

INCOME EXECUTIONS

STANDARD NO(S):

NYSSACD # 111

DATE:

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REFER TO:

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I. OBJECTIVE:

It is the objective of the Civil Division to establish 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).

II. DETAILS:

A. DEFINITIONS:

1. **INCOME EXECUTION** – 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 debtor's income.
2. **CLERK** – The clerk of the court in which the action is tried.
3. **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.
4. **MONEY JUDGMENT** – A judgment for a sum of money or directing the payment of a sum of money.
5. **JUDGMENT CREDITOR** – A person in whose favor a money judgment is entered or a person who becomes entitled to enforce it.
6. **JUDGMENT DEBTOR** – A person against whom a money judgment has been awarded.
7. **JURISDICTION** – An income execution must be delivered to the Sheriff of the county where the debtor resides or, to the Sheriff of the county where the employer is located.
8. **GROSS INCOME** – Salary, wages or other income, including any and all overtime earnings, commissions and income from trusts, before any deductions are made from such income.

9. **DISPOSABLE EARNINGS** – The remaining earnings after the deductions required by law to be withheld. (i.e. Social Security, state and federal income taxes, it does not include such items as union dues, health insurance premiums, charities, etc.)

B. PROCESSING:

1. The Civil Office will prepare Income Executions for data entry. Income Executions must be served within twenty (20) days of receipt by the Civil Office. Each paper must be time stamped and specify:
 - a. The name and last known address of the judgment debtor.
 - b. The name and address of the employer.
 - c. The name and address of the attorney of record.
 - d. The court where the judgment was obtained and the date of entry.
 - e. The transcribed date if the judgment rendered was from a lower court out of Seneca County.
 - f. The amount of the judgment and the amount due now.
 - g. The notice to judgment debtor.
 - h. The interest date.
2. The Civil Division will collect first stage, second stage and mileage fees in advance.
3. The Civil Division will log the papers, original plus four (4) copies, and issue a file number. The original should stay in the office with copies used for service.
4. The Civil Office will create a file and place it in the corresponding filing cabinet in alphabetical order by last name of debtor. This file will include the original and any copies of the execution plus copies of all appropriate forms which were sent to the debtor by certified and regular mailings, and all other documents related to the file.
5. There are two stages in the Income Execution collection process.
 - a. First Stage Service is when the execution is served on the debtor, giving him the opportunity to make voluntary payments to the Civil Division. There are two methods for serving first stage:
 - 1.) By serving the debtor in the same manner as a summons, or

- 2.) By certified mail return receipt requested, and by regular first class mail to the debtor. Both mailings are sent to the debtors last known address. The mail receipt and post office certificate of mailing must be kept as proof of service.
 - b.) The Civil Division uses the mail method for first stage service.
 - c.) Include along with the execution our standard form letter which explains to the debtor what is required.
6. Once service has been completed a payment schedule, based on how often a debtor is paid is set up and a copy of the debtor's pay stub is required.
 - a. Periodically, request a current copy of the debtors pay stub to verify that the correct payments are being received.
7. If the debtor does not respond and make their first payment within thirty (30) days, the execution is then served at his/her place of employment (Second Stage).
 - a. Second Stage Service is when the employer is served because the debtor is in default. The debtor is in default when:
 - 1.) The debtor fails to make their first payment within thirty (30) days from the date he was served first stage.
 - 2.) The debtor does not make the correct payments in accordance with the payment schedule.
 - 3.) The debtor stops payments before the execution is satisfied.
 - b. 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.
 - 1.) The Civil Division uses the summons method for second stage service.
 - a.) Include along with the execution the form letter which explains the employer's responsibilities.
8. Whether executions are in first or second stage service, the deductions must be calculated the same way. There are three (3) ways of determining the appropriate amount. The figure that is the lesser of the three 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.
- 9. We can only collect on one Income Execution of a judgment debtor at a time. However, if deductions are being made on child support or alimony we can collect on an Income Execution as long as the combined deductions do not exceed twenty-five percent (25%) of the disposable earnings.
- 10. The priority of multiple Income Executions against the same judgment debtor is determined by the date and time they are delivered to the Civil Office.
- 11. Apply all payments received to appropriate accounts.
 - a. If the payment is a direct payment of cash, certified bank check or money order, verify first that the appropriate amount is being paid.
 - 1.) If accounts are on hold, go to the notes tab found on the original screen of that account for information needed.
 - 2.) Monies received on accounts are entered daily and disbursed the following month.

C. MANAGING ACCOUNTS:

- 1. Once an execution is active whether 1st or 2nd stage, follow up on these accounts.
 - a. Accounts that have had no payments within a thirty (30) day cycle will be listed on a computer generated delinquent payers report.
 - 1.) If in 1st stage it will immediately be placed in second stage with the employer.
 - 2.) If in 2nd stage, send the employer an inquiry letter requesting payment.
 - a.) Correspondence sent to and received from the employer is placed in the file.
- 2. If the debtor declares bankruptcy the following steps are taken:
 - a. Request from the debtor's attorney or debtor a copy of the bankruptcy paperwork, if not provided.
 - b. Notify attorney for creditor with our form letter if contact has not been made by phone.

- c. If the execution is in second stage, send a letter to the employer to stop all payments.
 - d. Money received prior to the bankruptcy filing will be disbursed to the attorney of record. Money received after the date of bankruptcy filing is returned to the debtor.
3. The return is a statement of the actions taken by the Civil Division, which must be endorsed on all executions. They are:
- a. Satisfied – the account is paid in full.
 - b. Part Satisfied – the account is partially paid.
 - c. Unsatisfied – no payments received on account or payments applied only to fees and interest.
- 1.) The executions are returned for the following reasons:
- a.) Judgment is satisfied.
 - b.) After first stage service the employer is out of county.
 - c.) Employer is out of business or the debtor is not employed by the named employer.
 - d.) Judgment is vacated or annulled.
 - e.) The debtor has received a discharge through bankruptcy.
 - f.) The attorney of record requests in writing a return.