



The Lifecycle of Debt Collection:
Filing, Serving, and Executing
with Precision

The Challenge of Suing on Purchased Debt

- Plaintiff's lawyers often struggle to provide adequate proof when suing on purchased debt. Many debt buyers lack essential documentation, such as a complete transfer history or original account records, making it difficult to establish their legal right to collect. Without sufficient evidence, courts may deny default judgments, reinforcing the need for transparency and proper record-keeping in debt collection cases.

No Proof, No Case: The End of Filing Without Facts

A new law strengthens protections for consumers in debt collection cases filed in General Sessions court. Plaintiffs must now provide detailed documentation when suing over consumer debt, including proof of debt transfer history and evidence that the debt exists. Before a default judgment is awarded, plaintiffs must demonstrate their authority to collect the debt and present supporting records. The law does not apply to original creditors or lienholders. These changes aim to increase transparency and prevent improper debt collection practices.



•Required Information for Debt Actions:

- Plaintiff must include with a civil warrant:
 - Statement that the debt was transferred or assigned
 - Date of transfer or assignment
 - Names of prior debt holders (from charge-off onward)
 - Name or description of original creditor



1. Default Judgment Requirements:

- Plaintiff must provide:
 - Proof of authority to collect debt
 - Documentation proving debt exists, such as:
 - Signed consumer agreement
 - Record of purchase, payment, or account use
 - Other records demonstrating debt was incurred



Application of Law:

- Applies regardless of other evidence (e.g., affidavits)

Exemptions:

- Does not apply to original creditors or lienholders

Definition of "Charge Off":

- The removal of a consumer debt from a creditor's financial records



Applying the law:

-  **Required Documentation:**
 - Plaintiffs must provide proof of debt transfer history and validity.
 - Documentation must include a signed agreement, payment record, or other proof the debt was incurred.
-  **Default Judgment Standards:**
 - Judges must ensure plaintiffs demonstrate legal authority to collect the debt.
 - No default judgment without sufficient supporting records.
-  **Scope & Exemptions:**
 - Law applies to debt buyers and assignees, not original creditors or lienholders.
-  **Judicial Oversight:**
 - Affidavits alone are insufficient; courts must assess full documentation.
 - Ensures fairness and prevents improper or unsupported claims.
- **Goal:** Strengthen consumer protections, increase transparency, and uphold fair debt collection practices.



Service of process in General Sessions is governed by statute: § 16A-10-10-204, et. seq.

§ 16-15-901. Civil Warrants; Delivery to Persons Authorized to Serve Process
§ 16-15-902. Return of Service
§ 16-15-903. Personal Service of Process; Requirements; Authorized Representatives to Accept Service on Behalf of State, Counties, and Municipalities; Service by Mail
§ 16-15-904. Service upon Defendants Outside of State
§ 16-15-905. Constructive Service

Overview:

The clerk of the court issues the warrant after a complaint is filed
The summons is served by a person authorized to serve process
The person serving process must provide proof of service to the court
The proof of service should include the name and agency of the process server



Civil Warrants; Delivery to Persons Authorized to Serve Process; §16-15-901

- Filing Civil Warrants and Papers

- - Clerk of the general sessions court issues process and delivers for service.
- - Process delivered to an authorized person designated by the filing party or attorney.
- - Proof of service is endorsed on the warrant, writ, or other papers.
- - Civil warrants and other documents may be issued for service in any county.



Service of Process Requirements

- - Civil warrants, attachments, subpoenas, or summons may be served by:
 - - A non-party over 18 years old designated by the party or attorney.
 - - Sheriffs, constables, or law enforcement officers for other court orders.
- - Process server details must be included in service return:
 - - Name and agency (if law enforcement).
 - - Name and address (if private process server)



Validity of Service

- - Failure to include process server details does NOT invalidate service if otherwise valid.
- - Court may require a private process server to provide their address to the served party.



Return § 16-15-902

- Timeframe for Service of Process
- - Process must be served within sixty (60) days of issuance.



Service by Mail

- - Original warrant, writ, or papers must be endorsed by manner of service.
- - An affidavit of service compliance must be filed with the court clerk.
- - Return receipt must be included in the filing



Completion of Service by Mail

- - Process server must endorse:
 - - Date of mailing certified copy to defendant.
 - - Date of receipt of return receipt from the defendant.
- - Service is complete if return receipt is signed by:
 - - The defendant.
 - - A designated person per statute.
- - If receipt is not signed, other authorized service methods may be used.



Service Upon Defendants in this State

§ 16-15-903

- General Requirements
- - Plaintiff must provide necessary copies to the process server.
- - Service must be made according to the recipient's classification.
- - Proof of service must include the name of the recipient.



Service on Individuals

- - Personal delivery to the individual.
- - If evading, copies may be left with a suitable resident at their dwelling.
- - Can also be delivered to an authorized agent.



Service on Minors and Incompetent Persons

- - Delivered to the guardian, conservator, or custodial parent.
- - If none available, court appoints a guardian ad litem.
- - Minors 14+ must also be served directly.



Service on Business Entities

- - Partnerships & LLCs: Delivered to a partner or managing agent.
- - Corporations: Delivered to an officer, chief agent, or registered agent.
- - Nonresidents doing business in TN: Served via office/agency representative.



Service on Government Entities

- - State of Tennessee: Delivered to Attorney General or Assistant AG.
- - County: Delivered to County Mayor or County Attorney.
- - Municipality: Delivered to Chief Executive Officer or City Attorney.
- - Quasi-Governmental Entities: Delivered to an officer or managing agent.



Service by Mail

- - Plaintiff, attorney, or authorized person may serve by mail.
- - Mail must be sent via registered or certified return receipt.
- - Clerk provides necessary copies for mailing.
- - Original document used for proof of service.



Default Judgment & Mail Service

- - No default judgment unless return receipt shows personal acceptance.
- - If defendant is a corporation, refusal of mail may justify default if:
 - - Correct entity and registered agent were used.
 - - Verified by Tennessee Secretary of State.
- - If mail service fails, other legal methods may be used.



Service Upon Defendants Outside of State § 16-15-904

Authorization for Out-of-State Service

- - Service outside the state is allowed when authorized by Tennessee law.
- - Must be reasonably calculated to provide notice.
- - Methods of service include:
 - - Any form authorized within Tennessee.
 - - Any manner prescribed by the law of the state where service is made.
- - As directed by the court.



Service Limitations & Requirments

- - This statute does not apply if service is made outside U.S. judicial districts.
- - Service must include a copy of the warrant, writ, or other legal papers.
- - Mail service upon corporations and partnerships must be addressed to:
 - - Officers, managing agents, or authorized agents.



Service by Mail & Validity

- - If a warrant, writ, or other papers are served by registered/certified mail:
 - - Service is valid even if the addressee refuses delivery.
 - - The return receipt from USPS must be filed in the action.
 - - Service by mail is complete upon mailing.



Default Judgment Restrictions

- - Default judgment cannot be entered based on mail service unless:
- - Return receipt shows personal acceptance by the defendant or authorized person.
- - Return receipt states that the defendant or agent refused delivery, which is deemed personal acceptance.



Constructive Service § 16-15-905

- In cases where constructive service of process is permissible under the statutes of this state, constructive service shall be made in the manner prescribed by those statutes.
- It's important to note that constructive service is generally considered a last resort, used when personal service is not feasible. Courts require strict adherence to statutory procedures for constructive service to ensure due process is upheld.
- Fun Fact: Evasion of Service is Class C misdemeanor



Judgment Execution Essentials

- - In Tennessee, execution methods include wage garnishment, property liens, and asset seizures.
- - Governed by Tennessee statutes and court rules.
- - A judgment is enforceable for 10 years from the date of entry (TCA § 28-3-110).
- - Can be renewed before expiration.
- - Execution must be initiated within this timeframe to remain valid.



Methods of Execution

- -
 1. **Wage Garnishment** - A portion of the debtor's wages is withheld by the employer.
 2. **Bank Account Levy** - Funds from the debtor's bank account may be seized.
 3. **Property Liens** - A lien is placed on the debtor's real or personal property.
 4. **Asset Seizure** - Sheriff or constable may seize and sell debtor's property.
 5. **Installment Payment Orders** - Court may order periodic payments by the debtor.



Property Liens and Seizures

- - A judgment lien can be placed on real property by recording the judgment.
- - The lien must be satisfied before the property can be sold or refinanced.
- - Property may be seized and auctioned to satisfy the judgment.



Exemptions and Limitations (you may need to make this into multiple slides)

- - Tennessee law provides exemptions to protect certain assets from execution:
- - Homestead Exemption (TCA § 26-2-301) protects a portion of equity in a primary residence.
 - \$35,000 for individuals, \$52,500 for jointly owned property
- - Personal property exemptions
 - Health care aids
 - Tools of the trade
- - Wage garnishment limits ensure a minimum level of income is protected
 - 25% of disposable earnings per week, minus \$2.50 for of his/her dependent children under the age of 16 who reside in Tennessee
 - Child support garnishments can be up to 65% of disposable earnings
 - No disposable earnings are exempt for state or federal tax judgments
- - State and federal Exemptions
 - Social Security benefits
 - SSI
 - Unemployment benefits
 - Veteran's benefits
 - AFDC
 - Government pensions
- To claim exemptions, Defendant must file a motion within 20 days from the date the execution was mailed. The Court must hear and decide the motion promptly, and in no event later than 14 days of filing



Conditional Judgment

- Under Tennessee law, a creditor can get a “conditional judgment” against a non-debtor garnishee (usually an employer or a bank) when the creditor issues a garnishment or levy and the garnishee fails to respond. This conditional judgment is then made a final judgment if the garnishee never responds.



Switching Gears-A Quick Word on Detainer Warrant Appeals (this is the final new topic)

- T.C.A. § 29-18-130
- -(a) When judgment is rendered in favor of the plaintiff, in any action of forcible entry and detainer, forcible detainer, or unlawful detainer, brought before a judge of the court of general sessions, and a writ of possession is awarded, the same shall be executed and the plaintiff restored to the possession immediately.
- (b)
 - (1) If the defendant pray an appeal, then, in that case, the plaintiff shall execute bond, with good and sufficient security, in double the value of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the wrongful enforcement of such writ, and to abide by and perform whatever judgment may be rendered by the appellate court in the final hearing of the cause.
 - (2)
 - (A) If the defendant prays an appeal, then an appeal **must not be allowed** unless the defendant has executed bond, or posted either a cash deposit or irrevocable letter of credit from a regulated financial institution, or has provided two (2) good personal sureties with good and sufficient security in the amount of one (1) year's rent of the premises, **conditioned to pay all costs and damages accruing from the failure of the appeal, including rent and interest on the judgment as provided for in this section, and has abided by and performed whatever judgment may be rendered by the appellate court in the final hearing of the cause**
 - (B) The plaintiff is not required to post a bond to obtain possession if the defendant appeals without complying with this subdivision (b)(2). The plaintiff is entitled to interest on the judgment, which accrues from the date of the judgment if the defendant's appeal fails.



Concluding Remarks

- These situations can be complicated -- keep on top of communications from your attorney.
- If you have any questions regarding what we've covered today, feel free to reach out to me at: 615-500-8577, Jennifer@jennifermccoyle.com
- I'm always one phone call away!

