

CIVIL DIVISION

Civil actions in municipal courts are commenced by filing a complaint upon which summons or writ must be issued by the clerk of the municipal court. The form of summons or writ is to be prescribed by rule of court. All subsequent procedures in civil actions are subject to the following provisions:

(1) The return day is fixed by rule of court, but unless it is accompanied by an order to arrest, the summons or writ must be served at least three (3) days before the time of appearance.

(2) In all attachment and garnishment proceedings, a true copy of the affidavit must be served with the summons and order of attachment or garnishment.

(3) In any action for the recovery of personal property, the appraised value of which exceeds FIFTEEN THOUSAND DOLLARS (15,000.00), the judge, upon the return of the appraisal prior to judgment, must certify the proceedings in the case of the court of common pleas.

(4) Whenever any property is seized or sought to be recovered in any civil action, it must be appraised at once. (The value may be ascertained by the oath of two (2) disinterested persons who are residents of the territory of the court.)

(5) In any action in which the amount claimed by any Defendant in a counterclaim exceeds the jurisdictional amount, the judge must certify the proceedings in the case to the court of common pleas. (Exception: Cleveland Municipal Court.)

(6) When the amount due either party exceeds the sum for which a municipal court is authorized to enter judgment, such party may, in writing remit the excess and judgment be rendered for the residue. In this regard, any Defendant may, at his option, withhold setting up any counterclaim and make the counterclaim subject of a separate action.

(7) When the proceedings in a case are certified to the court of common pleas, the clerk of the municipal court must forthwith transmit all original papers, pleadings and a certified transcript of all journal entries in the case to the clerk of the court of common pleas for filing. If the bailiff has in his possession any property relating to the case, he must turn it over to the sheriff of the county, who holds the property as he would in all cases originating in the court of common pleas. (The case then proceeds in the court of common pleas as if it had commenced there originally.)

In any civil case or proceeding, if no special provision is otherwise made by statute, the practice or procedure in a municipal court must be the same as in court of common pleas. (See, generally, Title 23, Ohio Revised Code, for guidance as to practice and procedure in courts of common pleas.)

The most significant aspect of this rule is that the Ohio Rules of Civil Procedure are made to apply to municipal courts.

MUNICIPAL COURT CLERK'S GUIDE TO STEPS IN A CIVIL ACTION

I. Commencement of the action.

A. Civ. R. 3(A) provides that an action is commenced by filing a complaint with the court provided that service is obtained within one year.

1. Applies to all courts. Civ. R. 1(A).
2. Applies to all actions unless excepted by Civ. R. 1(C). Exceptions relate only to those provisions which are unique to the special proceedings enumerated in Civ. R. 1(C).
3. Court is used in the broad sense and not as the equivalent of judge. A complaint is filed with the court when deposited in the office of the clerk.
4. The clerk's received stamp-showing time and date is evidence of filing, but not conclusive evidence.
5. The purpose of the commencement provision is to establish compliance or noncompliance with the applicable statute of limitations.
6. The purpose of the one-year provision is to clear the docket of cases in which personal jurisdiction over the defendant is not acquired.
7. Civ. R. 3(A) does not require that a complaint be dismissed upon the expiration of one year after the filing of the complaint where service has not been obtained. If service is obtained within one year of the filing of the complaint, the actions commenced as of the date of the filing under Civ. R. 3(A). If the service is not obtained until after one year has expired, §2305.17 applies and the action is commenced as of the date service is obtained. That date may still be within the statute of limitations. If it is not, the Court will dismiss the action. St. Thomas Hospital v. Beal (1981), 2 Ohio App. 3d 132.
8. Under M.C. Sup. R. 6(A), the court reviews pending cases periodically and upon written notice to counsel and opportunity to be heard may dismiss cases which are not being prosecuted. Plaintiff has an obligation to attempt to secure service and the court does not have to wait until one year has expired to clear the docket of cases not being pursued.

B. Complaint.

1. Civ. R. 7(A) requires a complaint.
2. Contents of caption. Civ. R. 10(A).

- a) Name of the Court.
 - b) Title of the action, A v. B, often called the style of the case. In a complaint the title of the action must contain the names and addresses of all the parties. In other pleadings it is sufficient to state the name of the first party on each side with appropriate reference to the other parties such as et al.
 - c) The case number. For a complaint, the number is to be assigned and affixed by the clerk and shall be serially numbered on an annual basis beginning on the first day of January of each year. Cases shall be identified by year and by reference to the case type designator on the administrative judge report form. Additional identifiers may be added by local court rule. Sup. R 43.
 - d) Designation as in Civ. R. 7(A). Designation means name of the pleading. The only pleadings are:
 - (1) Complaint
 - (2) Answer
 - (3) Reply to denominated counterclaim
 - (4) Answer to a cross claim
 - (5) Third-party Complaint
 - (6) Third-party Answer
 - (7) Reply to answer, if ordered by the court
 - (8) Reply to third-party answer if ordered.
 - e) Additionally, Civ. R 38(B) requires that the legend “Jury Demand Endorsed Herein” appear in the caption when a jury demand is endorsed upon a pleading.
3. Content of the body of the complaint.
- a) Short and plain statement of claim for relief (cause of action). Civ. R 8(A).
 - b) Demand for judgment prayer. Civ. R. 8(A).
 - c) Each averment is to be simple, concise and direct. Civ. R. 8(E) (1).
 - d) Disclosure of minority or incompetency. Civ. R. 8(H).

- e) Pleading under the civil rules is notice pleading, giving notice to the defendant as to the nature of the claim against him. Fact pleading limited to statement of ultimate fact is out. Technicalities are out. Issues are developed by discovery and not limited to development by pleadings.

4. Subscription. Civ. R. 11(B).

- a) Complaint to be signed by an individual lawyer who states his address and attorney registration number issued by the Supreme Court of Ohio.
- b) Signing in firm name only is not enough.
- c) An unrepresented party must sign and state his address.
- d) A lawyer's signature is a certification that he has read the pleading, that there is good ground to support it, and that it is not interposed for delay.
- e) Verification is not required.
- f) Local rule may require telephone number, computer designation, and similar information.

5. Other requirements and options.

- a) M.C. Sup. R. 3(A) requires that the attorney who will try the case be designated on the pleading. The trial attorney may be a person other than the lawyer who subscribed the pleading.
- b) A jury demand may be endorsed on the pleading. Civ. R. 38(B).
- c) The written request for personal service, Civ. R. 4.1(2) or for residence service, Civ. R. 4.1(3), may appear on the pleading. Instructions to the clerk as to when and where to locate the defendant may be endorsed on the pleading or submitted separately.
- d) When an action is based upon a written instrument, a copy of the instrument is to be attached to the pleading or its absence explained. Civ. R. 10(D).

6. Filing and Facsimile (FAX) filings (See Supreme Court Rule 27).

- a) The Civil Rules contemplate the normal practice of filing pleading with the clerk. Local Rules should provide guidelines in accepting documents for filing by electronic means (facsimile or "FAX" filings).
- b) Civ. R. 5(E) defines filing with the court to be filing with the clerk of the court, but it permits the judge to allow papers to be filed with him. If he

does, he notes the date of filing on the pleading or other paper and transmits it to the office of the clerk.

C. Clerk's response to deficient complaint.

1. The clerk may wish to point out the deficiency in order that it may be remedied.
2. Absent a specific direction from the judge, the clerk should accept a deficient complaint for filing and accompanied by the requisite filing fees. It is said that the property of a submitted paper and the right of a person to file it is vested in the court and not in the clerk.
3. Local rule may require a deposit for costs before a complaint may be filed.

II. Acquiring personal jurisdiction over the defendant.

A. Process.

1. Process includes all of the writs issued by a court to carry out its orders.
2. A writ of summons is the process used to secure personal jurisdiction over a defendant.
3. Summons gives the defendant actual notice of the action against him and advises him of his obligation to respond.
4. Content of summons. Civ. R. 4(B).
 - a) Name and address of court.
 - b) Names and addresses of parties.
 - c) Name and address of plaintiff's attorney, if any.
 - d) The time within which the defendant is required to appear and defend.
5. Summons is to be directed to the defendant and signed by the clerk or deputy clerk.
6. Where there are multiple defendants or multiple plaintiffs, the name of the first party on each side in the caption and the name and address of the party to be served in the body of the summons.
7. Forms appearing in the appendix to the Civil Rules are sufficient to meet the requirements of the Civil Rules. Civ. R. 84. Forms may be modified to meet the facts of a particular case.

8. The Civil Rules contemplate that the summons be created only once and that the returns not be a part of the summons. When a summons is returned without being served, it is not necessary to prepare an alias summons. In that situation, the original summons is redirected to the process server. Where there are multiple defendants, the summons may not be directed to each of them at the same time. If not, the original summons is reissued when the additional service is requested.
9. A copy of the complaint must accompany the service of the summons. It is the obligation of counsel to provide enough copies for service on each defendant. Civ. R. 4(B). It is the duty of the clerk to provide enough copies of the summons for service on each defendant.
10. The burden of providing correct addresses for service and for supplying information as to when and how service is to be effected is on counsel. Civ. R. 4.6(E). Neither the clerk nor the process server is under an obligation to provide a directory service or to track down the whereabouts of a defendant.
11. There are two aspects to the service of summons. The first is to deliver the summons and complaint to the defendant and give him actual notice of the civil action. The second aspect is being able to prove that the notice was given. The return is evidence of service. The sufficiency of the evidence of service is counsel's problem. The appendix to the Civil Rules contains samples of returns for personal and residence service and they are reproduced here. (See Form-4 and Form-5 at the end of this section.)
12. The returns should not be incorporated into the summons, but kept as a separate instrument. A copy of the return should not be given to the defendant. Defendants under the former practice in which the return was a part of the summons often felt obligated to return the papers to the court. The present system is designed to eliminate such confusion.
13. All process may be served anywhere in Ohio and may also be served outside Ohio when authorized by the Civil Rules or by statute. Civ. R. 4.6(A). The municipal court's summons in a civil action is issued to the bailiff for service anywhere in the county or counties in which the court is located. §1902.23. Where the territorial jurisdiction of the court does not consist of the entire county, the bailiff is still authorized to serve a summons anywhere in the county, the clerk issues the summons to the sheriff of that other county for service and return. §1901.23. The sheriff of the other county is under no duty to serve the summons issued to him unless the summons bears the endorsement "Funds deposited to pay for the execution of this writ". §2303.16. The statute specifically applies to the court of common pleas but §1901.23 provides that service of process shall be made and returned in the municipal court in the same manner as in the common pleas court. The statute also provides that the issuing court shall not pay the officer's fees when the return is made.

14. Upon the filing of a complaint, the clerk is to issue summons forthwith for each defendant. Civ. R. 4(A). No praecipe is required. Counsel may provide directions for delayed service on a defendant as where that person is now out of state but will be returning on a specified day. Forthwith means as soon as it may be accomplished by reasonable means. Papin v. Imes (1961), 19 Ohio Op. 2d 114.
15. Civ. R. 4.2 provides how particular persons are to be served. Where a special situation exists, it is incumbent upon counsel to provide the information in serving instructions. For example, where a minor under sixteen is involved, service can be effected by serving a parent with whom he lives. The serving instructions should provide the parent's name and address and the fact that the minor lives with the parent.

III. Service of summons by certified mail.

- A. Under the Civil Rules, service by certified mail is the preferred method. Civ. R. 4.1(A) provides that service is to be by certified mail unless otherwise permitted by the Civil Rules.
- B. Procedural steps.
 1. A complaint has been filed, there are no written requests for other forms of service and the appearance docket initial entries have been made. The summons has been prepared and signed. Sufficient copies of the summons have been made so that each defendant will have one. The plaintiff has filed sufficient copies of the complaint so that each defendant will receive one.
 2. Clerk addresses an envelope to each defendant.
 3. Clerk places a copy of the summons and a copy of the complaint and accompanying documents, if any, in each envelope.
 4. Clerk follows certification procedure. (Refer to post office for certified mail procedures).

The clerk must mark the envelope with the words, "RETURN RECEIPT REQUESTED". This is placed on the address side and is easily done with a stamp. The forwarding instruction is also placed on the address side. The return receipt is affixed to the reverse side of the envelope and the certified mail sticker is placed on the address side.

Approximately 19 days is involved in a non-delivery situation. It takes two days for the letter to get to the address, the post office holds the letter fifteen days and it takes two days to return to the sender. It would be well to do away with the envelope legend, "If no delivered in five days return to sender". This legend may prevent service by certified mail.

If the clerk must make an inquiry about a piece of certified mail, the post office must know the name and address of the addressee and the certified number.

Certified mail cannot be used other than in the United States.

5. Clerk endorses instructions on the envelope to forward the mail. This is done by prepared stamp.
6. Clerk affixes adequate postage.
7. Clerk places envelopes in U.S. Mail.
8. Clerk “forthwith” enters fact of mailing on appearance docket.
9. Postage entered on cost docket.

C. Proof of service by certified mail.

1. The return receipt, Form 3811, serves as the return for the summons. The clerk enters the receiving of the return receipt on the appearance docket. Evaluation of the effectiveness of the evidence or service is the responsibility of counsel. Civ. R. 4.6(E). He is the one who may be called upon to provide proof of service in the future.
2. If the return receipt shows failure of delivery to the addressee (envelope returned with receipt attached and usual post office stamp with one of four reasons checked). Clerk forthwith notifies the attorney of record or the plaintiff if there is no attorney, of the failure. The notification is to be by mail. The rules do not require the notification to be by certified mail, ordinary mail will suffice. The clerk enters the fact of notification on the appearance docket. The next step in securing service is up to the plaintiff’s attorney. He must provide better information for certified mail delivery or he must make a request for personal or residence service.

3. Refusal to accept certified mail. Civ. R. 4.6(C).

- a) If the certified mail envelope is returned with an endorsement showing a refusal to accept the service, the clerk notifies counsel by ordinary mail, or the plaintiff if there is no attorney, of record that the summons has been returned refused.
- b) The attorney, or the party, may file a written request with the clerk for service by ordinary mail.

- c) The clerk mails a copy of the summons and a copy of the complaint to the defendant at the address in the caption or at an address furnished by counsel in written instructions.
- d) The mailing is to be evidenced by a certificate of mailing, which is a receipt given by the post office when ordinary mail is presented for mailing, and a certificate requested. The fee for a certificate is \$0.40. (See Form-2 at the end of this section.)
- e) Answer day is 28 days after the date of mailing appearing on the certificate and that date is to be endorsed upon the summons sent by ordinary mail.
- f) Service is deemed complete when the fact of mailing is entered on the record, the appearance docket.

4. Failure to claim certified mail service. Civ. R. 4.6(D).

- a) To be distinguished from refusal to accept service. Refusal is an affirmative act. Failure to claim is ambivalent. The defendant may have purposely failed to claim the certified mail or he may have been out of the state and not received the notice within the period during which the certified mail was held for delivery.
- b) If the certified mail envelope is returned with an endorsement showing that the envelope was unclaimed, the clerk shall notify the attorney of record, or the party if no attorney, by ordinary mail.
- c) The attorney or party may file a written request with the clerk for ordinary mail service.
- d) The clerk mails a copy of the summons and a copy of the complaint to the address in the caption or to an address furnished by counsel in written instructions.
- e) The mailing is to be evidence by a certificate of mailing which is a receipt given by the post office when ordinary mail is presented for mailing and a certificate requested. The fee for a certificate is \$0.40.
- f) Answer day is 28 days after the date of mailing as evidenced by the certificate and that date must be endorsed on the summons.
- g) Service is deemed complete when the fact of mailing is entered upon the record, the appearance docket, provided that the envelope is not returned undelivered. In that event, the clerk notifies the attorney who must then reassess how to effect service of summons.

D. Restricted service of certified mail.

1. Service of certified mail on the addressee only is available from the post-office, but it is not required by the Civil Rules and its use might impede service more than it establishes certainty
2. Southgate Shopping Center Corp. v. Jones (1975), 49 Ohio App. 2d 358 held that service by certified mail was valid only when signed for by the addressee or an authorized agent. Civ. R. 4.1 and Civ. R. 4.3 were amended in 1980 to provide that the return receipt signed by any person is to be accepted as evidence of service. The return may or may not establish service, but it is evidence. In Mitchell v. Mitchell (1980), 64 Ohio St. 2d 49, the Supreme Court held persons other than the addressee and the addressee's authorized agents could sign the receipt.
3. Certified mail service may be directed to a corporation at its usual place of business without being addressed to a specific officer of the corporation. Samson Sales Inc. v. Honeywell Inc. (1981), 66 Ohio St. 2d 290.

IV. Personal service of summons. Civ. R. 4.1(2).

A. Plaintiff files written request with the clerk. The request may be an endorsement on the complaint or may be a separate piece of paper. An acceptable form of request would be, "Plaintiff requests that the defendant, Richard Roe, be served with summons by personal service." The simple endorsement, "Personal service - all defendants" is probably sufficient. As a matter of good practice it is well to secure special service instructions at the point of filing. The idea is to get service expeditiously, and proper instructions given timely are the best guarantee of results.

B. Clerk prepares summons.

C. Clerk delivers original summons to the serving officer. If the form suggested at II, A, 7, above is used, a separate return sheet for each service (individual defendant or defendants to be served at one place and time) would be affixed (stapled) to the original summons. The clerk retains the original complaint and documents accompanying it. The clerk delivers a copy of the summons, without the returns attached if the suggested form is used, and a copy of the complaint with documents, if any, attached, to the serving officer for each defendant that he is to serve. If the officer will make service on two defendants at one time and place he still will provide each with a copy of the summons and a copy of the complaint. The copies of the complaint and accompanying documents are to be provided by the plaintiff when he files his complaint. Civ. R. 4(B). The clerk makes the copies of the summons, which he delivers, to the serving officer. Civ. R. 4.1(2) provides that the "...clerk of the court shall deliver the process and sufficient copies of the process and complaint... to the...(emphasis added). This may change the existing procedure in some courts where the serving officer

receives only the original process and makes copies of it, which he certifies and serves.

D. The clerk of municipal court delivers the summons and copies of summons and complaint to the bailiff of his court where the defendant or defendants to be served reside or found in the county or counties in which that municipal court has territorial jurisdiction.

1. It would appear the bailiff is not limited by the physical bonds of his court's territorial jurisdiction, but may process in all of any county in which his court does have territorial jurisdiction. The Fostoria Municipal Court has multi-county jurisdiction.

2. Where the defendant does not reside and is not found in a county in which the municipal court has territorial jurisdiction. The clerk of municipal court directs the original summons and the copy of he summons and complaint to the Sheriff of the county where the defendant does reside or is found. The contact between the clerk and the sheriff letter would be appropriate.

E. Civ. R. 4.1(2) contains an alternative procedure for a serving officer. A person, not less than 18 years of age, may be appointed by the court to make service of process provided he is not party to the action. If that occurs, the clerk delivers the summons and copies of summons and complaint to the person appointed by the court order.

1. There are no provisions for fees for such a process server. It is assumed that the plaintiff would pay for the service.

2. This is a provision not likely to be widely used but is included because of the possibility that the task of locating and serving a particular defendant might be a time consuming task beyond the patience of the sheriff. It is not intended to introduce a civilian force of process servers into civil procedure.

F. Duties of the process server.

1. The sheriff is required to endorse the day and hour that he receives the summons upon the summons. §311.09. Process in a municipal court is to be issued and returned in the same manner as in the court of common pleas. §1901.23. The bailiff has the same obligation as the sheriff in matters of service.

2. Civ. R. 4.1(2) is directory as to when service is to be made. It establishes a 28 day period, after issuance, in which the service should be made.

a) The rule also provides that failure to make the service within the twenty-eight day period does not invalidate a service made later. That later service could be anytime within one year after the filing of the complaint, or within the statute of limitations.

- b) The signification of the approach is that the old concept of rule day is gone. The summons does not expire if not served by rule day, which was the former practice. In fact there is no return day. Civ. R. 12(A) establishes answer day as 28 days after service of the complaint or 28 days after the last publication. This is why one original summons is all that is required and alias summons is not used.
 - c) This rule is not an invitation to delay to the process server. He an inherent duty to act with dispatch absent any exhortation to speed. The purpose of the change is to introduce flexibility and remove technicalities.
3. The sheriff or bailiff is required to locate the person to be served and to tender a copy of the summons and a copy of the complaint and accompanying documents. Tender means to offer. The summons does not have to be placed in the defendant's hands or inserted in a pocket to be served. Under the former practice, personal service was made by delivering a copy of the summons, with endorsement to the defendant.

If the personal service is not refused, the serving officer completes the personal service return.

The original summons and the return are delivered to the issuing clerk by the serving officer.

- a) 2323.46, remains in force and the sheriff making service in a county other than the issuing county may make the return by mail and is entitled to the same fees as if the summons had been issued in his county.
4. If personal service is refused, the service is not complete by making the tender of the copy of he summons and the copy of the complaint. Refusal is covered by Civ. R. 4.6(C).
- a) The serving officer completes the failure of service return stating that service of process was refused.
 - b) The summons with completed return and copies are delivered to the clerk.
5. If the service fails for some reason other than refusal, the serving officer completes the failure of service return. He then delivers the summons and copies to the issuing clerk.
6. In the event of accomplished service, the clerk enters that fact upon his appearance docket.
7. In the event of failure of service, including refusal of service, the clerk makes an appropriate entry on the appearance docket.

- a) Civ. R. 4.1(2) also requires that the clerk follow the same notification procedure as required in the case of certified mail by Civ. R. 4.1(1), viz:
 - Notify attorney of record by mail.
 - Enter fact of notification on the appearance docket.

V. Residence service of summons. Civ. R. 4.1(3).

- A. Plaintiff files a written request for each service and it is then made by the method.
 1. The methods of making the request are the same as set forth under personal service.
 2. There seems to be no good reason why a plaintiff might not request personal service or in the alternative residence service provided he makes that clear in his written request. This would provide a safety valve in the case of refusal of personal service.
- B. The steps for the issuance and delivery of the process to the server are the same as for personal service. There are the same need for specific information, as to the usual place of residence to be furnished by the attorney which places a premium upon securing instructions for service form the attorney. The server makes service by leaving a copy of the summons and a copy of the complaint and accompanying documents at the usual place of residence of the person to be served. He must leave it with a person of suitable age and discretion then residing therein.
 1. Under the former practice, residence service was accomplished by leaving a copy of the summons at the usual place of residence. §2703.08.
 2. Under the Civ. 4.1(3), you can't make residence service unless someone of suitable age and discretion, then living there, is at home to receive it.
 - a) The server will have to be the judge of who is of suitable age and discretion. There is no standard established. Common sense and reason must prevail.
 - b) The server must satisfy himself that the person lives in the residence. The babysitter won't meet the requirement of the rules.
 - c) The return is proof of the service and for that reason calls for the name of the person with whom the copy of the summons and complaint is left.
 3. Under the rules there can be no more doorknob service.
 4. There can be refusal of residence service as there was refusal of personal service.

- C. The steps in the delivery of the return where service accomplished and the delivery of the copies where refusal or failure exists are the same as for personal service. The duties of the clerk as to the docket and notification are the same and the responsibility of the attorney when notified of service failure, either refusal or otherwise, is the same as discussed in relation to personal service.

VI. Service of summons outside the state of Ohio. Civ. R. 4.3.

A. When service is authorized outside of Ohio.

1. Civ. R. 4.3(A) brings all of the long arm provisions together into one place. It does not significantly change the law as it existed before the rules except that the fiction of notice to a party by serving the Secretary of State is eliminated. The clerk and the sheriff no longer need concern themselves with the intricacies involving the sheriff of Franklin County and the Secretary of State. The rule permits service of process outside Ohio when the defendant, at the time of service is a nonresident of Ohio or is a resident of Ohio absent from Ohio. The clerk will not really be concerned as to whether the action is a proper one for long arm jurisdiction. That is the lawyer's problem. The necessity for out of state service will appear from the address in the title of the action or from the written request for service and instructions for service provided by the attorney.

B. Method of obtaining service.

1. Civ. R. 4.3(B) provides that persons may be served out of state in an authorized case by certified mail or by personal service. There is no provision for residence service outside Ohio.

a) Service by certified mail outside Ohio.

Certified mail service procedure is exactly the same as certified mail service in Ohio under Civ. R. 4.1(1), except as to failure to delivery. Civ. R. 4.3(B) provides when the return receipt shows failure of delivery the clerk notifies the attorney who sought service by regular mail. The attorney then as in Civ. R. 4.1, 4.2, 4.3, 4.6, has the option of attempting new service by making a written request for such service or relying on the Civ. R. 4.3(B) failure of service provision. If the attorney wishes to rely on the Civ. R. 4.3(B) "failure" provision, he files an affidavit with the clerk setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served. The clerk does not evaluate the affidavit. Service is complete upon the filing of the affidavit which would, of course, be entered upon the appearance docket.

b) Personal service outside Ohio.

Out of state personal service under Civ. R. 4.3(B)(2) differs substantially from personal service in Ohio, Civ. R. 4.1(2). An Ohio public official or a

foreign public official is under no duty to perform this service. The rules do not impose such a duty. The rule provides that personal service must be ordered by the court and that the server must be not less than 18, and not a party. He will be proposed by plaintiff's counsel and an affidavit which does not meet that minimum requirement is insufficient. Pistner v. Baxter (1981), 2 Ohio App. 3d 69.

2. Upon the filing of the affidavit, the clerk is to cause service of notice by publication in a newspaper of general circulation in the county. If there is none, the publication may be in a newspaper in the adjoining county.
3. The published notice must contain:
 - a) name and address of the court;
 - b) case number;
 - c) name of the first party on each side;
 - d) name and last known address of the person to be served;
 - e) summary statement of the object of the complaint and the demand for relief; and
 - f) notification that the person is required to answer within 28 days of the last publication.
4. The publication is to be for six successive weeks unless the authorizing statute provides for a lesser number of weeks.
5. Civ. R. 4.4(A) provides that service is complete on the last date of publication. Dolan v. Fulkert (1972), 30 Ohio App. 2d 165, held that where the last publication is more than one year after the filing of the complaint beyond the period of limitations, the completion of the service will relate back to the first date of publication which was within the one year period in determining that the action was commenced as required in Civ. R. 3(A).
6. Proof of service by publication is by affidavit of the publisher accompanied by a copy of the notice. This serves the same function as the process server's return or the return receipt for certified mail.

VIII. A. Third party complaints.

1. Civ. R. 14 provides that a third person is liable to a defendant for all or part of the plaintiff's claim against the defendant, the defendant may file a third party complaint against that third person.

2. Civ. R. 14 also provides that when a counterclaim is made against a plaintiff and a third person is liable to the plaintiff for all or part of the asserted counterclaim, the plaintiff may file a third party complaint
3. Summons is issued on a third party complaint as on a complaint. Civ. R. 14(A). The methods of service of summons on a third party complaint are the same as for a complaint. Civ. R. 4(C).

B. Duty of the lawyer in the service of summons.

1. Civ. R. 4.6(E), effective 7-1-97, provides:

The attorney of record or the serving party shall be responsible for determining if service has been made and shall timely file written instructions with the clerk regarding completion of service notwithstanding the provisions in Rules 4.1 through 4.6 which instruct a clerk to notify the attorney of record or the serving party of failure of process.

2. The purpose of the provision is to make it clear that the responsibility, the ultimate responsibility, for effecting service rests with the process server. Even if the clerk fails to provide the specified notice of failure of service, the duty remains on the attorney to check the return and to provide additional instructions or to request other methods of service.

C. Appearance.

1. Under Civil Rules practice, there is no special appearance to contest the validity of the service of process as in the pre-rule practice which used the motion to quash for that purpose.
2. When a defendant makes an appearance, there is no longer a question as to whether or not he had notice of the action and notice is the function of summons as a predicate to personal jurisdiction. The matter was not decided in Sizemore v. Smith (1983), 6 Ohio St. 3d 330, but a footnote to the opinion implies that it might be a dispositive issue.

D. Small Claims.

1. Civ. R. 4.1, service by certified mail, personal service, and residence service, applies to small cities. Smith v. Molnar (1971), 28 Ohio Misc. 257. Additionally as noted above, the filing of a motion to quash is an appearance which causes personal jurisdiction to attach.

IX. Service and filing of pleadings, motions, and other papers subsequent to the original complaint. Civ. R. 5.

- A. The methods employed in serving summons are prescribed in detail and the intervention of public officers is required because of the critical role of summons.

The Jurisdiction over the person of the defendant is dependent upon proper service.

- B. Other pleadings, answer and reply when required, motions, and other papers, such as those used in discovery, are all significant but not crucial to power of he court. Consequently, the subsequent items can be served with less formality and without the intervention of public officers. It is still important that the adverse party receive the paper and that the serving party is able to prove that service was made, but the clerk is not involved in achieving service. The clerk's function is to keep the file and record.
- C. Civ. R. 5(A) provides that service of subsequent papers does not have to be made upon persons who are in default for failure to appear. However, if new or additional claims are being asserted against such person in default, the service must be as provided in Civ. R. 4 through Civ. R. 4.6.
- D. Civ. R. 5(B) provides the methods of service and provides that service may be made upon the attorney of record for a represented party rather than upon the party. Service upon the party may be ordered by the court.
 - 1. Service may be delivering a copy of the paper to the party or to his attorney of record.

Delivery means:

 - a) handing it to the person;
 - b) leaving it at the person's office with his clerk or person in charge of the office;
 - c) leave it at the person's office in a conspicuous place, if there is no one in charge;
 - d) leave the paper at the person's dwelling house or casual place of abode with some person of suitable age and discretion then residing therein if the person doesn't have an office or if he has an office and it is closed.
 - 2. Service may be by mailing a copy of the paper to the party or to his attorney at the last known address. If the address is not known, the copy of the paper may be left with the clerk. The latter procedure is not an invitation for he serving party to determine an address. It merely places a copy in the clerk's hands where it can be claimed when the party appears. Ordinary mail may be used.
 - 3. Service is complete upon mailing or upon delivery as defined in this rule.

E. Filing.

1. Papers are served before they are filed. Civ. R. 5(D) requires that papers be filed within three days after service.
2. Civ. R. 5(E) provides that filing with the court means filing with the clerk. A judge may permit a paper to be filed with him. If he does, he must note the date and transmit the paper to the clerk.

F. Proof of service.

1. A paper may not be considered by court until proof of service has been endorsed upon the paper or a separate proof of service has been filed.
2. Civ. R. 5(D) provides that the proof of service must state the date and manner of service and it must be signed as required in Civ. R. 11.
3. The clerk is under no duty to evaluate the proof of service and should accept a paper even when no proof is offered. The obligation is on the court to not give consideration to a paper until proof of service is filed.

X. Subpoena

- A. A subpoena is a process of a court directing a person to appear and testify, subpoena and testificandum or to produce a document, subpoena duces tecum.
- B. Subpoena to appear and give testimony. Civ. R. 45(A).
 1. Issued by the clerk.
 2. Content.
 - a) Name of the Court.
 - b) Title of the Action.
 - c) Command the person to whom it is directed to appear and give testimony at a specified time and place.
 - d) The subpoena is issued to the requesting party in blank. The requesting party is to fill in the name of the person subpoenaed and file a copy of the filled in subpoena with the clerk before the subpoena is served. The requesting party may provide the clerk with a witness list before the clerk issues the subpoena. The reason for issuance in blank is to prevent early revelation of the witness list.

3. The subpoena is issued under seal of the court and signed by the clerk whether issued in blank or with the witness names appearing in the subpoena.
4. Multiple subpoenas may be issued. The rule does not establish a limit.

C. Subpoena for the production of documentary evidence. Civ. R. 45(C).

1. Same form and content requirement except that the command to the person is to produce the books, paper, documents or tangible things designated in the subpoena.
2. The requesting party must provide the clerk with an accurate description of the items to be produced.
3. The rule permits the subpoena may be combined and require the person subpoena to appear and testify and produce documentary evidence.

D. The two forms of subpoena may be combined and require the person subpoenaed to appear and testify and produce documentary evidence.

E. Service.

1. Service may be made by persons designated in Civ. R. 45(C).
 - a) Sheriff. Process is statewide as provided in Civ. R. 4.6(A). It is specifically provided in Civ. R. 45(E) that a subpoena requiring the attendance of a witness at a trial or hearing, for either testimony or production of documentary evidence, may be served anywhere in Ohio. A municipal court would issue a subpoena for service in another county directly to the sheriff of that other county. A subpoena is process and covered by §1901.23 in the same manner as summons is covered.
 - b) Bailiff. The bailiff is the primary process server for the municipal court in the county in which the court is located. §1901.23.
 - c) Coroner. The coroner is included because he is the only person who could serve process on a sheriff at the time the Civil Rules were adopted. That provision was repealed in 1981.
 - d) Clerk of court. The clerk was included as a person empowered to serve a subpoena to make window service function. It covers those situations where the person appears and receives his subpoena at that time, as where a willing witness needs a subpoena to justify being away from work.
 - e) Constable. §509.05 provides that constables, as ministerial officers of county courts, serve process.

- f) Attorney. This authorization obviates the necessity for securing a court order as prerequisite to service. It permits counsel to serve a subpoena on short notice in the course of a trial.
- g) Person designated by court order, not a party and is not a minor (process server).

2. Methods of service.

- a) Delivery of the subpoena to the person.
- b) Reading the subpoena to the person in his presence. Reading over the telephone does not comply with the rule.
- c) Leaving it at the person's usual place of residence. There is no requirement that it be left with a person of suitable age and discretion then residing therein as is true if the summons.
- d) There is no provision for service by mail. A subpoena served by mail is improperly served.

3. Fees.

- a) The person being served may demand one day's fee plus mileage in advance at the time of service. If such demand is made the tender of the fee and mileage is a part of the service requirement.
- b) If the person to be served lives outside the county in which the court is located, one day's fees and mileage must be tendered even though no demand is made. Such tender is a part of the service. Since the fees and mileage are witness fees and not serving officer fees, the sum should accompany the subpoena when it is issued to the sheriff of another county. The endorsement of fees on deposit in the issuing court relates to the serving officer's fees.

4. Return.

- a) Civ. R. 45(C) provides that the server file a return with the clerk.
- b) The return can be endorsed on the original subpoena or filed as a separate paper.
- c) The return should state when and how the service was made.
- d) The clerk making window service should also execute a return.

TIME TABLE UNDER THE CIVIL RULES

1. Computation of Time. In computing any period of time prescribed or allowed by the Civil Rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. When a public office in which an act required by law, rule, or order of the court, is to be performed is closed to the public for the entire day which constitutes the last day for doing such an act, or before its usual closing time on such day, then such act may be performed on the next succeeding day which is not a Saturday, a Sunday, or a legal holiday.

For example, if the day of the order is Wednesday, and the time permitted is fourteen days, the last day for performing the act shall be Wednesday two weeks hence unless that day is a legal holiday in which case the day after, Thursday is the final day. If the day of the order is Wednesday, and the time permitted is five days, the final day is the following Wednesday as the intermediate Saturday and Sunday are excluded. If a legal holiday intervenes, that day is also excluded.

2. Issuance of Original Summons. Upon the filing of a complaint the clerk shall forthwith issue a summons for service upon each defendant.
3. Issuance of Separate or Additional Summons. Upon request of the plaintiff separate or additional summons shall issue at any time against the defender
4. Return of Personal or residence service. The person serving process is required to serve the person within twenty-eight days or to make his return to the clerk indicating the reasons for failure to make service. Failure to make service within the twenty-eight day period does not affect the validity of service.
5. Notification by Clerk if Service fails. The clerk is required to notify, by mail, forthwith the attorney or party, if no attorney of record, at whose instance process was served.
6. Answer to Complaint. The answer must be served within twenty-eight days after service of the summons and complaint upon the defendant; if service is by publication, the answer must be served within twenty-eight days after the completion of service by publication.
7. Counterclaim. Any counterclaim may be asserted within the time permitted for pleading and thereafter with leave of court by amendment.
8. Reply to Counterclaim. The reply must be served within twenty-eight days after service of the pleading containing the counterclaim.
9. Cross-Claim. A cross-claim must be served within the time permitted for pleading.
10. Answer to Cross-Claim. The answer must be served within twenty-eight days after service of the cross-claim.

11. Third Party Complaint. The defending party may serve a third-party complaint without leave of court not later than fourteen days after service of his answer. Otherwise leave of court is required.
12. Answer, Counterclaim or Cross-Claim to Third Party Complaint. Responses to a third party complaint shall be served within twenty-eight days after service of the third party complaint.
13. Time for Service of a Motion. A written motion, other than one which may be heard ex parte and notice of the hearing thereof shall be served not later than seven days before the time fixed for the hearing, unless a different time is fixed from the Civil Rules or by order of the court. The affidavits supporting the motion shall be served with the motion and opposing affidavits may be served not later than one day before the hearing unless the court permits them to be served at some other time.
14. Additional Time if Service by Mail. Three days are added to the time prescribed for doing an act or taking a proceeding if the service of the notice or paper pertaining to the matter is served by mail. The reason for the additional time is that the time is that the time is calculated from the date of mailing and three days are allowed for delivery. This added time does not apply to service of original summons as the answer time is figured from receipt of the summons rather than the mailing thereof.
15. Time for Filing Papers After Service. All papers, after the complaint, required to be served upon a party shall be filed with the court within three days after service.
16. Reply ordered by court. The reply must be served within twenty-eight days after service of the order, unless the order otherwise directs.
17. Time for Pleading Altered by Service of Motion. The time for responses to a pleading is altered by service of a motion. If the court denies a motion, a responsive pleading, delayed because of service of the motion, shall be served within fourteen days after notice of the court's action unless a different time is fixed by order of the court. If the court grants the motion, the responsive pleading, delayed because of the service of the motion, shall be served within fourteen days after service of the pleading which complies with the court order.
18. Motion for Definite statement. This motion must be served within the period permitted for a responsive pleading which cannot be framed without further information. If the motion is granted, the pleading must be amended within fourteen days after motion of the order.
19. Motion to Strike. This motion must be made before responding to a pleading within the time permitted therefor or within twenty-eight days after the pleading to which it is directed is served if no responsive pleading is permitted.
20. Motions Presenting Defenses to Pleadings. If presented by motion, defenses described in Civ. R. 12(B) must be served within the time permitted for a responsive pleading and they must be served before a pleading is served.
21. Motion for Judgment on the Pleading. A motion for judgment on the pleadings must be served after the pleadings are closed but within such time as to not delay the trial.
22. Motion for Summary Judgment. This motion may be served by the party seeking affirmative relief at any time after the expiration of the time permitted for a responsive

motion or pleading by the adverse party or after service of a motion for summary judgment immediately. If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court.

The motion for summary judgment must be served at least fourteen days before hearing.

23. Amended Pleadings. A party may amend a pleading without leave at any time before a responsive pleading is served or if no responsive pleading is permitted and the action has not been placed upon the trial calendar, within twenty-eight days after it is served. Thereafter leave of court is required.
24. Response to Amended Pleadings. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fourteen days after service of the amended pleading, whichever is longer, unless the court otherwise orders.
25. Supplemental Pleadings. Supplemental pleadings may be served with leave of court upon motion at any time.
26. Motion to Add or Drop Parties. Parties may be added or dropped at any time upon motion of a party with leave of court or on the court's own initiative.
27. Intervention. A motion to intervene either of right or permissively must be timely served.
28. Default Judgment. Notice of application for judgment must be served upon a defaulting party who has previously appeared in the action at least seven days before the hearing on the application.
29. Motion for New Trial. A motion for a new trial must be served not later than fourteen days after the entry of judgment. The court may grant a new trial on its own initiative not later than fourteen days after entry of judgment. These time periods are mandatory and cannot be extended.
30. Demand for Jury Trial. A jury demand must be made in writing not later than fourteen days after service of the last pleading directed to the issue.
31. Extension of time. Under no circumstances may time be extended for serving a motion for judgment notwithstanding a verdict, a motion for a new trial, or a motion for relief from a judgment. Otherwise the court, for cause shown, may at any time at its discretion, with or without motion or notice order, the time enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order. However, if the specified time for performing the act has expired, the court may permit the act to be done only upon motion where the failure to act was the result of excusable neglect.
32. Amendment of Process. The court at any time may allow the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the party against whom process was served.
33. Suggestion of Death or Incompetency. The attorney of record of the party is required to suggest such fact on the record and serve notice on all other parties within fourteen days after the actual knowledge thereof.

34. Substitution of Parties in Event of Death or Incompetency. Where substitution is required, a motion for substitution must be served not later than ninety days after suggestion is made on the record.

COMMENCEMENT OF THE ACTION AND SERVICE OF PROCESS

1. Commencement of the Action. An action is not commenced unless service is obtained within one year of filing of the complaint.

PLEADINGS AND MOTIONS

1. Removal to Federal Court. A petition for removal must be filed within thirty days after receipt of the initial pleading setting forth a claim on which removal is based.
2. Expiration of Term. The expiration of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. In other words, if fourteen days is provided for taking action, there is always fourteen days as computed under Civil Rule 6(A) regardless of the term of court.

COURT NAME AND JURISDICTION
CIVIL AND SMALL CLAIM DIVISION COST/DEPOSIT SCHEDULE
ADMINISTRATIVE ORDER EFFECTIVE _____

REQUIRED DEPOSITS

Table listing required deposits: EXECUTION (\$250.00), PEACE WARRANT (90.00), PERSONAL SERVICE (40.00), SUBPOENA (within city) PER PERSON (25.00), SUBPOENA (within Guernsey County) PER PERSON (30.00)

SUBPOENA (outside of county). A check must be included payable to the person being subpoenaed. The amount is calculated on one-half day of service (\$6.00), or one full day (12.00) plus mileage at the rate of twenty-cents per mile).

FEES/COSTS

Table listing various fees and costs: APPEAL PREPARATION (\$30.00), ASSET FORM (25.00), BMV APPEAL INCLUDING OCCUPATIONAL (OUT-OF-STATE) ORC 4507.16.9(E) (90.00), CERTIFICATE OF JUDGMENT (15.00), CIVIL COMPLAINT (one defendant) (90.00), Additional defendants (each 10.00), COGNOVIT ACTION W/OUT CERTIFICATE (90.00), COGNOVIT ACTION W/CERTIFICATE (95.00), COUNTERCLAIM/CROSSCLAIM w/service (70.00), DEBTOR EXAM (30.00), FORCIBLE ENTRY & DETAINER (100.00), GARNISHMENT WAGES (80.00), GARNISHMENT BANK (50.00), JUDGMENT TRANSFER (40.00), JURY DEMAND (250.00), MARRIAGE (20.00), MODIFICATION OF JUDGMENT (35.00), OBJECTION TO REFEREE REPORT (15.00), PETITION TO VACATE JUDGMENT (35.00), REPLEVIN/ATTACHMENT (150.00), REVIVOR OF JUDGMENT (35.00), SMALL CLAIM TRANSFER TO CIVIL DIVISION (90.00), SATISFACTION OF JUDGMENT (10.00), SMALL CLAIM (55.00), SUMMONS (ALIAS ADDITIONAL REQUEST FOR CERTIFIED MAIL SERVICE PER OCCURENCE) (7.00), TRUSTEESHIP (105.00)

JUDGE

(Name of County)
(Jurisdiction)
SUMMONS

FORM-1

Plaintiff

vs

Case No. _____

Defendant

To the following named defendants:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

You have been named defendant(s) in a complaint filed in (Name of Court) (Court Address (Court Phone Number), by the following Plaintiffs:

Name	Address
_____	_____
_____	_____

A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is _____

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint within twenty-eight days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the court within three days after the service of a copy of the answer on the plaintiff's attorney.

If you fail to appear and defend, judgment by default will be rendered against for the relief demanded in the complaint.

Date: _____

Clerk
by _____
Deputy Clerk

U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
Received From: _____ _____ _____	Affix postage and postmark. Inquire of postmaster for postage.
One piece of ordinary mail addressed to: _____ _____ _____	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE POSTMASTER	

Note: This is used for regular mail service, after the certified mail has been unclaimed or refused.

(Name of Court)
(Jurisdiction)

Case No. _____

INSTRUCTIONS FOR PERSONAL OR RESIDENCE SERVICE

To the Clerk:

You are instructed to make personal-residence service (cross out one) upon
the defendant(s) _____

at the following address: _____

Special instructions for server: _____

(Attorney for) Plaintiff

RETURN OF SERVICE OF SUMMONS (PERSONAL)

Fees

Service	\$ _____	I received this summons on _____ 19__,
Mileage	_____	at ___ o'clock __m., and made personal service of it
Copy	_____	upon _____ by locating him
Docket	_____	- them (cross out one) and tendering a copy
Return	_____	summons and accompanying documents, on _____
Total	_____	_____, 19__.

Sheriff-Bailiff-Process Server

By _____
Deputy

RETURN OF SERVICE OF SUMMONS (RESIDENCE)

Fees

Service \$ _____
 Mileage _____
 Copy _____
 Docket _____
 Return _____
 Total \$ _____

I received this summons on _____ 19____,
 at ____ o'clock __m., and made residence service of it
 upon the defendants _____
 by leaving, at his - their (cross out one) usual place of
 residence with _____
 a person of suitable age and discretion then residing
 therein, a copy of the summons, a copy of the
 complaint and accompanying documents, on _____
 _____, 19____.

Sheriff-Bailiff-Process Server

Date: _____

By _____

Deputy

RETURN OF SERVICE OF SUMMONS (FAILURE OF SERVICE)

Fees

Service	\$ _____	I received this summons on _____ 19____, at ____ o'clock __m., with instructions to make personal – residence (cross out one) service upon the defendant(s) _____ and I was unable to serve a copy of the summons upon him – them (cross out one, for the following reasons: _____ _____ _____
Mileage	_____	
Copy	_____	
Docket	_____	
Return	_____	
Total	_____	

Sheriff-Bailiff-Process Server

Date: _____ By _____

Deputy

The Ohio statutes have been amended effective March 30, 1999, to provide for a continuing order of garnishment. Under the present format, we must resend a statutory demand each month and refile a new garnishment. Under the new format, one statutory demand will be sent to the debtor. After 15 days and not more than 45 days after sending the statutory demand, we can proceed with the filing of a garnishment if the debtor has not taken the action pursuant to the statutory demand to avoid garnishment.

In order to avoid a garnishment, the debtor may either pay the debt in full, pay the amount as calculated under the form, file a municipal court trusteeship, or enter into a debt scheduling program. The debtor, of course, may also file a bankruptcy proceeding.

The new statutory demand deletes the provision that advises the debtor the employer may hold funds earned over a period of up to 30 days in its possession. Under the new procedure, the employer will be holding funds until the judgment has been paid or until an event occurs that will terminate the garnishment.

Once the employer is served with a garnishment, if it is the only garnishment, the employer will process the garnishment until the probable amount of the judgment has been paid in full. The probable amount of the judgment includes principal, prejudgment interest at the rate ordered by the Court, postjudgment interest at the rate ordered by the Court, and court costs.

The continuous order will terminate upon any of the following:

1. The probable amount of the judgment has been paid in full through the garnishments.
2. The judgment creditor files notice with the Court and an order is issued by the Court that the judgment is paid in full or otherwise satisfied.
3. The debtor goes into a municipal court trusteeship.
4. The debtor files bankruptcy.

The following are deemed terminations of the garnishment, but really only are triggers that limit the garnishment to the processing of a period for 182 days:

5. The receipt by the garnishee of a garnishment with a higher priority.

6. The receipt by the garnishee of a garnishment with the same priority, but for another creditor.

Under the first four items listed above, they immediately terminate the garnishment. The last two items with regard to the receipt of successive garnishments cause the continuous garnishment to be limited only to a period of 182 days from the date the creditor began to process the garnishment. Once the creditor has processed the garnishment under those two instances for the total of 182 days, the garnishment would effectively be terminated.

As an employer is served with garnishments, the garnishments are stacked according to the order in which they are received. They will be processed as each prior garnishment runs its 182-day course. The creditor may not refile a garnishment while its garnishment is either being processed or is one of those held in the stacking procedure. Once the garnishment has been terminated, the creditor can refile it. Garnishments such as support orders or IRS levies may have priority. Similar to existing law, if the priority order is for a specific amount that does not utilize the full amount that would otherwise be available for garnishment by another creditor, the other creditor is entitled to the difference between the amount paid on the priority garnishment and what would otherwise be available.

At this point, we need to work with the Courts to determine the correct number of each form that they will require under the new program. The required forms are:

- Affidavit of garnishment
- Notice of court proceeding to collect debt
- Order and notice of garnishment and answer of employer
- Notice to the judgment debtor
- Request for hearing
- Interim report and answer of garnishee
- Final report and answer of garnishee

Under the new statute, a garnishment is to be initiated by the filing of an Affidavit of garnishment. I assume that those Courts that currently require us to file a Motion for an order to be issued in garnishment will still require the filing of the Motion. The Court will then serve the

garnishment on the garnishee. A Common Pleas Court and Municipal Court will have jurisdiction to serve a garnishment statewide. Upon the filing of the Affidavit of garnishment, the Court will issue an order and notice of garnishment and answer of employer. The employer will have five days from the date on which it is served with the garnishment in order to respond, If the debtor is not currently being garnisheed, the employer will immediately begin holding funds. If the debtor is to receive the funds within the five days that the employer is to answer the garnishment, the employer is to hold the funds and remit them to the Court. Thereafter, the employer will withhold funds from each pay.

I am anticipating that the Courts will change the court costs amount for the filing of a garnishment and that many Courts may require their own particular version of the forms. With regard to the actual processing and serving of the garnishments, I believe that the system will be essentially the same as the current system. The statutory notice can be sent by regular mail with proof of mailing provided to the Court. A copy of the statutory demand and proof of mailing must accompany the affidavit of garnishment along with the required fee for the employer and the necessary court costs. Since a creditor is only entitled to take 25% of an individual's wages, the employer would take 6.25% out of each paycheck if a person is paid weekly. It would be 12.5% if paid semimonthly, and 25% if paid monthly. The debtor still gets to keep the greater of the 75% exemption or an amount based on the minimum wage. For a person paid weekly, it is 30 times the minimum wage. For a person paid biweekly, it is 60 times the minimum wage. For a person paid semimonthly, it is 65 times the minimum wage, and for a person paid monthly, it is 130 times the minimum wage. The employer will continue to process the garnishment until one of the six items enumerated on the first page of this memo occurs. The employer is to file an interim report with the Court within 30 days of withholding funds from the debtor. The withheld funds are to be remitted with the report.

If at the time the employer is served with the garnishment it is already processing a prior garnishment, that information will be sent to the Court as part of the employer's answer. The garnishment will then be put in line for processing at the expiration of all prior garnishments. Each prior garnishment will be processed for a period of 182 days from the date on which it is first processed.

The processing of a garnishment terminates upon one of the events enumerated on the first page of this memo which is the payment of the debt through the garnishments, the creditor notifying the Court that the judgment is paid or otherwise satisfied, the debtor has gone into a municipal court trusteeship, or the debtor files bankruptcy. If one of these four events causes the termination of the garnishment, the employer immediately files a final report and answer of garnishee. As indicated on the first page of the memo, the receipt of a subsequent garnishment with a higher priority or the receipt of a subsequent garnishment of the same priority are treated as terminating the garnishment, but in those cases, the prior garnishments all get processed for a period of 182 days. The final report of the garnishee is not filed until the end of the 182-day period.

It appears that almost all of the communication from the employer is directed to the Court. The only time the employer is required to notify the creditor of any activity is if the employer receives a garnishment of a higher priority.

If a client wants to release a garnishment, it either can be done simply by filing a release with the Court which can then issue an order. The statute does provide that a garnishment order can be changed by mutual agreement of the judgment debtor and judgment creditor. That statute allows the parties to agree that the employer should withhold a specific dollar amount rather than some percentage. In going through this process, the parties may be able to either reduce or even increase the amount, although it is not clear from the statute which talks in terms of merely fixing the amount. The Court does not have the authority to change or terminate a garnishment order without the mutual consent of the parties. If we file a release of garnishment, the Court may treat that as an implied consent by the judgment debtor as to the issuance of an order terminating the garnishment.

We will be scheduling seminars for our staff and clients to discuss the new garnishment statute and the impact it will have on day-to-day operations. We will need to look at things such as the fees to be billed to the client for the garnishments and the circumstances under which they should be releasing garnishments. Unlike the past, if you release a garnishment and subsequently want to refile it, you may

have to wait in line to get your turn to be the current garnishment.

If anyone has any questions, I would be happy to address them.

AHW:clk

STATUTORY AMENDMENT PROVIDING FOR A CONTINUOUS ORDER OF GARNISHMENT

1. INTRODUCTION

A significant amendment to the garnishment statutes has recently been signed into law and will be effective commencing March 30, 1999. The bulk of the pertinent amendments are to Chapter 2716 of the Ohio Revised Code which governs the garnishment of personal earnings and garnishment of other than personal earnings. The essence of the amendment is that 2 garnishment of personal earnings will now run continuously until a judgment is paid in full or until the happening of a specific event which will be detailed in the within materials. Some of these events will cause the garnishment to cease immediately while other events will cause the garnishment to be in effect only for a period of 182 days from the date that the garnishee began processing the garnishment. Corresponding changes have been made to the statute to amend the various notices that must be provided to the debtor and garnishee as well as the responses to be filed by the garnishee. The amendment is quite lengthy and difficult to understand, although the actual scheme for the continuing garnishments is quite simple. The statute puts a tremendous burden on the employer as garnishee to process the garnishments and report them to the court. The most difficult item for the employer to contend with is the priority of garnishments when multiple garnishments are received on the same debtor and a subsequent garnishment has a higher priority because it is for an item such as support or an IRS lien. The materials sent to the employer/garnishee simply advise that it should check the statute for further information as to the priorities, but the statute is extremely confusing.

II. CHANGES TO RELATED STATUTES

A. As part of the bill, several of the related statutes also underwent some changes. The relevant changes as to garnishment will be addressed in the order in which the statutes appear in their numeric sequence.

1. O.R.C. Section 124.10

The wages of an employee or officer of the State of Ohio may be garnished by a judgment creditor. The statute was amended to clarify that it was a judgment creditor and not simply a creditor that could maintain a garnishment action against an employee of the state.

2. O.R.C. Section 1901.19

Changes were made to expand the authority of a municipal court to allow it to serve a garnishment of personal earnings or of other than personal earnings on a garnishee anywhere within the state.

3. O. R. C. Section 2329.66

The statute sets forth the amount of wages that an individual may hold as exempt from garnishment. Deleted from the statute, however, was the limitation that a garnishment could only apply at most to wages earned during a previous 30-day period. A creditor previously could only get at most 25% of one month's wages. That limitation was deleted because of the nature of the continuing garnishment.

Although not a change to the statute, an often overlooked provision is Section B(1)(a). If the judgment relates to money owed for health care services or health care supplies, the statute provides that a judgment lien may still be filed against the real property that is used as the personal residence of the debtor or the debtor's dependents, but delays the enforcement of the lien until the property is sold or otherwise transferred by the owner. Prior amendments did away with the limitation of obtaining only 12.5% of wages on a garnishment for health care services or health care supplies. The limitation on judgment liens appears to still be in effect.

4. O.R.C. Section 2329.70

This statute provides for a judgment debtor's filing of a trusteeship in a county court or municipal court upon receipt of a demand prior to garnishment as required by O.R.C. Section 2716.02. The filing of a trusteeship is one of the items that will terminate the continuous

garnishment. The maintaining of a proceeding in garnishment after notice to the creditor may be prevented by a writ of prohibition or other remedies provided by law.

5. O.R.C. Section 2333.21

This statute was amended to remove the limitation that only wages earned within the last 30 days could be applied on a garnishment, but does limit the amount to be obtained on a garnishment to be in compliance with O.R.C. Sections 2329.66, 2329.70, and 2716.

CONTINUING GARNISHMENT STATUTE

A. O.R.C. 2716.01

This section provides that a garnishment of personal earnings or other than personal earnings may be pursued after judgment only in ordinance with this chapter. Personal earnings can, in fact, only be garnisheed after judgment. Other than personal earnings may be attached prior to judgment, but under Section 2715 and only if certain statutory grounds exist for an order prior to judgment.

1. Definitions

The statute provides several definitions as to key terms, One of the most important terms, however, is "employer" which means a person who is required to withhold taxes out of payment or personal earnings made to a judgment debtor. If a garnishee is not an employer, then the garnishment of other than personal earnings is the appropriate procedure to attempt to obtain funds owed to some party.

B. O.R.C. Section 2716.02: The statutory demand prior to garnishment

The statute sets forth the language of a statutory notice that must be sent to the judgment debtor prior to garnishment. Most of the sections requiring various notices and other forms to be sent under this statute indicate that the formal notice should be in 'substantially the following form.' The statute for the demand prior to garnishment does not have such language. It appears that the wording is mandatory. The notice must be sent to the judgment debtor at least 15 days and not more than 45 days prior to the garnishment being filed. The form has been changed to indicate that the employer will be asked to withhold money from earnings until the judgment is paid in full or if applicable, is paid to a certain extent. The phrase "paid to a

certain extent" refers to the happening of one of the events that would terminate the continuous garnishment.

1. A judgment debtor can avoid garnishment by doing one of the following within the 15-day period:

- a. Pay the amount due.
- b. Complete the attached form entitled "Payment To Avoid Garnishment", have it signed by the employer, and return it with the required payment.
- c. Apply for the appointment of a trustee.
- d. The notice also advises the judgment debtor of the option of going into a budget and debt counseling service, although that option may not prevent the filing of the garnishment initially.
- e. The debtor may also avoid the garnishment by filing a bankruptcy proceeding.

2. Service of the notice prior to garnishment

- a. The statutory notice prior to garnishment may be either served by the court, or by sending it to the debtor by certified mail, return receipt requested, or by sending it by regular mail with proof of mailing. It must be sent to the judgment debtor's last known place of residence.

C. O.R.C. Section 2716.03: Commencing a garnishment proceeding

1. The garnishment proceeding is commenced by filing an Affidavit with the Court. Those Courts that currently require the filing of a Motion for an order of garnishment will probably continue to require the Motion. The Affidavit may be signed either by the judgment creditor or the judgment creditor's attorney. The statute has been amended to no longer allow an agent of the judgment creditor to file the Affidavit. The Affidavit needs to identify the name of the judgment debtor, state that the affiant has good reason to believe that the garnishee is liable to the judgment debtor, that the statutory demand has been sent as required, that the judgment debtor has not made any payment to avoid the garnishment, that the judgment debtor has not applied for a trusteeship, and that the affiant has no knowledge that the debt is the subject of a debt scheduling agreement. The Court shall then issue an order of garnishment of personal earning on the employer/garnishee.

2. Budget and debt counseling service

a. This statute defines a budget and debt counseling service as a nonprofit corporation.

b. A debt is included in the debt scheduling program if the creditor does not object within 15 days of receiving notice of the program. No secured debt which is subject to a lien of security interest of any type other than a judgment lien or execution lien is included in the debt scheduling program unless the creditor specifically agrees in writing to participate.

c. Any debt not listed by the debtor in the program or where the creditor rejects the program is not included in the program.

d. The judgment debtor may not be garnisheed as long as regular payments are being made to the service as required. If the judgment debtor fails to pay the service or the service fails to provide the creditor more than 45 days after the date on which the payment is due, then the creditor may proceed with garnishment.

D. O.R.C. Section 2716.04: Filing of the Affidavit for garnishment

1. The Affidavit of garnishment must be accompanied by a copy of the statutory demand required under Section 2716.02. It must also have either the certified mail receipt or the proof of regular mailing.

2. Along with the Affidavit, a fee of \$10.00 must be paid as the garnishee's fee for compliance with the order. The fee may now be added as court costs. This is a separate fee from the fee for the actual filing of the Affidavit.

E. O.R.C. Section 2716.041 -. Procedure for handling continuous garnishments

1. Once the judgment creditor has filed the Affidavit of garnishment with the required statutory notice and court costs as well as garnishee fee, the court shall issue an order of garnishment which will be served on the garnishee. The garnishee will receive three copies of the order of garnishment, two copies of the notice to the judgment debtor, two copies of the hearing request form, one copy of an interim report form which can be duplicated by the employer for continuous use, and one copy of a final report form.

2. The order of garnishment will indicate that it is a continuous order of garnishment that shall be processed by the employer until the total probable amount of the judgment has been paid in full. The "total probable amount" includes principal, prejudgment interest, postjudgment interest, and court costs which now includes the \$10.00 garnishee fee.

The garnishments will continue indefinitely unless one of the following things occur

- a. The total probable amount of the judgment is paid in full as a result of the garnishments.
 - b. The judgment creditor files a request with the Court that causes an order to be issued on the garnishee to stop the garnishments either because the judgment has been paid in full or has otherwise been satisfied. Although this section does not address a simple release of the garnishment even though the judgment is not satisfied, O.R.C. Section 2716.09 does provide that the judgment creditor and judgment debtor may apply to the Court for an order to modify or interrupt a garnishment. Although that section talks in terms of a joint application, the Court would probably accept a release filed by a judgment creditor as having the implied consent of the judgment debtor.
 - c. The appointment of a trustee pursuant to O.R.C. Section 2329.70 in the municipal or county court.
 - d. The filing of a bankruptcy proceeding in the United States Bankruptcy Court.
 - e. The filing by another creditor of a garnishment that under state law or federal law has a higher priority than the pending garnishment. A garnishment of higher priority would be an item such as a support order or an IRS lien.
 - f. The filing of another garnishment by another creditor that does not have priority as described in the preceding paragraph. Although items (e) and (f) are treated as termination of the garnishment, in reality they simply trigger different provisions of the statute which then limits the processing of the original garnishment to a period of 182 days from the time the employer/garnishee began processing that garnishment.
- The statute is complicated by the fact that in many sections, the garnishment that is currently being processed when

other garnishments are received is deemed a "higher priority order." One must determine whether that term in a particular section of the statute refers to a garnishment that truly has a higher priority under state or federal law or whether the statute is simply referring to the garnishment that is currently being processed as the higher priority order.

3. The first four items above will actually terminate the garnishment completely. The last two grounds which are the filing of a garnishment of higher priority and the filing

of a subsequent garnishment do not really terminate the garnishment, but simply limit the effective time to a 182-day period for which the garnishment can be processed. In the case of a garnishment with a higher priority, such as a support order, those orders frequently have a specific dollar amount to be withheld. If the amount ordered to be withheld is less than the statutory maximum that can be obtained on garnishment, the employer would still have to process the other garnishment in order to pay any funds available over the amount required on the priority garnishment to the other garnishment.

F. Limitations and requirements

1. As garnishments are filed by various creditors, they are stacked up and processed in the order in which they are received. A current garnishment that is being processed will run for 182 days from the time that the employer first began to process that particular garnishment. A judgment creditor that has filed a garnishment that is currently being processed or is being stacked up by the employer for future processing may not file an additional garnishment until after the time for processing that creditor's garnishment has expired.

The order of garnishment served on the employer will instruct the employer to fill out an answer section within five days of receipt. The section basically identifies whether the judgment debtor is employed and the amount of the wages that would be subject to the garnishment order on an ongoing basis. It also requires the employer to identify whether it is currently processing or stacking other garnishments and to provide the information as to those items.

2. The employer must identify the nature of the employer's pay periods, such as weekly, biweekly, or monthly. The wages are to be withheld out of every pay. If an employee is paid weekly, the employer will withhold 6.25% of each week's wages. If paid biweekly or semimonthly, the amount to be deducted is 12.5%. If the employee is paid monthly, the deduction is 25% of the month's wages. The judgment debtor still gets the benefit of having the greater exemption of 75% of the total wages or 30 times the current federal minimum hourly wage if paid weekly, 60 times the minimum wage if paid biweekly, 65 times the minimum wage if paid semimonthly, and 130 times the minimum wage if paid monthly.

3. The employer must remit the monies to the court within 30 days of the pay period. The funds must be accompanied by the garnishee's interim report that sets forth the following:

- a. The date the garnishee received the garnishment.
- b. The total probable amount due on the judgment.
- c. The amount that has been withheld to date.

This form must be completed in triplicate and all of the copies signed. One copy is returned to the Court. One copy is given to the employee, and one may be retained by the employer.

4. Upon the occurrence of one of the events that terminates the garnishment *other than the filing of a subsequent garnishment either of higher priority or the same priority*, the employer must file a final report and answer. The report will set forth the following:

- a. The date the garnishee received the order.
- b. The total probable amount o ' f due on the judgment.
- c. The total amount of wages withheld.
- d. The reason for the termination of the garnishment.

When the reason for the termination is a garnishment of higher priority or another garnishment, although this is called a termination of the pending garnishment, in reality it merely limits the pending garnishment to being processed for 182 days from the time the garnishee began processing the previous garnishment orders. Once the employer has processed a garnishment for 182 days with successive garnishments waiting to be processed, the employer will then file the final report and answer with regard to that garnishment.

5. If while processing a garnishment either in the instance where by statute a particular garnishment has a higher priority or if there are funds available after completing the payment of a previous garnishment, those funds can be paid on the next successive garnishment which will then commence to run.

6. When an employer receives a garnishment that has a higher priority by statute, that is the only instance in which the garnishee must immediately notify the judgment creditor directly of the receipt of the garnishment with higher priority. In the case of successive I garnishments of equal priority, the garnishee is simply filling out the answer contained in the order to advise the Court of the stacking of garnishments.

G. O.R.C. Section 2716.05- Forms and Procedures

The statute sets forth the various forms and the number of those forms that must be served on the garnishee. These issues were addressed above. The section also provides that the garnishee may be served either by personal service by the Court, by sending it to the garnishee by certified mail-return receipt requested, or by sending it to the garnishee by regular mail with proof of mailing. The section also sets forth the language that must substantially be included on the form for the order of garnishment and answer of employer. The answer must be returned to the Court within five days after receipt. It indicates that it should be returned together with the funds in the amount determined in accordance with the answer of employer. It would appear that the employer is to immediately start withholding funds from the pay period in which the order is received. Other language in the form, however, indicates that the employer is to begin holding money for each pay period following the receipt of the order. In construing these sections together, it would appear that the employer is required to start holding pay only in the next pay period and not the one in which it actually received the garnishment order.

H. Instructions to the garnishee

The form served on the garnishee basically explains the procedure and calculations that employer must follow in calculating the amount to be withheld and to remit it to the Court. It is interesting to note that the most complex part of the statute and the most difficult to comprehend deals with the stacking of the garnishments. In the order of garnishment to the employer, the form merely states:

'Special stacking, priority of payment, and manner of payment rules apply where a garnishee receives multiple orders of garnishment with respect to the same judgment debtor. These rules are set forth in Section 2716.041 of the Ohio Revised Code. You should become familiar with these rules.'

It will be extremely difficult for an employer without the assistance of counsel to understand these provisions.

1. O.R.C. Section 2726.06: Notice to the judgment debtor

1 . This statute provides the notice that must be given to the judgment debtor. It is essentially the same as the existing notice, except that it now notifies the debtor that wages may be withheld without the limitation under the prior statute that it is limited to wages in the possession of the employer- The debtor is advised of a right to a hearing if requested within five days. The notice also

clearly indicates that no objections to the judgment itself will be heard or considered at the hearing. The hearing will then be scheduled within 12 days of receipt of notice by the Court unless the debtor indicates that an emergency hearing is necessary. That notice will also be accompanied by a request for hearing form that must have a postage paid, self-addressed envelope or postcard that the debtor can use to request the hearing. The Court will send a notice of hearing to the creditor's attorney and the debtor.

2. If there is a hearing and the Court determines that the funds are to be paid in, the Court shall issue an order to the garnishee to pay the debtor's personal earnings into Court if they have not already been paid. The Order will be based on the answer previously received from the employer under Section 2716.05.

J. O. R. C. Section 2716.07: Format for interim report and answer of garnishee

1. This section sets forth the requirement that the garnishee file an interim report with the Court within 30 days after the end of each pay period of the judgment debtor for which funds in the appropriate amount have been withheld from the debtor's pay. The garnishee must provide the date on which it was served with the garnishment, the probable amount of the judgment, and the amount that has been withheld to-date. Since the statute requires that only one copy of the form be served on the garnishee, the garnishee will have to duplicate the form in order to have sufficient copies to file all of the regular reports. For each report, three copies are necessary, one for the Court, one for the debtor, and one for the employer's file.

K. O. R. C. Section 2716.08: Format for final report and answer of garnishee

1. In this report, the garnishee will again list the probable amount due on the judgment, the total amount that has been withheld, and when the judgment is not being paid in full through the garnishments, the reason for the termination of the garnishment. A caveat is that the prescribed form has as one of the reasons of termination that a subsequent garnishment was filed. An employer not proficient in processing the garnishments and understanding the entire statutory scheme may be led to believe that immediately upon the filing of a subsequent garnishment, the current garnishment terminates. Under the statute, a current garnishment or one with priority to the recently filed garnishment will be processed for at least 182 days from the date the employer initially begins to process the

prior garnishment. It is only at the expiration of the 182 days of processing that the termination notice is to be filed with the Court.

L. O.R.C. Section 2716.09: Modification of the garnishment order

1. The Court does not have jurisdiction to modify or interrupt a garnishment order unless it is done upon joint application of the judgment creditor and judgment debtor. Although not addressed by the statute, it would seem that a creditor that wants to simply release a garnishment would be able to do so by filing a release with the Court. Since the release is generally beneficial to the debtor, the Court should presume that it was done with the debtor's consent.

2. The judgment creditor and judgment debtor may agree that a specific amount may be withheld by the employer on the garnishment. There does not appear to be any limitation on the amount. Rather than simply taking the percentage of the wages as provided by statute, the parties can fix a specific dollar amount which apparently may be either less than, equal to, or more than the amount that otherwise would be obtainable. The Court could then issue an order on the employer to change the amount in conformity with the agreement of the parties.

IV. APPENDIX

Attached are proposed forms for the following items,

- A. Notice of court proceeding to collect debt - Section 2716.02
- B. Order and notice of garnishment and answer of employer - Section 2716.05
- C. Notice to the judgment debtor - Section 2716.06
- D. Request-for hearing - Section 2716.06(B)
- E. Interim report and answer of garnishee - Section 2716.07
- F. Final report and answer of garnishee - Section 2716.08

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551
(419) 872-7900

Household Financial Corp
I T T Financial

Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314

:

:

: Date: May 11, 1999

:

:

: S. Dwight Osterud

: Judge

:

:

* * * * *

Xxxxxx
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Dear XXXXXXXX

Enclosed please find a copy of the "Answer of Employer on Garnishment Proceedings" in the above entitled case.

Yours truly,

XXXXXXXXXX
Clerk/Deputy Clerk

garndist

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551
(419) 872-7900

Household Financial Corp	:	Case: CVF 9500314
I T T Financial	:	
	:	
Plaintiff(s)	:	JUDGMENT ENTRY
-VS-	:	OF DISTRIBUTION
	:	
Henneman, Christopher W. Henneman, Christine	:	S. Dwight Osterud
	:	Judge
	:	
Defendant(s)	:	

* * * * *

This cause came to the attention of the Court for distribution of monies received by the Clerk from garnishment proceedings against the Defendant.

The Court finds the Clerk has received the amount of \$000.00. The court costs are \$000.00, which includes the filing fee.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Clerk of this Court forward these funds, after deducting additional costs and necessary fees, to Plaintiff to be applied to Judgment.

Date: May 11, 1999

Judge S. Dwight Osterud

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551
(419) 872-7900

FINAL REPORT AND ANSWER OF GARNISHEE
(2716.08 ORC)

CASE CVF 9500314

JUDGMENT CREDITOR
VS.
Christopher Henneman
JUDGMENT DEBTOR

PLEASE NOTE: YOU MUST MAKE MULTIPLE COPIES OF THIS FORM, AS A NEWLY COMPLETED COPY WILL NEED TO BE SENT WITH EACH PAYMENT

THE GARNISHEE, Walbridge Coatings, IN THE ABOVE CASE STATES AS FOLLOWS:

1. THE DATE THAT THE GARNISHEE RECEIVED THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS WAS _____.
2. THE TOTAL PROBABLE AMOUNT DUE ON THE JUDGMENT, INCLUDING COURT COSTS, JUDGMENT INTEREST, AND, IF APPLICABLE, PREJUDGMENT INTEREST, AS STATED IN SECTION A OF THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS IS _____.
3. THE TOTAL AMOUNT THAT HAS BEEN WITHHELD FROM THE JUDGMENT DEBTOR'S PERSONAL EARNINGS AND PAID TO THE COURT WHILE THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS REMAINED IN EFFECT IS \$_____.
4. (WHEN APPLICABLE) THE TOTAL PROBABLE AMOUNT DUE ON THE JUDGMENT (AS STATES IN 2 ABOVE) IS NOT EQUAL TO THE TOTAL AMOUNT THAT HAS BEEN WITHHELD (AS STATED IN 3 ABOVE), AND THE REASON FOR THAT DIFFERENCE IS THAT THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS CEASED TO BE IN EFFECT FOR THE FOLLOWING STATUTORILY PRESCRIBED REASON(S) (CHECK WHICHEVER APPLY):
 - (A) A MUNICIPAL OR COUNTY COURT APPOINTED A TRUSTEE FOR THE JUDGMENT DEBTOR AND ISSUED AN ORDER THAT STAYS THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS.
 - (B) A FEDERAL BANKRUPTCY COURT ISSUED AN ORDER THAT STAYS THE ORDER OF GARNISHMENT OF THE JUDGMENT DEBTOR'S PERSONAL EARNINGS.
 - (C) A MUNICIPAL OR COUNTY COURT OR A COURT OF COMMON PLEAS ISSUED ANOTHER ORDER OF GARNISHMENT OF PERSONAL EARNINGS THAT RELATEDS TO THE JUDGMENT DEBTOR AND A DIFFERENT JUDGMENT CREDITOR, AND OHIO OR FEDERAL LAW PROVIDES THE OTHER ORDER A HIGHER PRIORITY. (SET FORTH THE NAME OF THE COURT THAT ISSUED THE HIGHER PRIORITY ORDER, THE ASSOCIATED CASE NUMBER, THE DATE THAT THE HIGHER PRIORITY ORDER WAS RECEIVED, AND THE BALANCE DUE TO THE RELEVANT JUDGMENT CREDITOR UNDER THAT ORDER):

 - (D) A MUNICIPAL OR COUNTY COURT OR A COURT OF COMMON PLEAS ISSUED ANOTHER ORDER OF GARNISHMENT OF PERSONAL EARNINGS THAT RELATEDS TO THE JUDGMENT DEBTOR AND A DIFFERENT JUDGMENT CREDITOR AND THAT IS NOT DESCRIBED IN 4(C) ABOVE. (SET FORTH THE NAME OF THE COURT THAT ISSUED THE SUBSEQUENTLY RECEIVED ORDER. THE ASSOCIATED CASE NUMBER, THE DATE THAT THE SUBSEQUENT ORDER WAS RECEIVED, AND THE BALANCE DUE TO THE RELEVANT JUDGMENT CREDITOR UNDER THAT ORDER):

ATTORNEY/JUDGMENT CREDITOR ATTY ID # 0012890
James S. Nowak, Atty.
4808 N. Summit St.

Toledo, OH 43611-2863
(419) 726-2605

I CERTIFY THAT THE ABOVE ARE TRUE:

EMPLOYER

NAME & TITLE OF PERSON COMPLETING FORM

SIGNATURE OF PERSON WHO COMPLETED FORM

DATE:

I DISPUTE THE JUDGMENT CREDITOR'S RIGHT TO GARNISH MY PERSONAL EARNINGS IN THE ABOVE CASE AND REQUEST THAT A HEARING IN THIS MATTER BE HELD NO LATER THAN TWELVE (12) BUSINESS DAYS AFTER DELIVERY OF THIS REQUEST TO THE COURT.

I _____ FEEL THAT THE NEED FOR THE HEARING IS AN EMERGENCY.
(INSERT: "DO" OR "DO NOT")

I DISPUTE THE JUDGMENT CREDITOR'S RIGHT TO GARNISH MY PERSONAL EARNINGS FOR THE FOLLOWING REASONS (OPTIONAL)

I UNDERSTAND NO OBJECTIONS TO JUDGMENT ITSELF WILL BE CONSIDERED AT THE HEARING

CURRENT ADDRESS

(NAME OF JUDGMENT DEBTOR-TYPE OR PRINT

CITY, STATE

(SIGNATURE)

TELEPHONE NUMBER

(DATE)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU WILL WAIVE YOUR RIGHT TO A HEARING AND SOME OF YOUR PERSONAL EARNINGS NOW IN THE POSSESSION OF YOUR EMPLOYER WILL BE PAID TO THE JUDGMENT CREDITOR IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT CREDITOR.

ANSWER DATE OF GARNISHEE _____

NOTICE TO THE JUDGMENT DEBTOR OF GARNISHMENT OF PERSONAL EARNINGS

Household Financial Corp.
931 Corporate Center Dr.
Pomona, CA 91768

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, OH 43551

JUDGMENT CREDITOR

VS.

CASE NO. CVF 95000314

Henneman, Christopher W.
29121 East Broadway
Walbridge, Ohio 45465

THIS COMMUNICATION IS FROM A DEBT COLLECTOR

JUDGMENT DEBTOR

YOU ARE HEREBY NOTIFIED THAT THIS COURT HAS ISSUED AN ORDER IN THE ABOVE CASE IN FAVOR OF THE ABOVE NAMED JUDGMENT CREDITOR IN THIS PROCEEDING, DIRECTING THAT SOME OF YOUR PERSONAL EARNINGS BE USED IN SATISFACTION OF YOUR DEBT TO THE JUDGMENT CREDITOR INSTEAD OF BEING PAID TO YOU. THIS ORDER WAS ISSUED ON THE BASIS OF THE JUDGMENT CREDITOR'S JUDGMENT AGAINST YOU THAT WAS RETAINED IN, OR CERTIFIED TO THE PERRYSBURG MUNICIPAL COURT IN THE CASE NUMBER SHOWN ABOVE ON: 04/18/1995

THE LAW OF OHIO PROVIDES THAT YOU ARE ENTITLED TO KEEP A CERTAIN AMOUNT OF YOUR PERSONAL EARNINGS FREE FROM THE CLAIMS OF CREDITORS. ADDITIONALLY, WAGES UNDER A CERTAIN AMOUNT MAY NEVER BE USED TO SATISFY THE CLAIMS OF CREDITORS. THE DOCUMENTS ENTITLED "ORDER AND NOTICE OF GARNISHMENT AND ANSWER OF EMPLOYER" THAT ARE ENCLOSED WITH THIS NOTICE SHOW HOW THE AMOUNT PROPOSED TO BE TAKEN OUT OF YOUR PERSONAL EARNINGS WAS CALCULATED BY YOUR EMPLOYER.

IF YOU DISPUTE THE JUDGMENT CREDITOR'S RIGHT TO GARNISH YOUR PERSONAL EARNINGS AND BELIEVE THAT YOU ARE ENTITLED TO POSSESSION OF THE PERSONAL EARNINGS BECAUSE THEY ARE EXEMPT OR IF YOU FEEL THAT THIS ORDER IS IMPROPER FOR ANY OTHER REASON, YOU MAY REQUEST A HEARING BEFORE THIS COURT BY DISPUTING THE CLAIM IN THE REQUEST FOR HEARING FORM, OR IN A SUBSTANTIALLY SIMILAR FORM, AND DELIVERING THE REQUEST FOR HEARING TO THIS COURT AT THE ABOVE ADDRESS, AT THE OFFICE OF THE CLERK OF COURT NO LATER THAN THE END OF THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE. YOU MAY STATE YOUR REASON FOR DISPUTING THE JUDGMENT CREDITOR'S RIGHT TO GARNISH YOUR PERSONAL EARNINGS IN THE SPACE PROVIDED ON THE FORM, HOWEVER YOU ARE NOT REQUIRED TO DO SO. IF YOU DO STATE YOUR REASONS FOR DISPUTING THE JUDGMENT CREDITOR'S RIGHT YOU ARE NOT PROHIBITED FROM STATING ANY OTHER REASONS AT THE HEARING. NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING. THE HEARING WILL BE LIMITED TO A CONSIDERATION OF THE AMOUNT OF YOUR PERSONAL EARNINGS, IF ANY, THAT CAN BE USED IN SATISFACTION OF THE JUDGMENT YOU OWE TO THE JUDGMENT CREDITOR. IF YOU REQUEST A HEARING BY DELIVERING YOUR REQUEST FOR HEARING NO LATER THAN THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE, IT WILL BE CONDUCTED NO LATER THAN TWELVE (12) DAYS AFTER YOUR REQUEST IS RECEIVED BY THE COURT. THE CLERK WILL NOTIFY YOU OF THE DATE, TIME AND PLACE OF THE HEARING. YOU MAY INDICATE IN THE FORM THAT YOU FEEL THAT THE NEED FOR THE HEARING IS AN EMERGENCY AND THAT IT SHOULD BE GIVEN PRIORITY BY THE COURT. IF YOU DO SO, THE COURT WILL SCHEDULE THE HEARING AS SOON AS PRACTICABLE AFTER YOUR REQUEST IS RECEIVED AND THE CLERK WILL SEND YOU NOTICE OF THE DATE, TIME AND PLACE OF THE HEARING. **IF YOU DO NOT REQUEST A HEARING BY DELIVERING YOUR REQUEST FOR HEARING NO LATER THAN THE END OF THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE, SOME OF YOUR PERSONAL EARNINGS, WILL BE PAID TO THE JUDGMENT CREDITOR!** IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, YOU MAY CONTACT THE OFFICE OF THE CLERK OF THIS COURT. IF YOU WANT LEGAL REPRESENTATION, YOU SHOULD CONTACT YOUR LAWYER IMMEDIATELY. IF YOU NEED THE NAME OF A LAWYER, CONTACT THE _____ COUNTY BAR ASSOCIATION AT (419) 353-3921, OR THE LEGAL AID SOCIETY AT 244-8345. THE JUDGES OR THE CLERK CANNOT GIVE LEGAL ADVICE OR ACT AS YOUR ATTORNEY.

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551

Household Financial Corp
I T T Financial

Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314
:
:
:
: NOTICE TO THE
: JUDGMENT DEBTOR
: OF PROPERTY
: OTHER THAN
: PERSONAL
: EARNINGS
:

* * * * *

You are hereby notified that this Court has issued an order in the above case in the favor of the Judgment Creditor in this proceeding, directing that some of your money, property, or credits, other than personal earnings, now in the possession of the Garnishee in this proceeding, be used to satisfy your debt to the Judgment Creditor. This order was issued on the basis of the Judgment Creditor's judgment against you that was obtained in the above case and in the above Court.

Upon your receipt of this notice, you are prohibited from removing or attempting to remove such money, property, or credits until expressly permitted by the Court. Any violation of this prohibition subjects you to punishment for contempt of court.

The law of Ohio and the United States provides that certain benefits-payments cannot be taken from you to pay a debt. Typical among the benefits that cannot be attached or executed upon by a creditor are:

- | | | | |
|---|--------------------------------------|---|---------------------------------------|
| 1 | Worker's Compensation Benefits | 6 | Supplemental Security Income (S.S.I.) |
| 2 | Unemployment Compensation Payments | 7 | Veteran's Benefits |
| 3 | Aid to Dependent Children (A.D.C.) | 8 | Black Lung Benefits |
| 4 | Poor Relief or General Relief (G.R.) | 9 | Certain Pensions |
| 5 | Social Security Benefits | | |

Additionally, wages under a certain amount may not be taken to pay the debt. There may be other benefits not included in the above list that apply in your case.

If you dispute the Judgment Creditor's right to garnish your property and believe that he should not be given your money, property, or credits, other than personal earning, not in the possession of the XXXXXXXX because they are exempt or if you feel that this order is improper for any other reason, you may request a hearing before this court by disputing the claim in the Request for Hearing form, (see attached document), or in a substantially similar form, and delivering the Request for Hearing to this Court at the above address at the office of the Clerk of the Court, no later than the end of the FIFTH BUSINESS DAY after you receive this notice. You may state your reasons for disputing the Judgment Creditor's right to garnish your property in the space provided on the form; however, you are not required to do so. If you do state your reason for disputing the Judgment Creditor's rights, you are not prohibited from stating any other reason at the hearing and if you do not state your reasons, it will not be held against you by the Court and you can state your reason at the hearing. If you request a hearing, the hearing will be limited to a consideration of the amount of your money, property, or credits, other than personal earnings, in the possession or control of the indicated garnishee, if any, that can be used to satisfy all or part of the judgment you owe to the Judgment Creditor. No objections to the judgment itself will be heard or considered at any such hearing.

If you request a hearing by delivering your request for hearing no later than the end of the FIFTH (5) BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE, it will be conducted in the PERRYSBURG MUNICIPAL COURT, Perrysburg, Ohio 43551 on XXXX. You may request the Court to conduct the hearing before this date by indicating your request in the space provided on the form; the court will send you notice of any change in the date, time, or place of hearing. If you do not request a hearing by delivering your request for hearing no later than the end of the FIFTH (5) BUYSINESS DAY after you receive this notice, some of your money, property, or credits, other than personal earning, will be paid to the Judgment Creditor.

If you have any questions concerning this matter, you may contact the office of the Clerk of the Court. If you want legal representation, you should contact your lawyer immediately. If you need the name of a lawyer, contact the local Bar Association or the Legal Aid Society.

Clerk/Deputy Clerk _____

Date: May 11, 1999

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551

Household Financial Corp
I T T Financial

Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314

:

:

: JUDGMENT ENTRY

:

:

: S. Dwight Osterud

: Judge

:

* * * * *

On 05/11/1999, the Judgment Creditor herein filed an Affidavit on Garnishment of Property Other Than Personal Earnings. Whereupon, Court Order and Notice of Garnishment was issued to Xxxxx .

The Court finds that said garnishee has filed its answer with the Court along with remittance of \$00.00 . The Court further finds that Judgment Debtor was duly notified of said garnishment of property other than personal earnings and has filed no request for hearing with the Court.

IT IS THEREFORE THE ORDER of this Court that said money on hand, less accrued court costs, be disbursed to Judgment Creditor.

Date: May 11, 1999

Judge: S. Dwight Osterud

Cc: Xxxxxx
Attorney for Judgment Creditor

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551

Household Financial Corp
I T T Financial
Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314
:
: NOTICE TO THE
: JUDGMENT DEBTOR
: OF GARNISHMENT OF
: PERSONAL EARNINGS
:
: S. Dwight Osterud
: Judge

* * * * *

YOU ARE HEREBY NOTIFIED THAT THIS COURT HAS ISSUED AN ORDER IN THE ABOVE CASE IN FAVOR OF THE ABOVE NAMED JUDGMENT CREDITOR IN THIS PROCEEDING, DIRECTING THAT SOME OF YOUR PERSONAL EARNINGS, NOT IN THE POSSESSION OF YOUR EMPLOYER, BE USED TO SATISFY SOME OF YOUR DEBT TO THE JUDGMENT CREDITOR INSTEAD OF BEING PAID TO YOU. THIS ORDER WAS ISSUED ON THE BASIS OF THE JUDGMENT CREDITOR'S JUDGMENT AGAINST YOU THAT WAS OBTAINED IN THE ABOVE CASE AND IN THE ABOVE COURT.

THE LAW OF OHIO PROVIDES THAT YOU ARE ENTITLED TO KEEP A CERTAIN AMOUNT OF YOUR PERSONAL EARNINGS FREE FROM THE CLAIMS OF CREDITORS. ADDITIONALLY, WAGES UNDER A CERTAIN AMOUNT MAY NEVER BE USED TO SATISFY THE CLAIMS OF CREDITORS. THE DOCUMENTS ENTITLED "ORDER AND NOTICE OR GARNISHMENT AND ANSWER OF EMPLOYER" THAT ARE ENCLOSED WITH THIS NOTICE SHOW HOW THE AMOUNT PROPOSED TO BE TAKEN OUT OF YOUR PERSONAL EARNINGS WAS CALCULATED BY YOUR EMPLOYER.

IF YOU DISPUTE THE JUDGMENT CREDITOR'S RIGHT TO GARNISH YOUR PERSONAL EARNINGS AND BELIEVE THAT YOU ARE ENTITLED TO POSSESSION OF THE PERSONAL EARNINGS BECAUSE THEY ARE EXEMPT OR IF YOU FEEL THAT THIS ORDER IS IMPROPER FOR ANY OTHER REASON, YOU MAY REQUEST A HEARING BEFORE THIS COURT BY DISPUTING THE CLAIM IN THE REQUEST FOR HEARING FORM, OR IN A SUBSTANTIALLY SIMILAR FORM, AND DELIVERING THE REQUEST FOR HEARING TO THIS COURT AT THE ABOVE ADDRESS, AT THE OFFICE OF THE CLERK OF COURT, NO LATER THAN THE END OF THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE. YOU MAY STATE YOUR REASON FOR DISPUTING THE JUDGMENT CREDITOR'S RIGHT TO GARNISH YOUR PERSONAL EARNINGS IN THE SPACE PROVIDED ON THE FORM, HOWEVER YOU ARE NOT REQUIRED TO DO SO. IF YOU DO STATE YOUR REASONS FOR DISPUTING THE JUDGMENT CREDITOR'S RIGHT YOU ARE NOT PROHIBITED FROM STATING ANY OTHER REASONS AT THE HEARING. NO OBJECTIONS TO THE JUDGMENT ITSELF WILL BE HEARD OR CONSIDERED AT THE HEARING. THE HEARING WILL BE LIMITED TO A CONSIDERATION OF THE AMOUNT OF YOUR PERSONAL EARNINGS, IF ANY, THAT CAN BE USED IN SATISFACTION OF THE JUDGMENT YOU OWE TO THE JUDGMENT CREDITOR. IF YOU REQUEST A HEARING BY DELIVERING YOUR REQUEST FOR HEARING NO LATER THAN THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE, IT WILL BE CONDUCTED NO LATER THAN TWELVE (12) DAYS AFTER YOUR REQUEST IS RECEIVED BY THE COURT. THE CLERK WILL NOTIFY YOU OF THE DATE, TIME AND PLACE OF THE HEARING. YOU MAY INDICATE IN THE FORM THAT YOU FEEL THAT THE NEED FOR THE HEARING IS AN EMERGENCY AND THAT IT SHOULD BE GIVEN PRIORITY BY THE COURT. IF YOU DO SO, THE COURT WILL SCHEDULE THE HEARING AS SOON AS PRACTICABLE AFTER YOUR REQUEST IS RECEIVED AND THE CLERK WILL SEND YOU NOTICE OF THE DATE, TIME AND PLACE OF THE HEARING. IF YOU DO NOT REQUEST A HEARING BY DELIVERING YOUR REQUEST FOR HEARING NO LATER THAN THE END OF THE FIFTH BUSINESS DAY AFTER YOU RECEIVE THIS NOTICE, SOME OF YOUR PERSONAL EARNINGS, WILL BE PAID TO THE JUDGMENT CREDITOR!

IF YOU HAVE ANY QUESTIONS CONCERNING THIS MATTER, YOU MAY CONTACT THE OFFICE OF THE CLERK OF THIS COURT. IF YOU WANT LEGAL REPRESENTATION, YOU SHOULD CONTACT YOUR LAWYER IMMEDIATELY. IF YOU NEED THE NAME OF A LAWYER, CONTACT THE LOCAL BAR ASSOCIATION.

JUDITH DAQUANO
Clerk of Court

May 11, 1999

By: _____
Xxxx
Clerk/Deputy Clerk

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551

Household Financial Corp
I T T Financial
Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314
:
:
: ORDER ON
: GARNISHEE TO PAY
: MONEY
:
: S. Dwight Osterud
: Judge

* * * * *

To: Xxxxxx

Garnishee in the above entitled Action:

In obedience to the Order of said Court made this day in the above entitled action,
you will pay into said Court the sum of \$00.00 of the amount owing by you to said
Plaintiff(s), to be applied to the payment of the judgment and costs in the action.

WITNESS my hand and the seal of said Court, May 11, 1999 .

Judith Daquano
Clerk

Xxxxxx
Clerk/Deputy Clerk

PERRYSBURG MUNICIPAL COURT
300 Walnut Street
Perrysburg, Ohio 43551

Household Financial Corp
I T T Financial
Plaintiff(s)

-VS-

Henneman, Christopher W. Henneman, Christine

Defendant(s)

: Case: CVF 9500314
:
:
: RELEASE OF
: GARNISHEE
: (Rev. Code Sec. 1911.37)
:
: S. Dwight Osterud
: Judge

* * * * *

The Order of Attachment in the above entitled case being dissolved, you are
thereby released from further liability in the premises.

WITNESS my signature and seal of said Court, this May 11, 1999.

Judge S. Dwight Osterud

An Act—Amended Substitute Senate Bill number 83

(122nd General Assembly)
Amended Substitute Senate Bill Number 83

AN ACT

To amend sections 317.20, 1923.06, 3953.01, 3953.04, 3953.07, 5309.01, 5309.06, 5309.09, 5309.24, 5309.28, 5309.33, 5309.36, 5309.38, 5309.40, and 5309.76 and to enact sections 765.01 to 765.04, 1901.183, 3953.29, and 5309.281 of the Revised Code to aid in the eradication of urban and rural blight by authorizing municipal corporations within the jurisdiction of the environmental division of a municipal court to establish noncriminal land use infractions and provide civil enforcement procedures for those infractions and by granting the environmental division of a municipal court additional jurisdiction to enforce nuisance abatement and other environmental laws and to enforce its judgments, to modify the procedure by which service is effected in an eviction action, and to eliminate references in title insurance policies and certain documents involving registered land transactions to racial and other restrictive covenants that, if exercised, honored, or included in a transfer, rental, or lease of housing accommodations, constitute an unlawful discriminatory practice.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1.

That sections 317.20, 1923.06, 3953.01, 3953.04, 3953.07, 5309.01, 5309.06, 5309.09, 5309.24, 5309.28, 5309.33, 5309.36, 5309.38, 5309.40, and 5309.76 be amended and sections 765.01, 765.02m 765.03m 765.04m 1901.183m 3953.29m and 5309.281 of the Revised Code be enacted to read as follows:

The following list contains all of the Ohio Revised Code Sections that are amended or created as a result of this act:

- Section 317.20
- Section 765.01
- Section 765.02
- Section 765.03
- Section 765.04
- Section 1901.183
- Section 1923.06
- Section 3953.01
- Section 5309.01
- Section 5309.06

- Section 5309.09
- Section 5309.24
- Section 5309.28
- Section 5309.281
- Section 5309.33
- Section 5309.36
- Section 5309.38
- Section 5309.40
- Section 5309.76

SECTION 2.

That existing sections 317.20, 1923.06, 3953.01, 3953.04, 3953.07, 5309.01, 5309.06, 5309.09, 5309.24, 5309.28, 5309.33, 5309.36, 5309.38, 5309.40, and 5309.76 of the Revised Code are hereby repealed.

SECTION 3.

Chapter 765. of the Revised Code shall be known as “Noncriminal Land Use Infractions.”

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<http://ohioacts.avv.com/122/sb83/home.htm>

2/23/99

Section 1923.06

- (A) [Except as otherwise provided in this section, the] ANY summons in an action [under] PURSUANT TO this chapter shall be issued, be in the form specified, and be served and returned as [in the Rules of Civil Procedure] PROVIDED IN THIS SECTION. Such service shall be at least [five] TEN days before the day set for trial.
- (B) Every summons issued under this section to recover residential premises shall contain the following language printed in a conspicuous manner: “A complaint to evict you has been filed with this court. No person shall be evicted unless [his] THE PERSON’S right to possession has ended and no person shall be evicted in retaliation for the exercise of [his] THE PERSON’S lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association.”

- (C) THE CLERK OF THE COURT IN WHICH A COMPLAINT TO EVICT IS FILED SHALL MAIL ANY SUMMONS BY ORDINARY MAIL, ALONG WITH A COPY OF THE COMPLAINT, DOCUMENT, OR OTHER PROCESS TO BE SERVED TO THE DEFENDANT AT THE ADDRESS SET FORTH IN THE CAPTION OF THE SUMMONS AND TO ANY ADDRESS SET FORTH IN ANY WRITTEN INSTRUCTIONS FURNISHED TO THE CLERK. THE MAILING SHALL BE EVIDENCED BY A CERTIFICATE OF MAILING WHICH THE CLERK SHALL COMPLETE AND FILE.
- (D) THE CLERK SHALL DELIVER SUFFICIENT COPIES OF THE SUMMONS, COMPLAINT, DOCUMENT, OR OTHER PROCESS TO BE SERVED TO, AND SERVICE SHALL BE MADE BY, ONE OF THE FOLLOWING PERSONS:
- (1) THE SHERIFF OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED WHEN THE PROCESS ISSUES FROM A COURT OF COMMON PLEAS OR COUNTY COURT;
 - (2) THE BAILIFF OF THE COURT FOR SERVICE WHEN PROCESS ISSUES FROM THE MUNICIPAL COURT;
 - (3) ANY PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER, WHO IS NOT A PARTY, AND WHO HAS BEEN DESIGNATED BY ORDER OF THE COURT TO MAKE SERVICE OF PROCESS WHEN PROCESS ISSUES FROM ANY OF THE COURTS IN DIVISIONS (D)(1) AND (2) OF THIS SECTION.
- (E) THE PERSON SERVING PROCESS SHALL EFFECT SERVICE AT THE PREMISES THAT ARE THE SUBJECT OF THE FORCIBLE ENTRY AND DETAINER ACTION BY ONE OF THE FOLLOWING MEANS:
- (1) BY LOCATING THE PERSON TO BE SERVED AT THE PREMISES TO TENDER A COPY OF THE PROCESS AND ACCOMPANYING DOCUMENTS TO THAT PERSON;
 - (2) BY LEAVING A COPY OF THE SUMMONS, COMPLAINT, DOCUMENT, OR THE PROCESS WITH A PERSON OF SUITABLE AGE AND DISCRETION FOUND AT THE PREMISES IF THE PERSON TO BE SERVED CANNOT BE FOUND AT THE TIME THE PERSON MAKING SERVICE ATTEMPTS TO SERVE THE SUMMONS PURSUANT TO DIVISION (E)(1) OF THIS SECTION';
 - (3) BY POSTING A COPY IN A CONSPICUOUS PLACE ON THE SUBJECT PREMISES IF SERVICE CANNOT BE MADE PURSUANT TO DIVISIONS (E)(1) AND (2) OF THIS SECTION.
- (F) WITHIN TEN DAYS AFTER RECEIVING THE SUMMONS, COMPLAINT, DOCUMENT, OR OTHER PROCESS FROM THE CLERK FOR SERVICE, THE PERSON MAKING SERVICE SHALL RETURN THE PROCESS TO THE CLERK. THE PERSON SHALL INDICATE ON THE PROCESS WHICH METHOD DESCRIBED IN DIVISION (E) OF THIS SECTION WAS USED TO SERVE THE SUMMONS. THE CLERK SHALL MAKE THE APPROPRIATE ENTRY ON THE APPEARANCE DOCKET.

(G) SERVICE OF PROCESS SHALL BE DEEMED COMPLETE ON THE DATE THAT EITHER OF THE FOLLOWING HAS OCCURRED:

- (1) SERVICE IS MADE PURSUANT TO DIVISION (E)(1) OR (2) OF THIS SECTION.
- (2) BOTH ORDINARY MAIL SERVICE UNDER DIVISION (C) AND SERVICE BY POSTING PURSUANT TO DIVISION (E)(3) OF THIS SECTION HAVE BEEN MADE.

(H)(1) THE CLAIM FOR RESTITUTION OF THE PREMISES SHALL BE SCHEDULED FOR HEARING IN ACCORDANCE WITH LOCAL COURT RULES, BUT IN NO EVENT SOONER THAN THE TENTH DAY FROM THE DATE SERVICE IS COMPLETE.

- (3) ANSWER DAY FOR ANY OTHER CLAIMS SHALL BE TWENTY-EIGHT DAYS FROM THE DATE SERVICE IS COMPLETE.

Editor's Note: This page represents an amended Section 1923.06. Click on the hot text if you want to compare this to the old version that is in A.V.V.s online Ohio Revised Code.

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<http://ohioacts.avv.com/122/sb83/sec-923.06.htm>

2/19/99

BELOW IS THE ANALYSIS OF 1923.06 TAKEN OUT OF SUB. S.B. 83

Forcible entry and detainer actions

(sec. 1923.06)

Under the Forcible Entry and Detainer Law, a landlord who decides to file an eviction action in court must give the tenant notice requesting the tenant to leave the premises, at least three days before filing the action in court (sec. 1923.04). If the landlord does file a complaint in court, the summons in the action must be served at least five days before the trial date in the manner provided for service in the Rules of Civil Procedure. Currently, under Ohio Civil Rule 4.1, service may be made by certified or express mail evidenced by return receipt signed by any person, by personal service, or by residence service (leaving a copy of the complaint and other papers with some person of suitable age and discretion residing at the residence to be served).

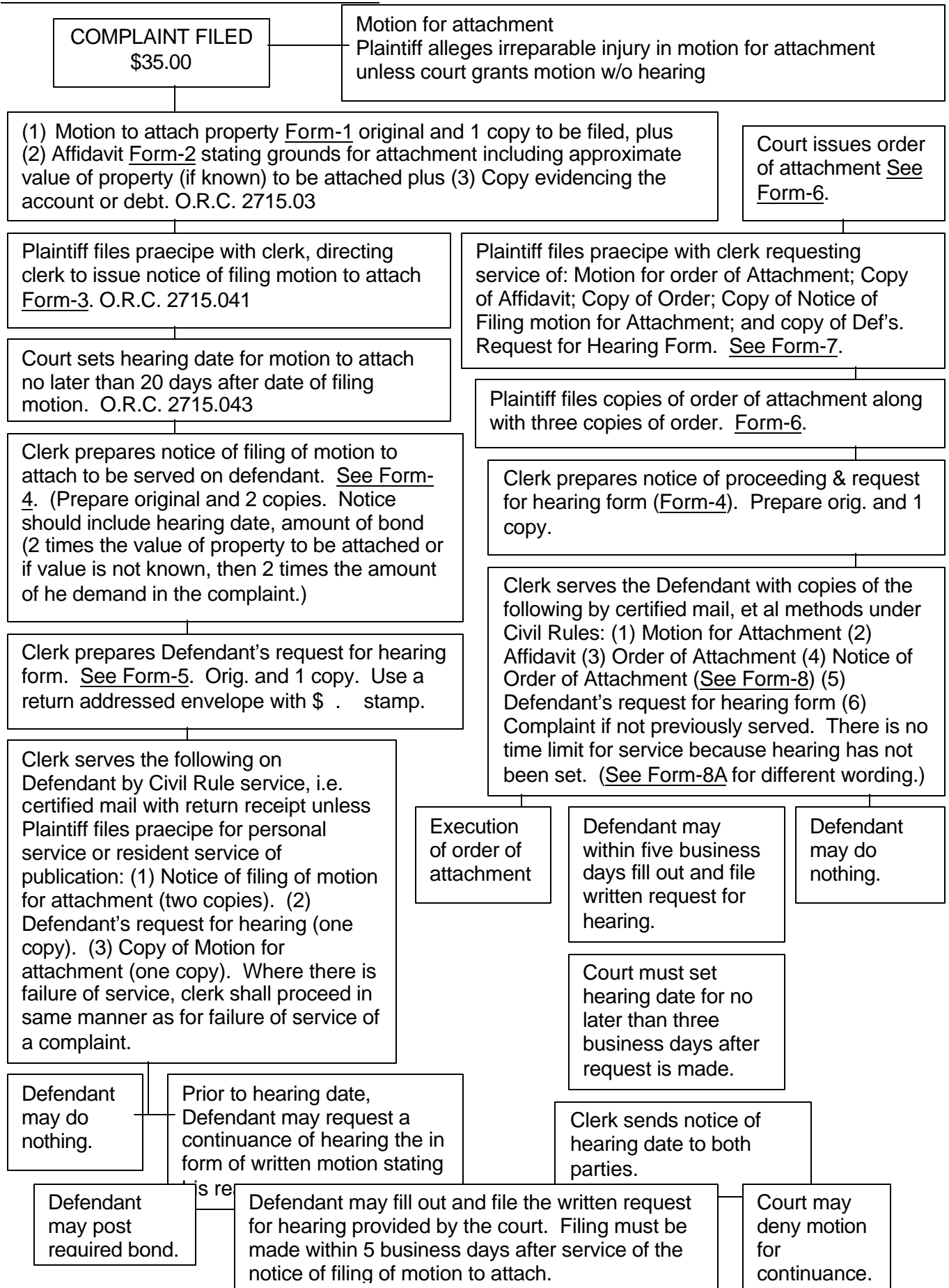
The bill amends the notice process for eviction actions, first, by requiring the clerk of the court where the complaint is filed to mail any summons and accompanying papers by ordinary mail to the defendant at the address in the complaint and to any other address to which the clerk received written instructions to mail the summons (sec. 1923.06(C)). Second, in addition to those mailings, the summons and other documents must be served as follows: in a common pleas court or a county court, by the sheriff in the county where the premises are located; in a municipal court, by the bailiff of the court; or

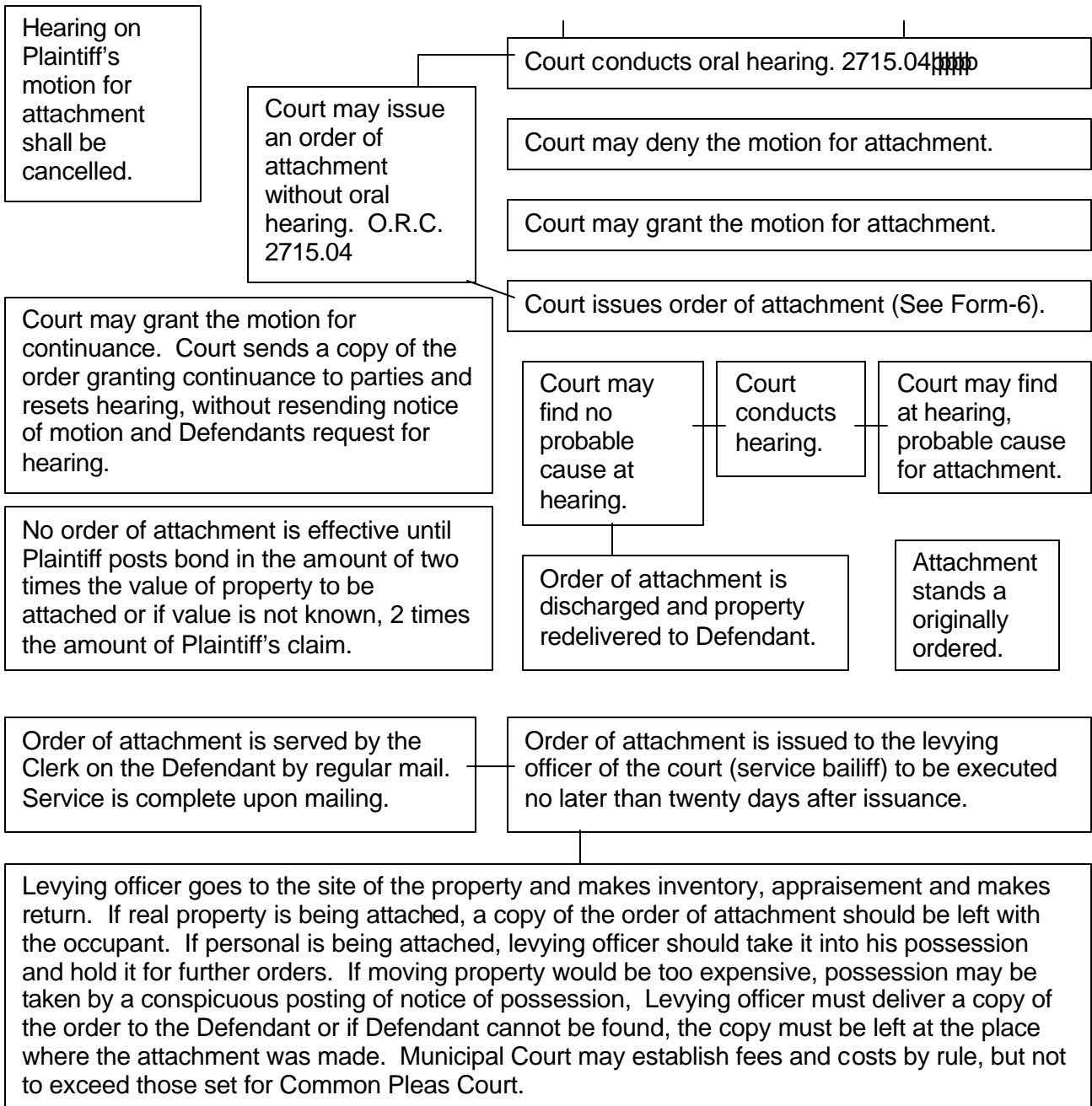
by any person who is 18 years of age or older, not a party to the action, who has been designated by order of the court to make service of process from the court of common pleas, county court, or municipal court (sec. 1923.06(D)). The summons must be served by these persons in one of the following manners:

- (1) By locating the person to be served at the premises and tendering copies of the process and other documents to that person;
- (2) By leaving a copy of the summons and other documents with a person of suitable age and discretion found at the premises if the person to be served cannot be found at the time the person making service attempts to serve the summons as described in (1) above;
- (3) By posting a copy in a conspicuous place on the premises if service cannot be made under (1) or (2) above. (Sec. 1923.06(E)).

The person making service must return the process to the clerk within ten days after receiving the summons for service and indicate the method used for service (sec. 1923.06(F)). Service must be considered complete on the date that service is made by the method described in (1) above (personal service) or by the method described in (2) above (residential service), or by both ordinary mail service and by posting as described in (3) above (sec. 1923.06(G)). Service must be made at least ten days (instead of the current five days) before the day set for trial (sec. 1923.06(A)). An answer to the complaint must be filed within 28 days from the date service is complete (sec. 1923.06(H)).

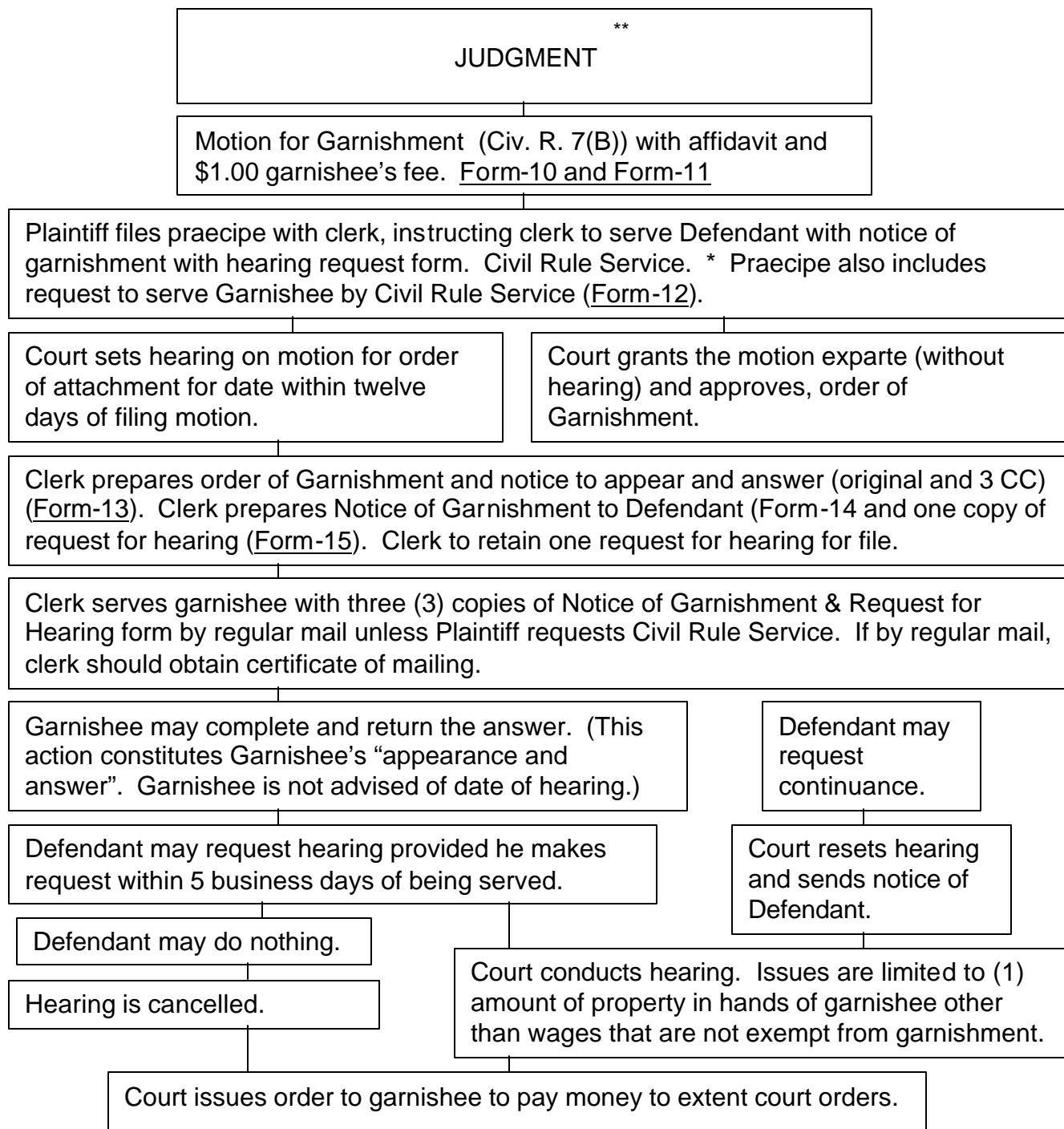
ATTACHMENT BEFORE JUDGMENT





GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS

(eg. Bank "Attachment")

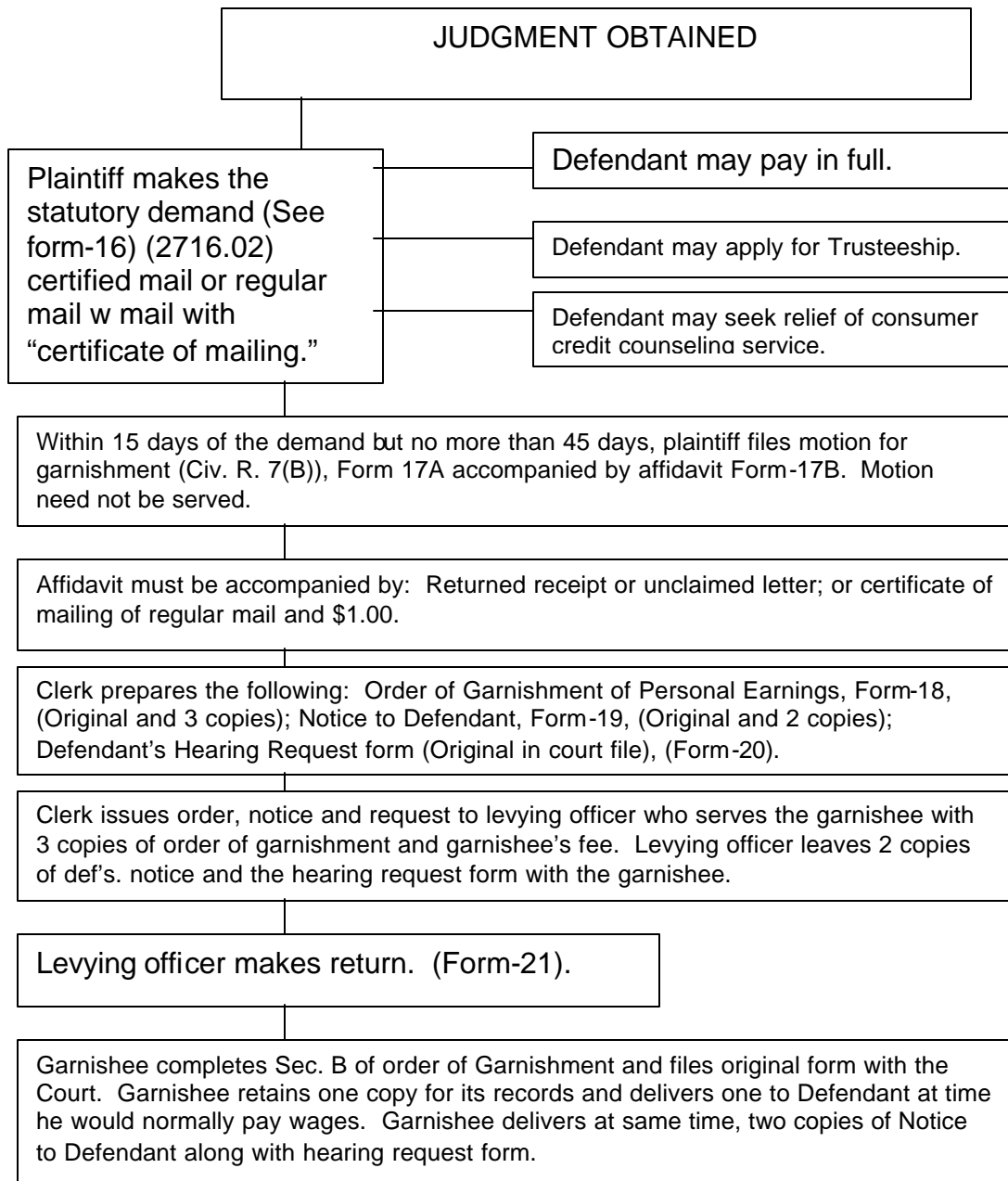


** Court's ruling is that the Garnishee must be within the territorial jurisdiction of court.

* Certified mail, regular mail, residence, personal service.

GARNISHMENT - Seizing of property to satisfy judgment where property is in possession of 3rd party (Garnishee).

GARNISHMENT OF PERSONAL EARNING - Available only after judgment has been obtained



Defendant may file request for hearing within five days of receiving "request for hearing" form. Court schedules hearing for no later than 12 days after receiving notice.

Defendant may do nothing & Garnishment continues.

Hearing is restricted to issues of the amount of wages in hands of garnishee and status of any exempt wages.

