

#005

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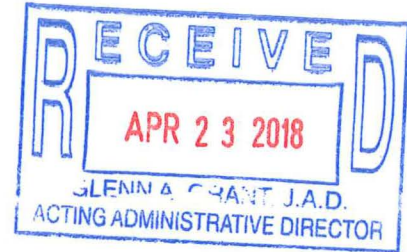
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APRIL 18, 2018

GLENN A. GRANT, J.A.D.  
ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS  
RULES COMMENTS  
HUGHES JUSTICE COMPLEX, P.O. BOX 037  
TRENTON, NJ 08625-0037



Re: 2016-2018 SUPREME COURT RULES COMMITTEE REPORTS- PUBLICATION FOR  
COMMENT – SPECIAL CIVIL PART RULES

Dear Judge Grant:

I respectfully submit this dissenting report to a proposed amendment to Rule 6:7-5, the ability to amend writs to include new filing fees as taxed costs.

As you know, with the inception of the Court Rules under Rule 1:43, the Court increased many court costs and created new court costs that did not exist prior to that date, and as such, there was no need prior to Rule 1:43 under the Court Rules to address subsequent court costs. However, with the acceptance of these new rules, new costs came into being – costs such as motion fees for various motions such as motions turnovers, motions to amend names, motions to amend writs, motions to amend the court records, and costs for notices of appearance and substitutions of attorneys. These costs never existed before. Now because of their existence, writs need to be amended to include these costs as incurred after a writ is issued.

A prime example is a motion for wage garnishment writ of execution. Sometimes a wage execution does not satisfy the judgment because of a prior or insufficient earnings, and thus while that wage execution is still a valid execution and remains pending, other costs may be incurred – costs for motions in aid of litigant's rights, costs for subsequent writs, motions for turnover, etc. Each of these is a taxable cost that is not on the original writ and needs a mechanism for being added to the original writ.

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Another example is a writ of execution. Even though a writ is good for two (2) years, in those two (2) years there may be multiple levies that require multiple motions for turnover. There is no mechanism by which to add costs to that writ of execution.

The recommendation of Mr. Pressler was that since the Clerk is aware of these costs as they are incurred, the Clerk should notify the Court Officer so that he can update the Writ of Execution. In Committee, it was rejected because we were advised that the Presiding Judges were working on this and were coming up with a solution. However, no solution was ever forthcoming.

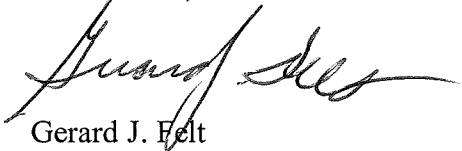
If this is too much work for Clerks to take on, then I would recommend that Rule 6:7-3(b) and Rule 6:7-4(c) be amended to include the ability to amend writs of execution by certification in the same manner that the same writs are amended to update interest on executions. See attached.

Since this method is already being used to add interest to subsequent writs, it would be a simple amendment to include subsequent costs in these Court Rules. I have attached copies of the proposed rules.

I would recommend that the Supreme Court entertain this amendment to the Court Rules to correct an unintentional consequence and problem caused by adding new costs without adjusting other Court Rules that are affected by them.

Respectfully submitted,

PRESSLER, FELT & WARSHAW, LLP

A handwritten signature in black ink, appearing to read "Gerard J. Felt", written over a horizontal line.

Gerard J. Felt

GJF/MR  
Enclosure

### **6:7-3. Wage Executions; Notice, Order, Hearing; Accrual of Interest and Subsequent Costs**

(b) Accrual of Interest and Subsequent Costs. The judgment creditor or the judgment creditor's attorney who seeks to recover interest and/or costs that has have accrued subsequent to issuance of the execution must file an affidavit or certification with the clerk of the court setting forth the amount of accrued interest and/or costs. A copy of the affidavit or certification shall be served personally or by certified mail upon the judgment debtor's employer by the judgment creditor or attorney. A copy of the affidavit or certification shall be sent by ordinary mail by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and to the court officer who served the execution upon the judgment debtor's employer. The affidavit or certification shall state that the interest and/or costs and the court officer fees thereon have been imposed pursuant to R. 4:42-11 and must be collected in accordance with same by the employer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the wage execution fully satisfied. The affidavit or certification shall be filed with the clerk prior to the return of the satisfied wage execution by the court officer. An affidavit or certification filed subsequent to the return of the satisfied wage execution shall be returned by the clerk to the judgment creditor or attorney with a notation or notice that the wage execution has been fully satisfied.

### **6:7-4. Chattel Executions; Time at Which Levy Can be Made; Accrual of Interest and Subsequent Costs.**

(c) Accrual of Interest and Subsequent Costs. The judgment creditor or the judgment creditor's attorney may file an affidavit or certification with the clerk of the court setting forth the amount of accrued interest and/or costs. A copy of the affidavit or certification shall be sent by ordinary mail and by certified or registered mail, return receipt requested, by the judgment creditor or attorney to the judgment debtor at the debtor's last known address and by ordinary mail to the court officer to whom the writ of execution has been assigned. The affidavit or certification shall state that the interest and/or costs and the court officer fees thereon have been imposed pursuant to R. 4:42-11 and must be collected in accordance with same by the officer. The court officer shall give to the judgment creditor or judgment creditor's attorney at least 30 days' notice of intention to return the chattel execution fully satisfied. The affidavit or certification shall be filed with the clerk prior to the return of the satisfied execution by the court officer. An affidavit or certification filed subsequent to the return of the satisfied execution shall be returned by the clerk to the judgment creditor or attorney with a notation or notice that the execution has been fully satisfied.