COMMENTS ON PROPOSED AMENDMENTS TO RULES 64-I AND 69-I OF THE RULES OF THE SUPERIOR COURT

1. Rule 64-I(a) and (b). These changes appear to be formal improvements which clarify the procedures somewhat. This provision might be further improved by spelling out whether the Clerk or the plaintiff fills out the boxes in the notice to defendant, and whether this is done before or after issuance, and by specifying whether the notice is to be sent out before or after the application is submitted to the Court. It would appear that the section's title should be "Application and Notice of Defendant," since both subjects are dealt with therein.

2. Rule 64-I(c). The enlargement of time from five days to ten days seems fair, and the change of language is again a useful clarification. It also makes good sense to require the garnishee to serve the plaintiff with his answer, and, while the Code does not so provide, it seems to be well within the court's power to impose this procedural requirement. We suggest, however, that the defendant also be served with a copy of the garnishee's answer to the interrogatories; it is, after all, his property which is involved. For that purpose, the plaintiff should be required, in serving the interrogatories on the garnishee, to notify him of the defendant's address, as shown on the notice to defendant. If the address is not known to the plaintiff, the plaintiff should so advise the garnishee who will, in many situations (for example, where the garnishee is an employer or a bank) have the defendant's address. In those situations it would facilitate providing notice of the underlying proceeding to the defendant if the plaintiff's interrogatory to the garnishee were to provide the defendant's address. The second sentence of the proposed rule substitutes for the somewhat inaccurate "join issue thereon" the highly technical term "traverse." While it is preferable to use technical terms whose legal import is settled to colloquialisms which may create new controversies, where that danger does not exist, language should be used that laymen can understand; this is particularly so with respect to those court rules which are addressed to ordinary citizens rather than professionals. It would seem, in this instance, that "contest" would be preferable to "traverse." It would also be useful if the rule were to spell out just how the plaintiff should proceed if he wishes to "traverse" ("contest") the garnishee's answer.

Finally, the phrase "the garnishee shall be entitled as of course to judgment in accordance with his answer" seems to be imprecise. If, for example, the plaintiff believes that the garnishee has $5,000 of the defendant's property and the garnishee answers by saying that he has only $3,000 of his

property, and the plaintiff accepts this answer, the garnishee is entitled to an order limiting the attachment to no more than $3,000. But this is somewhat different from the ordinary understanding of a judgment in the garnishee's favor. It would seem, therefore, that the rule would more appropriately read: "* * * the garnishee shall be entitled as of course to an order limiting the attachment and his obligations thereunder in accordance with his answer."

3. Rule 64-I(d). This is a minor technical change. The word "traversing" here simply tracks § 16-506 of the D.C. Code and a change would probably only confuse matters. However, since the "traversing affidavit" by the defendant or garnishee is something different from what the plaintiff must file if he contests the answers to the interrogatories, that seems to be an additional reason for not using the same word "traverse" to mean something different in (c).

4. Rule 64-I(f). It seems preferable to specify the minimum notice for considering motions to quash attachments rather than the present "adequate notice," which is vague and invites controversy as to what is adequate; the change is therefore an improvement. However, it is not entirely clear why, if the order of attachment has been granted ex parte, the court should not be empowered to quash (vacate) that attachment ex parte at the behest of the defendant, if the defendant can make a clear showing of abuse, and of irreparable injury if the attachment is not immediately quashed.

5. Rule 69-I(d). See comments on Rule 64-I(c).

6. Rule 69-I(e). These are mere technical changes which require no comment.

January 24, 1980

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Rules Changes

The Superior Court Rules Committee recently proposed the amendment of Civil Rules 64-I and 69-I as set forth below. These rules changes will be recommended for adoption by the Board of Judges unless modified or withdrawn after receiving comments from members of the Bar. Written comments concerning these revisions may be submitted within thirty days of the publication of this notice in the Daily Washington Law Reporter to Peter George Djinis, Attorney Advisor to the Rules Committee, District of Columbia Superior Court, 500 Indiana Avenue, N.W., Washington, D.C. 20001. The text of the proposed amendments is as follows:

PROPOSED AMENDMENTS TO SCR Civ 64-I and 69-I

Explanatory Note: Paragraph (a) and (b) of Rule 64-I has been amended in order to clarify the application procedure for writs of attachment before judgment. Paragraph (c) of Rule 64-I and paragraph (d) of Rule 69-I have been revised to require the garnishee to serve within ten days answers to the interrogatories accompanying the writ upon the party at whose instance the garnishment was issued. In addition, Rule 64-I(d) has been changed to require that all parties be afforded at least three days notice when the Court seeks to try on the merits an attachment action at the same time that a motion to quash the attachment is heard.

Proposed Amendments to SCR Civ 64-I

ATTACHMENT BEFORE JUDGMENT

(a) ~~NOTICE-TO-DEFENDANT~~ APPLICATION. ~~Upon-filing any~~ An application for a writ of attachment before judgment~~,~~ shall set forth, by affidavit, specific facts meeting the requirements of D.C. Code 1973, §16-501(c) and (d). ~~the plaintiff-shall-also-file~~ The application shall be accompanied by a ~~prepared~~ Notice to Defendant on a CA Form 105 supplied by the clerk. The clerk 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 such mailing. If defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth his reasonable efforts to ascertain defendant's current mailing address.

(b) ISSUANCE. An applications for a writ of attachment before judgment shall be submitted to the Civil Calendar Control Judge who may approve or deny issuance or may direct such further hearings before issuance as he deems appropriate. ~~The-affidavit-accompanying-the-application-for-the-writ-shall set-forth-specific-facts-meeting-the-requirements-of-D.C.-Code §16-501(c)-and-(d)-(1973-ed.).~~

(c) ANSWER OF GARNISHEE. ~~After-the-filing-of-the answer-of-a-garnishee,-he-may-give-notice-thereof-to~~ A garnishee shall file with the clerk his answer to the interrogatories accompanying the writ of attachment within ten days after service of the writ upon him, and shall serve a copy of the answer upon the party at whose instance the garnishment was issued. If such party shall not traverse ~~join issue-thereon~~ the answer to the interrogatories within 5 ten days after service of such ~~notice~~ answer, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the Court.

(d) 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 1973, §16-506, ~~(1973-ed.)~~ 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.

(e) (unchanged)

(f) EXPEDITION OF MOTIONS TO QUASH. ~~UNDER-THIS-RULE~~ All motions to quash attachments shall be heard by the Court on an expedited basis. ~~Upon-adequate-notice-to-the-parties,~~ 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 by tried on the merits at the same time the motion is heard. A motion to file an attachment pursuant to section ~~(b)~~(a) of this rule shall be heard by the Civil Calendar Control Judge as a preliminary matter unless the accompanying affidavit on its face demonstrates compliance with that section.

(g) (unchanged)

Proposed Amendments to SCR Civ 69-I

ATTACHMENT AFTER JUDGMENT IN GENERAL

(a) (unchanged)

(b) (unchanged)

(c) (unchanged)

(d) ANSWER OF GARNISHEE. ~~After the filing of the answer of a garnishee, he may give notice thereof to~~ A garnishee shall file with the clerk his answer to the interrogatories accompanying the writ of attachment within ten days after service of the writ upon him, and shall serve a copy of the answer upon the party at whose instance the garnishment was issued. If such party shall not traverse ~~join issue thereon~~ the answer to the interrogatories within 5 ten days after service of such ~~notice~~ answer, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the Court.

(e) JUDGMENT AGAINST GARNISHEE. No judgment against a garnishee under D.C. Code 1973, §§16-556 or 16-575 ~~(1973 ed.)~~ shall be entertained except by order of Court. Applications for a judgment shall be filed (1) within four weeks after answers to the interrogatories are due and not filed, or (2) as to property other than "wages" as defined in D.C. Code 1973, §16-571 ~~(1973 ed.)~~ within four weeks after the garnishee has filed answers to the interrogatories or (3) as to such "wages", within fifteen weeks of the date on which a garnishee fails to make a payment due under the writ, or (4) within such later time as may be authorized by the Court upon a motion made within the applicable period. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this rule, the garnishment and attachment shall stand dismissed. Upon oral or written request thereof, the clerk shall enter such dismissal of the garnishment and attachment and shall furnish a certificate of such dismissal to the garnishee, the defendant, or any other person.