

Rule 3111. Service of the Writ on Garnishee. Effect

(a) ***

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service.

NOTE: For limitations on the power to attach tangible personal property see Rule 3108(a).

See Rule 3111.1 providing that service of the writ does not attach the defendant's funds on deposit in a bank or other financial institution in an account in which funds are deposited electronically on a recurring basis and are identified as funds which upon deposit are exempt from attachment.

(c) ***

(d) ***

Rule 3111.1. Exemptions from Levy and Attachment (NEW)

In the absence of a court order, service of the writ upon a bank or other financial institution as garnishee shall not attach any of the defendant's funds on deposit with the bank or other financial institution in an account in which

(1) funds are deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law, or

NOTE: See Rule 3146(b)(2) governing judgment against a bank or other financial institution as garnishee upon admission in answer to interrogatory.

(2) the funds on deposit, not including any otherwise exempt funds, do not exceed the amount of the general monetary exemption under 42 Pa.C.S. § 8123. The plaintiff shall have the right to file an objection if the plaintiff believes that the defendant has exhausted the statutory exemption.

Rule 3146. Judgment against Garnishee upon Default or Admission in Answer to Interrogatories

(b)(1) [The] Subject to paragraph (2) of this subdivision, the prothonotary, on praecipe of the plaintiff, shall enter judgment against the garnishee for the property of the defendant admitted in the answer to interrogatories to be in the garnishee's possession, subject to any right therein claimed by the garnishee, but no money judgment entered against the garnishee shall exceed the amount of the judgment of the plaintiff against the defendant together with interest and costs. The entry of judgment shall not bar the right of the plaintiff to proceed against the garnishee as to any further property or to contest any right in the property claimed by the garnishee.

(2) If the garnishee is a bank or other financial institution, the prothonotary, in the absence of an order of court, shall not enter judgment pursuant to paragraph (1) of this subdivision as to funds of any account of the defendant that is identified in the garnishee's answer to interrogatory no. 7 or 8.

Rule 3252. Writ of Execution--Money Judgments

(a) The writ of execution shall include a notice to the defendant, a summary of major exemptions, and a claim for exemption, and shall be substantially in the following form:

(Caption)

WRIT OF EXECUTION

NOTICE

This paper is a Writ of Execution. It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

The law provides that certain property cannot be taken. Such property is said to be exempt. There is a debtor's exemption of \$ 300. There are other exemptions which may be applicable to you. Attached is a summary of some of the major exemptions. You may have other exemptions or other rights.

If you have an exemption, you should do the following promptly: (1) Fill out the attached claim form and demand for a prompt hearing. (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to court ready to explain your exemption. If you do not come to court and prove your exemption, you may lose some of your property.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

WRIT OF EXECUTION

Commonwealth of Pennsylvania

County of _____

To the Sheriff of _____ County:

To satisfy the judgment, interest and costs against _____,
(Name of Defendant)
defendant[.],

(1) you are directed to levy upon the property of the defendant and to sell **[his]** the defendant's interest therein;

(2) you are also directed to attach the property of the defendant not levied upon in the possession of _____,
(Name of Garnishee)

as garnishee, _____
(Specifically describe property)

and to notify the garnishee that

(a) an attachment has been issued;

(b) except as provided in paragraph (c), the garnishee is enjoined from paying any debt to or for the account of the defendant and from delivering any property of the defendant or otherwise disposing thereof;

(c) the attachment shall not include any funds in an account of the defendant with a bank or other financial institution

(i) in which funds are deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law, or

(ii) that total \$300 or less. If multiple accounts are attached, a total of \$300 in all accounts shall not be subject to levy and attachment as determined by the executing officer. The funds shall be set aside pursuant to the defendant's general exemption provided in 42 Pa.C.S. § 8123.

(3) if property of the defendant not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify [him] such other person that he or she has been added as a garnishee and is enjoined as above stated.

Amount due \$ _____

Interest from _____ \$ _____

(Costs to be added) \$ _____

(Name of Prothonotary (Clerk))

Seal of the Court

By _____
(Deputy)

**MAJOR EXEMPTIONS UNDER PENNSYLVANIA
AND FEDERAL LAW**

1. \$300 statutory exemption
2. Bibles, school books, sewing machines, uniforms and equipment
3. Most wages and unemployment compensation
4. Social Security benefits
5. Certain retirement funds and accounts
6. Certain veteran and armed forces benefits
7. Certain insurance proceeds
8. Such other exemptions as may be provided by law

(Caption)

CLAIM FOR EXEMPTION

To the Sheriff:

I, the above-named defendant, claim exemption of property from levy or attachment:

(1) From my personal property in my possession which has been levied upon,

(a) I desire that my \$300 statutory exemption be

(i) set aside in kind (specify property to be set aside in kind):_____.

(ii) paid in cash following the sale of the property levied upon; or

(b) I claim the following exemption (specify property and basis of exemption): _____.

(2) From my property which is in the possession of a third party, I claim the following exemptions:

(a) my \$ 300 statutory exemption: in cash; in kind (specify property): _____;

(b) [Social Security benefits on deposit in the amount of \$_____;

(c)] other (specify amount and basis of exemption): _____.

I request a prompt court hearing to determine the exemption. Notice of the hearing should be given to me at _____, _____.
(Address) (Telephone Number)

I verify that the statements made in this Claim for Exemption are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Defendant)

**THIS CLAIM TO BE FILED WITH THE
OFFICE OF THE SHERIFF OF
_____ COUNTY:**

(Address)

(Telephone Number)

NOTE: Under paragraphs (1) and (2) of the writ, a description of specific property to be levied upon or attached may be set forth in the writ or included in a separate direction to the sheriff.

Under paragraph (2) of the writ, if attachment of a named garnishee is desired, the garnishee's name should be set forth in the space provided.

Under paragraph (3) of the writ, the sheriff may[, as under prior practice,] add as a garnishee any person not named in this writ who may be found in possession of property of the defendant. See Rule 3111(a). For limitations on the power to attach tangible personal property, see Rule 3108(a).

(b) Each court shall by local rule designate the officer, organization or person to be named in the notice.

Rule 3253. Interrogatories in Attachment

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

(Caption)

Interrogatories to Garnishee

To _____:
(Garnishee)

You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

1. At the time you were served or at any subsequent time did you owe the defendant any money or were you liable to the defendant on any negotiable or other written instrument, or did the defendant claim that you owed the defendant any money or were liable to the defendant for any reason?

2. At the time you were served or at any subsequent time was there in your possession, custody or control or in the joint possession, custody or control of yourself and one or more other persons any property of any nature owned solely or in part by the defendant?

3. At the time you were served or at any subsequent time did you hold legal title to any property of any nature owned solely or in part by the defendant or in which defendant held or claimed any interest?

4. At the time you were served or at any subsequent time did you hold as fiduciary any property in which the defendant had an interest?

5. At any time before or after you were served did the defendant transfer or deliver any property to you or to any person or place pursuant to your direction or consent and if so what was the consideration therefor?

6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to the defendant's direction or otherwise discharge any claim of the defendant against you?

7. If you are a bank or other financial institution, at the time you were served or at any subsequent time did the defendant have funds on deposit in an account in which funds are deposited electronically on a recurring basis and which are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law? If so, identify each account and state the reason for the exemption, the amount being withheld under each exemption and the entity electronically depositing those funds on a recurring basis.

8. If you are a bank or other financial institution, at the time you were served or at any subsequent time did the defendant have funds on deposit in an account in which the funds on deposit, not including any otherwise exempt funds, did not exceed the amount of the general monetary exemption under 42 Pa.C.S. § 8123? If so, identify each account.

(The plaintiff may set forth additional appropriate interrogatories.)

Explanatory Comment

Numerous federal and state statutes provide that funds paid to individuals pursuant to the statutes are exempt from execution, levy and attachment. Perhaps the premier statute in this regard is the Social Security Act which provides, 42 U.S.C. § 407:

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Section 407 provides that not only are future payments exempt from execution but so too are the funds once they have been deposited in the recipient's account in a bank or other financial institution.

Prior to the present amendments, the Pennsylvania Rules of Civil Procedure did not comply with these provisions. The writ of execution under Rule 3252, paragraph 2(b), provided that "the garnishee is enjoined from paying any debt to or for the account of the defendant and from delivering any property of the defendant or otherwise disposing thereof." The writ contained no exception for funds of the defendant which are exempt from execution. In addition, the defendant was required to claim the exemption by filing a claim under Rule 3123.1.

The present amendments to the execution rules address this problem. Under the amended rules, the judgment creditor rather than the defendant has the burden of raising an issue with respect to exempt payments within the scope of new Rule 3111.1. The defendant need not file a claim for exemption as exempt funds are not attached.

The amendments are as follows:

1. New Rule 3111.1 is to be promulgated, explicitly stating that funds of the defendant on deposit in certain accounts with a bank or other financial institution are exempt from execution. Social security payments are not named. Rather, the rule speaks in terms of “funds on deposit in a bank or other financial institution in an account in which funds are deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law.”

2. The form of the writ of execution set forth in Rule 3252 is amended by incorporating the language of new Rule 3111.1(1). New paragraph 2(c) of the writ advises the garnishee that the attachment does not include the defendant’s funds in an account which exempt funds are deposited electronically on a recurring basis.

3. Rule 3253 governing interrogatories to the garnishee is amended by adding new interrogatory no. 7. This interrogatory inquires of a bank or other financial institution as garnishee whether the defendant had “funds on deposit in an account in which funds are deposited electronically on a recurring basis and which are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law.” The garnishee is then required to “identify each account and state the reason for the exemption, the amount being withheld under each exemption and the entity electronically depositing those funds on a recurring basis.”

4. The prior practice under Rule 3146(b) was that “the prothonotary, on praecipe of the plaintiff, shall enter judgment against the garnishee for the property of the defendant admitted in the answer to interrogatories to be in the garnishee’s possession.” Rule 3146(b) has been amended by adding new paragraph (2) providing that if the answer of a bank or other financial institution to interrogatory no. 7 identifies

one or more accounts as containing exempt funds, “the prothonotary, in the absence of an order of court, shall not enter judgment pursuant to paragraph (1) of this subdivision as to funds of any account of the defendant that is identified in the garnishee’s answer” to the interrogatory.

5. Section 8123 of the Judicial Code, 42 Pa.C.S. § 8123, provides for a \$300 monetary exemption. This exemption is treated separately in new Rule 3111.1(2), in new paragraph (2)(c)(ii) of the writ of execution prescribed by Rule 3252 and in a new interrogatory to the garnishee under Rule 3253, interrogatory no. 8. The amendments provide a similar procedure for the \$300 monetary exemption as for recurring electronic deposits described above: \$300 or less in an account of the defendant is exempt from attachment, the writ of execution notifies the garnishee that \$300 or less in an account of the defendant is not attached and interrogatory no. 8 inquires of the garnishee concerning the funds of the defendant on deposit in accounts with the garnishee. As the \$300 amount is exempt from attachment, the defendant need not claim it under Rule 3123.1 governing claim of exemption.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair