

## Opinion No. 69-85

August 4, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Ray Shollenbarger,  
Assistant Attorney General

**TO:** Honorable Nils T. Kjellstrom, Judge, Small Claims Court Bernalillo County Court  
House, Albuquerque, New Mexico

### QUESTIONS

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1. Does the Small Claims Court have the jurisdiction to issue a writ of garnishment?
2. Does the District Court have concurrent jurisdiction with the Magistrate Court to issue a writ of garnishment?

#### CONCLUSIONS

1. No.
2. No.

### OPINION

#### {\*135} ANALYSIS

Garnishment is a specialized form of attachment which allows a person to satisfy a debt owing him from property of his creditor which is in the possession of a third party. Garnishment was not a remedy that existed at common law and in New Mexico the {\*136} scope of the remedy is purely statutory. **Farmers Ins. Exchange v. Ledesma**, 214 F.2d 495 (1954); 86 A.L.R. 588. Resort to the statutes on garnishment is necessary to determine which courts can issue the writ since it is generally held that a court has no jurisdiction to proceed in garnishment, even though it is a court of general jurisdiction, unless such jurisdiction is expressly conferred by statute. **Winfree v. Mann**, 154 Va. 683, 153 S.E. 837 (1930).

The legislature in Chapter 139 of the Laws of 1969 repealed Sections 26-2-2 through 26-2-36, N.M.S.A., 1953 Compilation, which had previously provided for the issuance of garnishment. This action leaves only Section 36-14-1, N.M.S.A., 1953 Compilation, as amended by Chapter 139 of the Laws of 1969 and new Section 36-14-16, N.M.S.A., (Chapter 139 of Laws of 1969) as statutory sources of jurisdiction for courts to issue garnishment. Section 36-14-1, supra, is a grant of jurisdiction solely to the magistrate court and Section 36-14-16, supra, is a grant of jurisdiction to the district court in those

cases where the debt or sum claimed exceed the jurisdictional amount of the magistrate court.

Since there is no expressed statutory jurisdiction in the Small Claims Court to issue garnishment, it is our opinion that it cannot issue the writ. Section 36-14-16, supra, is clear in its expression that the district court only has the power to issue the writ when the amount claimed is in excess of the jurisdictional amount of the magistrate court, thus there is no concurrent jurisdiction to issue garnishment.