

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Amendment

of the

District Court Rules of Civil Procedure

EM. RIHANO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2004 AUG 27 PM 2:45

FILED

ORDER AMENDING RULE 70
OF THE DISTRICT COURT RULES OF CIVIL PROCEDURE
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rule 70 of the District Court Rules of Civil Procedure is amended as follows, effective January 1, 2005 (deleted material is bracketed and stricken, and new material is underlined):

RULE 70. GARNISHMENT.

(a) Nonconclusory Affidavit and Service of ~~[AFDC]~~ TANF Notice on Individuals.

(1) Any motion for issuance of garnishee summons for funds of an individual held by a financial institution must be accompanied by a separate affidavit or declaration of the movant/judgment creditor or movant/judgment creditor's attorney setting forth those facts which lead the affiant or declarant to conclude that the assets to be garnished are not traceable to Temporary Aid to Needy Families - Federal and State (TANF), formerly known as Aid to Families with Dependent Children (AFDC) grants, or to funds that are non-garnishable under the law. The sufficiency of each nonconclusory affidavit or declaration in support of the motion for issuance of garnishee summons for funds shall be reviewed by the presiding judge prior to issuance of the garnishee summons.

(2) After issuance of the garnishee summons and before issuance of the garnishment order, ~~[an AFDC]~~ a TANF Notice must be served upon the individual/judgment

debtor. Service shall be by personal service or by certified or express mail. If service of the notice cannot be effected by ~~[either]~~ any of the aforesaid methods, service may be effected by publication pursuant to Section 634-36 of the Hawai'i Revised Statutes, as the same may be renumbered. The judgment creditor shall file a declaration with the court regarding the service attempts and the result. If service was obtained, a [A] copy of the [AFDC] TANF Notice together with proof of service thereof shall be filed with the court immediately after such notice has been served upon the individual/judgment debtor. A garnishee order may ~~[shall not]~~ issue after [untill] proof of service has been made, or after the judgment creditor has filed a return of service, or an affidavit or declaration with the court describing the service and the result.

(b) Where Judgment/Prejudgment Debtor Not an Individual. Where the judgment debtor or prejudgment debtor is other than an individual such as a corporation, partnership or trustee, or where an individual's funds other than those held by a financial institution are being garnished, subsection (a) of this rule is not applicable.

(c) Time of Motion. In all post-judgment garnishment proceedings, unless ordered by the court, any motion for issuance of garnishee summons shall not be filed until ten days have elapsed since entry of judgment.

(d) Garnishment of Wages. Whenever a judgment creditor seeks to garnish a judgment debtor's wages pursuant to Chapter 652 or Chapter 653 of the Hawai'i Revised Statutes:

(1) The judgment creditor must serve upon the judgment debtor's employer, in accordance with the procedures set forth in Chapter 652 or 653 of the Hawai'i Revised Statutes, two copies of either (i) the motion for issuance of garnishee summons or (ii) certified copy of the judgment and the affidavit or declaration as to the amount due and unpaid on account of the judgment, whichever is applicable, which includes a separate Garnishee Information form, in

substantially the same form as set forth in Form 27 in the Appendix of Forms herein.

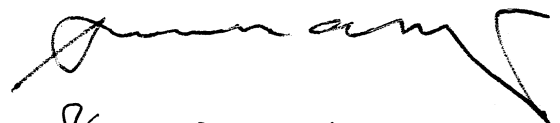
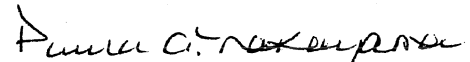
(2) The creditor must attach a separate Notice to the Employer, in substantially the same form as set forth in Form 27A in the Appendix of Forms herein, as the first page of each copy of the documents set forth in paragraph (d)(1) of this rule.

(e) Motion for Return/Release of Garnished Wages. If a judgment debtor files a motion for return and/or release of garnished wages pursuant to Chapter 652 or 653 of the Hawai'i Revised Statutes, notice of the motion must be provided to both the judgment creditor and the judgment debtor's employer. The judgment debtor may use Form 27B in the Appendix of Forms herein, Defendant's Motion for Return/Release of Wages Exempt From Garnishment.

DATED: Honolulu, Hawai'i, August 27, 2004.



Steven A. Levinson



Pamela E. Dulby, Jr.

