

Rule 64-II. Replevin Actions

(a) **NOTIFYING THE JUDGE.** On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the judge to whom the case is assigned under Rule 12-1(b).

(b) **HEARING ON APPLICATION FOR WRIT; ORDER TO PRESERVE PROPERTY.**

(1) *Setting a Hearing.* When notifying the judge of the action, the plaintiff may request that the judge set a date for a hearing at which the plaintiff will be required to establish the probable validity of his claim and the defendant will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue.

(2) *Order to Preserve Property.* If the judge determines the plaintiff has filed a verified complaint alleging the defendant is wrongfully detaining the specified property that the plaintiff is entitled to possess, he or she may issue an order:

(A) directing the defendant to preserve the property that is the subject of the action in his or her possession or under his or her control so as to keep it amenable to the process of the court pending further order of the court;

(B) indicating the date on which the plaintiff's application for a writ of replevin will be heard; and

(C) informing the defendant that he or she may be heard at that time, with or without witnesses, on whether the writ should issue.

(3) *Service of Process.* The order must direct the plaintiff to serve a copy of the summons, complaint, and order on the defendant at least 7 days prior to the hearing date. A plaintiff who does not effect service on time must apply to the judge to whom the case is assigned to set a later hearing date, which will provide the defendant with sufficient time to adequately prepare. The order may require actions by the plaintiff designed to accomplish prompt and expeditious notice to the defendant.

(c) **ISSUING THE WRIT; REQUIRING A SECURITY FROM THE DEFENDANT.** At the conclusion of the hearing, the judge 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. If the defendant remains in possession of the property, the court may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property under D.C. Code § 16-3708 (2012 Repl.).

(d) **FILING REQUIREMENTS.** The Civil Division will not accept for filing any action of replevin unless the complaint is accompanied by an appropriate surety bond, approved by the clerk.

(e) **GOVERNMENT APPLICATIONS FOR WRITS OF REPLEVIN WITHOUT PRIOR ADVERSARY HEARING.**

(1) *In General.* In its initial application, counsel for a federal, District of Columbia, State or other governmental agency or official may apply for issuance of 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)–(5) (2012 Repl.) as a basis for attachment before judgment

(2) *Filing Requirements.* The application must show:

(A) a direct necessity to secure an important governmental or general public interest; and

(B) a special need for prompt action under a specific statute or regulation authorizing seizure of property without opportunity for prior hearing.

(3) *Judicial Action*. The judge may authorize the immediate issuance of the writ prior to the hearing only if the application is supported by affidavit or sworn testimony reciting specific facts that tend to establish the required grounds. If the judge authorizes the issuance of the writ, findings of fact and conclusions of law, which state the basis of the need for immediate issuance must be entered on the record.

(4) *Vacating the Writ*. After at least 24 hours notice to the plaintiff, the defendant against whom a writ has been issued without a hearing may apply to the court to have the writ vacated. Regardless, if such writ issues, a hearing must take place on the 5th day after execution of the writ. It is the duty of plaintiff's counsel to notify the clerk's office promptly of the execution of the writ.

(f) EXPEDITED TRIAL. Trial of all actions in replevin, whether on the jury or nonjury calendar, must be expedited.

(g) TRIAL IN LIEU OF HEARING. If all of the parties consent, the judge conducting a hearing on the issuance vel non of a writ of replevin may try the entire proceeding on the merits in lieu of merely determining whether to issue the writ.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See Fuentes v. Shevin, 407 U.S. 67 (1972).