# COUNTY OF MONROE
# OFFICE OF THE SHERIFF
## ROCHESTER, NEW YORK

| GENERAL ORDER<br>CIVIL BUREAU | DATE OF ISSUE<br>December 31, 2025 | EFFECTIVE DATE<br>December 31, 2025 | NO.<br>005-25 |
|---|---|---|---|
| SUBJECT: GENERAL ORDER<br><br>Property Executions | | DISTRIBUTION<br><br>Civil Bureau Personnel | AMENDS |
| REFERENCE: Civil Practice Law & Rules 211, 5208, 5205, 5230, 5235, 8011, 8012, 8013 NYSSA 33, 100, 107, 110 | | | RESCINDS<br>005-24 |

**Purpose:** To define and familiarize members and employees with the Monroe County Sheriff's Office (MCSO) policy in relation to the acceptance, service, completion, and return of Property Executions.

**Policy:** Members and employees will be responsible for maintaining uniform compliance and enforcement of Property Executions in accordance with the directives set forth in this order.

**I. Contents of Executions – Clerical Review**

A. Executions must specify the date the judgment was entered, the court where it was entered, original amount of the judgment, amount outstanding, names of the parties involved, last known address of the judgment debtor, and the date of filing of the transcript.

B. When jurisdiction is based solely on attachment of local assets, the execution must so state, and describe the property attached, directing that only such property be levied on and sold pursuant to the execution. In such instances, property of the judgment debtor that has not been attached is not subject to the execution, (CPLR 5230a).

C. If the judgment debtor is deceased, a levy is not permitted without leave of the Surrogate Court, (CPLR 5230a, 5208).

D. Accepting executions:

1. The execution must contain the information required by statute.

2. An attorney or a clerk of the court must sign all executions.

3. Transcripts will be necessary when:

a. Judgment is obtained in a court other than Supreme, Monroe County, or Family Court.

b. For lien against real property, if the judgment was not entered in the county where real property located.

c. Judgments older than ten (10) years require that a notice of levy must be filed with the County Clerk to maintain a lien against the property, (CPLR 5235). Judgments that are more than twenty (20) years old, the Sheriff's Counsel will be consulted prior to levy, since there might be exception to presumption of payment, (CPLR 211b).

d. Leave of Surrogate Court is required.

E. The Sheriff's Office is required to maintain a detailed record of all executions delivered and received. The records must indicate the names of the parties, and the judgment debtor or obligator, dates of issue and return, date and time of delivery (must be endorsed or time stamped on the execution), amount due upon receipt of the execution, and the amount of judgment and any Sheriff's fees that are unpaid at the time of return of the execution, (CPLR 5230d).

## II. Issuance of Execution

An execution may be issued at any time before a judgment is satisfied or vacated, but not prior to entry and docketing of the judgment, (CPLR 5230). Judgments are presumed to be paid, and satisfied, after twenty (20) years, (CPLR 211b). Executions will only be issued by the court clerk or the attorney for the judgment creditor.

## III. Receiving the Execution - by Clerical

A. Executions may be received only during office hours which are from 0900 to 1700 hours Monday through Friday.

B. Fees are at a rate set by NYS Law, plus mileage, and any necessary advance money for deposits for towing, advertising, overtime, etc. Also the rate for notice to judgment debtor, if applicable (CPLR 8011, 8012, 8013).

C. An original and three (3) copies must be received.

1. An attorney or court clerk must sign the original execution.

2. A return and endorsement must be made upon the original copy.

3. One copy will be retained for Civil Bureau files.

D. Ensure that the execution is directed to the Sheriff and not to another enforcement officer. If the execution is not directed to the Sheriff, the MCSO Civil Bureau may not have the authority to act.

E. A complete description and proof of ownership of the property upon which a levy is to be made will be obtained. The attorney will provide written instruction as to the property to be levied upon and the person to be served.

F. A record of all executions and corresponding fees will be created for each service and will list the following:

1. Exact title of the action.
2. Exact type of papers that were received.
3. Exact amount of fees that were received.
4. Exact date and time the execution was received.
5. Attorney of record.
6. Creditor and debtor.
7. Court and the county that issued the execution.
8. The court assigned index number.

G. Determine if there are any special instructions or provisions to be complied with that could have an effect upon serving and making a levy by virtue of the execution.

## IV. Service of the Property Execution by the Deputy

A. Executions can be served 1) personally on the debtor, if that is not possible, 2) service may be served on a person of suitable age and discretion who resides (or is employed at the property) that is sought to be recovered, or 3) "Nail and Mail" service may be used.

Note: If method two or three is used, an additional copy must be sent by regular mail. This mailing must be made upon return to the office during the business day in order to complete the service.

B. The serving Deputy must sign the notice of the levy prior to serving and mailing it. This notice will be attached to all copies of the execution, (see attached CB-017 Notice of Levy and Demand Form).

C. If there is a threat of violence, special preparations will be made in advance of the actual service and levy through the Civil Sergeant. Any other special arrangements such as trucks and crew for the removal of property will be made with the attorney of record.

## V. Time Frame of Execution Prior to Levy

A. Sixty (60) days from issuance by a court clerk or attorney.

B. Further extensions by the attorney for the creditor.

1. The attorney may grant additional 60-day extensions in writing.

2. The attorney may continue 60-day extensions in writing unless another execution is delivered to the Civil Bureau, which has not been returned to the clerk, (CPLR 5230c). This prevents the first judgment creditor from securing a continuing lien and priority on the debtor's property, to the detriment of other judgment creditors, (CPLR 5230c).

## VI. Voluntary Collections Prior to Levy

A. Voluntary collection prior to levy is permitted if it is beneficial to all parties and approved by the issuing attorney, Civil Sergeant, or the Civil Bureau Chief.

B. Rules for voluntary collection:

1. There will be an executed written agreement in which the judgment creditor agrees to voluntary payments by the judgment debtor without a levy being made. Such writing would be relevant evidence should a judgment creditor seek to hold the Sheriff liable for failure to levy upon available property upon default in payments being made by the debtor.

2. An execution prior to return is valid for 60 days, with 60-day extensions available upon written notice from the issuing attorney. However, extensions cannot be granted, except for the initial 60-day extension, if another execution is received. Therefore, the life of the execution may be as little as 120 days and a levy may not be made after the execution has expired.

3. All attorneys or creditors who have delivered an execution must agree to terms of payment. An attorney or creditor who has issued an execution has the right to insist that the execution be enforced.

4. If another enforcement officer in the county makes a levy against the property of the same judgment debtor, MCSO's execution(s) loses priority.

5. The attorney for the judgment creditor will be advised of any change in circumstances such as delivery of a new execution or default in payment schedule that may cancel the agreement to accept voluntary payments.

6. The acceptance of voluntary payments does not effect the execution in any way, except for the necessary amount to be collected. Subsequently, if the judgment debtor defaults, MCSO will still proceed to levy on the property, sufficient to satisfy the execution.

   Note: If the initial 60-day period is about to expire, staff must notify the attorney for appropriate action (i.e. extension, issuance of a new execution, etc.).

## VII. Levy on Personal Property by a Deputy

A. A levy is the taking of property followed by a service of the execution. In some cases, the service may precede the taking of property.

   1. Levy by service affects two classes of personal property, tangible and intangible.

   2. If the property is capable of delivery, it must be levied upon by seizure rather than by service, (CPLR 5232b).

B. General rules regarding service of execution:

   1. Executions must be served in the same manner as a summons, except that service cannot be made on an agent designated to receive service pursuant to CPLR 318.

   2. If the garnishee is New York State, the levy is made in the same manner as an income execution, (CPLR 5231).

## VIII. Levy by Service or Constructive Levy by the Deputy

A. Prerequisites in order for a levy to be valid:

   1. The person served must owe a debt to the judgment debtor or be in possession or custody of property not capable of delivery in which the judgment debtor has an interest at the time of service. If no property or debt exists at that time, the levy is ineffective, even if the person served later acquires such property or incurs a debt subject to enforcement.

   2. The person served must also know or have reason to believe that they are indebted to the judgment debtor, or be in possession of property in which the judgment debtor has an interest. For example, bank account(s) held under a fictitious name would not be subject to execution served on a bank.

B. The levy must be served on the garnishee in accordance with CPLR 308.

C. The garnishee must turn over any property or debt of the judgment debtor to the Sheriff. Any debt that becomes due within ninety (90) days of service is also subject to the levy. A court order can extend the life of the levy for the duration of the debt. Property must be in possession of the garnishee at the time of the levy in order to be subjected to the levy (other than debt). The garnishee is forbidden to turn over any of the debtor's property to anyone

other than the Sheriff (or support collection unit) unless a court order directs otherwise, (CPLR 5232a).

Note: After ninety (90) days, or such further time as provided by order of the court served on the garnishee, the levy is ineffective except as to that property already within Sheriff's Office control.

D. The levy is void after ninety (90) days from the date of service unless:

1. The creditor has commenced a special proceeding pursuant to CPLR 5225b or 5227.

2. The Civil Bureau has received a court order extending the levy.

3. The garnishee has turned the property over prior to the ninety (90) day period, (CPLR 5232a).

E. Rules for levy on intangibles:

1. Levy by service can only be made on a garnishee, never a judgment debtor.

2. Levies may only be placed on a debt or other intangible property.

3. Levy must be completed by actually taking into custody the property unless the life of the levy is extended by other means.

## IX. Levy by Seizure of the Deputy

A. Any interest of the judgment debtor that is capable of delivery is considered tangible. This type of property includes property such as negotiable instruments, documents of title, stock certificates, money, motor vehicles, etc.

B. Manner of seizure:

1. The Sheriff must levy on property capable of delivery by taking it into custody. The Sheriff need not take the property into physical possession or remove it to the Sheriff's Office Property Clerk. The Sheriff must simply assert "dominion and control" over the property.

2. Actual seizure may be accomplished by removing the property from the premises or placing a custodian in charge of the property.

3. As an alternative, the Sheriff may make a verbal declaration that the property in question is held under levy, although this action is not generally recommended.

4. An inventory should be made, signed by parties present and entered into records held in the Civil Bureau. Failure to make such an inventory will not invalidate MCSO's levy.

5. Leaving the property with the debtor or third party until the sale does not void a levy, but will only be left at the written direction of the creditor's attorney to avoid risk of liability to the Sheriff's Office.

C. The Sheriff's Office must also serve a copy of the execution, in the same manner as levy by service, upon the person from whose possession or custody the property was taken.

## X. Notice to Judgment Debtor

CPLR 5232(c) provides that the Sheriff must, within four (4) days after service of an execution on any garnishee, mail, or deliver to each judgment debtor, who is a natural person, a copy of the execution and a Notice to Debtor Form.

A. If the execution states that this notice has been served upon the judgment debtor within the past year, it need not be sent again.

B. If the execution is served upon a judgment debtor and not a garnishee, or if the judgment debtor is not a natural person, this requirement does not apply.

C. If service is necessary, the statute requires that both the execution and notice be sent to the judgment debtor. This notice must be sent within four (4) days after service of the execution on the garnishee.

D. Service is made by actual personal delivery or by first-class mail, to the debtor's residence, or if undeliverable there or unknown, to the debtor at his/her place of employment. The notice will be placed in a plain envelope marked "personal and confidential". If both the residence and place of employment are unknown, the notice will be mailed to the debtor at any other known address.

## XI. Levy at a Private Dwelling

A. Deputies only have the power to enter peacefully (invited in) under an execution. Members who do not have a search warrant, cannot break and enter unless the execution includes a signed court order to break and enter, and is accompanied by a hold harmless agreement.

B. Members may only execute the levy upon goods specifically listed by the issuing attorney, or items that are voluntarily surrendered.

C. CPLR 5205 lists goods that are specifically exempt from levy, and defines the monetary exemption amount for specific personal property such as motor vehicles, animals and livestock, household items, artwork, etc.

## XII. Levy at Commercial Establishments

A. A commercial property may be entered voluntarily to seize property. Only a court order can permit forcible entry of a commercial property.

B. There is no right to "lock out" the judgment debtor from their place of business unless they consent. Because of expenses, it is beneficial to all parties to consent to a lock out. If a lock out is agreed to, there is the risk that some of the levied items may be taken. This burden is therefore shifted from the Sheriff's Office to the attorney for the judgment creditor. Written indemnification must be on file with the Sheriff's Office, whereby the attorney assumes all liability.

## XIII. Making and Recording the Levy

A. A sufficient description of the property will be obtained so it may be properly identified and included in the notice of levy.

B. When storage is necessary, will obtain an advance that covers the cost of storage fees.

C. If a locksmith is required, advise the issuing attorney to supply one.

D. When custodians are necessary, have the attorney provide them, or forward the funds in advance to cover payment of any overtime expenses or costs incurred by the Sheriff's Office.

E. Have the issuing attorney execute a Hold Harmless Agreement and/or a bond valued at twice the amount of the judgment, indemnifying the Sheriff's Office if the attorney wants items left with the debtor or garnishee and does not want to pay the expenses of removal or placing a custodian. This may be revised later by the attorney after the levy.

F. Obtain enough information to locate and serve a proper person in order to complete the levy. A levy is not complete unless both a service and seizure occurs.

G. Have the attorney provide the value of the item(s) to be levied upon to ensure the taking of no more property than is necessary to satisfy the judgment.

H. When an attorney or creditor insists that the Deputy take an action that is unethical or potentially illegal, Sheriff's Counsel will be consulted prior to taking action.

## XIV. Advertising Prior to Sale

A. Prepare a notice of sale, listing the date, time, and place, (CPLR 5233b).

B. Attach the inventory, if available, to the notice.

C. Post in three (3) public places in the town or city in which the sale is to be held, at least six (6) days prior to the date of the sale.

D. Notify by mail with a copy of the notice of sale (i.e. attorney, debtor, or any other person who has expressed an interest).

E. Lotting of merchandise is permitted in very large inventories such as in a warehouse.

## XV. Conducting the Sale of Personal Property

A. Property must be sold within the view of the Deputy conducting the sale as well as within the view of those attending the sale, (CPLR 5233a).

B. A minimum of two (2) Deputies must be present at a sale.

* C. Sale is for cash, certified check, or bank-check only. Payable at the completion of the sale or by direction of the Bureau chief or his designee.

D. Only the right, title, and interest of the judgment debtor are being sold. The sale is subject to all valid prior liens and encumbrances. This notice must be announced at the time of sale.

E. All sales are subject to approval by the Sheriff. The sale is not complete and final until the successful bidder receives a bill of sale from the Sheriff's Office.

F. No warranty is made as to the condition or value of the item(s) being sold.

G. No sale is complete until payment has been made in full to the Sheriff's Office. If the debtor tenders payment in full, prior to the purchaser completing payment, the purchaser's rights may be terminated.

H. Sale procedure:

1. A detailed record must be maintained of all bidders and the amount of the bids received.

2. Property will be sold in bulk lot bid format first and by lot second. The higher net bid will be the successful bid. Considerations of Deputy time and expense incurred from lotting material must be considered.

3. In accordance with CPLR 5233(a), no sale will be permitted to the Sheriff, Undersheriff, or any other sworn member of the Sheriff's Office.

4. On taxable items, New York State sales tax must be paid, except when an exemption form is given to the Deputy to file.

5. A bill of sale must be prepared in duplicate, with a copy retained for Civil Bureau files. The Sheriff or the Undersheriff must sign the bill of sale.

## XVI. Distribution of Proceeds (CPLR 5234) – by the Senior Accountant

A. All fees, expenses, and taxes must be deducted.

B. The attorney for the judgment creditor must receive the balance up to the judgment amount plus interest and post-judgment costs.

C. The judgment debtor must receive any excess proceeds from the sale, if there are no existing executions on file for the proceeds.

D. No proceeds will be distributed until fifteen (15) days after the service of the execution, unless by court order, (CPLR 5234a).

## XVII. Stays, Appeals, and Bankruptcy

A. A stay may occur at any time during the enforcement cycle. A stay is a temporary condition that prevents further action, but does not require a release of property.

B. An appeal has the effect of a stay under CPLR 5519. Property or levies will not be released on appeal without an order under CPLR 5204. Such an order provides for the payment of fees, expenses, and weight.

C. Do not proceed when bankruptcy is filed prior to the levy. After the levy, MSCO may be required by Bankruptcy Court to turn any levied property over to the court. Any scheduled sales will be postponed, and the court notified. The creditor's attorney must be notified of any bankruptcy filings.

## XVIII. Return of Property Execution

A return is the act of the Sheriff in redelivering the execution with an accounting of the success or failure in fulfilling its direction, (CPLR 5230c). The execution will be returned to the court clerk endorsed as satisfied or partially satisfied. Only lower court executions need be returned when wholly unsatisfied.

By Order of the Sheriff,

Todd K. Baxter

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