

Order

Michigan Supreme Court
Lansing, Michigan

September 23, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2015-07

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

Amendments of Rule 3.101
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of MCR 3.101 are adopted, effective October 1, 2015.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 3.101 Garnishment After Judgment

- (A) [Unchanged.]
- (B) Postjudgment Garnishments.
- (1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.
- (a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:
- (i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ;
or
 - (ii) ~~the expiration of 182 days after the date the writ was issued;~~
 - ~~(iii)~~ the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds

the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

- (b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment. ~~The plaintiff may seek a second writ after the first writ expires under subrule (B)(1)(a).~~

(c) [Unchanged.]

(2) [Unchanged.]

(C)-(D)[Unchanged.]

(E) Writ of Garnishment.

(1)-(4)[Unchanged.]

- (5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant or as otherwise provided under MCL 600.4012,

- (a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and
- (b) periodic payments due to the defendant may be withheld until the expiration of the writ judgment is satisfied and in the discretion of the court paid directly to the plaintiff.

(6) [Unchanged.]

(F)-(M)[Unchanged.]

(N) Orders for Installment Payments

(1) [Unchanged.]

- (2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and retains its priority

and remains in force until it would have expired as if the installment payment order had never been entered.

(O)-(R)[Unchanged.]

(S) Failure to Disclose or to Do Other Acts; Default; Contempt.

(1) For garnishments filed under MCR 3.101(B)(2) (nonperiodic):

~~(1)~~(a) If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided in subrule (G)(2).

~~(2)~~(b) If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.

(2) For garnishments filed under MCR 3.101(B)(1) (periodic):

MCL 600.4012(6)-(10) governs default, default judgments, and motions to set aside default judgments for periodic garnishments.

~~(3) In addition to other actions permitted by law or these rules, t~~The court may impose costs on a garnishee whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than \$100.

(4) This rule shall not apply to nonperiodic garnishments filed for an income tax refund or credit.

(T) [Unchanged.]

Staff Comment: The amendments of MCR 3.101 eliminate subrule (B)(1)(a)(ii) and make other coordinating changes to reflect statutory revisions in 2015 PA 14 and 15.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 23, 2015

Clerk