

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



QUESTIONS ARE WELCOMED



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”.



TCA § 26-1-103

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

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.”

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.”

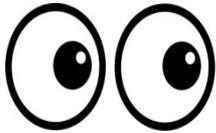
Tennessee Jurisprudence, Executions § 3, vol. 12 (2021)

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.*

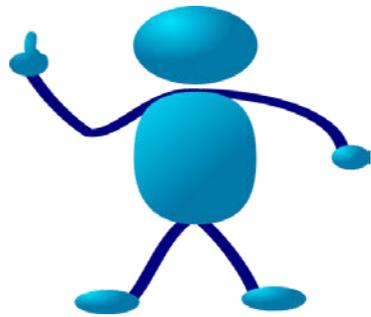
Garnishment usually concerns the debtor's wages and/or the debtor's bank account.

** 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. [Voyles v. State Farm Ins. Co., 1987,743 S.W.2d 165 at TCA 26-2-202, note 7]



another WARNING:

**No clerk shall issue a WRIT OF EXECUTION,
unless it provides the following required notices:**

T.C.A. §26-2-404

Notice to Judgment Debtor

T.C.A. §26-2-203

Notice to Garnishee

T.C.A. §26-2-216

Notice to Judgment Debtor (and Notice to Garnishee)

The form, on the A.O.C.'s website, consolidates the execution and garnishment form along with these three required notices.

The Execution FORM:

- It's on the A.O.C.'s website:
www.tncourts.gov

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

- Judgment creditor (or their attorney) should fill out as much of the execution form as possible.
- Clerk needs to ensure ALL court costs are reflected on the form.

NOTICE TO JUDGMENT DEBTOR [TCA 26-2-404(a)]

To collect a judgment against you in this lawsuit, your money or other property has been seized by execution or garnishment. An execution allows the sheriff to sell the property levied upon. A garnishment requires your bank (or other person holding your money or property) to transfer your property to the court or to hold it to satisfy the judgment. READ THIS CAREFULLY. YOU MAY BE ABLE TO KEEP YOUR MONEY OR PROPERTY OR GET IT BACK.

State and federal laws prevent certain types of money or property from being used to pay a judgment. Such money or property is "exempt." Examples of exempt money are: Social Security benefits, SSL unemployment benefits, Veterans' benefits, AFDC, and most government pensions. Examples of exempt property are certain health care aids and "tools of trade." These examples of exempt money and property constitute only a partial list, and you may have other exemptions.

If you think you have exempt money or property that has been seized, you have the right to file a motion with the court clerk's office identified below claiming your exemption and asking for the release or return of your money or property.

You can get a form for filing this motion at the clerk's office below, or the clerk may have supplied such a form on the back of this notice. YOU SHOULD ACT QUICKLY. If you file a motion within twenty (20) days from the date this notice was mailed to you or was given to you, the court must hear and decide your motion promptly, and in no event later than fourteen (14) days from filing. The clerk will notify you of the time, date, and place of the hearing.

IF YOU DO NOT UNDERSTAND YOUR RIGHTS OR HOW TO EXERCISE THEM, YOU MAY WISH TO CONSULT WITH A LAWYER. IF YOU CANNOT AFFORD A LAWYER, YOU MAY BE ELIGIBLE FOR FREE LEGAL ASSISTANCE.

The court clerk's office can provide you with forms and with information about legal services in your area, but the clerk cannot give you legal advice.

NOTICE TO THE DEBTOR (EMPLOYEE) [TCA 26-2-216(b)(2)]: Your earnings have been subjected to a garnishment which has been served upon your employer. The garnishment creates a lien on a portion of your earnings until the judgment is satisfied, or for six (6) months, whichever occurs first. You have the following rights:

Some of your wages are protected by state and federal law from garnishment. See the notices below [OR ON REVERSE] to the employer to find out how much of your wages are protected from garnishment.

IF YOUR EMPLOYER IS TAKING TOO MUCH MONEY FROM YOUR WAGES:
You may apply to the court at the clerk's office shown below within twenty (20) days from any improper withholding of your wages for a motion to stop the garnishment. The court clerk identified below shall provide you with a form for making such a motion, or may have supplied a form motion on the back of this notice. You may wish to seek the counsel of a lawyer. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

PLEASE NOTE: If you file a motion, the court must hear and decide your motion promptly, and in no event later than fourteen (14) days from filing. The clerk will notify you of the time, date, and the place of hearing. The court clerk's office can provide you with forms and with information about legal services in your area, but the clerk cannot give you legal advice.

IF THE RIGHT AMOUNT OF MONEY IS BEING TAKEN FROM YOUR WAGES BUT YOU WANT TO GET THE GARNISHMENT STOPPED THROUGH A PAYMENT PLAN:

You may apply to the court for an order suspending further garnishments by the same creditor upon your paying a certain sum of money weekly, biweekly, or monthly, to pay the judgment. If you file this motion, the garnishment of your wages will stop for as long as you make the payments ordered by the court.

The court clerk shall provide you with the necessary forms to make this application, or you may seek the counsel of an attorney. If you are unable to afford an attorney, you may be eligible for free legal services to assist you.

NAME: _____, Clerk
_____, Court
ADDRESS: _____
TELEPHONE: _____

**TO ALL FINANCIAL INSTITUTIONS:
THESE FUNDS ARE ATTACHED AND SHALL
BE PAID INTO COURT WITHOUT FURTHER
ORDER.**

OFFICER'S RETURN (other than wage garnishment); executed as follows:

[OR] executed by LEVYING on the following described property:

On this _____ day of _____, 20____.

Deputy Sheriff/Constable

OFFICER'S RETURN (on wage garnishment) [TCA 26-2-216(b)(1)(A)]
I acknowledge receipt of 3 copies of the garnishment summons on the abovementioned employee on _____ day of _____, 20____.

Executed by serving _____
Employer or Employer's Agent

On this _____ day of _____, 20____.

Deputy Sheriff/Constable

AFFIDAVIT FOR EXECUTION

Having first been duly sworn according to law, I hereby make oath that the following information is true to the best of my knowledge and belief:

Judgment Creditor's Address for mailing notices required by TCA 26-2-402:

Telephone No.: _____

Judgment Debtor's Name and Last Known Address:

Telephone No.: _____

Balance on Judgment including original Cost \$ _____

By: _____

Judgment Creditor/Agent

Sworn to and subscribed before me on _____ day of _____, 20____

Deputy Clerk/Notary Public

My Commission Expires: _____

Application for Execution

The Judgment Creditor hereby makes application to the Clerk of the _____ Court to have an Execution in the above styled case to satisfy a judgment against the Judgment Debtor(s) herein:

Date of Judgment _____
Judgment Balance \$ _____
Pre-Paid Cost \$ _____
Interest \$ _____
Clerk's Fees \$ _____
Officer's Fee \$ _____
Total \$ _____

Judgment Creditor/Agent

Issued this _____ day of _____, 20____

By _____

Case/Docket No. _____

EXECUTION

COUNTY _____ COURT _____

Garnishment Levy
 on Financial Institution/Bank

Plaintiff

VS.

Defendant

Judgment Debtor's SSN/EIN: _____

To: _____

Employer (if wage garnishment) or other garnishee

Address: _____

To: _____

Financial Institution/Bank

Account No: _____

Address: _____

Levy On: _____

AFFIDAVIT FOR OFFICER

WAGE GARNISHMENT

I, _____, Deputy Sheriff/Constable after

being sworn, make oath that:

A garnishment summons was served on _____, employer garnishee, on _____ day of _____, 20____, and that the employer garnishee refused to sign a receipt acknowledging service of said summons.

[TCA 26-2-216(b)(1)(B)]

RE: COPY FURNISHED JUDGMENT DEBTOR

A copy of the execution by levy was mailed to the judgment debtor at the address provided pursuant to TCA 26-2-402 or was provided by actual hand delivery. [TCA 26-2-405]

Please Print: Deputy Sheriff/Constable

Signature

Agency Address

My Commission Exp: _____

Notary

My Commission Exp _____

EXECUTION: GARNISHMENT or LEVY

STATE OF TENNESSEE WRIT OF EXECUTION TO ANY LAWFUL OFFICER OF COUNTY COURT

NOTICE TO THE GARNISHEE (EMPLOYER)

[TCA 26-2-216(b)(2)]

THE MAXIMUM PART OF THE AGGREGATE DISPOSABLE EARNINGS OF AN INDIVIDUAL FOR ANY WORK WEEK WHICH IS SUBJECTED TO GARNISHMENT MAY NOT EXCEED.

(a) Twenty-five percent (25%) of the garnishee's [sic "debtor's"] disposable earnings for that week, minus \$2.50 for each of the garnishee's [sic "debtor's"] dependent children under the age of sixteen (16) who resides in the State of Tennessee as provided in TCA 26-2-107: or

(b) The amount by which the garnishee's [sic "debtor's"] disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable, minus \$2.50 for each of the garnishee's [sic "debtor's"] dependent children under the age of sixteen (16) who resides in the State of Tennessee, whichever is less.

"Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

In the case of earnings for a pay period other than a week, the weekly formula must be changed to apply to that pay period so as to exempt an equivalent percentage of disposable earnings. For example, the calculation concerning the federal minimum wage in subsection (b) should be computed as follows: WEEKLY: 30 times the federal minimum hourly wage (fhw) at the time the earnings for any pay period become due and payable; BIWEEKLY: 2 times 30 fhw; SEMI-MONTHLY: 2 and one sixth (2-1/6) times 30 fhw; and MONTHLY: 4 and one third (4-1/3) times 30 fhw equals the amount to be subtracted from disposable earnings for that pay period.

If the judgment orders alimony and the person in whose favor the judgment was rendered has remarried, the above exemption applies. If the judgment orders the debtor to pay support for the debtor's minor child or children, or alimony and the person in whose favor the alimony judgment was rendered has not remarried, different standards apply under 15 USCS § 1673(b). If the debtor is supporting a spouse or dependent child other than those for whom the order was entered, then fifty percent (50%) of the debtor's disposable earnings may be garnished. If the debtor is not supporting such additional dependents, a maximum of sixty percent (60%) may be garnished. These figures rise to fifty-five percent (55%) and sixty-five percent (65%), respectively, if the support order is for a period more than twelve (12) weeks before the pay period to be garnished.

If the judgment is for state or federal taxes, no disposable earnings are exempt under 15 USCS § 1673(b).

GARNISHMENT CALCULATION FOR:

(Name of employee)

ANSWER OF GARNISHEE (Employer) Docket/Case #

(Garnishment Calculation: TCA 26-2-404(b), as defined in TCA 26-2-216)

Pay period from to

(1) IF THE JUDGMENT IS FOR ANY DEBT OTHER THAN FOR ALIMONY OR CHILD SUPPORT:

- (A) What is the total gross pay before any deductions? \$ (b)(1)(A)
(B) How much is deducted from pay for social security and federal income tax? (b)(1)(B)
(C) Subtract subdivision (b)(1)(B) from subdivision (b)(1)(A) (b)(1)(C)
This is disposable earnings.
(D) Are wages paid once every week, once every two (2) weeks, once a month or two (2) times per month? (fhw = federal minimum hourly wage)
If once every week, enter 30 X fhw. (b)(1)(D)
If once every two (2) weeks, enter 30 X fhw X 2. (b)(1)(D)
If two (2) times per month, enter 30 X fhw X 2.166667. (b)(1)(D)
If once per month, enter 30 X fhw X 4.333334. (b)(1)(D)
(E) Subtract subdivision (b)(1)(D) from subdivision (b)(1)(C). (b)(1)(E)
If subdivision (b)(1)(E) is \$0 or less, STOP. NO WAGES MAY BE WITHHELD.
If subdivision (b)(1)(E) is more than \$0, go on to (F).
(F) Divide subdivision (b)(1)(C) by 4. (b)(1)(F)
(G) Enter the lesser of subdivision (b)(1)(E) or subdivision (b)(1)(F). (b)(1)(G)
(H) How many children does the debtor have under sixteen (16) years of age living in Tennessee? (b)(1)(H)
(I) Multiply subdivision (b)(1)(H) by \$2.50 per week \$5.00 if wages are paid every two (2) weeks; \$5.42 if paid two (2) times per month; and \$10.83 if paid once per month. (b)(1)(I)
(J) Subtract subdivision (b)(1)(I) from subdivision (b)(1)(G). (b)(1)(J)

This is the amount of wages to withhold. If this amount is \$0 or less, nothing should be withheld from wages.

(2) IF THE JUDGMENT IS FOR CHILD SUPPORT OR ALIMONY:

- (A) If the judgment is for alimony and the ex-spouse has remarried, withhold the amount in subdivision (b)(1)(J). \$
(B) If the judgment is for child support, or the judgment is for alimony and the ex-spouse has not remarried, multiply disposable earnings (subdivision(b)(1)(C)) by:
.50 if the employee is supporting another spouse or child and the arrearage is less than twelve (12) weeks old;
.55 if the employee is supporting another spouse or child and the arrearage is more than twelve (12) weeks old;
.60 if the employee is NOT supporting another spouse or child and the arrearage is less than twelve (12) weeks old;
.65 if the employee is NOT supporting another spouse or child and the arrearage is more than twelve (12) weeks old.
Withhold this amount (in preceding blank) from wages, or the amount actually ordered to be paid for alimony or child support, whichever is less. \$

Nothing Due Employee [] No Longer Employed []
Other
As of day of , 20 ,

, Garnishee,

is holding the sum of \$

I certify under penalty of perjury that the above information is true and correct.

Date: _____

Garnishee/Employer

You are commanded to take and levy the judgment debtor's property, the balance of the below judgment, plus costs and interest thereon and hereby satisfy a judgment by this court, in favor of the judgment creditor. Have you said monies, together with this writ, ready to render this court 30 days from the date hereof, or within.

GARNISHMENT

To Employer or Other Garnishee:

By virtue of the above command (or an attachment in my hands), any funds or property in your hands owing to judgment debtor are hereby sequestered.

You are summoned to answer in writing within 10 days of service of this garnishment: [TCA 26-2-203(a), TCA 26-2-204, TRCP 69.]

(1) Whether you are, or were, at the time of the service of this garnishment indebted to the judgment debtor; if so, how and in what amount;

(2) Whether you had in your possession, or under your control, any property, debts, or effects belonging to the judgment debtor at the time of service of this notice, or at the time of answering, or at any time between the date of service and the time of answering; if so, the kind and amount.

(3) Whether there are, to your knowledge and belief, any and what property, debts, and effects in the possession or under the control of any other, and what, person;

(4) Such other questions appearing on or attached to the original execution put to you by the court or the judgment creditor as may tend to elicit the information sought.

YOU ARE FURTHER NOTIFIED AND REQUIRED to pay no debt due by you, or to become due, to said judgment debtor, and to retain possession of all property of the judgment debtor, EXCEPT as to earnings in excess of the amount to be retained by this garnishment. This 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 employer's payroll period immediately prior to SIX (6) CALENDAR MONTHS after service of the execution, whichever occurs first. A lien obtained hereunder shall have priority over any subsequent liens obtained hereunder. [TCA 26-2-214(b)(1).]

NOTICE: TO EMPLOYER

YOU ARE REQUIRED TO WITHHOLD THE GARNISHMENT AMOUNT, OR PART THEREOF, FROM THE EMPLOYEE'S WAGES AND TO PAY THESE MONIES TO THE COURT NOT LESS THAN ONE TIME EACH CALENDAR THIRTY (30) DAYS. YOU ARE LIABLE FOR FAILURE TO WITHHOLD FROM THE EMPLOYEE'S WAGES AND FAILURE TO PAY THESE MONIES TO THE COURT. TO ENSURE PROPER CREDIT, INCLUDE THE JUDGMENT DEBTOR'S NAME AND THE DOCKET NUMBER ON THE PAYMENT AND MAIL TO: [TCA 26-2-216(b)(1)(C) & TCA 26-2-215.]

Clerk, Clerk Title

Address

NOTICE TO GARNISHEE [TCA 26-2-203(b)]

NOTICE: Although you have a longer time in which to answer the court concerning this garnishment, you must do the following on the same day you receive the garnishment, or on the next working day. Determine if you possess or control money or property of the judgment debtor. If so, within that same time period, you shall furnish a copy of the garnishment summons and Notice to Judgment Debtor by mailing them first class, postage prepaid, to the judgment debtor's last known address as shown by your records, or by actual delivery to the judgment debtor. If the address shown by your records differs from that shown on this execution form, you shall also mail a copy of the garnishment and notice to the latter address.

ANSWER OF GARNISHEE (Non-Wage) Docket/Case#

As of the day of , 20 , Garnishee, who is NOT AN EMPLOYER, is holding the sum of \$ owed or belonging to Judgment Debtor. I certify under penalty of perjury that the above information is true and correct.

Garnishee [one holding asset(s) owed or belonging to Judgment Debtor]

TCA§ 26-2-217(c)(1) & (2)

“(1)... duty of the court clerk promptly to notify the garnishee of the satisfaction of the judgment and the expiration of the lien of garnishment.



(2) The judgment creditor shall notify the court clerk of the balance due upon a judgment whenever the creditor causes the issuance or revival of a garnishment thereon.

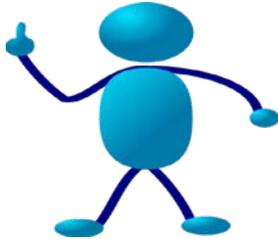
Furthermore, the judgment creditor shall notify the court clerk when the judgment has been satisfied.”

Look for 3 things, before issuing/signing the execution form. [See TCA 26-1-203 & TRCP 62]:

- Final Judgment is, at least, 30 days old. {Clerk should count the 1st day the day after the entry/filing date of the Judgment.} **10 days in GS**, per TCA 27-5-108
- No MOTION(s) *filed, i.e. Motion to Alter or Amend, Motion for New Trial, etc.* [Appeal from GS]
- No satisfaction of judgment filed.



WARNING WARNING



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

{Slide seems out of
place, but here for
emphasis & fear!}

HOLD FUNDS for 20+ days!!!

“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



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

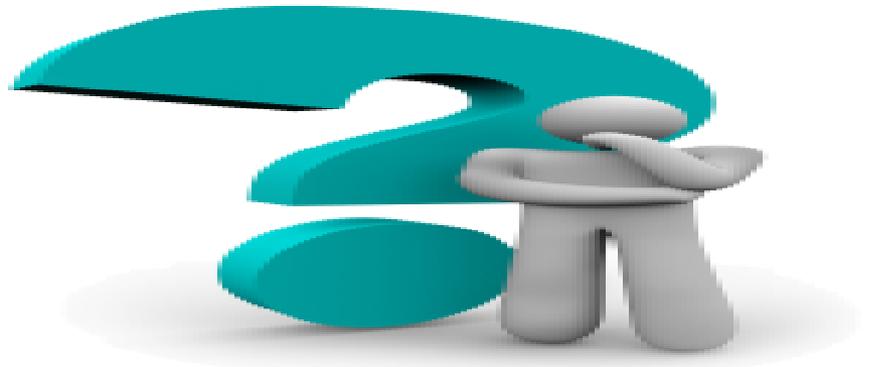


TIP: 🙄

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.



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



How does the clerk endorse & issue the execution form?



TCA§ 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**.”

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 ($\frac{1}{2}$) to the informer and the other one-half ($\frac{1}{2}$) 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.”

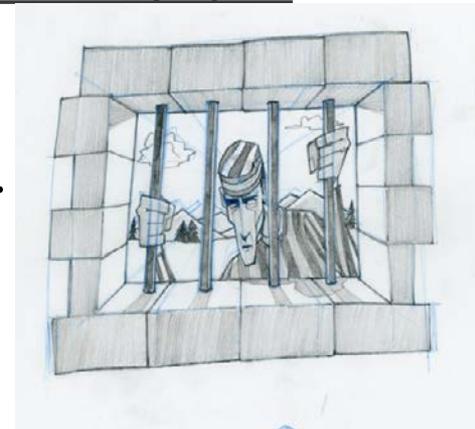
See TCA § 26-1-303.



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*.



FEEES



\$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.”

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**

FEEES 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)

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.]

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.

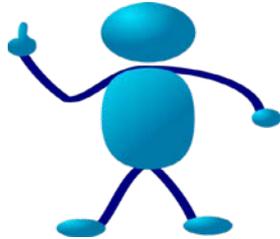
Officer's RETURN: "nulla bona", *AFFIDAVIT* needed.

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

WARNING
WARNING



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

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

“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

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. ”

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.



\$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.

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.”

**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.

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 EXEMPTION RIGHTS*

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

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

STAY (STOP) wage garnishment, without Court ORDER

Written agreements for SLOW PAY (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.



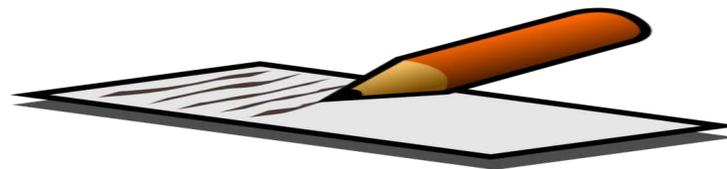
Tennessee Rules of Civil Procedure **TRCP 69**

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.”



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.”

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.

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.”

Duty of “*Garnishee*” continued....

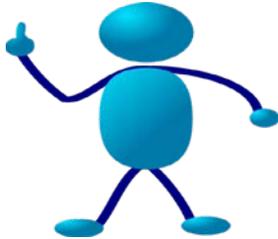
Tennessee Rules of Civil Procedure

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.

**EXTRA THOUGHTS:
prejudgment
stuff**



The law allows
for prejudgment
& post-
judgment
remedies, via
garnishment &
levy.

**EXTRA THOUGHTS:
prejudgment
stuff**



*“Lien Lis
Pendens”*

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

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]

What Does a Clerk Do with debtors & creditors?

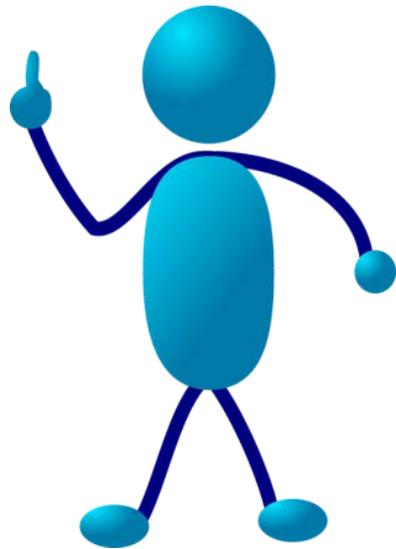
Now, you know some stuff!



- 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:

Kay's office: 423-798-1742

Kay's cell: 423-235-1274

