

§ 13-54.5-101. Definitions

As used in this article 54.5, unless the context otherwise requires:

(1) "Continuing garnishment" means any procedure for payment of a judgment debt by withholding earnings to which a judgment debtor becomes entitled for the duration of the writ of continuing garnishment.

(2)

(a) "Earnings" means:

(I) Compensation paid or payable to an individual employee or independent contractor for personal labor or services;

(II) Funds held in or payable from any health, accident, or disability insurance.

(b) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for the theft, embezzlement, misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain, "earnings" also means:

(I) Workers' compensation benefits;

(II) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and articles 30.5 and 31 of title 31, C.R.S.;

(III) Dividends, severance pay, royalties, monetary gifts, monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office, taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies, interest, trust income, annuities, capital gains, or rents;

(IV) Any funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; and

(V) Tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross

earnings to the minimum wage for the number of hours worked, whichever is greater.

(c) For the purposes of writs of garnishment issued by the state agency responsible for administering the state medical assistance program, which writs are issued as a result of a judgment for medical support for child support or for medical support debt, "earnings" includes:

(I) Payments received from a third party to cover the health care cost of the child but which payments have not been applied to cover the child's health care costs; and

(II) State tax refunds.

(d) For the purposes of writs of garnishment issued by a county department of human or social services responsible for administering the state public assistance programs, which writs are issued as a result of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible, "earnings" includes workers' compensation benefits.

(e) For the purposes of attachments of earnings or writs of garnishment that are the result of a judgment taken for court assessments including fines, fees, costs, restitution, and surcharges pursuant to section 16-11-101.6 or section 16-18.5-105, C.R.S., "earnings" also means those enumerated under paragraph (a) of this subsection (2).

(3) "Garnishee" means a person other than a judgment creditor or judgment debtor who is in possession of earnings or property of the judgment debtor and who is subject to garnishment in accordance with the provisions of this article.

(4) "Garnishment" means any procedure through which the property or earnings of an individual in the possession or control of a garnishee are required to be withheld for payment of a judgment debt.

(5) "Judgment creditor" means any individual, corporation, partnership, or other legal entity that has recovered a money judgment against a judgment debtor in a court of competent jurisdiction.

(6) "Judgment debtor" means any person, including a corporation, partnership, or other legal entity, who has a judgment entered against him in a court of competent jurisdiction.

(7) "Notice of exemption and pending levy" means the document required to be served on the judgment debtor in any garnishment proceeding, except continuing garnishment, as soon as practicable following the service of the writ of garnishment on the garnishee. A "notice of exemption and pending levy" includes a statement that the judgment creditor intends to satisfy the judgment against the judgment debtor out of the judgment debtor's personal property held by a third party and that the judgment debtor has the right to claim certain property as exempt.

(Amended by 2018 Ch. 38, §10, eff. 8/8/2018. Amended by 2015 Ch. 301, §4, eff. 7/1/2015. L. 84: Entire article added, p. 469, § 1, effective January 1, 1985. L. 85: (7) amended, p. 582, § 1, effective May 3. L. 87: (2) amended, p. 595, § 23, effective July 10. L. 90: (2) amended, p. 564, § 33, effective July 1. L. 91: (2) amended, p. 384, § 5, effective May 1. L. 92: (2) amended, p. 577, § 4, effective July 1. L. 93: (2)(b) amended, p. 1871, § 4, effective June 6. L. 94: (2)(a)(I) amended, p. 1536, § 3, effective May 31; (2) amended, p. 1595, § 4, effective July 1; (2)(b) amended, p. 1252, § 5, effective July 1. L. 96: (2) amended, p. 591, § 2, effective July 1. L. 98: (2)(b)(II) amended, p. 920, § 6, effective July 1. L. 99: (2)(b)(II) amended, p. 620, § 14, effective August 4. L. 2005: IP(2)(b) and (2)(b)(II) amended, p. 71, § 2, effective August 8. L. 2006: (2)(d) added, p. 947, § 3, effective August 7. L. 2009: (2)(b)(II) amended, (SB 09-282), ch. 288, p. 1397, §58, effective January 1, 2010. L. 2010: (2)(b)(II) amended, (HB 10-1422), ch. 419, p. 2068, §23, effective August 11. L. 2012: (2)(e) added, (HB 12-1310), ch. 268, p. 1392, § 3, effective June 7. L. 2015: (1), (2)(a)(I), and (2)(b)(III) amended, (SB 15-283), ch. 301, p. 1239, § 4, effective July 1. L. 2018: IP and (2)(d) amended, (SB 18-092), ch. 38, p. 399, § 10, effective August 8.)

Amendments to subsection (2) by Senate Bill 94-088, Senate Bill 94-164, and House Bill 94-1345 were harmonized.

ANNOTATION

Law reviews. For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991).

The definition of "earnings" before 1991 was broad enough to include tips. *United Guar. Residential Ins. Co. v. Dimmick*, 916 P.2d 638 (Colo. App. 1996).

For the legislative intent contained in the 2006 act enacting subsection (2)(d), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

§ 13-54.5-102. Continuing garnishment - creation of lien

(1) In addition to garnishment proceedings otherwise available pursuant to the laws of this state in any case in which a money judgment is obtained in a court of competent jurisdiction, the judgment creditor or its assignees are entitled, on notice to the judgment debtor required by section 13-54.5-105(5)(b), to apply to the clerk of such court for garnishment against any garnishee. To the extent that the earnings are not exempt from garnishment, such garnishment is a lien and continuing levy upon the earnings due or to become due from the garnishee to the judgment debtor consistent and in accordance with the requirements of section 13-54.5-105(6).

(2) Garnishment pursuant to subsection (1) of this section is a lien and continuing levy against said earnings due for one hundred eighty-two days consistent and in accordance with the requirements of section 13-54.5-105(6) or for one hundred eighty-two days following the expiration of any writs with a priority pursuant to section 13-54.5-104, but such lien is terminated earlier than one hundred eighty-two days if earnings are no longer due; the underlying judgment is vacated, modified, or satisfied in full; or the writ is dismissed; except that a continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered and a copy of which shall be delivered by the judgment creditor to the garnishee.

(2.5) A garnishee is not required to collect, possess, or control the judgment debtor's tips, and any tips are not owed by a garnishee to a judgment creditor.

(3) Garnishment pursuant to subsection (1) of this section shall apply only to proceedings against the earnings of a judgment debtor who is a natural person.

(Amended by 2019 Ch. 214, §1, eff. 8/2/2019. L. 84: Entire article added, p. 470, § 1, effective January 1, 1985. L. 85: (1) amended, p. 582, § 2, effective May 3. L. 88: (1) and (2) amended, p. 610, § 1, effective July 1. L. 2001: (2) amended, p. 35, § 1, effective August 8. L. 2012: (2) amended, (SB 12-175), ch. 208, p. 826, § 14, effective July 1.)

Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the

dates of entry of the judgments upon which the writs of garnishment are based.

§ 13-54.5-103. Property or earnings subject to garnishment

(1) Repealed.

(2) Any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings, owned by the judgment debtor and in the possession and control of the garnishee at the time of service of the writ of garnishment upon the garnishee shall be subject to the process of garnishment.

(3) Notwithstanding the provisions of subsection (2) of this section, the exemptions from garnishment required or allowed by law, including but not limited to exemptions provided by sections 13-54-102 and 13-54-104 and 15 U.S.C. sec. 1671 et seq., apply to all garnishments.

(Amended by 2019 Ch. 214, §2, eff. 8/2/2019. L. 84: Entire article added, p. 470, § 1, effective January 1, 1985. L. 96: (1) amended, p. 621, § 30, effective July 1.)

Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the dates of entry of the judgments upon which the writs of garnishment are based.

ANNOTATION

Not federally guaranteed student loan. Moneys in student's bank account, which are proceeds of federally guaranteed student loan, are not garnishable pursuant to a judgment based on antecedent business debt of student. *Schaerrer v. Westman Comm'n Co.*, 769 P.2d 1058 (Colo. 1989).

Judgment debtor's right to annual discretionary disbursement of the corpus of a trust is not a garnishable asset. The right to annual disbursement of funds from principal is a power of appointment, and a power of appointment is neither property nor a property right. *Univ. Nat'l Bank v. Rhoadarmer*, 827 P.2d 561 (Colo. App. 1991).

Foreclosure sale excess proceeds may be garnished. *TCF Equip. Fin. v. Pub. Trustee*, 2013 COA 8, 297 P.3d 1048.

§ 13-54.5-104. Priority between multiple garnishments

(1)

(a) Only one writ of continuing garnishment against earnings due the judgment debtor shall be satisfied at one time. When more than one writ of continuing garnishment has been issued against earnings due the same judgment debtor, they shall be satisfied in the order of service on the garnishee. Except as provided in this subsection (1), a lien and continuing levy obtained pursuant to this article shall have priority over any subsequent garnishment lien or wage attachment.

(b) Where a continuing garnishment has been suspended for a specific period of time by agreement of the parties pursuant to the provisions of section 13-54.5-102(2), such suspended continuing garnishment shall have priority over any writ of continuing garnishment served on the garnishee after such suspension has expired.

(c)

(I) Notwithstanding any other provision of this subsection (1), a continuing garnishment obtained pursuant to section 14-14-105, C.R.S., for the satisfaction of debts or judgments for child support shall have priority over any other continuing garnishment.

(II) Notwithstanding any other provision of this subsection (1), a continuing garnishment obtained pursuant to section 26-2-128(1)(a), C.R.S., for the satisfaction of a judgment for fraudulently obtained public assistance or fraudulently obtained overpayments has priority over any other continuing garnishment other than a garnishment for collection of child support under subparagraph (I) of this paragraph (c).

(2)

(a) Any writ of continuing garnishment served upon a garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that he has been served previously with one or more writs of continuing garnishment against earnings due the judgment debtor and specifying the date on which all such liens are expected to terminate.

(b) Upon the termination of a lien and continuing levy obtained pursuant to this article, any other writ of continuing garnishment which has been issued or which is issued subsequently against earnings due the judgment debtor shall have priority in the order of service on the garnishee, and no priority shall be given to any previous continuing lienholder whose lien has

terminated. The person who serves a writ of continuing garnishment on a garnishee shall note the date and time of such service.

(L. 84: Entire article added, p. 471, § 1, effective January 1, 1985. L. 94: (1)(c) amended, p. 2062, § 3, effective July 1.)

ANNOTATION

Law reviews. For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990).

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continuing garnishment (Colorado Revised Statutes (2021
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§ 13-54.5-105. Notice to judgment debtor in continuing garnishment

(1) In the case of a continuing garnishment, the writ of garnishment must be served on the garnishee in accordance with rule 4 of the Colorado rules of civil procedure.

(2) The writ of garnishment pursuant to subsection (1) of this section must include:

(a) The name of the judgment debtor;

(b) The last-known physical and mailing addresses of the judgment debtor or a statement that the information is not known;

(c) The amount of the judgment upon which the judgment creditor bases the continuing garnishment;

(d) Information sufficient to identify the judgment on which the continuing garnishment is based;

(e) A completed notice that satisfies subsection (3) of this section and that may be incorporated into and made a part of the writ of garnishment; and

(f) A notice of Colorado rules about garnishment that satisfies subsection (4) of this section and that is incorporated into and made a part of the notice required by subsection (2)(e) of this section.

(3) The notice required by subsection (2)(e) of this section must be in substantially the following form and conspicuously labeled:

Notice of Garnishment

Money will be taken from your pay if you fail to act.

1. Why am I getting this notice? You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money. Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this

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form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe? The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the writ of garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid? The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment. The rules about how much of your pay can be taken are explained in the notice of Colorado rules about garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck. At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options? Yes, you have several options, here are three of them:

A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.

B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.

C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you

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want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything? If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are. The amount of your disposable earnings that can be garnished is determined by comparing two numbers:

(1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under 4. **Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks' wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$_____ will be withheld from each paycheck that is subject to garnishment.

(4) The notice required by subsection (2)(f) of this section must:

(a) Have a heading stating that it explains wage garnishment in Colorado; and

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(b) Reasonably inform the judgment debtor of:

(I) The limits on wage garnishment pursuant to section 13-54-104;

(II) Exemptions from and limits on garnishment and protections pursuant to the laws of Colorado; and

(III) An estimate, based on the judgment debtor's most recent paycheck and prepared by the garnishee, of the amount that would likely be withheld from the judgment debtor's paychecks in the future.

(5) Not later than seven days after being served with a writ of garnishment:

(a) If one of the following grounds applies, the garnishee shall send notice to the judgment creditor stating the applicable ground:

(I) The judgment debtor is not an employee of the garnishee; or

(II) The writ of garnishment does not contain all information required by subsection (2) of this section.

(b) If subsection (5)(a) of this section does not apply, the garnishee shall:

(I) Send to the judgment creditor a notice that includes:

(A) A statement that the named judgment debtor is an employee of the garnishee;

(B) The pay frequency of the judgment debtor and the date of the first payday that is at least twenty-one days after the garnishee was served with the writ of garnishment in accordance with subsection (1) of this section or the first payday after the expiration of any prior effective writ of garnishment that is at least twenty-one days after service of the writ on the garnishee;

(C) If the judgment debtor's earnings are subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended, the nature, number, and amounts of these deductions and the relative priority of the writ of garnishment; and

(II) Send to the judgment debtor on the same day the notice required by subsection (5)(b)(I) of this section is sent to the judgment creditor a copy of the writ of garnishment and the notices required pursuant to subsections (2)(e) and (2)(f) of this section.

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(6) If subsection (5)(b)(I) of this section applies, the garnishee shall begin garnishment on the first payday that occurs at least twenty-one days after the garnishee was served with the writ of garnishment in accordance with subsection (1) of this section or the first payday after the expiration of any prior effective writ of garnishment that is at least twenty-one days after service of the writ on the garnishee.

(Amended by 2019 Ch. 214, §4, eff. 8/2/2019. L. 84: Entire article added, p. 471, § 1, effective January 1, 1985.)

Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the dates of entry of the judgments upon which the writs of garnishment are based.

§ 13-54.5-106. Notice to judgment debtor in other garnishment

(1) In a case where personal property of the judgment debtor other than earnings is subject to garnishment, following the service of the writ of garnishment on the garnishee, the person who served said writ shall, as soon as practicable, serve a copy of the writ of garnishment, together with a notice of exemption and pending levy, upon each judgment debtor whose property is subject to garnishment by said writ. The notice of exemption and pending levy shall inform the judgment debtor that the judgment creditor intends to seek satisfaction of any judgment rendered in its favor against the judgment debtor out of the judgment debtor's personal property in the possession or control of the garnishee and shall inform the judgment debtor of his right to claim exempt property.

(2) The notice of exemption and pending levy in such garnishment proceeding against the personal property of a judgment debtor who is a natural person shall contain the following:

(a) The judgment creditor's name and business address;

(b) The original amount of the judgment;

(c) The amount, if any, paid on the principal of the judgment as of the date of the notice;

(d) The principal balance due on the judgment;

(e) The interest, if any, due on the judgment;

(f) The itemized taxable costs, if any, including the estimated costs of serving the notice;

(g) The total amount due and owing on the judgment;

(h) The date of entry of the judgment;

(i) The name of the court in which the judgment was entered;

(j) A statement of the judgment debtor's right to claim any property levied upon as exempt, including, but not limited to:

(I) Exempt property under section 13-54-102 and exempt earnings under section 13-54-104;

(II) Workers' compensation benefits under section 8-42-124, C.R.S.;

(III) Unemployment compensation benefits under section 8-80-103, C.R.S.;

(IV) Group life insurance proceeds under section 10-7-205, C.R.S.;

(V) Health insurance benefits under section 10-16-212, C.R.S.;

(VI) Fraternal society benefits under section 10-14-403, C.R.S.;

(VII) Family allowances under section 15-11-404, C.R.S.;

(VIII) Repealed.

(IX) Public employees' retirement benefits pursuant to sections 24-51-212 and 24-54-111, C.R.S., social security benefits pursuant to 42 U.S.C. sec. 407, and railroad employee retirement benefits pursuant to 45 U.S.C. sec. 231m;

(X) Public assistance benefits under section 26-2-131, C.R.S.;

(XI) Police officers' and firefighters' pension fund payments under section 31-30.5-208, C.R.S.;

(XII) Utility and security deposits under section 13-54-102(1)(r);

(j.5) A statement that, notwithstanding the debtor's right to claim any property levied upon as exempt for the property specified in paragraph (j) of this subsection (2), no exemption other than the exemptions set forth in section 13-54-104(3) may be claimed for a writ which is the result of a judgment taken for arrearages for child support or for child support debt;

(k) The method of claiming an exemption and the time therefor; and

(l) The right to a hearing on any such claim of exemption and the time within which such hearing must be held.

(3) Any notice to the judgment debtor required in the case of a garnishment proceeding against the assets of a judgment debtor other than a natural person shall be as prescribed by the supreme court pursuant to section 13-54.5-111.

(L. 84: Entire article added, p. 471, § 1, effective January 1, 1985. L. 87: (2)(j)(IX) amended, p. 1091, § 6, effective July 1; (2)(j)(IX) amended, p. 1585, § 56, effective July 1; (2)(j.5) added, p. 595, § 24, effective July 10. L. 88: (3) amended, p. 611, § 2, effective July 1. L. 90: (2)(j)(II) amended, p. 564, § 34, effective July 1. L. 92: (2)(j)(V) amended, p. 1726, § 15, effective July 1. L. 93: (2)(j)(VI) amended, p. 609, § 2, effective July 1. L. 94: (2)(j)(VII) amended, p. 1040, § 18, effective July 1, 1995. L. 96: (2)(j)(XI) amended, p. 941, § 3, effective May 23. L. 2011: (2)(j)(VIII) repealed, (HB 11-1303), ch. 264, p. 1152, §20, effective August 10.)

§ 13-54.5-107. Service of notice upon judgment debtor

(1) In a case of continuing garnishment, the garnishee shall deliver a copy of the writ of garnishment and notices required by section 13-54.5-105 to the judgment debtor in accordance with the provisions of section 13-54.5-105(5)(b)(II).

(2)

(a) In cases other than a continuing garnishment where the judgment debtor's personal property is subject to garnishment, service of the notice of exemption and pending levy required by section 13-54.5-106 must be made by one of the following means:

(I) Giving the notice of exemption and pending levy to the judgment debtor in person and obtaining a receipt;

(II) Personal service;

(III)

(A) Depositing the notice in the United States mail, postage prepaid and addressed to the judgment debtor's last-known address known to the judgment creditor. A notice served in this manner must be sent either by certified mail, return receipt requested, or by regular mail supported by an affidavit of mailing sworn and retained by the judgment creditor.

(B) A notice mailed and not returned as undeliverable by the United States postal service is presumed to have been given on the date of mailing. For the purposes of this subsection (2), "undeliverable" does not include unclaimed or refused.

(C) If the judgment debtor has provided consent for notice by electronic mail as described in subparagraph (IV) of this paragraph (a), the judgment creditor shall also provide the notice as described in subparagraph (IV) of this paragraph (a) when using the notice provisions in this subparagraph (III).

(IV) Transmitting the notice by electronic mail, if the judgment debtor has previously consented to receive information about the debt from the judgment creditor in electronic form, to the last-known electronic mail address of the judgment debtor on file with the judgment creditor. A notice served in this manner must be supported by an affidavit, executed under penalty of perjury, of any officer, clerk, or agent of the creditor or the creditor's attorney, authorized to serve the notice or electronically transmit

the notice under this section. The affidavit constitutes proof of notice under this subparagraph (IV).

(b)

(I) If service cannot be made upon the judgment debtor as set forth in paragraph (a) of this subsection (2), and upon a showing that due diligence has been used to obtain service as set forth in paragraph (a) of this subsection (2), the court shall order service of a notice of exemption and pending levy to be made by one of the following methods:

(A) Publication for a period of fourteen days in a newspaper of general circulation published in the county in which the property was levied upon;
or

(B) If there is no newspaper of general circulation published in the county in which the property was levied upon, then service is made by publication for a period of fourteen days in a newspaper of general circulation in an adjoining county, and the court shall order the clerk of the court in which the judgment was entered to mail a copy of the notice to the judgment debtor at the judgment debtor's last-known address, postage prepaid.

(II) A newspaper used for service by publication as set forth in this paragraph (b) must meet the requirements set forth in section 24-70-106, C.R.S.

(III)

(A) The judgment creditor shall file with the clerk of the court in which the judgment was entered a notice of exemption and pending levy, as well as proof of service of the notice.

(B) In the case of service by publication, the judgment creditor shall file with the clerk of the court in which the judgment was entered an affidavit of publication and an affidavit of the mailing of the notice.

(3) Compliance with this section and sections 13-54.5-105 and 13-54.5-106 by the judgment creditor shall be deemed to give sufficient notice to the judgment debtor of the garnishment proceedings against him, and no further notice shall be required under this article.

(Amended by 2019 Ch. 214, §5, eff. 8/2/2019. Amended by 2015 Ch. 301, §5, eff. 7/1/2015. L. 84: Entire article added, p. 473, § 1, effective January 1, 1985. L. 2012: (2) amended, (SB 12-175), ch. 208, p. 826, § 15, effective July 1. L. 2015: (2) amended, (SB 15-283), ch. 301, p. 1240, § 5, effective July 1.)

**Colo. Rev. Stat. § 13-54.5-107 Service of notice upon
judgment debtor (Colorado Revised Statutes (2021 Edition))**

Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the dates of entry of the judgments upon which the writs of garnishment are based.

§ 13-54.5-108. Judgment debtor to file written objection or claim of exemption

(1)

(a) In a case of continuing garnishment where the judgment debtor objects to the calculation of the amount of exempt earnings, the judgment debtor shall have seven days from receipt of the copy of the writ of continuing garnishment required by section 13-54.5-105 within which to resolve the issue of such miscalculation, by agreement with the garnishee, during which time the garnishee shall not tender any money to the clerk of the court or judgment creditor. If such objection is not resolved within seven days and after good faith effort, the judgment debtor may file a written objection with the clerk of the court in which the judgment was entered setting forth with reasonable detail the grounds for such objection. The judgment debtor may also file a written objection with the clerk of the court in which the judgment was obtained pursuant to section 13-54-104(2)(a)(I)(D). The judgment debtor shall, by certified mail, return receipt requested, deliver immediately a copy of such objection to the judgment creditor or his or her attorney of record.

(b) In a case where a garnishee, pursuant to a writ of garnishment, holds any personal property of the judgment debtor other than earnings which the judgment debtor claims to be exempt, said judgment debtor, within fourteen days after being served with the notice of exemption and pending levy required by section 13-54.5-106, shall make and file with the clerk of the court in which the judgment was entered a written claim of exemption setting forth with reasonable detail a description of the property claimed to be exempt, together with the grounds for such exemption. The judgment debtor shall, by certified mail, return receipt requested, deliver immediately a copy of such claim to the judgment creditor or his or her attorney of record.

(2) Upon the filing of a written objection or claim of exemption, all further proceedings with relation to the sale or other disposition of said property or earnings shall be stayed until the matter of such objection or claim of exemption is determined.

(3) Notwithstanding the provisions of subsection (1) of this section, a judgment debtor failing to make a written objection or claim of exemption may, at any time within one hundred eighty-two days from receipt of a copy of the writ of continuing garnishment required by section 13-54.5-105 or from service of the notice of exemption and pending levy required by section 13-54.5-106 and for good cause shown, move the court in which the judgment was entered to hear an objection or a claim of exemption as to any

Colo. Rev. Stat. § 13-54.5-108 Judgment debtor to file written objection or claim of exemption (Colorado Revised Statutes (2021 Edition))

earnings or property levied in garnishment, the amount of which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt. Such hearing may be granted upon a showing of mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow.

(Amended by 2019 Ch. 214, §6, eff. 8/2/2019. L. 84: Entire article added, p. 473, § 1, effective January 1, 1985. L. 2012: (1) and (3) amended, (SB 12-175), ch. 208, p. 827, § 16, effective July 1.)

Section 7(2) of chapter 214 (HB 19-1189), Session Laws of Colorado 2019, provides that the act changing this section applies to all writs of garnishment issued on or after October 1, 2020, or the official declaration of the vote thereon by the governor if sent to a vote of the people, regardless of the dates of entry of the judgments upon which the writs of garnishment are based.

ANNOTATION

There is no provision by statute for oral amendment of a claim of exemption. In re Nye, 210 B.R. 857 (Bankr. D. Colo. 1997).

Court must hold a hearing to determine validity of defendant's claim of exemption prior to allowing garnishment to proceed.

Summarily denying a claim of exemption based on a finding that the defendant was in contempt of another court order is insufficient. Borryo v. Lefever, 159 P.3d 657 (Colo. App. 2006).

§ 13-54.5-108.5. Garnishee not required to assert exemption

A garnishee shall not be required to deduct, set up, or plead any exemption for or on behalf of a judgment debtor, except as set forth in the writ.

(L. 2006: Entire section added, p. 579, § 1, effective July 1.)

§ 13-54.5-109. Hearing on objection or claim of exemption

(1)

(a) Upon the filing of an objection pursuant to section 13-54.5-108(1)(a) or the filing of a claim of exemption pursuant to section 13-54.5-108(1)(b), the court in which the judgment was entered shall set a time for the hearing of such objection or claim, which shall be not more than fourteen days after filing. The clerk of the court where such objection or claim is filed shall immediately inform the judgment creditor or his or her attorney of record and the judgment debtor or his or her attorney of record by telephone, by mail, or in person of the date set for such hearing.

(b) The certificate of the clerk of the court that service of notice of such hearing has been made in the manner and form stated in paragraph (a) of this subsection (1), which certificate has been attached to the court file, shall constitute prima facie evidence of such service, and such certificate of service filed with the clerk of the court is sufficient return of such service.

(2) Upon such hearing, the court shall summarily try and determine whether the amount of the judgment debtor's exempt earnings was correctly calculated by the garnishee or whether the property held by the garnishee is exempt and shall enter an order or judgment setting forth the determination of the court. If the amount of exempt earnings is found to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property, to the judgment debtor within seven days.

(3) Where the judgment debtor moves the court to hear an objection or claim of exemption within the time provided by section 13-54.5-108(3) and the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold in execution was exempt and shall issue an order setting forth the determination of the court. If such amount of earnings is found to have been miscalculated or if such property is found to be exempt, the court shall order the judgment creditor to remit the amount of the over-garnished earnings or such exempt property or the value thereof to the judgment debtor within seven days.

(4) Any order or judgment entered by the court as provided for in subsections (2) and (3) of this section is a final judgment or order for the purpose of appellate review.

(L. 84: Entire article added, p. 474, § 1, effective January 1, 1985. L. 2012:
(1)(a), (2), and (3) amended, (SB 12-175), ch. 208, p. 827, § 17, effective July
1.)

ANNOTATION

Failure to comply with a court order does not supersede requirement to set a hearing pursuant to subsection (1)(a). The court may not sanction a party for his or her failure to comply with a court order by refusing to set a hearing on an objection or claim of exemption. The setting of a hearing is mandatory, not discretionary. *Borrayo v. Lefever*, 159 P.3d 657 (Colo. App. 2006).

Under §5-12-102, a garnishor is entitled to postjudgment interest on a garnishment amount based on the garnishee's unreasonable delay in paying the sums due. There is no basis to treat a garnishee against whom a judgment is entered differently from a defendant against whom another judgment is entered. *Thompson v. Catlin Ins. Co. (UK) Ltd.*, 2018 CO 95, 431 P.3d 224.

**Colo. Rev. Stat. § 13-54.5-110 No discharge from employment
for any garnishment - general prohibition (Colorado Revised
Statutes (2021 Edition))**

**§ 13-54.5-110. No discharge from employment for any
garnishment - general prohibition**

(1) No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to any garnishment or like proceeding directed to the employer for the purpose of paying any judgment.

(2) If an employer discharges an employee in violation of the provisions of this section, the employee may, within ninety-one days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

(L. 84: Entire article added, p. 475, § 1, effective January 1, 1985. L. 2012: (2) amended, (SB 12-175), ch. 208, p. 828, § 18, effective July 1.)

§ 13-54.5-111. Supreme court rules

The practice and procedure in garnishment actions instituted pursuant to this article, and all forms in connection therewith, shall be in accordance with rules prescribed by the supreme court pursuant to article 2 of this title.

(L. 84: Entire article added, p. 475, § 1, effective January 1, 1985.)