CIVIL COURT OF THE CITY OF NEW YORK

<u>CHIEF CLERK'S MEMORANDUM</u>	Class:	CCM-183
Subject: Execution and Restraints	Category:	GP-10, LT-10, SC-10
on Money Judgments	Eff. Date:	January 1, 2009

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<u>BACKGROUND</u>

To establish a procedure for the execution of money judgments on bank accounts consistent with the aims of State and Federal laws exempting certain income from debt collection, chapter 575 of the Laws of 2008 amends the CPLR, in relation to restraint, execution, income execution and levy procedures, effective January 1, 2009. See LSM-168.

<u>DIRECTIVE</u>

Based on these amendments the following procedure is being established:

If a person comes into court requesting a restraining notice on a **banking institution** where the **judgment debtor is a natural person** the clerk shall give the person the following forms:

> Restraining Notice (CIV-SC- 59 revised 2/09)
> Exemption Notice (CIV-SC- 76 created 1/09)
> Two Exemption Claim forms (CIV-SC-75 created 1/09)
> Instructions for Service of a Restraining Notice (CIV-SC-57 revised 1/09)
> Affidavit of Service of a Restraining Notice (CIV-SC-58 revised 2/09)

The person should be advised that when a restraining notice is served on a **banking institution** where the **judgment debtor is a natural person** the restraining notice **must be accompanied by an Exemption Notice and two Exemption Claim forms with sections "Address A" and "Address B" filed out.** These papers may be served by Certified mail Return Receipt Requested or served in the same manner as a summons. After the papers are served the person who served the papers must fill out an Affidavit of Service and have it notarized. Advise the person to make a photocopy of each form served and retain these documents with the Affidavit of Service.

As a reminder, if a person comes into court requesting a restraining notice where the **judgment debtor is not a natural person** the clerk shall give the person the following forms:

> Restraining Notice (CIV-SC- 59 revised 2/09)
> Instructions for Service of a Restraining Notice (CIV-SC-57 revised 1/09)
> Affidavit of Service of a Restraining Notice (CIV-SC-58 revised 2/09)

The person should be advised to:

> Make a photocopy of the Restraining Notice for their records,
> Have the Restraining Notice served, and
> Have the server fill out the Affidavit of Service and have it notarized and retain for his/her records.

In addition, if a person comes into court requesting a restraining notice where the judgment debtor **is a natural person** however the restraining notice **is not directed to a banking institution**, the clerk shall give the person the following forms:

> Restraining Notice (CIV-SC- 59 revised 2/09)
> Notice to the Judgment Debtor (CIV-SC-64 created 2/09)
> Instructions for Service of a Restraining Notice (CIV-SC-57 revised 1/09)
> Affidavit of Service of a Restraining Notice (CIV-SC-58 revised 2/09)

> The person should be advised to:
> > Make two photocopies of the Restraining Notice and the Notice to Judgment Debtor, Mail a copy of the Restraining Notice and the Notice to Judgment Debtor to the Judgment Debtor,
> > Maintain a copy of the Restraining Notice and Notice to the Judgment Debtor for his/her records, and
> > Serve the Restraining Notice, have the server fill out the Affidavit of Service and have it notarized, and retain for his/her records.

The new procedure outlined in CPLR § 5222-a (d) requires the judgment creditor who is objecting to a claim of exemption to serve a motion on the banking institution and the judgment debtor within eight days of the postmark on the envelope containing the exemption claim form. The motion shall be noticed for seven days after service of the moving papers. To assist the self represented users we have created a Notice of Motion to Object to a Claim of Exemption (CIV-SC-31 created 2/09) and an Affidavit in Support of a Motion to Object to a Claim of Exemption (CIV-SC-32 created 2/09). See attached.

Please be sure to discard all outdated forms.

Dated___February 6, 2009_____   _____/s/_____

                                                                                              Chief Clerk
                                                                                              Jack Baer