

RULE 4:59. PROCESS TO ENFORCE JUDGMENTS

4:59-1. Execution

(a) In General. Process to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order, shall be a writ of execution, except if the court otherwise orders or if in the case of a *capias ad satisfaciendum* the law otherwise provides. Unless the court otherwise orders, the writ of execution shall be in the form prescribed by Appendix XII-D and Appendix XII-E, as appropriate, to these rules. Except with respect to writs issued out of the Special Civil Part, the amount of the debt, damages, and costs actually due and to be raised by the writ, together with interest from the date of the judgment, shall be endorsed thereon by the party at whose instance it shall be issued before its delivery to the sheriff or other officer. The endorsement shall explain in detail the method by which interest has been calculated, taking into account all partial payments made by the defendant. Except with respect to writs issued out of the Special Civil Part, the judgment-creditor shall serve a copy of the fully endorsed writ, personally or by ordinary mail, on the judgment-debtor after a levy on the debtor's property has been made by the sheriff or other officer and in no case less than 10 days prior to turnover of the debtor's property to the creditor pursuant to the writ. Unless the court otherwise orders, every writ of execution shall be directed to a sheriff and shall be returnable within 24 months after the date of its issuance, except that in case of a sale, the sheriff shall make return of the writ and pay to the clerk any remaining surplus within 30 days after the sale, and except that a *capias ad satisfaciendum* shall be returnable not less than eight and not more than 15 days after the date it is issued. A writ of execution issued by the Civil Part of the Law Division shall not be directed to a Special Civil Part Officer except by order of the Civil Presiding Judge and such order shall specify the amount of the Officer's fee. One writ of execution may issue on one or more judgments or orders in the same cause. The writ may be issued either by the court or the clerk thereof.

(b) Contents of Writs of Execution and Other Process for the Enforcement of Judgments. All writs of execution and other process for the enforcement of judgments shall provide that any levy pursuant thereto shall exclude:

(1) all funds in an account of the debtor with a bank or other financial institution, if all deposits into the account during the 90 days immediately prior to service of the writ were electronic deposits, made on a recurring basis, of funds identifiable by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey law or federal law, and

(2) all funds deposited electronically in an account of the debtor with a bank or other financial institution during the two months immediately prior to the account review undertaken by the bank or other financial institution in response to the writ that are identified by the bank or other financial institution as exempt from execution, levy or attachment under New Jersey law or federal law.

(c) Execution to Enforce a Court Order for the Support of Dependents. Income withholding to enforce a judgment or order for the periodic payment of alimony or child support shall be governed by R. 5:7-4A(a), (b) and (c). The Presiding Judge of the Family Division in each vicinage may issue a standing or special order authorizing the Probation Division to execute on cash or cash-equivalent assets, as defined herein, to collect child support or alimony judgments payable through the Probation Division, and directing that writs of execution to collect past-due child support or alimony be served on the holder of such assets by the Probation Division. In vicinages where such an order is issued, an execution to enforce an alimony or child support judgment against cash or cash-equivalent assets shall be governed by R. 5:7-5(b) and the Vicinage Chief Probation Officer shall be designated Deputy Clerk of the Superior Court for the limited purpose of certifying writs of execution for alimony or child support judgments payable through the Probation Division. Cash or cash-equivalent assets include bank accounts, retirement accounts, trusts, insurance proceeds, net monetary awards and settlements from civil lawsuits, non-court settlements, proceeds from estates, investments, commissions, bonuses and any other asset from which funds are readily available without the need for seizure, inventory or public sale.

(d) Order of Property Subject to Execution; Required Motion.

(1) Execution First Made Out of Personal Property; Motion. The execution shall be made out of the judgment debtor's personal property before the judgment-creditor may proceed to sale of the debtor's real property. If the debtor's personal property is insufficient or cannot be located, the judgment creditor shall file a motion, on notice, for an order permitting the sale of the real property. The motion, which shall not be joined with any other application for relief, shall be supported by a certification specifying in detail the actions taken by the judgment creditor to locate and proceed against personal property. The notice of motion shall state that if the motion is not successfully defended, the judgment debtor's real property will be subject to sale. The notice shall have annexed the listing of Legal Services Offices and Lawyer Referral Offices as required by R. 4:4-2. No sale of real property shall proceed unless an order granting the motion has been entered.

(2) Execution First Made Out of Property of Party Primarily Liable. If a writ of execution is issued against several parties, some liable after the others, the court before or after the levy may, on application of any of them and on notice to the others and the execution creditor, direct the sheriff or other officer that, after levying upon the property liable to execution, he or she raise the money, if possible, out of the property of the parties in a designated sequence.

(e) Wage Executions; Notice, Order, Hearing. Proceedings for the issuance of an execution against the wages, debts, earnings, salary, income from trust funds or profits of a judgment-debtor shall comply with the requirements of paragraph (a) of this rule and shall be on notice to the debtor. The notice of wage execution shall state (1) that the application will be made for an order directing a wage execution to be served on the defendant's named employer, (2) the limitations prescribed by 15 U.S.C. §§ 1671-1677,

inclusive and N.J.S.A. 2A:17-50 et seq. and N.J.S.A. 2A:17-57 et seq. on the amount of defendant's salary that may be levied upon, (3) that defendant may notify the court and the plaintiff in writing within ten days after service of the notice of reasons why the order should not be entered, (4) if defendant so notifies the clerk, the application will be set down for hearing of which the parties will receive notice as to time and place, and if defendant fails to give such notice, the order will be entered as of course, and (5) that defendant may object to the wage execution or apply for a reduction in the amount withheld at any time after the order is issued by filing a written statement of the objection or reasons for a reduction with the clerk and sending a copy to the creditor's attorney or directly to the creditor if there is no attorney, and that a hearing will be held within seven days after filing the objection or application for a reduction. The judgment-creditor may waive in writing the right to appear at the hearing on the objection and rely on the papers. The notice of application for wage execution shall be served on the judgment-debtor in accordance with R. 1:5-2. A copy of the notice of application for wage execution shall be filed with the clerk at the time the form of order for wage execution is submitted except in the Special Civil Part no order is required to be submitted. In the Special Civil Part, the copy of the notice of application for wage execution along with the certification of amount due in accordance with R. 6:7-1(a) shall be filed with the clerk. No wage execution order shall be issued unless the notice of application was filed within 45 days of service of the notice upon the judgment debtor or 30 days of the date of the hearing. The wage execution order shall include a provision directing the employer immediately to give the judgment-debtor a copy thereof and it shall also include a provision that the judgment-debtor may, at any time, notify the clerk and the judgment-creditor in writing of reasons why the levy should be reduced or discontinued. If an objection from the judgment-debtor is received by the clerk after a wage execution has issued, all moneys remitted by the employer shall be held until further order of the court and the matter shall be set down for a hearing to be held within seven days of receipt of the objection.

(f) **Supplementary Proceedings.** In aid of the judgment or execution, the judgment creditor or successor in interest appearing of record, may examine any person, including the judgment debtor, by proceeding as provided by these rules for the taking of depositions or the judgment creditor may proceed as provided by R. 6:7-2, except that service of an order for discovery or an information subpoena shall be made as prescribed by R. 1:5-2 for service on a party. The court may make any appropriate order in aid of execution. If the warrant for arrest is not executed within 24 months after the date of the entry of the order authorizing it, both the order and the warrant shall be deemed to have expired and to be of no further effect.

(g) **Sheriff's Costs.** The sheriff shall file a bill of taxed costs with the final report with the clerk of the court.

(h) **Notice to Debtor.** Every court officer or other person levying on a debtor's property shall, on the day the levy is made, mail a notice to the last known address of the person or business entity whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed by qualified persons. If the execution is served on a bank or other financial institution as

garnishee pursuant to N.J.S.A. 2A:17-63, the officer shall mail the notice to the debtor on the day the officer serves the writ. The notice shall be in the form prescribed by Appendix VI to these rules and copies thereof shall be promptly filed by the levying officer with the clerk of the court and mailed to the person who requested the levy. If the clerk or the court receives a claim of exemption, whether formal or informal, it shall hold a hearing thereon within 7 days after the claim is made. If an exemption claim is made to the levying officer, it shall be forthwith forwarded to the clerk of the court and no further action shall be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets may be made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to debtor.

(i) Forms. The forms in Appendices XI-I and XI-L through XI-R, inclusive, shall be used in the Law Division, Civil Part, as well as in the Special Civil Part. The Administrative Director of the Courts is authorized to prescribe the minimum mandatory weekly disposable earnings reflected in Appendix XI-I (Notice of Application for Wage Execution) and Appendix XI-J (Wage Execution), as may be necessary from time to time, so as to adjust those forms to the lawful limitations prescribed by paragraph (b).

Note: Source – R.R. 4:74-1, 4:74-2, 4:74-3, 4:74-4. Paragraph (c) amended November 17, 1970 effective immediately; paragraph (d) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b), (c), (d), and (e) redesignated (c), (d), (e) and (f) respectively, July 24, 1978 to be effective September 11, 1978; paragraph (b) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (b) amended July 15, 1982 to be effective September 13, 1982; paragraph (d) amended July 22, 1983 to be effective September 12, 1983; paragraph (b) amended and paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (e) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (c), (e), (f), and (g) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective June 28, 1996; paragraph (d) amended June 28, 1996 to be effective September 1, 1996; paragraph (e) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (e), and (g) amended July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a) and (d) amended, and new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (f) amended July 9, 2008 to be effective September 1, 2008; paragraph (c) redesignated as subparagraph (c)(2), new paragraph (c) caption adopted, new subparagraph (c)(1) caption and text adopted, and paragraph (g) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended, former paragraphs (b) through (h) redesignated as paragraphs (c) through (i), new paragraph (b) adopted, redesignated paragraph (h) amended, and caption added to redesignated paragraph (i) July 19, 2012 to be effective September 4, 2012; paragraph (i) amended July 22, 2014 to be effective September 1, 2014; paragraph (c) amended July 27, 2015 to be effective September 1, 2015; paragraph (e) amended July 31, 2020 to be effective September 1, 2020.

4:59-2. Judgment for Specific Acts; Writ of Possession

(a) Judgment for Specific Acts. If a judgment or order directs a party to perform a specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of such defaulting party by some other person appointed

by the court, and the act when so done shall have like effect as if done by the defaulting party.

(b) Order and Writ of Possession. Where a party by virtue of any judgment or order, or any writ, sale or proceeding thereunder, claims possession of property, but the judgment or order does not provide therefor, the court on motion may make an order for the possession, provided notice of the motion is given to the person in possession and proof is made that such person has failed to deliver possession 10 days after a written demand. If an order or judgment is for the possession of real or personal property, the party in whose favor it is entered is, on application to the clerk, entitled as of course to a writ of possession directed to the sheriff (except as otherwise provided by R. 6:7-1(f)), which may include an execution for costs.

Note: Source – R.R. 4:75-1, 4:75-2; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 30, 2012 to be effective September 4, 2012.

4:59-3. Process in Behalf of and Against Persons Not Parties

An order made in favor of a person who is not a party to the action may be enforced by the same process as in the case of a party and, if obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as a party.

Note: Source – R.R. 4:76; amended July 13, 1994 to be effective September 1, 1994.