

Rule 64. Seizure of Person or Property; Attachment Before Judgment; Replevin Actions

(a) Seizure of person or property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the District of Columbia existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; and (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these Rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated.

(b) Attachment before judgment.

(1) Application and notice to defendant. An application for a writ of attachment and garnishment before judgment shall set forth, by affidavit, specific facts meeting the requirements of D.C. Code § 16-501(c) and (d). The application shall be accompanied by a Notice to Defendant on a form provided by the Clerk. The party applying for the writ shall send such notice to the defendant by first class mail at the address shown on the notice, or in case of a foreign corporation to its registered agent, if any, and shall note on the docket the date of issuance. If defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth the plaintiff's reasonable efforts to ascertain defendant's current mailing address.

(2) Issuance. An application for a writ of attachment before judgment, together with a bond in accordance with D.C. Code § 16-501(e), shall be submitted as provided in SCR-Family R(a)(2) to the judicial officer, who may require further proceedings before ruling on the application.

(3) Service. The writ of attachment shall be served in accordance with D.C. Code § 16-502, and may be served by a special process server.

(4) Answer of garnishee. If the writ is accompanied by interrogatories, the garnishee shall file with the Clerk the answer to the interrogatories within 10 days after service of the writ upon the garnishee, and shall serve a copy of the answer upon the defendant and upon the party at whose instance the garnishment was issued. If within 10 days after service of the answer to the interrogatories or such later time as the Court may allow, the party at whose instance the garnishment was issued shall not contest the answer to the interrogatories pursuant to D.C. Code § 16-522, the garnishee's obligations under the attachment shall be limited by the garnishee's answer.

(5) Hearing. If a hearing is held as a result of the filing of a traversing affidavit by the defendant or the garnishee pursuant to D.C. Code § 16-506, the plaintiff shall be required to establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(6) Priority of liens. For purposes of determining priority of successive liens, a writ of attachment issued under subparagraph (b)(2) of this Rule shall be effective from the date of its delivery to the marshal or other process server.

(7) Expedition of motions to quash. All motions to quash attachments shall be heard by the Court on an expedited basis. Upon at least three days' notice to all parties, the

Court may in appropriate cases order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(8) Discovery. For good cause shown, the Court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in SCR-Dom Rel 69.

(c) Replevin actions.

(1) Initiating action. A complaint in replevin shall set forth, by affidavit, specific facts meeting the requirements of D.C. Code § 16-3703. Upon filing the action and before process therefor is placed in the hands of the U.S. Marshal or other process server, the plaintiff, personally or by the plaintiff's attorney, shall bring the action to the attention of the judicial officer as provided in SCR-Family R(a)(2).

(2) Setting of hearing date. At the time of initiating the action under this Rule the plaintiff may request that the judicial officer set a date for a hearing at which the plaintiff shall be required to establish the probable validity of the claim and the defendant shall be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue. If, upon such application, the judicial officer determines that the plaintiff has filed a verified complaint alleging that the defendant is wrongfully detaining certain specified property which the plaintiff is entitled to possess, the judicial officer may issue an order directing the defendant to preserve the property which is the subject of the action in the defendant's possession or under the defendant's control so as to keep it amenable to the process of the Court pending further order of the Court. The order shall also indicate the date on which the plaintiff's application for a writ of replevin will be brought on for hearing and shall inform the defendant that the defendant may be heard at that time, with or without witnesses, on whether the writ should issue.

(3) Notice to defendant. The order shall direct the plaintiff to cause a copy of the summons, complaint, and order to be served upon the defendant at least five days prior to the date set for the hearing. If they are not served by that time, the plaintiff shall apply to the judicial officer to whom the case is assigned to set a later hearing date which will provide the defendant with sufficient time to make adequate preparation therefor. If any order entered under this paragraph (c), the judicial officer may include such requirements as will accomplish prompt and expeditious notice to the defendant.

(4) Issuance of writ after hearing. At the conclusion of the hearing, the judicial officer may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the Court. In the latter event, the judicial officer may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property pursuant to D.C. Code § 16-3708.

(5) Issuance of writ prior to hearing. In making the initial application to the judicial officer to whom the case is assigned, the plaintiff may apply for issuance to the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute, or on any other ground set forth in D.C. Code § 16-501(d)(2), (3), (4), or (5) as a basis for attachment before judgment. Upon such application, supported by affidavit or sworn testimony reciting specific facts which tend to establish the grounds therefor, the judicial officer may, if deemed appropriate, authorize the immediate issuance of the writ prior to the hearing. If issuance is authorized, the judicial officer shall enter in the record findings of fact and conclusions of law which state the basis of the need for such immediate issuance. The defendant against

whom a writ has been issued in this manner may, on not less than 24 hours notice to the plaintiff, apply to the Court to have the writ vacated. If such writ issues, a hearing shall take place on the fifth court day after execution of the writ. It shall be the duty of the plaintiff's counsel to notify the Court promptly of the execution of the writ.

(6) Trial. Trials of all actions in replevin shall be expedited.