

CHAPTER 267

GARNISHMENT

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267.01 Garnishment; definitions, procedure, exceptions. (1) Any creditor may proceed against any person who is indebted to or has any property in his possession or under his control belonging to such creditor's debtor, as prescribed in this chapter. "Plaintiff" as used in this chapter includes a judgment creditor and "defendant", a judgment debtor.

(2) Except as otherwise provided in this chapter, the procedure in garnishment actions shall be the same as in ordinary civil actions.

(2a) A garnishment action is a separate action.

(3) An individual may commence a garnishment action in his own person and in his own behalf, or by an attorney licensed to practice in the courts of this state, but not otherwise. Garnishment actions on behalf of any other party shall be commenced only by attorneys licensed to practice in the courts of this state.

(4) No garnishment action shall be brought to recover the price or value of spirituous, malt, ardent or intoxicating liquors sold at retail.

(5) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments received pursuant to a pension or retirement program.

(6) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(7) "Federal minimum hourly wage" means that wage prescribed by sec. 6 (a) (1) of the fair labor standards act of 1938, as amended.

Cross Reference: See 253.11 (3) which limits circuit

court jurisdiction of garnishment actions to cases where the amount involved is \$500 or more.

267.02 Garnishment before and after judgment; wages or salary. (1) A plaintiff may commence a garnishment action at any time after:

(a) A summons is issued: 1. In an action for damages founded upon contract, express or implied (or in a contract action where a writ of attachment could issue on demands not yet due under s. 266.03 (3)). 2. In an action upon a judgment. 3. In a tort action where a writ of attachment could issue under s. 266.03 (2).

(b) An execution upon an in personam judgment is issuable.

(2) (a) Plaintiff may not commence any garnishment action affecting the earnings of the principal defendant prior to judgment in the principal action.

(b) If the plaintiff in the principal action is unable to obtain personal service on a defendant and has filed the summons and return of service from the sheriff with the clerk of court, the judge of the court in which the principal action is pending may grant an order permitting the plaintiff to make substituted service on the defendant's employer if the plaintiff shows:

1. The defendant's present place of employment; and

2. That a cause of action exists; and

3. That a reasonable effort has been made to obtain personal service on the defendant.

(c) Before taking judgment in an action commenced under par. (b), the plaintiff shall present an affidavit from the defendant's employer stating that the defendant received the summons of that action.

(2m) Any garnishment action shall be subject to the limitations of s. 270.69 (4).

(3) Except under sub. (2) (a), the plaintiff may in like manner, subsequently proceed against other garnishees and, if he has reason to believe they have subsequently become liable, against the same garnishee more than once.

267.04 Garnishment actions; how commenced; summons. (1) Upon payment to the clerk of court of a clerk's fee of \$2 and a suit tax of \$2.50 in actions under s. 299.01 (4) (b) and a suit tax of \$5 in other garnishment actions, the clerk shall issue a garnishee summons together with sufficient copies to the plaintiff or his attorney; the summons form may be in blank, but must carry the court seal.

(2) The garnishee summons shall be substantially in the following form:

STATE OF WISCONSIN

... COURT

... COUNTY

A. B., Plaintiff

vs

C. D., Defendant

and

E. F., Garnishee

The State of Wisconsin, to said garnishee:

You are hereby summoned, as garnishee of the defendant, C. D., and required, within 20 days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer, whether you are indebted to or have in your possession or under your control any property belonging to the defendant.

IF YOU ARE INDEBTED TO THE DEFENDANT, YOU ARE ORDERED TO PAY THE PRESCRIBED SUBSISTENCE ALLOWANCE TO THE DEFENDANT IF EARNINGS ARE THE SUBJECT MATTER OF THIS GARNISHMENT ACTION. YOU ARE ORDERED TO RETAIN FROM THE BALANCE THE AMOUNT OF PLAINTIFF'S CLAIM AND DISBURSEMENTS, NOT TO EXCEED \$15 FOR A SMALL CLAIMS ACTION OR \$30 FOR ALL OTHER ACTIONS, AS STATED IN THE ANNEXED COMPLAINT PENDING THE FURTHER ORDER OF THE COURT. ANY EXCESS INDEBTEDNESS SHALL NOT BE SUBJECT TO THE GARNISHMENT. IF YOU HAVE PROPERTY OR EARNINGS BELONGING TO THE DEFENDANT AND THE AMOUNT OF INDEBTEDNESS RETAINED IS LESS THAN THE AMOUNT CLAIMED AND DIS-

BURSEMENTS, NOT TO EXCEED \$15 FOR A SMALL CLAIMS ACTION OR \$30 FOR ALL OTHER ACTIONS, YOU ARE TO RETAIN THE PROPERTY OR EARNINGS PENDING THE FURTHER ORDER OF THE COURT, EXCEPT AS PROVIDED IN S. 267.18 (3).

You are further required to serve a copy of your answer to the garnishee complaint on the undersigned attorney and to file your original answer with the clerk of this court, within the 20-day period. In case of your failure to answer, judgment will be entered against you for the amount of plaintiff's judgment against said defendant and costs, of which the said defendant will also take notice.

If earnings are the subject matter of this garnishment action, you are required under s. 267.18 (2) to pay over to the principal defendant, on the date when the earnings subject to the garnishment action are normally payable, a subsistence allowance, out of the earnings then owing, in the sum of either 75% of the defendant's disposable earnings or 30 times the federal minimum hourly wage in effect at the time the earnings are payable, whichever is greater.

Dated this ... day of ..., 19...

Clerk of ... Court
(Seal)

Attorney for plaintiff:

P. O. Address

(3) A garnishment action shall be commenced by the service of a garnishee summons and annexed verified complaint.

267.05 Garnishee complaint before and after judgment; several garnishees. (1) The garnishee complaint in a garnishment action before judgment must allege the existence of one of the grounds for garnishment mentioned in s. 267.02 (1) (a). The amount of the plaintiff's claim against the defendant and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions, above all offsets, known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control, other than earnings, belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(2) The garnishee complaint in a garnishment action after judgment must allege the existence of the grounds for garnishment men-

tioned in s. 267.02 (1) (b), and the name and location of the court, case number, if any, date of entry and amount of the judgment on which the garnishment action is based, the amount of the plaintiff's claim against the defendant and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions, above all offsets known to the plaintiff, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(3) Any number of garnishees may be joined in the same garnishment action; but if a joint liability is claimed it shall be so stated in the complaint, otherwise the several garnishees shall be deemed severally proceeded against.

(4) If a garnishee defendant is named by a partnership name, service of the garnishee summons and complaint may be made upon any partner. A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

267.06 Garnishee fees, costs. A garnishee shall be entitled to \$3 as garnishee fee, and shall not be required to answer unless such fee is first paid. When a corporation is garnished such fee shall be paid to the person upon whom the garnishee summons and complaint is served. Such fee shall be taxed as costs in the action the same as witness fees are taxed.

267.07 Service on garnishee and defendant. (1) Except as provided in s. 267.05 (4), the garnishee summons and complaint shall be served on the garnishee as required for the exercise of personal jurisdiction under ch. 262, and notice of such service in substantial conformity with sub. (4), or a copy of the garnishee summons and complaint, together with the summons in the principal action, shall be served on the principal defendant as required for the exercise of personal jurisdiction under ch. 262, not later than 10 days after service on the garnishee as provided in s. 262.06.

(4) Form of notice.

State of Wisconsin

..... Court

..... County

TO:

.....

.....

You are notified that an action has been commenced against you by on a claim of \$..... and that your (property) (wages) in the hands of (has) (have) been garnished to satisfy that claim.

Unless you demand a complaint as provided in the attached summons, or answer the garnishment complaint, a copy of which can be obtained from the undersigned, judgment will be taken against you and your (property) (wages) applied to pay the debt as provided by law.

Dated this day of 19

Plaintiff by:

Plaintiff's attorney

Address

(5) Unless the notice, or a copy of the garnishee summons and complaint, is served, as provided in this section, the garnishee action shall be dismissed.

267.08 Judgment; bond. (1) No judgment in the principal action shall be entered against the defendant for an amount in excess of the liability of the garnishee to the principal defendant, unless the defendant makes a general appearance or is personally served and defaults. An in rem judgment shall not bar another action for any unpaid balance of the claim.

(2) No money shall be paid by the garnishee to the plaintiff to satisfy an in rem judgment within one year from entry of such judgment unless the plaintiff executes a bond or undertaking to the garnishee, to be filed in the garnishee action, for double the amount paid, or for double the value of the property delivered conditioned that if the principal defendant within one year from entry of judgment secures relief under s. 269.46, and, in due course prevails on the merits, the plaintiff will pay the amount or any part thereof found due to the principal defendant or to the garnishee defendant, as the court orders.

267.10 Filing of garnishment actions. (1) Before delivery of the garnishee summons and complaint to be served, a copy of each shall be filed with or mailed to the clerk of the court.

(2) Within 10 days following service of the garnishee summons and complaint on the garnishee and notice thereof to the principal defendant, whichever is later, the plaintiff shall file the original garnishee summons and complaint with the clerk of court.

(3) Upon failure to comply with this section the garnishment action shall be dismissed.

267.11 Garnishee answer. The garnishee shall, within 20 days from the service of a garnishee summons and complaint, exclusive of the day of service, serve upon the attorney for the plaintiff, and file with the clerk of court, a verified answer in which he shall state:

(1) Whether he was, at the time of the service of the garnishee summons indebted or under any liability to the defendant, naming him, in any manner or upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and the facts necessary to a complete understanding of such indebtedness or liability. When the garnishee is in doubt respecting any such liability or indebtedness he may set forth the facts concerning the same.

(2) Whether he held at the time aforesaid the title or possession of or any interest in land or of any personal property or any instruments or papers relating to any such belonging to the defendant or in which he is interested. If he admits any such or is in doubt respecting the same he shall set forth a description of such property and the facts concerning the same, and the title, interest or claim of the defendant in or to the same.

(3) If he claims any setoff or defense to any debt or liability or any lien or claim to such property he shall allege the facts.

(4) He may state any claim of exemption from execution on the part of the defendant or other objection, known to him, against the right of the plaintiff to apply upon his demand the debt or property disclosed.

(5) If he discloses any debt or the possession of any property to which the defendant and other persons make claim he may allege the names and residences of such other claimants and, so far as known, the nature of their claims.

(6) In addition to the requirements of sub. (1), If the garnishee is indebted to or under any liability to the defendant for earnings, the garnishee answer shall state the amount of the subsistence allowance paid over or to be paid over to the principal defendant and the balance held by the garnishee.

(7) Service upon the attorney for the plaintiff may be effected by mailing a copy of the garnishee answer to the attorney for the plaintiff at his post-office address as shown on the summons.

267.13 Payments by garnishee; releases.

(1) If the answer shows a debt due to the defendant, the garnishee may pay the same or suf-

ficient thereof to cover the plaintiff's claim, as stated in the garnishee complaint and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions, to the clerk of the court. If prior to so doing, the plaintiff in writing requests the garnishee to pay such sum to such clerk, the garnishee shall, within 5 days after receipt of such request, pay the sum to the clerk. The clerk shall give his receipt therefor to the garnishee. The payment shall discharge the garnishee of all liability for the amount paid.

(2) If the debt disclosed is not due, this section shall apply when it becomes due, with like effect.

(3) If the garnishee fails to pay such sum within 5 days after receipt of such request, the plaintiff shall be entitled to judgment against the garnishee for the amount disclosed, when due, either before or after judgment in the original action and may collect the same by execution; but in case no judgment has been rendered in the principal action the execution against the garnishee shall require the sheriff to pay the money collected into court to abide the event of the principal action. Moneys paid into court shall be paid to the plaintiff when final judgment is rendered in his favor, and to the extent of satisfying the same, upon order of the court, and any balance to the party entitled thereto.

(4) If no such request is made and the garnishee does not elect to pay such sum to the clerk, the garnishee shall hold the same until order of the court. Any stipulation between the plaintiff and defendant shall be filed with the court.

(5) If judgment is against the plaintiff such moneys shall be paid to the defendant.

267.14 Answer conclusive if no reply by plaintiff; procedure following reply. (1) The answer of the garnishee shall be taken as true unless the plaintiff, within 20 days after the receipt of the answer of the garnishee, serves a reply upon the garnishee.

(2) Upon service of the reply, issue shall be joined between the plaintiff and garnishee, and the parties shall thereupon proceed as in ordinary civil actions.

(3) Trial of a garnishment issue shall be to the court.

267.15 Defendant or garnishee may defend both actions. (1) The defendant may, within 20 days from the service of the garnishee summons and complaint on him, answer the garnishee complaint and defend the garnishment action upon any ground upon which a

garnishee might defend, and may participate in the trial of any issue between the plaintiff and garnishee. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not defend.

(2) When any garnishee defends the principal action, he shall thereby become a party defendant in said action and shall be so entered of record by the clerk, but shall be liable only for the costs in said action.

267.16 Principal action tried first; judgment. (1) No trial shall be had of the garnishment action until the plaintiff has judgment in the principal action and if the defendant has judgment the garnishment action shall be dismissed with costs.

(2) The court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff or any officer appointed by the judgment of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee shall discharge him from all demands by the defendant for all property paid, delivered or accounted for by the garnishee, by force of such judgment.

Cross Reference: For sale of perishable property, see 266.14

267.17 Impleader. When the answer of the garnishee discloses that any 3rd person claims the debt or property in his hands and the name and residence of such claimant the court may order that such claimant be impleaded as a defendant in the garnishment action and that notice thereof, setting forth the facts, with a copy of such order and answer be served upon him, and that after such service is made the garnishee may pay or deliver to the officer or the clerk such debt or property and have a receipt therefor, which shall be a complete discharge from all liability for the amount so paid or property so delivered. Such notice shall be served as required for service of a summons. Upon such service being made such claimant shall be deemed a defendant in the garnishee action, and within 20 days shall answer setting forth his claim or any defense which the garnishee might have made.

267.18 Liability of garnishee; subsistence allowance. (1) (a) From the time of the service of the summons and complaint upon the

garnishee he shall stand liable to the plaintiff for the property and earnings then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution or the amount of the subsistence allowance due the defendant under sub. (2) if earnings are the subject matter of the garnishment action, but not in excess of the amount of the plaintiff's claims as disclosed by his garnishee complaint and disbursements, not to exceed \$15 for a small claims action or \$30 for all other actions.

(b) When earnings are the subject of the garnishment action, the amount owed the principal defendant on the payday for the pay period in which the garnishment summons was served on the garnishee is subject to the garnishment.

(2) (a) When earnings are the subject of a garnishment action, the garnishee shall pay over to the principal defendant on the date when the earnings would normally be payable the greater of the following:

1. A subsistence allowance of 75% of the defendant's disposable earnings, then due and owing; or

2. An amount equal to 30 times the federal minimum hourly wage for each full week of the pay period; or

3. In the case of earnings for a period other than a week, the defendant shall receive a subsistence allowance computed so that it is equivalent to that in subd. 2 using a multiple of the federal minimum hourly wage prescribed by rule of the industry, labor and human relations commission.

(b) The restrictions of par. (a) do not apply in the case of:

1. An order of any court for the support of any person.

2. An order of any court of bankruptcy under chapter XIII of the bankruptcy act.

3. Any debt due for any state or federal tax.

4. An order of a court under s. 128.21.

(c) No court in this state may make, execute or enforce any order or process in violation of this section.

(3) If the garnishee holds subject to the garnishment or pays pursuant to s. 267.13, moneys owed the principal defendant equal to the amount of the plaintiff's claim as set forth in the garnishee complaint and disbursements, then any excess moneys owed the defendant, and any garnished property in the garnishee's possession or control, shall no longer be subject to the garnishment. If the moneys owed by

the garnishee to the defendant and so held are less than the amount claimed and disbursements, all property subject to the garnishment shall be held pending the further order of the court, subject to any rights of disposition that the garnishee may have, and all proceeds therefrom to which defendant would be entitled shall likewise be retained. The defendant may, on notice, petition the court for an order to release, from the garnishment, all property or its proceeds not reasonably required to assure payment of the plaintiff's claim and disbursements.

Cross Reference: See 16.53 (1) (d) 2 for provision as to authority of the secretary of administration in garnishment matters.

267.19 Nonliability as garnishee; judgment when rendered. No person shall be liable as garnishee:

(1) By reason of his having drawn, accepted, made, indorsed or guaranteed any negotiable instrument; or

(2) By reason of any thing received or collected by him by execution or other process; or

(3) By reason of any money in his hands as a public officer; or

(4) By reason of any thing owing by him upon a contingency.

(5) Property in a safe deposit box in any bank or safe deposit company is not property in the possession or control of such bank or safe deposit company within the meaning of this chapter.

(6) A debt owing by the owner of property subject to a mechanic's lien, pursuant to s. 289.01, shall not be deemed absolutely due until the claims of subcontractors and employes under s. 289.01 have matured or expired.

(7) Except as provided in this section, judgment may be given for any thing owing, although it has not become due in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

Cross Reference: See 895.36, providing that no person shall be liable as garnishee of a public corporation.

267.20 Action by defendant against garnishee stayed. Except upon the order of a judge no action shall be commenced by the defendant or his assignee against a garnishee upon any garnished claim or demand or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee, until the termination of the garnishment action; and if an action has been commenced or an execution issued it shall be stayed by the court or a judge thereof as to the garnishee upon his application.

267.21 Release of garnishment; bond. (1) The defendant may file with the clerk of the court a bond, executed by at least 2 sureties, resident freeholders of the state, to the effect that they will on demand pay to the plaintiff the amount of the judgment that may be recovered against such defendant not exceeding a sum specified, which shall be 1 1/2 times the amount of the debt specified in the garnishee complaint or in such less sum as the court directs. If the plaintiff fails to take issue with the garnishee answer the bond shall be conditioned to pay to the plaintiff the amount of the debt admitted or of the value of the property held by the garnishee.

(2) The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this state, above all his liabilities and exclusive of property exempt from execution, the aggregate of which sums shall be double the amount specified in the bond. The defendant shall serve on the plaintiff a copy of such bond with a notice of where the same was filed. Within 3 days after the receipt thereof the plaintiff may notify the defendant that he excepts to the sufficiency of the sureties, otherwise he waives all objections to them. When the plaintiff excepts, the sureties shall justify in like manner as bail on arrest, and ss. 264.17, 264.18 and 264.19 shall be applicable thereto. Thereafter the garnishee shall be discharged and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers.

267.22 Costs. In case of a trial of an issue between the plaintiff and any garnishee, the prevailing party shall recover taxable costs.

267.23 Garnishment of earnings of public officers and employes. (1) (a) Only a judgment creditor may maintain a garnishment action against the state or any political subdivision thereof, under this section, to reach the disposable earnings of the judgment debtor.

(b) This section does not apply or extend to money due to an officer or employe to reimburse him for expenditures made by him in the discharge of his duties.

(c) Actions under this section are subject to rules adopted under s. 16.53 (1) (d) 2.

(2) (a) The garnishee summons and complaint shall be served upon the garnishee by delivering a copy thereof to the department of

administration if the state is garnishee; otherwise to its secretary or clerk. Service on the judgment debtor shall be made as provided by s. 267.07 for service upon a defendant.

(b) Section 267.06 does not apply to proceedings under this section but otherwise the practice shall be that prescribed by this chapter.

(3) The complaint must contain an allegation that the plaintiff believes that the garnishee is indebted to the defendant for earnings and that the debt is not exempt under s. 272.18.

(4) Within 20 days after service upon him, the department or the secretary or clerk of the garnishee shall answer the complaint by delivering or mailing to the court his certificate of the amount owed by the garnishee to the judgment debtor for earnings at the time of service; and his answer as to the amount owing is conclusive in the garnishment action.

(5) (a) The judgment debtor shall receive the subsistence allowance specified in s. 267.18 (2) on the date his check or voucher is normally paid. The balance of the earnings due shall be delivered to the court until the amount demanded in the garnishee complaint, together with disbursements, has been paid into court, unless sooner terminated by order of the court.

(b) The clerk shall hold the earnings paid

into the court and disburse them as the court orders.

(c) The earnings remaining in the custody of the court after the judgment is satisfied, shall be paid to the judgment debtor.

(d) Other judgment creditors of the judgment debtor may intervene in the garnishment action.

(6) A judgment under this section shall have precedence over an assignment by the debtor filed with the garnishee subsequent to the service of the garnishee summons.

History: 1971 c. 261.

267.235 Restriction on discharge from employment by reason of garnishment. No employer may discharge any employe by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness or because of compliance with any provision of this chapter. Whoever wilfully violates this section may be fined not more than \$1,000 or imprisoned not more than one year or both.

267.24 Penalties. (1) Any creditor who violates s. 267.01 (3), 267.02 (2) or 267.10 shall forfeit not more than \$100 which forfeiture shall be paid to the county treasurer.

(2) The court before which the garnishment action is pending shall have summary jurisdiction under this section.