a separate certificate of service documenting (a) the timely service of the aforementioned copies on the judgment creditor or the judgment creditor’s counsel, as the case may be, or (b) judgment creditor’s lack of knowledge of the judgment debtor’s last known address.

Concerns about new Form 4-806A (Writ of garnishment)

The first page of proposed new Form 4-806A presents a number of concerns, including (but not limited to) potential inconsistencies between this Form and other garnishment forms.

First, the caption-fields of the form indicate that Form 4-806A is to be used in each of the District Courts, Magistrate Courts, and Metropolitan Court. However, the first ordering paragraph states that the garnishee is

“ordered to appear before the magistrate court located at _____” without referencing the applicable District Court or Metropolitan Court.

The second ordering paragraph (which also appears in the current form of Writ of Garnishment) states that “YOU ARE ORDERED to file a written answer with the _____ court located at _____ within twenty (20) days from the day you receive this writ. Your answer must be under oath and on the attached form (answer by garnishee).”

I respectfully submit that **the inclusion of both ordering paragraphs is potentially confusing to garnishees, because the first paragraph “order[ing the garnishee] to appear before the magistrate court . . . to answer under oath the following questions” suggests that some type of in-person appearance is required** in addition to filing the written Answer by Garnishee. This confusion could be eliminated by deleting the first ordering paragraph (and its three numbered questions) from Form 4-806A.

[The questions shown on page 1 of draft Form 4-806A are also problematic for the additional reasons discussed below regarding the form of Answer by Garnishee.]

Finally, the new Form 4-806 includes a section number 4 that is titled “Other Persons Possessing Property Belonging to Judgment Debtor” and contains the statement that “To my knowledge the following persons are indebted to the defendant or have personal property of the defendant in their possession.”

As an attorney who primarily represents judgment creditors rather than judgment debtors, I would be “happy” (other things equal) to have garnishees provide information about other potential sources of funds or assets that could be garnished. However, if a client of mine was served with a Writ of Garnishment and was required to file an Answer by Garnishee in the form of proposed new Form 4-806A, I would have a number of concerns that are illustrated by the following hypothetical questions:

- If a garnishee suspects (or has limited information suggesting) that another person or entity owes money to the defendant or holds property of the defendant, but the garnishee chooses not to provide that unconfirmed information in the Answer by Garnishee, is the garnishee potentially liable to the judgment creditor?
- If the garnishee instead chooses to provide that unconfirmed information in the Answer by Garnishee, but the information turns out to be incorrect, could the garnishee be held liable to the defendant for slander or some other cause of action? Are there any immunities or other protections afforded to garnishees in such situations?
- Many garnishees are national or regional financial institutions (banks and credit unions), sometimes with centralized garnishment-processing departments. Is the particular person filing the Answer by Garnishee under oath speaking only on his or her behalf regarding “knowledge” of other persons holding money or property of the defendant, or is that person required to canvass the entire organization for any “knowledge” regarding other persons holding money or property of the defendant?
- The State of New Mexico and other governmental bodies can also be subject to garnishment. Is a particular State entity (filing an Answer by Garnishee) required to provide any “knowledge” possessed by any other State entity or State-employed individual?
- Attorneys and law firms can be subject to garnishment, and attorneys (in connection with their own work-product and analysis) sometimes develop confidential knowledge regarding other persons who may hold property or money of a defendant. What is the procedure for an attorney to assert work-product protection in response to Question #4 on the form of Answer by Garnishee?

- Sometimes the persons or entities served with writs of garnishment may be provided (confidentially) with information from their own counsel regarding other persons holding money or property of a judgment debtor. What is the procedure for a garnishee to assert that it cannot answer Question #4 without revealing information learned in the course of a confidential attorney-client communication?
- How would other privileges or immunities (such as the confidential marital communications privilege) be applied in response to Question #4? For example, if one spouse (as judgment debtor) told another spouse (during their marriage) about other persons owing him/her money, but the couple later divorced, is the judgment debtor still able to invoke the privilege to keep his/her former spouse from revealing that information to a judgment creditor in response to a Writ of Garnishment?

I respectfully submit that Question #4 should be deleted from the proposed Form 4-806A. The New Mexico garnishment statute has not been amended since 1977 (except for the year-2023 amendments that updated Section 35-12-7 exemptions and added Section 35-1-2(C) requiring copy-mailing to the defendant), so there does not appear to be any statutory basis for suddenly requiring garnishees (or any persons filing an Answer by Garnishee) to make statements about third parties.

If a judgment creditor or counsel wishes to question any person or entity regarding his/her/its "knowledge" of third parties who may hold money or property of a defendant, such questions should be presented under the auspices of Rule 1-069 post-judgment discovery, its procedural protections for judgment debtors, and its testimonial privileges for witnesses (including, but not limited to, absolute immunity from suit for any statements made in a court proceeding).

Thank you for your consideration of these comments.

Respectfully,

Stephen Waller

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[rules.supremecourt-grp] Comments Proposal 2024-5

1 message

Wolf Bomgardner <wolf@nmpovertylaw.org>

Fri, Apr 12, 2024 at 2:08 PM

Reply-To: wolf@nmpovertylaw.org

To: rules.supremecourt@nmcourts.gov

Good afternoon,

Please find attached comments for proposal 2024-5 regarding the rules and forms for bankruptcy and garnishment.

Best,

Wolf Bomgardner
Economic Equity Attorney
New Mexico Center on Law and Poverty
505-305-0222



NMCLP Comments--Proposal 2024-5.docx.pdf

109K



April 12, 2024

Via email to rules.supremecourt@nmcourts.gov

Elizabeth A. Garcia
Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848, Santa Fe, NM 87504-0848

RE: Adoption of Proposal 2024-5, Proposed Revisions to the Rules of Civil Procedure for the District Courts, the Rules of Civil Procedure for the Magistrate Courts, the Rules of Civil Procedure for the Metropolitan Courts, and the Civil Forms

Dear Chief Clerk Garcia:

Please accept the following comments on the New Mexico Supreme Court's proposed revisions to the Rules of Civil Procedure for the District Courts, the Rules of Civil Procedure for the Magistrate Courts, the Rules of Civil Procedure for the Metropolitan Courts, and the Civil Forms (Proposal 2024-5).

The New Mexico Center on Law and Poverty is a non-profit advocacy organization and law firm dedicated to working with low-income New Mexicans to advance social and economic justice. In 2023, SB 216 modernized and expanded the protections afforded to New Mexicans in bankruptcy and garnishment proceedings. The bill was the culmination of years of advocacy by the Center, the bankruptcy bar, civil legal service providers, and consumer and finance experts. We commend the Supreme Court of New Mexico for proposing permanent forms for the law that are simple and comprehensive for pro se consumers and attorneys alike.

The forms largely compliment the language of the bill. However, we are concerned that some forms contain language that deviates from the law. Our concerns are with two of the proposed forms: 1) 4-803A Claim of Exemptions on Execution, and 2) 4-806A Writ of Garnishment. Please see a detailed discussion of these forms below. Finally, we are concerned that not all rules and forms have "use notes" indicating that they are the exclusive rules forms to be used for cases filed after July 1, 2023.

4-803A. Claim of Exemptions in Execution

New Mexico law previously allowed a bankruptcy exemption for one vehicle worth \$4,000. Following the passage of SB 216, New Mexico law allows for exemption of multiple vehicles with a total worth no greater than \$10,000. The instructive statutory provision is 42-10-1(A)(2), which allows exemption of “a person's aggregate interest in motor vehicles, not exceeding ten thousand dollars.”

This protection is not accurately reflected in 4-803A. The problematic language is found in Part III regarding “personal property exemptions.” The current proposed language allows for exemption of only “one motor vehicle worth up to ten thousand dollars (\$10,000) or that amount of equity in a more valuable vehicle.” The proposed form should be amended to reflect the permissible exemption of multiple vehicles whose aggregate value is ten thousand dollars. We suggest the language: “motor vehicles worth up to ten thousand dollars (\$10,000) in the aggregate, or that amount of equity in a more valuable vehicle.” Additionally, space should be added to list more than one vehicle.

This amendment would also make this form consistent with other proposed form 4-808C. That proposed form lists an exemption for “aggregate interest in motor vehicles, not exceeding ten thousand dollars.”

4-806A. Writ of Garnishment

Previously, New Mexico law did not require any service or notice upon a judgment debtor when a writ of garnishment was filed. That changed after the passage of SB 216. The relevant statutory provision is 35-12-2(C) which states, “[a]t the same time as the garnishment is served on the garnishee, a copy of the garnishment shall be sent to the defendant's last known address.”

This provision of the law is recognized in multiple places throughout the proposed rules and forms. Proposed rules 1-065.2(B), 2-802(B), and 3-802(B) all accurately reflect this change in the law. All of those proposed rules also state that a separate certificate of service shall be filed by the judgment creditor indicating transmission of the writ on the judgment debtor. We commend these rules for making a clear process that courts and parties can rely on to indicate compliance with 35-12-2(C).

However, there is nowhere in the proposed forms to indicate compliance with 35-12-2(C), or rules 1-065.2(B), 2-802(B), and 3-802(B). We suggest that the form for writ of garnishment in 4-806A be amended to add space to allow compliance with the other proposed rules. This form already contains a “Return for Completion by Sheriff” and a “Return for Completion by Other Person Making Service.” Another return should be added here to comply with the above mentioned statute and rules. We suggest calling it: “Return for Completion by Judgment Creditor.” The form should state: “I certify that I delivered a copy of this to the judgment debtors last known address, _____ on _____ day of _____, _____, by delivering a copy of the writ, a copy of the application for writ, a copy of a form for answer by garnishee, a copy of a notice of right to claim exemptions for each judgment debtor, and a copy of the claim of exemption form for each judgment debtor to _____, judgment debtor or their attorney of record,” and should contain a line for a signature by the judgment creditor.

Use Notes

Finally, it should be noted that several proposed rules and forms have “use notes” which do not state an effective date. Specifically, the effective date is missing from the use notes in rules and forms 1065.1, 1065.2, 2-801, 2-802, 3-801, 3-802, 4-803(A), 4-805(A), and 4-807(A). However, SB 216 states “the provisions of this act apply to actions filed on or after July 1, 2023.” Several of the rules and forms already have use notes which state they are “effective for all cases filed on or after July 1, 2023.” All rules and forms should have use notes indicating they are the exclusive rules and forms to be used on any cases filed on or after July 1, 2023.

Conclusion

We want to again express our deepest gratitude for your work on promulgating rules and forms to implement this law. Our hope is that these recommendations and our explanations will serve to help you while you finalize the permanent rules and forms . We look forward to working with you to ensure the changes to New Mexico law help reduce the burden of debt for the people of New Mexico.

Sincerely,

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[rules.supremecourt-grp] Comment on Proposal 2024-005 - Amendments to execution and garnishment forms

David Grammer <david@grammerlawoffices.com>

Fri, Apr 12, 2024 at 4:46 PM

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To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

This is to comment on the proposed revisions to execution and garnishment forms, specifically, Forms 4-808B, Notice of Right to Claim Exemptions (Garnishment) and 4-808C, Notice of Right to Claim Exemptions from Execution.

Each of these forms states at Paragraph 3, "PARTIAL LIST OF EXEMPTIONS" and immediately above that: "Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt."

Laws 2023, ch. 104, the 2023 Act that amended the exemption statutes, amended Sec. 42-10-13 NMSA to add a new subsection B which states: "B. A notice of the right to claim exemption to garnishment, execution, levy, attachment or foreclosure or a form to file or claim that exemption shall be provided by the creditor to the person whose property is subject to garnishment, execution, levy, attachment or foreclosure, and **that notice shall contain a complete list of exemptions provided by the law.**"

To the extent the Court is okay with the Legislature telling it what to put in these procedural forms, it would be appropriate to delete the word 'Partial' and to reword the quoted prefatory phrase to state "Here is a list of money and property which may be claimed exempt." It would therefore be advisable to make a comprehensive review of all applicable exemptions, whether within Chapter 42, Art.10 NMSA or elsewhere, to assure completeness of the list.

Thanks,

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