



Michigan Supreme Court

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Thomas P. Clement
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MEMORANDUM

DATE: February 21, 2019

TO: Trial Court Judges and Administrators
cc: Milton L. Mack, Jr.

FROM: Thomas P. Clement

RE: Court Officer Authority

The State Court Administrative Office was asked whether court officers appointed¹ to execute orders to seize property could enter into payment plans with civil defendants, take a percentage fee from seizures of money, and return to seize additional monies multiple times using the original order to seize property. After analysis of statutory authority and court rule, we do not believe that court officers may engage in these activities. A detailed explanation is provided below.

Payment Plans

There is no authority for a court officer to enter into a payment plan. The request and order to seize property is an order to seize and sell personal property, not an order to negotiate a payment plan. There is authority to seize money (MCL 600.6017(6)), but there is no authority for a court officer to enter into an agreement with a civil defendant for payments. If a civil defendant wants a payment plan with the plaintiff, that avenue is available to him through the court. See MCL 600.6201 and form MC 15.

Statutory Percentage on a Seizure of Money

Court officers have the authority to seize money; however the officer is not entitled to a percentage of the money seized. If the officer seizes money, (which is considered personal property subject to seizure), that money “shall be taken as money collected and paid, *and not sold* unless it has a value of more than face value.” MCL 600.6017(6). The phrase “and not sold” is important when reviewing the statute, which permits the statutory percentage fee.

¹ MCR 2.103(B) and 3.106 are the court rules governing appointment of court officers and seizures of property.

MCL 600.2559(1)(i) provides authority for the percentage fee.

*If the person has seized property under an order for the seizure of property issued in an action in which a judgment is entered against the owner of the property, regardless of whether the judgment is entered before or after the order is issued, and if the judgment is satisfied *before sale of the seized property* by full payment of the judgment or settlement between the parties, 7% of the first \$8,000.00 of the payment or settlement amount and 3% of the payment or settlement amount exceeding the first \$8,000.00. [Emphasis added.]*

There are two conditions to section 2559(1)(i) that must be fulfilled before the court officer is authorized to receive the percentage fee. First, the court officer must have seized property under an order for seizure. Second, the judgment must be satisfied *before sale of the seized property*. If the court officer meets both of those conditions, then he is allowed the percentage fee on the full payment or settlement amount.

An officer that seizes money satisfies the first condition (because it is permissible to seize money). But, he cannot satisfy the second condition because *there is never going to be a sale of the seized property*. Statute clearly provides that “money shall be taken as money collected and paid, *and not sold* unless it has a value of more than face value.” MCL 600.6017(6). Since the officer seized property that is not saleable property, the officer is not allowed a percentage fee from money seized.

By way of contrast, the percentage fee is appropriate where the officer seizes property such as a boat or car, and is preparing to sell the property. If, *before sale of the seized property*, plaintiff and defendant work out a settlement of the underlying judgment, then the officer gets a percent of the payment or settlement amount.

Duration of Order to Seize

The request and order to seize (form MC 19) is served on the civil defendant one time and then returned to the court. Upon receipt by the officer, the order is endorsed with the year, month, day, and hour – that is the date of the execution. It is returnable no more than 90 days from that date. MCL 600.6002.

The language on form MC 19 (item 6) was intended to make clear that if the court officer had already started seizing property and hadn't completed the seizure before the order was no longer valid, the officer could continue with the seizure in accord with MCL 600.6002(3). It does not mean the officer can use the order to go back and seize more property² *after* the initial execution on the seizure order.

If the court officer is unable to seize enough property to satisfy the judgment, MCL 600.6005 provides that the plaintiff may obtain a successive or alias execution upon the return of the execution. Section 6005 provides the framework for a plaintiff to obtain another request and order for seizure after the original order has been served. By providing authority to obtain additional execution orders, this makes clear that the original execution order is a one-time order.

² Reportedly, court officers erroneously construe the language of item 6 on form MC 19 to provide authority to collect payments on a payment plan for, in some cases, years after the seizure order was served.

Forms

MCR 3.106 requires form MC 82 (receipt and inventory) filed within 7 days and a copy provided to the civil defendant. The form MC 83 (report of collection activity) must be filed within 14 days after the return date or the judgment is satisfied, whichever occurs first. SCAO will be reviewing forms MC 19, 82 and 83 for possible updates.

Performance of Nonstatutory Services

There is a distinction between actions performed while acting as a court officer versus actions performed pursuant to private contractual agreements with attorneys. The lines should not be blurred between these two very different roles. Individuals may contract with attorneys to carry out “nonstatutory services” that go beyond a court officer’s statutory authority, such as serving as a negotiator, messenger, runner or investigator. When performing nonstatutory services, the individual is not acting as a court officer. Instead, he is acting pursuant to his agreement with the attorney. Any fee that an attorney pays an individual to perform nonstatutory services is absorbed by the creditor, not taxed back to the defendant’s judgment balance. See *Harbour Towne Marina Ass’n v Geile* (In re Fees of Court Officer), 222 Mich App 234 (1997).

If you have any questions regarding this memo, please contact Julia Norton at trialcourtservices@courts.mi.gov.