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WRIT OF EXECUTION
(GARNISHMENT or other LEVY)

a few “Nuts & Bolts”:
What Does a Clerk Do?


[February 2022]
Suggestions of Kay Solomon Armstrong, J.D.
Greene County Clerk & Master



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Tennessee’s Court Clerks have
many ways to get to the same end!

- These are suggestions and some thought provoking questions to obtain a version of
 - “Best Practices”.



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TCA § 26-1-103

“All judgments and
decrees of any of the judicial
tribunals of this state for
money may be enforced
by execution.”

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Consider a definition in
Gibson Suits In Chancery
 (8th ed., Inman) §19.02

Execution is “the general name for every process or writ whereby the judgments and decrees of Courts are enforced.”

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Tennessee Jurisprudence
 (an Encyclopedia of Tennessee Law) **SAYS:**


“An execution issues, as a matter of course, upon a judgment for a specific sum of money, without any order awarding or directing its issuance in express terms.”

Tennessee Jurisprudence, Executions § 3, vol. 12 (2021)

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Court Clerks are asked to issue a writ of execution on a **form** that will usually be in the nature of the following:

GARNISHMENT (on wages)
 GARNISHMENT (on a bank account, sometimes referred to as a “**BANK LEVY**”)
LEVY (seizure for sale) on personal property




* *Garnishee: Debtor's property in hands of a 3RD person.*

Garnishment usually concerns the debtor's wages and/or the debtor's bank account.

* TCA §29-7-101 & 26-2-202
 All property under the control of the garnishee shall be liable to satisfy a judgment against a judgment debtor.
 EXCEPTION:
 Clerk of court could not be "garnishee" and, therefore, was exempt from garnishment; funds in custody of the clerk of court were in custody of law and could not be reached by garnishment. (Opies v. State Farm Ins. Co., 1987, 743 S.W.2d 165 at TCA 26-2-202, note 7)

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**WARNING
WARNING** **HOLD FUNDS for 20+ days!!!**



WAIT for the 21st days, after receipt of execution funds.
(Slide seems out of place, but here for emphasis & fear!)


"No sheriff or other officer shall conduct an execution sale, and no clerk shall pay out funds received pursuant to an execution or garnishment until the judgment debtor's time has expired for filing a motion to quash, or until a judicial determination has been made on such motion."

See TCA § 26-2-408




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What court costs are unpaid, at this point in time?



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TIP: 

Clerk may want to ensure that the balance due on the *BILL OF COSTS*, is included within the *TOTAL* amount wanted from the execution, in addition to the clerk's fee for issuance.




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original final *BILL OF COSTS*
 + [past execution costs]
 (clerk & officer fees)
 + [current execution costs]
 (clerk & officer fees)



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How does the clerk endorse & issue the execution form?



TCAS 26-1-301: Endorsement by Clerk


“The clerk shall endorse on the execution, when issued, the date and amount of the judgment, and the items of the bill of costs, written in words, and the amounts distinctly stated in figures, and the date of issuance.”

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WARNING
WARNING:

“Any clerk neglecting § 26-1-301 or § 26-1-302 is liable to a penalty of one hundred twenty-five dollars (\$125), to be recovered by action, one-half (½) to the informer and the other one-half (½) to the state, to damages at the suit of the party aggrieved, and commits a Class C misdemeanor, for which, on conviction, such clerk shall be removed from office.”

See TCA § 26-1-303.




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**Rule Docket Entries Required
(or possible jail*)**


The clerk shall also enter upon the execution docket (now, computerized rule docket entry) the date of the issuance of such execution, and to what county and officer issued; the return of the officer, with the date of such return; the dates and amounts of all moneys received into or paid out of the office thereon; the entries to be made at the time of the issuance, receipt, or payment, as the case may be.

See TCA § 26-1-302 & See TCA § 26-1-303*



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FEES



\$25 STANDARD POST-JUDGMENT CLERK FEE
[TCA 8-21-401(i)(1)]

“Unless otherwise provided, court clerks in criminal and civil cases in all courts shall charge a standard post-judgment fee of twenty-five dollars (\$25.00). This fee shall be charged per occurrence and shall be charged regardless of whether judgment is enforced by garnishment, execution, levy or other process. This fee shall also apply to post-judgment interrogatories, publications, motions to set installment payments, and orders and pleas.”

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FEES continued...

SHERIFFS & CONSTABLES
[TCA 8-21-901(a)(2) & (5)]

(A) For a **levy** of an execution **on property** or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession
..... **\$40.00**

(B) For collecting money to satisfy a judgment, whether by execution, fieri facias, **garnishment** or other process, in civil cases each time collection is attempted
..... **\$20.00**

(5) For data processing services **\$ 2.00**

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FEES continued, again...

LEVY OF EXECUTION {BANK LEVY}
 Tenn. Op. Atty. Gen. No. 17-47 (Tenn.A.G.),
 2017 WL 5203247 (October 31, 2017)

"When a sheriff serves a levy of execution on money belonging to an individual, including funds held in a bank, his actions fall within the plain meaning of paragraph (A)."

See TCA 8-21-901(a)(2)(A).

= \$40 Sheriff's Fee + \$2.00 (data)

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FEES continued, again...

GARNISHMENT (wages)
 Tenn. Op. Atty. Gen. No. 17-47 (Tenn.A.G.),
 2017 WL 5203247 (October 31, 2017)

"And Paragraph (B) provides for a \$20 fee for other attempts to collect money to satisfy a judgment that are not properly characterized as a levy of execution, including garnishment and other processes employed by a sheriff in addition to or instead of a levy of execution."
 See TCA 8-21-901(a)(2)(B).

= \$20 Sheriff's Fee + \$2.00 (data)

[Sheriff or other officer shall serve 3 copies of the garnishment summons upon the employer garnishee.
 See TCA § 26-2-216.]

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Execution forms expire in 30 days!

All executions issuing from the Supreme Court, Court of Appeals, **Circuit, Chancery, Criminal** and special courts, as well as **General Sessions**, shall be returnable within thirty (30) days after the date of their issuance. See TCA § 26-1-401.

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**Officer's RETURN: "nulla bona",
AFFIDAVIT needed.**


When an execution form has been returned "nulla bona" (no leviable asset found), an ALIAS may be issue. But, no ALIAS (2nd execution issued) or PLURIES (all executions issued after the 2nd) shall be issued, until the previous execution form is returned or satisfactorily accounted for by AFFIDAVIT.

See TCA 26-1-108.

"No alias or pluries execution shall issue until the previous execution is returned, or satisfactorily accounted for by affidavit." – TCA 26-1-108

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**WARNING
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**HOLD FUNDS for 20+
days!!!**

WAIT for the
21st days, after
receipt of
execution
funds.

"No sheriff or other officer shall conduct an execution sale, and no clerk shall pay out funds received pursuant to an execution or garnishment until the judgment debtor's time has expired for filing a motion to quash, or until a judicial determination has been made on such motion."

See TCA § 26-2-408

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WAGE GARNISHMENTS :

EFFECTIVE for 6 months.

2018 Amendment to TCA 26-2-216(b)(2)
RE: Garnishment Summons NOTICE
substitution of "earnings" for "wages", and "six (6) months" for "three (3) months"

See language in the execution form {found in TCA § 26-2-216}:

"The garnishment creates a lien on a portion of your earnings until the judgment is satisfied, or for six (6) months, whichever occurs first."

See also TCA § 26-2-214:
"The lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or satisfied, or until the expiration of the payment period immediately prior to six (6) calendar months after service of the execution, whichever occurs first."

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WARNING
WARNING:

"Any clerk, who fails or refuses to issue execution as prescribed in this section, forfeits five hundred dollars (\$500), to be recovered by action, and is liable to the party aggrieved in damages, and commits a Class C misdemeanor, for which, upon conviction, such clerk shall be removed from office."

See TCA § 26-1-207.



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\$10,000 Personal Property Exemption*, plus other exemptions

Each defendant is entitled to file a personal property exemption up to \$10,000, which may include items of personalty, money & bank account funds. - TCA § 26-2-103

Other exemptions include necessary wearing apparel, family pictures, family Bible, school books, State pensions, certain retirement plan funds, certain medical/health savings, certain insurance benefits, implements, professional books, or tools of the trade (\$1,900 in value), VA benefits, Social Security benefits, unemployment compensation, Families First program benefit or local public assistance benefit, disability/illness/unemployment benefit.

THERE ARE FORMS FOR THIS!!



See TCA § 26-2-103, 104, 105, 110, 111.

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CTAS has required forms:
www.ctas.tennessee.edu

See TCA § 26-2-409

"The University of Tennessee county technical assistance service shall provide clerks of court with forms for judgment debtors to use in filing a motion to quash an execution or garnishment on the ground of exemption rights, in otherwise asserting their exemption rights, or in filing a motion to pay a judgment by installments."

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Certain FORMS on
A.O.C.'s website:
www.tncourts.gov

On homepage, go to "Forms & Publications" tab,
then "Trial & General Sessions Court forms",
then look in the alpha list.

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DEBTOR'S FORMS on A.O.C.'S WEBSITE (in pdf & WORD):

1. *MOTION FOR INSTALLMENT PAYMENTS: {SLOW PAY and supporting AFFIDAVIT OF INCOME AND PROPERTY}*
2. *MOTION TO QUASH GARNISHMENT / EXECUTION AND CLAIM EXEMPTON RIGHTS*

See TCA 26-2-216(a)(1).

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CLERK'S FORMS on A.O.C.'S WEBSITE (in pdf & WORD):

EXECUTION GARNISHMENT
RELEASE OF GARNISHMENT
STAY OF GARNISHMENT OR ATTACHMENT
STAY OF INCOME ASSIGNMENT

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STAY (STOP) wage garnishment, without Court ORDER

Written agreements for SLOWPAY (in installments), signed by the parties ... and filed with the clerk, shall have the same force and effect as an ORDER made by the Judge to stay the issuance, execution or return of any writ of garnishment against wages..."

See TCA § 26-2-218.



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Tennessee Rules of Civil Procedure **TRCP 69**

ADVISORY COMMISSION COMMENT to 2004 AMENDMENT:

"Rule 69 is rewritten in its entirety.

The intent is to consolidate procedures established by statute, court precedent, and custom into a single orderly rule.

New Rule 69 does not radically change current law."



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continued...

Tennessee Rules of Civil Procedure, Rule 69.01

The Scope:

"The rule applies to executions and garnishments on legal and equitable interests in personalty, including intangibles, and realty to satisfy judgments in all courts in Tennessee. A Circuit Court judgment will reach equitable interests without a Chancery Court action to enforce the judgment."

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JUDGMENTS: alive for 10 years

Tennessee Rules of Civil Procedure

Rule 69.04

Creditor can file a **MOTION TO EXTEND JUDGMENT** for another 10 years. Copy of the motion shall be mailed [by the judgment creditor] to the last known address of the judgment debtor.

If no response is filed by the judgment debtor within 30 days of the filed MOTION, the MOTION shall be granted **without further notice or hearing**, and an ORDER extending the judgment shall be entered by the court.

If a response is filed within 30 days of the filing date of the MOTION, the MOTION should be **set for hearing**.

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Duty of "Garnishee" [3RD party holding debtor's property]

Tennessee Rules of Civil Procedure

Rule 69.05(1)

"A writ of garnishment served on a garnishee holding property of the judgment debtor **requires the garnishee to answer the writ and make an accounting to the court.**

Property includes a judgment debtor's realty, personalty, money, wages, corporate stock, choses in action (whether due or not), and court judgments."

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Duty of "Garnishee" continued....



Tennessee Rules of Civil Procedure

Rule 69.05(3)

Within **10 days** of service, the garnishee shall file a **written answer with the court** accounting for any property of the judgment debtor held by the garnishee.

Within **30 days** of service, the garnishee shall **file with the court any money or wages** (minus statutory exemptions) otherwise payable to the judgment debtor.

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<p>EXTRA THOUGHTS: prejudgment stuff</p>	<p>EXTRA THOUGHTS: prejudgment stuff</p>
	
<p>The law allows for <u>prejudgment</u> & post-judgment remedies, via garnishment & levy.</p>	<p>“Lien Lis Pendants”</p>

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**Clerk may be asked to sign:
“Lien Lis Pendants”**

1. A “lien lis pendens” applies only to realty that is the subject matter of a lawsuit and described in the COMPLAINT.
2. To affect the rights of bona fide purchasers and encumbrancers, an abstract must be registered in the REGISTER S OFFICE of the county where the realty is located.
3. The abstract must identify the court and contain names of parties to the action and a description of the realty and its ownership. [See TRCP, Rule 69.07]


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What Does a Clerk Do with debtors & creditors?

Now, you know some stuff!



- Kay Solomon Armstrong, J.D.
Greene County Clerk & Master



- 423-798-1742

EXTRA EXTRA EXTRA THOUGHT:



Give me a call, if you have questions and think I can help:

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Kay's cell: 423-235-1274