

The Civil Procedure Rules Committee invites comment on proposed out-of-cycle amendments to the Florida Rules of Civil Procedure. The full text of the proposals can be found on The Florida Bar's website at www.floridabar.org.

Interested persons have until May 15, 2017 to submit comments **electronically** to the Chair of the Civil Procedure Rules Committee, Roger Haughey, II, at rhaughey@sbwlegal.com and to the Bar staff liaison, Mikalla Davis, at mdavis@floridabar.org.

RULE 1.570. ENFORCEMENT OF FINAL JUDGMENTS

(a) Money Judgments. Final process to enforce a judgment solely for the payment of money shall be by execution, writ of garnishment, or other appropriate process or proceedings.

(b) Property Recovery. Final process to enforce a judgment for the recovery of property shall be by a writ of possession for real property and by a writ of replevin, distress writ, writ of garnishment, or other appropriate process or proceedings for other property.

(c) Performance of an Act. If judgment is for the performance of a specific act or contract:

(1) the judgment shall specify the time within which the act shall be performed. If the act is not performed within the time specified, the party seeking enforcement of the judgment shall make an affidavit that the judgment has not been complied with within the prescribed time and the clerk shall issue a writ of attachment against the delinquent party. The delinquent party shall not be released from the writ of attachment until that party has complied with the judgment and paid all costs accruing because of the failure to perform the act. If the delinquent party cannot be found, the party seeking enforcement of the judgment shall file an affidavit to this effect and the court shall issue a writ of sequestration against the delinquent party's property. The writ of sequestration shall not be dissolved until the delinquent party complies with the judgment;

(2) the court may hold the disobedient party in contempt; or

(3) the court may appoint some person, not a party to the action, to perform the act insofar as practicable. The performance of the act by the person

appointed shall have the same effect as if performed by the party against whom the judgment was entered.

(d) Vesting Title. If the judgment is for a conveyance, transfer, release, or acquittance of real or personal property, the judgment shall have the effect of a duly executed conveyance, transfer, release, or acquittance that is recorded in the county where the judgment is recorded. A judgment under this subdivision shall be effective notwithstanding any disability of a party.

(e) Proceedings Supplementary. The holder of an unsatisfied judgment or judgment lien is entitled to conduct proceedings supplementary to execution and related discovery, as provided by chapter 56, Florida Statutes. Notices to Appear and supplemental complaints in proceedings supplementary must be served as provided by the law and rules of procedure for service of process.

Committee Notes

20__ Amendment. Subdivision (e) has been added to address legislative amendments to chapter 56, Florida Statutes (2016).

FORM 1.914(a). EXECUTION

EXECUTION

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to levy on the property subject to execution of in the sum of \$..... with interest at% a year from(date)....., until paid and to have this writ before the court when satisfied.

DATED on

(Name of Clerk)

As Clerk of the Court

By _____

As Deputy Clerk

Committee Notes

1980 Amendment. The description of the property to be levied on has to be made general so it encompasses all property subject to execution under section 56.061, Florida Statutes (1979).

FORM 1.914(b). NOTICE TO APPEAR

TO(name of third party).....:

YOU ARE NOTIFIED that, pursuant to section 56.29, Florida Statutes, proceedings supplementary to satisfy a judgment by application of the following(identify the property, debt, or other obligation due to the judgment debtor)..... in County, Florida have been initiated against you by (name of judgment creditor)..... You are required to serve an affidavit [on or before date] stating that the (property, debt, or other obligation) belongs to you. The affidavit must include any fact or legal defense opposing the application of the (“property” or “debt” or “other obligation”) toward the satisfaction of the judgment on (name of the judgment creditor, or its attorney, and his/her/its address) You must file the original affidavit with the clerk of this court either before service on the judgment creditor or immediately thereafter. Legal defenses need not be filed under oath but must be served contemporaneously with the affidavit.

If any of your property has been levied on and you choose to oppose the application of the property to be applied toward the satisfaction of the judgment, then you must furnish a bond with surety to be approved by the officer in favor of the judgment creditor. The amount of the bond must be double the value of the goods claimed as the value is fixed by the officer and conditioned to deliver said property on demand of said officer if it is adjudged to be the property of the judgment debtor and to pay the judgment creditor all damages found against you if it appears that the claim was interposed for the purpose of delay.

YOU HAVE A RIGHT TO A TRIAL BY JURY TO DETERMINE THE RIGHT TO THE (PROPERTY, DEBT OR OTHER OBLIGATION DUE TO THE JUDGMENT DEBTOR). YOU ARE ENTITLED TO DISCOVERY UNDER THE FLORIDA RULES OF CIVIL PROCEDURE. IF THE COURT OR JURY DETERMINES THAT THE (PROPERTY, DEBT OR OTHER OBLIGATION) BELONGS TO THE JUDGMENT DEBTOR AND IS SUBJECT TO APPLICATION TOWARD THE SATISFACTION OF ITS JUDGMENT, THEN YOU MAY BE ORDERED TO (PAY DAMAGES TO THE JUDGMENT CREDITOR OR SURRENDER THE PROPERTY OR OTHER OBLIGATION DUE TO THE JUDGMENT DEBTOR TO THE JUDGMENT CREDITOR).

ORDERED at, Florida, on

..... (date)

FORM 1.914(c). AFFIDAVIT OF CLAIMANT IN RESPONSE TO NOTICE TO APPEAR

BEFORE ME, the undersigned authority appeared(name of claimant or claimant's agent)....., who, after being first duly sworn, deposes and states, under penalty of perjury:

1. I am the (claimant, or identify relationship to claimant).
2. I (or claimant) was served with a Notice to Appear on(date).
3. I (or claimant) own(s) and am/is entitled to possession of(describe the property, debt, or other obligation due to the judgment debtor identified in the Notice to Appear).
4. This property should not be applied to satisfy the judgment because (state all reasons why the property, debt, or other obligation due to the judgment debtor identified in the Notice to Appear should not be applied to satisfy the judgment).
5. (Select a or b)
 - a. I (or claimant) request(s) a trial by jury on all issues so triable.
 - b. I (or claimant) request(s) a non-jury trial on all issues.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: _____

Signature of Affiant
Printed Name:_____

STATE OF _____
COUNTY OF _____

Sworn to or affirmed and signed before me on this ____ day of _____, 20__ by (name of affiant) _____, who is personally known to me or who has produced _____, as identification and who did take an oath.

NOTARY PUBLIC, STATE OF
(Print, Type or Stamp Commissioned Name
of Notary Public)

Committee Notes

20 Adoption. Form 1.914(c) is used by a claimant to respond to a Notice to Appear under section 56.29(2), Florida Statutes. Legal defenses need not be filed under oath, but must be served contemporaneously with the affidavit. If the claimant's property has already been levied upon, he or she may obtain possession of the property by filing with the officer having the execution a copy of this affidavit and by furnishing the officer a bond with surety, as set forth in section 56.16, Florida Statutes.