



Using CRCP 103 as an Adjudicative Tool

A Practitioner's Guide to
Sections 2 and 4 of CRCP 103

BY JERAD WEST

This article highlights the procedural complexities of garnishment proceedings under sections 2 and 4 of CRCP 103 and discusses how practitioners can use Rule 103 to quickly, efficiently, and creatively adjudicate contract indebtedness, insurance coverage obligations, and entity-related issues.

Garnishment under Colorado Rule of Civil Procedure 103 (Rule 103 or the Rule) is often regarded as a narrow, ministerial collection tool, primarily related to wages and bank levies. This view is incomplete. Rule 103's reach is broader, and, when used to its full extent, may serve as a procedural mechanism to resolve complex legal and factual disputes in an equitable proceeding on an expedited schedule, culminating in an adversarial hearing. Garnishment is a powerful way to reach debtor assets held by nonparties and can be used to adjudicate issues many practitioners do not consider "garnishment issues," provided the practitioner stays within the procedural framework of Rule 103.

Rule 103 contains 13 sections that set forth a structured, technical process that must be meticulously followed. This article addresses the mechanisms available in section 2 of the Rule, which are applicable to the personal property of natural persons, and those in section 4, which are applicable to the personal property of non-natural persons. Sections 2 and 4 are technically demanding procedures with mandatory forms, unusual service requirements, compressed deadlines, and procedural differences depending on whether the judgment debtor is a natural or non-natural person.¹ Those differences are not cosmetic—they often determine whether the garnishment succeeds or is quashed—and are therefore discussed in detail below.

Rule 103 as an Adjudicative Tool

Rule 103 sets forth a structured process that can be used to adjudicate a host of issues. As an initial procedural matter, a judgment creditor initiates garnishment by filing a request for issuance of the writ with the clerk of the court in which the judgment entered. The garnishment proceeding therefore remains within the same

case and before the same court that entered the underlying judgment.

Once the writ is issued and served, the garnishee answers under oath whether the garnishee possesses any property of the judgment debtor. The judgment creditor may then file a traverse, challenging the answer. A traverse is a filing by which a judgment creditor formally contests the truth or completeness of a garnishee's answer by setting forth a factual basis for the challenge, thereby placing the garnishee's alleged indebtedness or possession of property at issue for adjudication.² Limited discovery is allowed in the court's discretion, after which the court holds a hearing where the creditor must prove by a preponderance of the evidence that the garnishee is in possession of the debtor's funds or assets.³ Further, if a traverse is required, a court may award costs and attorney fees "as are just," providing a mechanism to recover fees that may not be available if a separate suit were brought to litigate the same question.⁴

One benefit of using Rule 103 as opposed to filing a separate suit is efficiency and associated cost savings. It allows judgment creditors to bypass many procedures associated with a new civil action, including the filing of a complaint and answer, motions practice, entry of a case management order, mandatory initial disclosures, and substantial discovery. Instead, disputed issues are framed through the garnishee's answer and any traverse and resolved through an evidentiary hearing, subject to limited discovery as the court deems appropriate.

Given its structure, practitioners may not instinctively recognize the variety of issues that can be resolved quickly and cost-effectively through the expedited garnishment process.⁵ For example, Rule 103 can be used to determine if a third party is in possession of funds owed to the judgment debtor under a contract and to recover those funds (e.g., funds owed for goods

or services provided, rents, and distributions); to litigate whether a liability insurer owes payment of a judgment under an insurance policy; and to bring necessary third parties before the court to resolve disputes over ownership and entitlement to property that is nominally held by someone other than the debtor (e.g., fraudulent transfers, piercing the corporate veil, or alter ego).

Sections 2 and 4 Are the Mechanisms for Garnishing Non-Earnings Personal Property of a Debtor

As an initial matter, the processes described below depend on first obtaining a final judgment that is executable.⁶ What constitutes a final judgment and any applicable waiting periods are beyond the scope of this article. Assuming a final, executable judgment has entered, Rule 103 creates multiple garnishment tracks. Sections 2 and 4 are the mechanisms for garnishing non-earnings personal property of a debtor. The procedures apply based on the nature of the judgment debtor. This threshold issue is deceptively simple but can be outcome determinative if the wrong form and procedure are used.

Section 2 governs garnishment of "personal property of any kind (other than earnings of a natural person)" in the possession or control of a garnishee, expressly including "credits, debts, choses in action, or money owed to the judgment debtor," whether due at service or to become due thereafter.⁷ Because the debtor is a natural person, section 2 builds in an exemption, service, and notice structure that drives much of the procedure. The writ used is mandatory and must be in the form and content of Form 29.⁸

In contrast, section 4 governs garnishment of the personal property of non-natural persons and is more streamlined than section 2. The writ used is mandatory and must be in the form and content of Form 32.⁹

What Can Be Garnished Under Sections 2 and 4?

Rule 103 garnishment is not an ex parte determination of debt. Instead, the judgment creditor bears the burden to prove “the existence and validity of the indebtedness of the garnishee,” and the garnishee is treated “in the same manner as if [it] had been sued directly on the debt by the judgment debtor.”¹⁰ This allows Rule 103 to be used to litigate matters such as disputed contract obligations and insurance coverage issues, as the garnishment hearing becomes the forum in which the underlying obligation is proven.¹¹

However, contingent liabilities cannot be litigated in garnishment.¹² A contingent liability is one where money owed to the judgment debtor by the garnishee is contingent upon the occurrence of some future event.¹³ A contingent liability is not one where the garnishee denies possession of the judgment debtor’s assets. Rather, it means that a future event must occur for the debt to mature.¹⁴ For example, a disputed contractual debt may be garnished where the contract has been performed because performance created the debt prior to garnishment, even if the amount due is contested. In contrast, a tort claim against an insurer for bad faith failure to settle is contingent until liability for bad faith is established in a separate action and therefore is not subject to garnishment under Rule 103.¹⁵

Contract Debts and Other “Disputed Indebtedness” Owed by Third Parties

Because the reach of sections 2 and 4 includes “credits, debts, [and] choses in action,” and because the creditor bears the burden to prove them, garnishment is structurally suited to contract-based recovery where the third party (garnishee) denies they owe anything.¹⁶ *Maddalone v. C.D.C., Inc.* is a clean illustration of this model.¹⁷ In that case, a judgment creditor attempted to garnish a promissory note obligation. The garnishees denied the debt based on an assignment, and the creditor filed a traverse. The appellate court emphasized that when a garnishee denies indebtedness, the garnishee is entitled to an evidentiary hearing at which the creditor must prove the debt’s validity by a preponderance of the evidence.¹⁸

Practically, that means Rule 103 can be used to pursue receivables and contract payments such as retainage, rents, unpaid invoices, escrowed funds, settlement payments, commissions, refunds, or other obligations, so long as the claim can be framed as money or property owed to the judgment debtor that the debtor could have pursued directly.¹⁹

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While Rule 103 may be used to determine insurance coverage under the contract, it may not be used to determine if an insurance carrier acted unreasonably or in bad faith.

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Garnishees may claim they do not possess any money owed to the judgment debtor because they are entitled to setoff amounts owed by the judgment debtor to them. For example, if the judgment debtor is owed money under a contract and the garnishee claims a right of setoff for alleged breaches by the judgment debtor, garnishment can quickly and efficiently resolve this issue. Section 10 expressly provides for the resolution of questions of setoff.²⁰

Insurance Coverage for the Judgment (Coverage Garnishment)

Garnishment is also an appropriate forum for resolving insurance coverage issues. The fact that coverage will be determined before the same court that entered the underlying judgment has particular significance in coverage garnishment cases. Because the garnishment is issued from the court that adjudicated the insured’s liability, that court is already familiar with the factual record and legal issues underlying the judgment. When coverage is disputed, the same court is well positioned to evaluate policy defenses, allocation issues, and the relationship between the judgment and the insurance contract, rather than requiring those issues to be relitigated in a separate forum. This is in addition to the fact that, if the coverage issue is traversed, fees may be awarded at the court’s discretion.

In *Bohrer v. Church Mutual Insurance Co.*, the Colorado Supreme Court described garnishment as an appropriate vehicle for resolving whether an insurer is indebted to satisfy a judgment under the policy and remanded for a traverse hearing because allocation was required between covered and excluded causes.²¹ In *Hoang v. Monterra Homes LLC*, the Colorado Court of Appeals reiterated that coverage disputes may be litigated in garnishment and described the procedural rights the insurer-garnishee is entitled to under Rule 103, including limited discovery, a hearing, expert testimony, and reliance on portions of the underlying record.²²

These cases support a creative but doctrinally sound use of Rule 103. Where the judgment is against the insured, the creditor may garnish the insurer to litigate whether the insurer is indebted under the policy for the judgment.²³ Coverage disputes may require evidentiary development and even expert testimony. The cases recognize that the parties “may offer expert testimony” and “may rely on portions of the record in the underlying tort case.”²⁴

However, the use of Rule 103 to determine issues of insurance coverage has a boundary. While Rule 103 may be used to determine insurance coverage under the contract, it may not be used to determine if an insurance carrier acted unreasonably or in bad faith.²⁵ Rule 103

can resolve the contractual issue of whether an insurer is indebted for covered damages (coverage), but it is not a shortcut to litigate the insured's tort claims because unliquidated tort claims are contingent liabilities not subject to garnishment.²⁶

Fraudulent Transfers, Alter Ego, and Veil Piercing

Rule 103 includes mechanisms for resolving disputes over who owns or has rights to property. A common problem when trying to recover a judgment is uncertainty about rightful ownership of multiple claimants to the same property, sometimes intentionally created to frustrate collection. Issues of fraudulent conveyance, veil piercing, and alter ego can be litigated under Rule 103 so long as the third parties have either been served with the appropriate summons or writ or have intervened.²⁷

Rule 103 does not automatically establish jurisdiction over nonparty transferees or related entities. However, it provides the tools to bring these parties efficiently and effectively before the court to resolve such issues. Section 11 of the Rule outlines notice and summons procedures that can require the necessary parties to appear in the proceeding.²⁸ Section 9 of the Rule outlines the voluntary intervention available to a party interested in the ownership of the property at issue.²⁹ Proper use of these tools enables ownership and entitlement disputes to be litigated quickly and efficiently through garnishment, instead of requiring the judgment creditor to start over in a separate action. If the garnishee denies ownership and the issue is determined against it, Rule 103 also provides the court with discretion to award fees.

Section 2 in Detail: Garnishing Personal Property of Natural Persons

Section 2 practice is driven by Form 29, the debtor notice and exemption structure, and the "second service" requirement that must occur before the clerk can enter judgment or order turnover.

Form 29 is the "exclusive form" for non-earnings garnishment when the judgment debtor is a natural person.³⁰ While the introductory statement of the appendix to chapters 1 to 17A

of the Rules states that "the following forms are intended for illustration only,"³¹ subsection 2(b) of the Rule requires that any writ be in the "form and content" of Form 29, indicating that Form 29 is not merely illustrative.³² In addition, although not officially part of the Rule's text, the forms include information not explicitly outlined in the Rule. For example, Form 29 offers instructions to the garnishee on how to answer and tender property and contains specific questions for the garnishee to answer (including setting forth any claims for setoff) that are not specified in the rule text.³³

After service of the writ on the garnishee under CRCP 4, the garnishee must answer within 14 days and hold the property pending further order.³⁴ The holding requirement is important. It preserves the res (i.e., money property) while the debtor notice, exemption window, and any traverse are processed.

Rule 103 requires that before judgment is entered or turnover is ordered, the judgment creditor must show that a copy of the writ with notice and a blank copy of Form 30 (Claim of Exemption to Writ of Garnishment With Notice) was served on each judgment debtor whose property is subject to garnishment and that either (1) no claim of exemption was filed within 14 days after service or (2) a claim was filed and disallowed. The clerk will enter judgment only after the creditor files proof of second service and at least 14 days have passed without a claim of exemption. If a claim is filed, no judgment is entered until the claim is determined.³⁵

Section 4 in Detail: Garnishing Personal Property of Non-Natural Persons

Section 4 is often the primary option for securing assets owned by entity debtors and

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for intangible assets such as receivables and contract payments. Since it does not include the section 2 exemption procedures, it is typically more effective when the target asset is a disputed debt (such as a contract receivable or other obligation) and the goal is to efficiently challenge the asset's ownership in court.

The same core adjudicative principles apply. The garnishee is treated as if sued on the debt by the judgment debtor and is entitled to deny indebtedness, to engage in discovery, and to have a hearing at which the creditor bears the burden of proving the case by a preponderance of the evidence.³⁶ That procedural model is what makes section 4 appealing for creative uses, particularly where determining whether a counterparty owes payment or whether an insurer is liable for covered judgment damages.

Procedural Aspects of Garnishment Proceedings

Practitioners are often surprised by the procedural aspects of garnishment because Rule 103 is an equitable process. It includes features that make garnishment resemble an expedited trial before the court. The standard rules of civil procedure do not apply, and discovery and motion practice are limited.³⁷

Bench Trial and Procedural Due Process

Garnishment is tried to the court, and procedural due process protections are found in Rule 103. When a garnishee denies indebtedness, Rule 103 provides a system that protects the garnishee through notice, an opportunity to deny possession of relevant property, discovery, and a hearing. *Maddalone* explains that, unlike other supplemental proceedings, Rule 103 places the burden on the judgment creditor, treats the garnishee like a direct defendant, and provides procedural protections sufficient to satisfy due process and equal protection.³⁸

The Traverse

The traverse serves as the turning point between a primarily administrative track, where the garnishee admits holding assets, and a litigated track, where issues of indebtedness

or ownership are disputed. Rule 103 uses the answer to the writ, the traverse, and a hearing to resolve the matters outlined in both the answer and the traverse, providing the process for determining ownership of the disputed property.³⁹ When the answer denies indebtedness and is traversed, a hearing on the issues raised is mandatory.⁴⁰ It is important to note that a traverse must be filed within 21 days from the time an answer was filed or should have been filed.⁴¹ This is a crucial deadline, as the failure to file a traverse "shall be deemed as an acceptance of the answer as true."⁴²

Expedited Proceedings and Discovery

Discovery is available in garnishment, but Rule 103 "does not specify the extent of discovery," and garnishment is "an expedited proceeding" in which ordinary case management and discovery rules "generally" do not apply.⁴³ *Hoang* frames discovery rulings as discretionary, and a discovery limitation is only reversible if there has been arbitrary, unreasonable, or unfair decision-making.⁴⁴

In the context of determining insurance coverage, *Hoang* emphasized that limiting oral depositions did not violate the insurer's procedural rights, where the insurer could call and cross-examine witnesses and could not show that the additional discovery would have changed the outcome.⁴⁵ For practitioners, the practical lesson is twofold. First, plan early for necessary discovery. Second, develop the record to show why a particular discovery is needed, especially if the issue depends on facts rather than purely legal theories.

Defaults and Default Judgments

Rule 103 also contains a default and default judgment framework that can itself require evidence and a hearing.⁴⁶ Where the garnishee answers indicating it holds property or owes money but fails to tender, the creditor may establish entitlement to default judgment through the answer itself. Where the garnishee fails to answer at all, the creditor generally must introduce extrinsic evidence of liability, often by calling the garnishee as a witness at a hearing.⁴⁷ The default provision in the Rule also provides for an award of fees as is just.⁴⁸

Attorney Fees, Costs, and "Just" Orders

Rule 103 allows an award of attorney fees, costs, and expenses as are just, following a traverse hearing.⁴⁹ Fee awards after a traverse hearing are discretionary and should only include those amounts necessary to prosecute or defend the traverse.⁵⁰ Practitioners should treat fee exposure as part of the traverse risk calculus for both sides.

Third-Person Claims and Intervention

Rule 103 anticipates disputes where the garnished property may belong to multiple persons or where rightful ownership is unclear. Because they are third parties who may owe duties to the judgment debtor, garnishees are frequently conservative when admitting if they possess the assets of the judgment debtor. Section 11's third-person claim process provides protection to the garnishee, stating that the garnishee is not required to defend a third person's rights in the asset.⁵¹

When the garnishee indicates a third-person claim, the clerk issues a summons to the third person, who must answer under the time frames found in CRCP 12.⁵² If the garnishee promptly delivers funds to the clerk or property to the sheriff, the garnishee can be released and discharged from liability upon service of the summons.⁵³

Intervention is another key procedural tool. Rule 103 allows a third party claiming an interest in garnished property to intervene under CRCP 24,⁵⁴ with the intervention deadline tied to the time judgment is entered against the garnishee.⁵⁵

These tools are particularly important to the "creative" categories—fraudulent transfer, alter ego, and veil piercing—because they provide procedural pathways to bring the necessary parties before the court, enabling ownership and entitlement issues to be adjudicated within the garnishment proceeding.

Conclusion

Sections 2 and 4 of Rule 103 provide powerful mechanisms to reach judgment debtors' assets held by nonparties, and, equally important, provide a procedural forum to litigate whether those assets are recoverable. Lawyers who treat garnishment as a narrow "bank levy tool" overlook its broader utility: adjudicating contract indebtedness and coverage obligations and,

when necessary third parties are properly before the court, resolving ownership disputes and related entity issues.

The price of that power is strict procedural compliance. Section 2 imposes debtor-protective requirements that can derail the writ if overlooked. Section 4 offers a streamlined route

for entity debtor assets and is often the best fit for receivables and contract rights. Practitioners who master these procedural mechanisms can transform garnishment from an afterthought into a powerful enforcement strategy, especially where a valuable asset is not property in the debtor's possession. ^{CI}



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NOTES

1. CRCP 103 § 2(b) (Form 29 mandatory for natural persons); 13 *Colo. Prac., Civ. Proc. Forms & Comment.* § 103:22 (3d. ed. Thomson West 2021) (Form 29 contains substantive and procedural provisions).
2. *Day v. Bank of Del Norte*, 230 P. 785, 785 (Colo. 1924).
3. *Hoang v. Monterra Homes LLC*, 129 P.3d 1028, 1033 (Colo.App. 2005), as modified on denial of reh'g (May 12, 2005) and judgment rev'd on other grounds, 149 P.3d 798 (Colo. 2007), as modified (Mar. 5, 2007); *Maddalone v. C.D.C., Inc.*, 765 P.2d 1047, 1049 (Colo.App. 1988).
4. CRCP 103 § 8(5).
5. *Maddalone*, 765 P.2d at 1049; *Hoang*, 129 P.3d at 1033.
6. CRCP 103 § 5 addresses writs in aid of pre-judgment attachment. It resembles Sections 2 and 4 in structure and practice, but it is outside the scope of this article.
7. CRCP 103 § 2(a).
8. CRCP 103 § 2(b).
9. CRCP 103 § 4(a).
10. *Maddalone*, 765 P.2d at 1049; *Hoang*, 129 P.3d at 1033.
11. *Maddalone*, 765 P.2d at 1049.
12. *Haselden Langley Constructors, Inc. v. Graybar Elec. Co.*, 662 P.2d 1064, 1065 (Colo. 1983).
13. *Id.*
14. *In re Stone*, 573 P.2d 98, 100 (Colo. 1977).
15. *Steen v. Aetna Cas. & Sur. Co.*, 401 P.2d 254, 255 (Colo. 1965). Whether such a claim would be subject to an exemption is beyond the scope of this article.
16. CRCP 103 § 2(a); CRCP 103 § 4(a).
17. *Maddalone*, 765 P.2d at 1048-49.
18. *Id.* at 1049.
19. *Walk-In Med. Ctrs., Inc. v. Breuer Cap. Corp.*, 778 F.Supp. 1116, 1122 (D.Colo. 1991).
20. CRCP 103 § 10; *Flanders Elec. Motor Serv., Inc. v. Davall Controls & Eng'g*, 831 P.2d 492, 496 (Colo.App. 1992).
21. *Bohrer v. Church Mut. Ins. Co.*, 965 P.2d 1258, 1267 (Colo. 1998).
22. *Hoang*, 129 P.3d at 1033.
23. *Id.*
24. *Id.*
25. *Steen*, 401 P.2d at 255.
26. *Id.*
27. *Great Neck Plaza, L.P. v. Le Peep Rests., LLC*, 37 P.3d 485, 489 (Colo.App. 2001).
28. CRCP 103 § 11(a), (b).
29. CRCP 103 § 9.
30. CRCP 103 § 2(b).
31. CRCP appendix to chapters 1 to 17A (Forms), Introductory Statement at note 1.
32. CRCP 103 § 2(b).
33. CRCP Form 29.
34. CRCP 103 § 2(a).
35. CRCP 103 § 2(g)(2), (4).
36. *Hoang*, 129 P.3d at 1033.
37. *Id.*
38. *Maddalone*, 765 P.2d at 1049.
39. CRCP 103 § 8; *CB Richard Ellis, Inc. v. CLGP, LLC*, 251 P.3d 523, 528 (Colo.App. 2010).
40. *Maddalone*, 765 P.2d at 1049.
41. CRCP 103 § 8.
42. *Id.*
43. *Hoang*, 129 P.3d at 1033.
44. *Id.*
45. *Id.*
46. CRCP 103 § 7(b).
47. 13 *Colo. Prac.* § 103:71; *Don J. Best Tr. v. Cherry Creek Nat. Bank*, 792 P.2d 302, 304 (Colo.App. 1990).
48. CRCP 103 § 7(b)(4).
49. CRCP 103 § 8(b)(5).
50. *L & R Expl. Venture v. CCG, LLC*, 351 P.3d 569, 576 (Colo.App. 2015).
51. CRCP 103 § 11.
52. CRCP 103 § 11(a).
53. CRCP 103 § 11(b).
54. CRCP 103 § 9.
55. *Id.*



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