COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK

GENERAL ORDER CIVIL BUREAU	DATE OF ISSUE September 14, 2020	EFFECTIVE DATE September 14, 2020	NO. 013-20
SUBJECT: GENERAL ORDER Orders of Attachment		DISTRIBUTION Civil Bureau Personnel	AMENDS
REFERENCE: NYSSA STANDARD 33, CPLR ARTICLE 62			RESCINDS 13-C-13

Purpose: To create a uniform policy within the Monroe County Sheriff's Office (MCSO) Civil Bureau with regards to the service and enforcement of Orders of Attachments.

Policy: It shall be the policy of the MCSO Civil Bureau to follow the established procedures for serving and enforcing lawfully issued Orders of Attachments in accordance with the provisions of the New York State Civil Practice Law and Rules (CPLR Article 62).

I. Definitions:

Order of Attachment: A provisional remedy, before judgment, where property may be taken into legal custody pending the outcome of any action, except matrimonial action. It can be used as security for the plaintiff for any judgment they may be awarded, or to allow the court to exercise jurisdiction over the defendant when he/she cannot be served with a summons.

Provisional Remedy: Used to protect a litigant's rights during the course of an action.

Undertaking: A bond the plaintiff must post in a total amount fixed by the court, but not less than $500.00 to cover attorney costs and damages in cases where the defendant ultimately wins.

II. General Procedures

A. Processing

1. Obtain three (3) certified copies of the order. Payment for fees and expenses will be collected in advance. The order shall specify the amount to be secured including any interest, costs, and Sheriff's fees and expenses, and be endorsed with the name and address of the plaintiff's attorney.

   Note: The attorney of record must file the original with the clerk of the court within 10 days of the granting of the order (CPLR section 6212 (c)), otherwise it will lapse.

2. Encourage the attorney to attach the affidavits upon which the order is based, and obtain certified copies of the bond.

3. Obtain a letter of instruction from the attorney listing:

   a. Whether to remove or place the property in custodial care.
   b. What type of service is requested, (levy by service or levy by seizure).

i. Levy by service is made by serving a copy of the order on the defendant or garnishee in the same manner as a summons, except service cannot be made on a designated agent pursuant to CPLR 318.

Note: Service can be made regardless of who the possessor is and without regard to whether the property is tangible or intangible.

ii. Levy by seizure is made by taking into actual custody property that is capable of delivery. This is done only at the direction of the plaintiff or plaintiff's attorney, and upon furnishing to the Sheriff indemnity as set by the court.

c. Ensure that the plaintiff is aware that it is their obligation to provide advance expenses for moving and storage of the property. The amount will be determined after a review by the Chief of the Civil Bureau or his/her designee.

i. The deputy assigned to the case will contact the bonded moving and storage company, requested by the plaintiff, to remove and transport the property to their warehouse for storage.

ii. The deputy executing the order will verify the property is being inventoried by the moving and storage company as it is removed and will obtain a copy of the completed inventory.

iii. When taking property into custody, processing, security and storage will be performed in accordance with all agency property custody directives.

iv. Upon taking actual custody of property, a copy of the order of attachment must be served upon the person from whom MCSO took possession of the property in the same manner as a levy by service is accomplished.

v. When the Civil Bureau has taken into actual custody, property or debts having value sufficient to satisfy the amount specified in the order of attachment, the Sheriff shall notify the defendant and each person upon whom the order of attachment was served, that the order of attachment has been fully executed.

B. The order of attachment can be served with or without notice (the notice is the summons either served before or after service of the attachment). If the action is not started we may be requested to serve the summons. If the summons is not served within sixty (60) days of issuance (date signed by the judge) the order will lapse.

1. Note the date signed by the judge
2. If the summons is served by someone other than MCSO, a copy of the proof of service from the attorney of record must be obtained.

C. If the order is served without notice given to the defendant, the plaintiff is required to make a motion to "confirm" the attachment within 5 days of the levy. For this reason it is important to furnish proof of service immediately to the plaintiff. An order without notice may provide that the Sheriff's Office refrain from taking any property into their actual custody until a further order is issued by the court (CPLR 6211 (b)).

1. If the order is served with notice it may allow for the court to grant a temporary restraining order to the defendant.

2. The levy not only covers current debts and property but also debts "thereafter" coming into the possession of the garnishee.

   a. The garnishee must, within ten (10) days after being served, send to the Civil Bureau a statement listing all debts to the defendant, when they are due, all property of the defendant in the garnishee's possession, and the value of that property. They cannot interfere or dispose of such property.

      i. Any debt or property against which a money judgment may be enforced is subject to the attachment.

      ii. Levy on real property, (CPLR 6216); is processed by filing with the County Clerk where the real property is located.

   b. Life of the levy is ninety (90) days. It may be extended by:

      i. Court Order.
      ii. Taking custody of the property within ninety (90) days.

3. After 90 days, the levy is void except for property or debts already taken into custody, collected or received.

D. Plaintiff starting a special proceeding to compel payment or delivery to Sheriff.

1. If the property is tangible, Civil Bureau staff must take said property into custody. If the defendant refuses to turn the property over, it is the plaintiff's responsibility to start special proceedings to force delivery.

2. The plaintiff can direct the Sheriff's Office Civil Bureau to return or leave the property in the possession of the debtor as long as he/she makes the request in writing and that it does not conflict with the agency's duty to the court.

E. Property shall be held until further direction from the court or plaintiff, and shall be subject to the payment of sheriff's fees and expenses. Any money collected shall be held in an interest-bearing trust account in a national or state bank, or trust company.

F. Deputies will conduct an inventory of levied property to include a description of the property seized, the real property levied upon, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon. This information will be filed with the courts within 15 business days after levy.

Note: If there is not a standard for establishing value of property seized such as a NADA book, the attorney should be notified to provide us with an estimated value or an appraiser to determine the estimated value.

G. An order of attachment may be terminated by discharge, vacated order, or annulment. Both the discharge and vacated order must be mandated by the court (CPLR 6222 and 6223). An annulment arises without intervention of the court when:

1. The action in which it was granted abates or is discontinued.

2. A judgment is entered in favor or the plaintiff and is fully satisfied.

3. A judgment is entered in favor of the defendant; however if this occurs and the plaintiff is granted a stay and eventually obtains a reversal of the judgment for the defendant, the attachment would be revived.

H. Fifteen (15) days after an order has been vacated or set aside, the Sheriff must file an inventory of the property seized and an estimate of the value of all property levied upon and names and addresses of all persons served.

I. A return is not required by article 62 of the CPLR, unless ordered to do so by the court (CPLR 6225).

By Order of the Sheriff,

Todd K. Baxter