

STATE OF NEW HAMPSHIRE

PROBATE COURT

PROCEDURE BULLETIN 27

RELATIVE TO: Attachments and Trustee Process

This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.

BACKGROUND

The following definitions are provided for reference:

Attachment – a lien created by judicial process on a respondent’s property or interest in property. Attachments also serve as a basis for jurisdiction and provide security for payment of a petitioner’s claim. The power to attach property is entirely derived from statute – RSA 511 and RSA 511-A.

Trustee Process – a form of attachment where the respondent’s right to receive money or property from a third party (e.g. held in trust for the respondent), may be held as security for the petitioner’s judgment. May also be referred to as “garnishment” or “foreign attachment.” An equitable proceeding decided on equitable principals. Only permitted in personal actions. This is a power also derived from statute - RSA 512.

Both attachments and trustee process are obtained through the same procedures.

Petitions to attach and petitions for trustee process usually come to the Court in one of three ways: (1) as petitions to attach with notice filed with the filing of the underlying action; (2) as petitions to attach with notice filed after the underlying action has already started; or, (3) as an *ex parte* petition/motion to attach filed with the filing of the underlying action. It is rare, if ever, that an *ex parte* petition/motion to attach will be filed before or after the underlying action has already started although the statute does not preclude this. This procedure bulletin covers all of these different scenarios. The following index is provided so that the user can turn to the section that applies to a particular case:

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PETITION/MOTION TO ATTACH WITH NOTICE

Can be filed with original pleading or afterwards but **NOT** before.

Petition/motion to attach with Notice - Filed WITH Original Pleading (Underlying Action)

1. Verify petition/motion to attach with notice and petition for underlying action are complete (e.g. signed under oath, complete addresses, etc.). Ensure return date on petition/motion to attach with notice has been provided.
2. There is no fee for filing petition/motion to attach with notice. However, the appropriate entry fee for underlying action must be paid.
3. Open a file, assign a case number and date stamp filings. Enter/case number into case management system.
4. The filing party is responsible for determining the number of attested copies needed for service. Prepare orders of notice on underlying action and attested copies of petition/motion to attach at no charge.
5. Complete service packets by stapling attested copy(ies) of petition/motion to attach, with notice to respondent on the reverse side, on top of the orders of notice and copy of the underlying action. Keep original for file and give service packets to filing party.

NOTE: It is the responsibility of the filing party to have these served.

6. Update case management system. Enter time standards for underlying action as is normally done for equity matters. In addition, enter time standard for objection to petition/motion to attach (due by return day).
7. If no objection is filed and the service returns are on file, present to judge for ruling on petition/motion to attach no sooner than the day after the return day.
 - a. If attachment is denied, issue notice of decision. Continue to process underlying action as though no petition/motion to attach was filed.
 - b. If attachment is granted, issue notice of decision and proceed to step 9 of this section below for issuance of blue writ.

NOTE: Judge may limit scope of requested attachment.

8. If an objection is filed, schedule hearing on petition/motion to attach with notice. Hearing must be held within 14 days of receipt of objection.

- a. If, after hearing, attachment is denied, issue notice of decision. Underlying action will continue in the normal course.
- b. If, after hearing, attachment is granted, issue notice of decision and proceed to step 9 of this section below for issuance of blue writ.

NOTE: Judge may limit scope of requested attachment.

9. If attachment is granted:

- a. Gather the following for mailing (or to provide in hand at counter) to the filing party:
 - i. Notice of decision prepared in either step 7 or 8 above.
 - ii. One blue writ (with case name and case number completed and signed by register but otherwise blank) for each asset to be attached (consistent with judge's order).

NOTE: Do not make or retain a copy of blue writ for the file.

- iii. One attested copy of the petition/motion to attach with notice with the judge's completed order to accompany each blue writ. There is no charge for these copies.
- b. Send notice of decision prepared in either step 7 or 8 above to all respondents.
- c. Update case management system.

Petition/motion to attach with Notice - Filed AFTER Original Pleading (Underlying Action)

1. Verify petition/motion to attach with notice is complete (e.g. signed under oath, complete addresses, etc.) including appropriate Probate Court Rule 21 certification (no additional service is required).
2. There is no fee for filing a petition/motion to attach with notice.
3. Date stamp filings. Enter into the case management system.
4. If no objection is filed, present to judge for ruling on petition/motion to attach with notice no sooner than the 11th day.
 - a. If attachment is denied, issue notice of decision. Underlying action will continue in the normal course.

- b. If attachment is granted, issue notice of decision and proceed to step 6 of this section below.

NOTE: Judge may limit scope of requested attachment.

- 5. If an objection is filed, schedule hearing on the petition/motion to attach with notice. Hearing must be held within 14 days of receipt of objection.

- a. If, after hearing, attachment is denied, issue notice of decision. Underlying action will continue in the normal course.
- b. If, after hearing, attachment is granted, issue notice of decision and proceed to step 6 of this section below for issuance of blue writ.

NOTE: Judge may limit scope of requested attachment.

- 6. If attachment is granted:

- a. Gather the following for mailing (or to provide in hand at counter) to the filing party:
 - i. Notice of decision prepared in either step 4 or 5 above.
 - ii. One blue writ (with case name and case number completed and signed by register but otherwise blank) for each asset to be attached (consistent with judge's order).

NOTE: Do not make or retain a copy of blue writ for the file.

- iii. One attested copy of the petition/motion to attach with notice with the judge's completed order to accompany each blue writ. There is no charge for these copies.
- b. Send notice of decision prepared in either step 4 or 5 above to all respondents.
- c. Update case management system.

EX PARTE PETITION/MOTION TO ATTACH

Ex Parte Petition/Motion to attach – Filed BEFORE Original Pleading (Underlying Action)

- 1. Verify *ex parte* petition/motion to attach is complete (e.g. signed under oath, complete addresses, etc.). Note that no return date is necessary.
- 2. There is no fee for filing an *ex parte* petition/motion to attach.

3. Open a file, assign a case number and date stamp filings. Enter/case number into the case management system.
4. Ask filing party to remain in building and be available for a page.
 - a. If judge has questions or wants a hearing, a record should be taken. See Procedure Bulletin 14.
 - b. If no judge is on site, check with filing party to ensure that matter could not be addressed when there will be a judge on site. If an emergency, contact Administrative Judge's office for assignment.
5. If *ex parte* petition/motion to attach is denied:
 - a. Issue a notice of decision **only** to the filing party.
 - b. Update case management system and close file.
6. If *ex parte* petition/motion to attach is granted:

NOTE: The judge needs to include in the order a time within which the petitioner shall file the underlying action. Normally, this will be within 2 business days.

- a. Gather the following for mailing (or to provide in hand at counter) to the filing party:
 - i. One blue writ (with case name and case number completed and signed by register but otherwise blank) for each asset to be attached (consistent with judge's order).

NOTE: Do not make or retain a copy of blue writ for the file.

- ii. One attested copy of the *ex parte* petition/motion to attach with the judge's completed order to accompany each blue writ plus enough attested copies of the petition/motion for service on the respondent(s). There is no charge for these copies.
- b. Update case management system and enter time standard for underlying action to be filed.

NOTE: No time standard is needed for the filing of an objection.

- c. **IMPORTANT:** If underlying petition is not filed within time specified in order give to judge to make an order vacating the attachment immediately and issue a notice of decision.
7. If an objection is filed, schedule for a prompt hearing.

NOTE: Ask judge how quickly he or she wants to schedule the hearing.
8. If service return of underlying action is not filed by return day, present to judge for order dismissing underlying action.

Ex Parte Petition/Motion to Attach – Filed WITH Original Pleading (Underlying Action)

1. Verify *ex parte* petition/motion to attach and petition for underlying action are complete (e.g. signed under oath, complete addresses, etc.). Ensure return date on *ex parte* petition/motion to attach has been provided.
2. There is no fee for filing an *ex parte* petition/motion to attach. However, the appropriate entry fee for underlying action must be paid.
3. Open a file, assign a case number and date stamp filings. Enter/case number into the case management system.
4. Ask filing party to remain in building and be available for a page.
 - a. If judge has questions or wants a hearing, a record should be taken. See Procedure Bulletin 14.
 - b. If no judge is on site, check with filing party to ensure that matter could not be addressed when there will be a judge on site. If an emergency, contact Administrative Judge's office for assignment.
5. If *ex parte* petition/motion to attach is denied:
 - a. Issue a notice of decision **only** to the filing party.
 - b. Update case management system.
 - c. Continue to process underlying action as though no *ex parte* petition/motion to attach was filed.
6. If *ex parte* petition/motion to attach is granted:

a. Gather the following for mailing (or to provide in hand at counter) to the filing party:

i. One blue writ (with case name and case number completed and signed by register but otherwise blank) for each asset to be attached (consistent with judge's order).

NOTE: Do not make or retain a copy of blue writ for the file.

ii. One attested copy of the *ex parte* petition/motion for attachment with the judge's order completed and the "notice to respondent" section completed by the register to accompany each blue writ and one attested copy for service on each respondent. There is no charge for these copies.

iii. Staple attested copies of *ex parte* petition/motion to attach with the judge's completed order on the top of the orders of notice and copy of the underlying action.

b. Place original *ex parte* petition/motion to attach with judge's completed order and original petition on underlying action in file.

7. Update case management system. Enter time standards for underlying action as is normally done in equity matters.

NOTE: No time standard is needed for the filing of an objection to the attachment.

8. If an objection is filed schedule for prompt hearing.

NOTE: Ask judge when hearing should be held.

9. If service return of underlying action is not filed by return day, present to judge for order dismissing underlying action.

Ex Parte Petition/motion to attach – Filed AFTER Original Pleading (Underlying Action)

1. Verify *ex parte* petition/motion to attach and petition for underlying action are complete (e.g. signed under oath, complete addresses, etc.). Ensure return date on *ex parte* petition/motion to attach has been provided.

2. There is no fee for filing a petition/motion to attach.

3. Date stamp filings. Enter into the case management system.

4. Ask filing party to remain in building and be available for a page.
 - a. If judge has questions or wants a hearing, a record should be taken. See Procedure Bulletin 14.
 - b. If no judge is on site, check with filing party to ensure that matter could not be addressed when there will be a judge on site. If an emergency, contact Administrative Judge's office for assignment.
5. If *ex parte* petition/motion to attach is denied:
 - a. Issue a notice of decision.
 - b. Update case management system.
 - c. Continue to process underlying action as though no *ex parte* petition/motion to attach was filed.
6. If *ex parte* petition/motion to attach is granted:
 - a. Gather the following for mailing (or to provide in hand at counter) to the filing party:
 - i. Notice of decision (prepare enough copies for each respondent).
 - ii. One blue writ (with case name and case number completed and signed by register but otherwise blank) for each asset to be attached (consistent with judge's order).

NOTE: Do not make or retain a copy of blue writ for the file.

 - iii. One attested copy of the *ex parte* petition/motion for attachment with the judge's completed order and the "notice to respondent" section completed by the register to accompany each blue writ and one attested copy for service on each respondent. There is no charge for these copies.
 - iv. Staple a copy of the notice of decision to the top of each attested copy of the *ex parte* petition/motion for attachment with the judge's completed order prepared for each respondent.
 - b. Place original *ex parte* petition/motion to attach with judge's completed order and original petition on underlying action in file.

7. Update case management system.

NOTE: No time standard is needed for the filing of an objection to the attachment.

8. If an objection is filed schedule for prompt hearing.

NOTE: Ask judge when hearing should be held.

Last Reviewed: August 1, 2007

_____/s/ David D. King
David D. King
Administrative Judge of Probate Court

History:

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