

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1731

Amending Civil Rule 69
concerning writs of executions.

IT IS ORDERED:

Civil Rule 69 is amended to read as follows:

**Rule 69. Execution — Examination of Judgment Debtor
— Restraining Disposition of Property — Execution After
Five Years.**

(a) **Execution — Discovery.** Process to enforce a judgment shall be by a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with these rules and applicable statutes. In aid of the judgment or execution, the judgment creditor or a successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) **Examination of Judgment Debtor in Court.**

(1) Before or after the issuing of an execution against property, the judgment debtor may be made to appear before the court, or before a master appointed by such court, at a time and place specified by an order, and to answer under oath all questions concerning property the judgment debtor has which may be subject to execution. The court may also order the debtor to bring to the examination documents concerning property that may be subject to execution.

(2) The examination may be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in that party's behalf. If by such examination it appears that the judgment debtor has any property liable to execution, the court shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or both, as may seem most likely to effect the object of the proceeding.

(c) **Order Restraining Disposition of Property.** At the time of allowing the order prescribed in subsection (b)(1) of this rule or at any time thereafter pending the proceeding, the court may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any property liable to execution pending the proceeding. For disobeying any order or requirement authorized by this rule the judgment debtor may be punished as for a contempt.

(d) **Execution After Five Years.** Whenever any period of five years shall elapse without a writ of execution being outstanding on a judgment, no writ of execution may be issued unless the court finds that there are just and sufficient reasons for the judgment creditor's failure to obtain a writ within that five-year period. The procedure shall be as follows:

(1) The judgment creditor shall file a motion supported by affidavit with the court where the judgment is entered for leave to issue an execution. The motion and affidavit shall state the names of the parties to the judgment, the date of its entry, the reasons for failure to obtain a writ for a period of five years and the amount claimed to be due thereon or the particular property of which possession was adjudged to the judgment creditor

remaining undelivered.

(2) Upon filing such motion and affidavit the judgment creditor shall cause a summons to be served on the judgment debtor in accordance with the provisions of Rule 4. The summons shall state the amount claimed or the property sought to be recovered under the judgment.

(3) The judgment debtor may file and serve a response to such motion within 20 days, alleging any defense to such motion that may exist. The judgment creditor may file and serve a reply to such response. The judgment debtor waives all defenses and objections that the judgment debtor does not present in the response as herein provided.

(4) The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be delivered.

(5) At the time of filing the motion for leave to issue execution or at any time thereafter before the final order is entered, the judgment creditor may cause the property of the judgment debtor to be attached and held during the time said motion is pending and until the final order is entered. Such attachment shall be made in accordance with these rules and applicable statutes, and for the purpose of such attachment the judgment shall be deemed an implied contract for the direct payment of money. In the event that the court shall order that execution be issued, it shall further order that any property of the judgment debtor attached hereunder shall be sold for the satisfaction of such execution and the peace officer shall apply the property attached by the peace officer or the proceeds thereof upon the execution.

(e) **Multiple Executions.**

(1) Only one original general writ of execution and one original writ of execution for garnishment of earnings may be issued and outstanding at any one time except:

(A) an additional writ of execution may be issued while another is outstanding if either of the writs is to be served on the Department of Revenue to seize the debtor's Alaska Permanent Fund Dividend; only one writ can be levied against a debtor's Permanent Fund Dividend for each debt; or

(B) additional writs may be issued if the creditor alleges facts by affidavit that show (1) there is property which cannot be served by the process server holding an outstanding writ because the property is outside the community in which the process server is authorized to operate, and (2) there is good cause to believe the debtor may remove or dispose of the property unless immediate action is taken.

(2) A process server to whom a writ of execution is issued may make copies of the writ as necessary. However, no writ or copies may be transferred to another process server except within the same firm. If the creditor discovers property that could be seized under the writ in another community in which the original process server does not serve, the outstanding writ must be returned to the court so that the clerk of court can cancel the first writ and issue a new writ to a process server serving the other community.

(f) **Service of Writ of Execution.**

(1) *Service – By Whom.* The clerk shall deliver the writ of execution and process server instructions to a peace officer or to

a licensed civilian process server specially appointed by the Commissioner of Public Safety for that purpose under Civil Rule 4(c)(3), except that the clerk may serve writs of execution on the Alaska Permanent Fund Dividend by certified mail. Postal delivery receipts for writs of execution served on the Permanent Fund Division of the Department of Revenue shall be made returnable to the judgment creditor.

(2) *Delivery of Money to the Court.* A process server who receives money as a result of a levy must deliver the money and a return of service to the court on the next day of business after receipt. The process server must file the original writ unless the money received by the server will satisfy only part of the judgment and the server expects to seize more money or property with the writ. In this situation, the process server may make a partial return by delivery to the court of all money received and a return of service that identifies the date and the amount of the writ. The original writ must be returned to the court when the judgment has been satisfied, when the process server no longer expects to seize more money or property with the writ, or within 30 days after receiving a notice of termination of the writ from the court.

(3) *Return of Service of the Writ.*

(A) The return of service must be in writing and must state who was served, the date of service, the amount of money or the property received, and the date the process server received the money or property.

(B) The return of service must also list each fee the process server is charging, and the subdivision of Administrative Rule 11 that allows that fee. If the amount charged exceeds the base

amount recoverable under Rule 11, the return must also provide justification for the excess amount.

(C) If the writ is served by a licensed civilian process server, the return of service must be by affidavit. If the writ is served by a peace officer, the return of service may be by certificate.

(g) Service of Notice on Judgment Debtor.

(1) *Service Methods.* The judgment creditor must serve on the judgment debtor the documents that AS 09.38.065(c), AS 09.38.075(b), AS 09.38.080(c), and AS 09.38.085 require to be served on the judgment debtor. If service is being made under AS 09.38.080, the documents must be served on the debtor before, at the time of, or within three days after levy. The judgment creditor may serve the documents by certified mail as provided in Civil Rule 4(h), or by licensed civilian process server; if no licensed civilian process server is available, then service may be made by a peace officer.

(2) *Forms.* The judgment creditor must use forms authorized by the administrative director for the papers required to be served on the judgment debtor, including the creditor's affidavit, the notices, the claim of exemption form, and the judgment debtor booklet.

(3) *Who May Sign Affidavit.* A creditor's affidavit filed on behalf of a corporation may be signed by any officer or employee authorized in writing to sign on that corporation's behalf, AS 22.20.040 notwithstanding.

(4) *Number of Notices Required if Multiple Seizures.* A creditor is not required to serve any additional notice and accompanying documents on the debtor for a subsequent levy if the creditor's affidavit previously served on the debtor describes the property

seized by the subsequent levy and a notice was served on the debtor within the past 45 days.

(5) *Proof of Service on Debtor.*

(A) *Proof of Service.* Within 30 days after the court receives money seized by writ of execution, the creditor must file proof of service of the notice to debtor described in paragraph (g)(1).

(i) *Certified Mail.* If service is by certified mail, the proof of service must be an affidavit stating that service was by certified mail. The affidavit must list the documents served, the person to whom the documents were mailed, and the date of mailing. The postal delivery receipt card must be attached to the affidavit.

(ii) *Personal Service.* If service is by a licensed civilian process server or by peace officer, the proof of service must list the documents served, the person with whom the documents were left, the date and time of service, the place of service, and the method of service. If service is made by a licensed civilian process server, the proof of service must be by affidavit. If service is made by a peace officer, the proof of service may be by certificate.

(B) *Diligent Inquiry.* If the creditor is unable to serve the notice, the creditor may file a request for release of funds and an affidavit of diligent inquiry explaining the efforts the creditor has made to effect service. The efforts must include service by certified mail and a mailing by first-class mail to the debtor's last known address. The affidavit must describe the efforts made to locate the debtor. Seized funds may be released to the creditor if the court is satisfied that the creditor has made diligent inquiry into the whereabouts of the debtor and has made sufficient efforts to give the debtor actual notice of the debtor's rights.

(C) *Return of Seized Funds to Debtor.* If, within 30 days

after the court receives money seized by writ of execution, the creditor neither files proof of service as required by subparagraph (A) above nor requests a release of funds under subparagraph (B), the court may release all monies seized to the debtor without further order of the court or notice to the creditor. If money is released to the debtor under this paragraph, the cost of service of the writ of execution shall not be assessed against the debtor.

(h) Confirmation of Sale of Real Property on Execution — Objections — Disposition of Proceeds.

(1) *Confirmation.* Where real property has been sold on execution, the plaintiff in the writ of execution, on motion, is entitled to have an order confirming the sale, after the expiration of 10 days after the filing of the return of sale, unless the judgment debtor has filed objections to the sale within 10 days after the filing of the return of sale.

(2) *Objections.* If objections are filed the court shall determine at a hearing whether there were substantial irregularities in the proceedings of sale which caused probable loss or injury to the judgment debtor. If not, the order confirming the sale shall be granted. If so, the court shall deny the motion and direct that the property be resold, in whole or in part as upon an execution received of that date.

(3) *Disposition of Proceeds of Sale.* After entry of an order confirming the sale of real property, the clerk shall apply the proceeds of the sale, or so much thereof as may be necessary, in satisfaction of the judgment and costs. Any proceeds remaining shall be paid to the judgment debtor. Such payments shall be made prior to the entry of the order of confirmation if the judgment debtor files with the clerk a waiver of all objections

made or to be made to the proceedings concerning the sale.

(i) **Execution on Alaska Permanent Fund Dividends.**

(1) When an Alaska Permanent Fund Dividend is levied upon to satisfy a judgment, the Department of Revenue may deliver the seized funds directly to the court instead of turning them over to the process server who served the writ. The Department of Revenue will notify the process server of the amount seized. Based on this information, the process server shall prepare and file a return of service. The court shall disburse the funds as provided by law.

(2) The administrative director may adopt procedures for executing upon Alaska Permanent Fund dividends by electronic means to satisfy judgments in criminal and minor offense cases and judgments in other cases in favor of the state. The procedures shall be established by administrative bulletin and may include procedures for issuance of writs of execution in electronic format, service of writs and notices of levy by electronic means, return of service, deposit of funds seized, and other execution procedures.

(3) The automatic stays listed in District Court Civil Rule 20(a), District Court Civil Rule 24(a), and Civil Rule 62(a) do not apply to writs issued to government agencies for execution on the Alaska Permanent Fund Dividend under (i)(2) of this rule.

CROSS REFERENCES

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(h) **CROSS REFERENCE:** AS 09.35.180

(i) **CROSS REFERENCE:** AS 43.23.065

DATED: July 13, 2010

EFFECTIVE DATE: August 1, 2010

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers