COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK

GENERAL ORDER CIVIL BUREAU	DATE OF ISSUE August 10, 2020	EFFECTIVE DATE August 10, 2020	NO. 011-20
SUBJECT: GENERAL ORDER Income Executions		DISTRIBUTION Civil Bureau Personnel	AMENDS
REFERENCE:			RESCINDS 11-C-09

Purpose: To create a uniform policy within the Monroe County Sheriff's Office (MCSO) Civil Bureau detailing the enforcement of Income Executions.

Policy: It will be the policy of the MCSO Civil Bureau to follow the established procedures for the service and enforcement of Income Executions in accordance with the provisions of the New York State Civil Practice Law and Rules (CPLR).

Definitions: Income Executions: An enforcement instrument issued by the judgment creditor's attorney acting as an officer of the court, or the court clerk, directing the Sheriff to satisfy a money judgment out of the judgment debtors income.

Clerk: The Clerk of the Court in which the action is tried.

Garnishee: A person who owes a debt to a judgment debtor, or a person other than the judgment debtor, who has property in his possession or custody in which a judgment debtor has an interest.

Money Judgment: A judgment for a sum of money or directing the payment of a sum of money.

Judgment Creditor: A person in whose favor a money judgment is entered, or a person who becomes entitled to enforce it.

Judgment Debtor: A person against whom a money judgment has been awarded.

Jurisdiction: A geographic area in which an enforcement officer is empowered to act.

Gross Income Salary: Wages, other income including any and all overtime earnings, commissions, and income from trusts before any deductions are made from such income.

Disposable Earnings: The remaining earnings after the deduction required by law to be withheld (i.e. social security, state, and federal income taxes. This does not include such items as union dues, health insurance premiums, charities, etc).

I. Procedure:

A. Processing Papers

1. The Civil Bureau requires an original and three (3) copies per stage (or original and five (5) copies if submitting both stages at the same time of the income execution along with the judgment. The original execution and one (1) copy will remain on file in the Civil Bureau Office and the additional copies will be used for service. Section D of this Order outlines proper disposition of the original upon return to the court.

2. Each paper must be time stamped and specify:

   a. The name and address of the judgment debtor, as well as the name and address from which the judgment debtor is receiving, or will receive money.
   b. The amount of judgment and the amount due.
   c. The Notice to Judgment Debtor.
   d. Date of entry.
   e. The interest date.
   f. Attorney of record.

3. The Civil Bureau will collect first-stage fees, second-stage fees, and mailing costs in advance. A fee is required for service to a municipality.

B. Income Unit

1. The Civil Bureau receives the papers and creates a corresponding file jacket. This is filed in numeric order and will contain the original execution (along with copies of all unused executions) and all other documents related to the file.

2. There are two (2) stages in the income execution collection process. The first stage service is when the execution is served on the debtor personally, giving them the opportunity to make voluntary payments to the Civil Bureau. There are two (2) methods for serving first-stage:

   a. By serving the debtor in the same manner as a summons.

   b. By certified mail with return receipt requested, and by regular first-class mail to the debtor. Both mailings are sent to the debtor's known address. The adhesive certified mail tracking number must be kept as proof of service; the delivery status can be verified through UPS or Pitney Bowes online using the tracking number.

      i. The Civil Bureau's standard form letter, which explains to the debtor what is required, will be included in the mailing along with the execution.

3. Once service has been completed, a payment schedule (weekly, bi-weekly, or monthly) is set up. A copy of the debtor's pay stub is required.

   Note: Periodically, a request will be made for a copy of the debtors pay stub to verify that the correct payments are being received.

4. When the first payment is received, the file is reviewed. The balance due, interest date, gross income, fees, and attorney are confirmed. Referrals and priors are searched.

5. The account is monitored monthly for defaults.

6. If the debtor enters into default, the execution is then served at his/her place of employment (second-stage). Second-stage service is when the employer is served because the debtor is in default. The debtor is in default when:

    a. The debtor fails to make their first payment within twenty (20) days from the date he/she was served first-stage.

    b. The debtor does not make the correct installments agreed upon.

    c. The debtor stops payments before the execution is satisfied.

    d. The execution is served second-stage in the same manner as a summons or by certified mail, return receipt requested. Service by certified mail need not be accompanied by a regular mailing.

        i. The Civil Bureau will use the mail method for second stage service when possible.

        ii. The Civil Bureau's standard form letter, which explains to the employer what is required, will be included in the mailing along with the execution.

        iii. When serving a municipality, ensure that the applicable fee is included, and that it is made payable to the municipality.

        iv. If service is not deliverable by mail, attempt service by using the summons method.

7. Whether executions are in first or second-stage, the deductions must be calculated the same way. There are three (3) ways of determining the appropriate amount. The figure that is the less of the three (3) is the appropriate amount to deduct.

    a. No more than 25% of disposable income.
    b. No more than the difference between the disposable income and thirty (30) times the current minimum wage.
    c. No more than 10% of gross income. This is the most frequent method used.

8. The Civil Bureau may only collect on one (1) income execution of a judgment debtor at a time. However, if deductions are being made on child support or alimony, collection may be performed on an income execution as long as the combined deductions do not exceed 25% of the disposable earnings.

9. The priority of multiple income executions against the same judgment debtor is determined by the date and time they are delivered to the MCSO or any other enforcement officer.

C. Managing Accounts

1. The following action will be taken once the execution is active, whether first or second-stage, on any accounts that are flagged for "no payment received" within the appropriate cycle period. This is generally twenty (20) days for first-stage and thirty (30) days for second-stage:

    a. If in first-stage, it will immediately be placed in second-stage with the employer.

b. If in second-stage, a letter is sent or a telephone call is made to the employer requesting payment.

i. Correspondence received from the employer is filed with the case.

ii. Attorney's status inquires (updates on accounts) are answered upon request.

2. Inspect the accounts where checks have been received from either the defendant or the employer for accuracy to include, but not be limited to, the following:

a. Correct name, account number, employer, what has been paid to date, balance due, and the last payment that was received.

b. If accounts are flagged, the notes screen will be referred to for any prior notes that have been entered, or the file will be pulled for any other applicable information that is needed.

3. Monies received on accounts are entered and are disbursed the following month.

4. If the debtor declares bankruptcy the following steps are taken:

a. Request a copy of the petition with the bankruptcy number.
b. Request a list of the creditors.
c. Contact the creditor's attorney for instructions on how to proceed. Requests of such information will be in writing.
d. If the execution is in second-stage, send a letter to the employer to hold all payments.
e. Money received after the date of receiving notification of bankruptcy filing is returned to the source.

D. Returns

1. The return is a statement of the actions taken by the deputy. This must be endorsed on all executions and are documented as follows:

a. Fully satisfied – the account is paid in full.
b. Partially satisfied – the principal balance is reduced, but not paid in full.
c. Unsatisfied – no payments applied to the principle on the account.

2. Executions may be returned for the following reasons:

a. Judgment is satisfied.
b. The debtor is discharged or has resigned from employment.
c. The employer is out of business or the debtor is no longer an employee of the named employer.
d. The judgment is vacated or annulled.
e. The debtor has received a discharge through bankruptcy.
f. The attorney of record requests a return, in writing.

By Order of the Sheriff,

Todd K. Baxter