



A Fireside Chat on Garnishment & Supplemental Rules B/E

Hon. Andrew W. Edison, Southern District of Texas

F. Daniel Knight – Chamberlain Hrdlicka

February 2, 2024

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Agenda

- Introduction
- The Relevant Rules
- Pre-Filing Considerations & The Complaint
- The Response
- The Rule E Hearing ... and Beyond
- The Decision – Grant or Deny
- Questions

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Rule B

(1) When Available; Complaint, Affidavit, Judicial Authorization, and Process. In an in personam action:

(a) If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant's tangible or intangible personal property—up to the amount sued for—in the hands of garnishees named in the process.

(b) The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court's order upon application without further court order.

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Rule B

(c) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must issue the summons and process of attachment and garnishment. The plaintiff has the burden in any post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed.

(d)

(i) If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.

(ii) If the property is other tangible or intangible property, the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(e) The plaintiff may invoke state-law remedies under Rule 64 for seizure of person or property for the purpose of securing satisfaction of the judgment.

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Rule B

(2) **Notice to Defendant.** No default judgment may be entered except upon proof—which may be by affidavit—that:

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- (a) the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4;
- (b) the plaintiff or the garnishee has mailed to the defendant the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt; or
- (c) the plaintiff or the garnishee has tried diligently to give notice of the action to the defendant but could not do so.

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