

Alabama Rules of Civil Procedure

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 69.

Execution.

(a) *Procedure.* The clerk shall issue a writ of execution to enforce a money judgment upon application of the judgment creditor. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by these rules and statutory provisions not inconsistent herewith.

(b) *Writ of execution; notice to judgment debtor.* Upon application for a writ of execution the judgment creditor shall provide the clerk with a description of the property to be executed upon, if known, and the last known address of the judgment debtor against whom execution is sought. The clerk shall prepare and issue a writ of execution in accordance with the information supplied by the judgment creditor. The clerk shall also issue a notice of the right to claim certain property as exempt from execution, using Form 92 in the Appendix of Forms to these rules. A copy of the writ of execution and notice of exemption rights shall be delivered by the clerk to the sheriff, for service upon the judgment debtor.

(c) *Service of writ and notice.* The sheriff shall serve the judgment debtor with a copy of both the writ of execution and the notice of exemption rights at the time of levy upon the judgment debtor's real property or seizure of the judgment debtor's personal property pursuant to the writ of execution. Service shall be effected by personal delivery to the judgment debtor, if the judgment debtor is present either at the time notice of the levy is delivered or at the time of seizure of the judgment debtor's personal property; otherwise service shall be effected by first class mail sent to the judgment debtor's last known address shown on the writ of execution or by posting on the door of the debtor's last known residence address.

(d) *Claim of exemption.* At any time after a levy or seizure but prior to a sale of such property, a judgment debtor may file a notarized claim of exemption with the sheriff. If a claim of exemption is filed with the sheriff, the judgment debtor shall also file a copy thereof with the clerk of the court. Sale of any property claimed as exempt by the judgment debtor which has not been previously sold, shall thereafter be stayed, unless the creditor successfully contests the claim.

(e) *Contesting a claim of exemption.* After notice from the sheriff that a claim of exemption has been filed by a judgment debtor, the judgment creditor may institute a contest of such claim by filing with the sheriff an affidavit as required by law within the time provided in § 6-10-26, Code of Alabama 1975. If a timely contest of a claim of exemption is filed, the sheriff shall forthwith return the process and other papers to the court to which the process is returnable, accompanied with a full statement of the facts, and a hearing to determine said contest shall be scheduled by the court at the earliest practicable time and the contest shall be tried and determined as other contests of claims of exemption are tried and determined.

(f) *No contest filed.* If the judgment creditor, in person or by that party's agent or attorney, fails to file a timely contest with the sheriff after notice of the judgment debtor's claim of exemption, the sheriff shall forthwith release to the judgment debtor all property claimed as exempt that had not been sold prior to the filing of the claim of exemption. The sheriff shall then return the process and other papers to the court to which the process is returnable, accompanied with an itemized affidavit of the sheriff's costs of making the levy and keeping the property subject to the claim of exemption, which costs shall be taxed against the judgment creditor.

(g) *Discovery.* In aid of the judgment or execution, the judgment creditor or the judgment creditor's successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(dc) *District court rule.* Rule 69 applies in the district courts.

[Amended 11-5-85, eff. 12-2-85; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

The rule applies to all proceedings, whether heretofore regarded as legal or equitable, and it provides that a writ of execution shall be the normal process for enforcement of a money judgment. The procedure on execution is to be in accordance with statute. See Code of Ala., §§ 6-9-1 through 6-9-150. In this respect the rule makes no change, for by statute enforcement of equity decrees has long been analogized to execution of a judgment at law. Code of Ala., Tit. 7, § 332. Thus in most circumstances execution has entirely supplanted the classical equitable method of enforcement by contempt proceedings. But the "unless" clause of the first sentence allows use of methods other than writ of execution in cases where such methods are proper and the court so orders; for example, a judgment debtor in an alimony case may be proceeded against by

contempt and imprisonment. *Ex parte Stephenson*, 252 Ala. 316, 40 So.2d 716 (1949).

The third sentence makes the discovery procedures of Rules 26 to 37 available to the judgment creditor in aid of the judgment or execution. These procedures will be for the same purpose, but broader in their scope and simpler in their details, than the former remedies of a judgment creditor's bill or a statutory supplementary proceeding. Code of Ala., §§ 6-6-200 through 6-6-204. The statutes cited thus will be superseded by this rule.

Committee Comments to Amendment Effective December 2, 1985

The December 2, 1985, amendment of Rule 69 is related to the decision of the United States District Court for the Northern District of Alabama in *Green v. Harbin*, 615 F.Supp. 719 (N.D.Ala.1985), in which Alabama statutory procedures for garnishments and claims for exemption were successfully attacked on federal constitutional grounds. The same issues have been raised regarding Alabama's execution procedures in *Chapman v. Harbin*, CV-84-HM-5707NE. This amendment rewrote Rule 69. As rewritten, it provides a procedural framework for executions which is consistent with the mandates of the decision in *Green*. The amended rule is designed to insure that a judgment debtor will receive express notice of his rights of exemption. The judgment debtor may then file a claim for exemption with the sheriff, in which event he shall also file a copy thereof with the clerk of the court. This rule does not relieve the sheriff of his duty to serve the judgment creditor in the manner set out in § 6-10-26, Code of Alabama 1975. A procedure and a timetable are established for contesting a claim of exemption and for holding a hearing with respect to such a contest. Provision is made for the mandatory release of property claimed as exempt, if the judgment creditor fails to file with the sheriff a timely contest of such a claim of exemption. Finally, the amended rule follows its predecessor in making the discovery procedures of Rules 26 through 37 available to the judgment creditor in aid of judgment or execution.

Committee Comments to October 1, 1995, Amendment to Rule 69

The amendment is technical. No substantive change is intended.