VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 501

An Act to amend and reenact §§ 8.01-293, 8.01-466 and 8.01-511 of the Code of Virginia, relating to who may serve process.

[H 991]

Approved April 1, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-293, 8.01-466 and 8.01-511 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-293. Who to serve process.

The following persons shall ~~be eligible to~~ serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295; or

2. Any person of age eighteen years or older and who is not a party or otherwise interested in the subject matter in controversy. *Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.*

§ 8.01-466. Clerk to issue fieri facias on judgment for money.

On a judgment for money, it shall be the duty of the clerk of the court in which such judgment was rendered, upon request of the judgment creditor, his assignee or his attorney, to issue a writ of fieri facias at the expiration of twenty-one days from the date of the entry of the judgment and place the same in the hands of ~~the~~ *a* proper ~~officer of such court~~ *person* to be executed and take his receipt therefor. The writ shall be issued together with the form for requesting a hearing on a claim of exemption from levy as provided in § 8.01-546.1. For good cause the court may order an execution to issue on judgments and decrees at an earlier period.

§ 8.01-511. Institution of garnishment proceedings.

On a suggestion by the judgment creditor that, by reason of the lien of his writ of fieri facias, there is a liability on any person other than the judgment debtor or that there is in the hands of some person in his capacity as personal representative of some decedent a sum of money to which a judgment debtor is or may be entitled as creditor or distributee of such decedent, upon which sum when determined such writ of fieri facias is a lien, a summons in the form prescribed by § 8.01-512.3 may (i) be sued out of the clerk's office of the court from which an execution on the judgment is issued so long as the judgment shall remain enforceable as provided in § 8.01-251, (ii) be sued out of the clerk's office to which an execution issued thereon has been returned as provided in § 16.1-99 against such person or (iii) be sued out of the clerk's office from which an execution issued as provided in § 16.1-278.18. The summons and the notice and claim for exemption form required pursuant to § 8.01-512.4 shall be served on the garnishee, and shall be served on the judgment debtor promptly after service on the garnishee. Service on the judgment debtor and the garnishee shall be made pursuant to subdivision 1 or 2 of § 8.01-296. When making an application for garnishment, the judgment creditor shall set forth on the suggestion for summons in garnishment the last known address of the judgment debtor, and shall furnish the clerk, *if service is to be made by the sheriff, or shall furnish any other person making service* with an envelope, with first-class postage attached, addressed to such address~~, whereupon~~. A copy of the summons and the notice and claim for exemptions form required under § 8.01-512.4 shall be ~~inserted into such envelope by the clerk and~~ sent *by the clerk* to the sheriff *or provided by the judgment creditor to the person making service,* with the process to be served. ~~The sheriff,~~ Promptly after service on the garnishee, *the person making service* shall mail such envelope by first-class mail to the judgment debtor at his last known address. If the ~~serving officer~~ *person making service* is unable to serve the judgment debtor pursuant to subdivision 1 of § 8.01-296, such mailing shall satisfy the mailing requirements of subdivision 2 b of § 8.01-296. The ~~sheriff~~ *person making service* shall note on his return the date of such mailing which, with the notation "copy mailed to judgment debtor" shall be sufficient proof of the mailing of such envelope with the required copy of the summons and the notice and claim for exemption form ~~inserted by the clerk~~ with no examination of such contents being required ~~by the sheriff~~ nor separate certification by the clerk *or judgment creditor* that the appropriate documents have been so inserted. If the ~~serving officer~~ *person making service* is unable to serve the judgment debtor pursuant to subdivision 1 or 2 of § 8.01-296, such mailing shall constitute service of process on the judgment debtor. The judgment creditor shall furnish the social security number of the judgment debtor to the clerk, except as hereinafter provided.

The judgment creditor may require the judgment debtor to furnish his correct social security number by the use of interrogatories. However, use of such interrogatories shall not be a required condition of a judgment creditor's diligent good faith effort to secure the judgment debtor's social security number.

Such remedy shall be in addition to all other lawful remedies available to the judgment creditor.

Except as hereinafter provided, no summons shall be issued pursuant to this section for the garnishment of wages, salaries, commissions or other earnings unless it: (i) is in the form prescribed by § 8.01-512.3, (ii) is directed to only one garnishee for the garnishment of only one judgment debtor and (iii) contains both the "TOTAL BALANCE DUE" and the social security number of the judgment debtor in the proper places as provided on the summons. Upon receipt of a summons not in compliance with this provision, the garnishee shall file a written answer to that effect and shall have no liability to the judgment creditor, such summons being void upon transmission of the answer.

However, if the judgment which the judgment creditor seeks to enforce (i) does not involve a business, trade or professional credit transaction entered into on or after January 1, 1984, or (ii) is based on any transaction entered into prior to January 1, 1984, then upon a representation by the judgment creditor, or his agent or attorney, that he has made a diligent good faith effort to secure the social security number of the judgment debtor and has been unable to do so, the garnishment shall be issued without the necessity for such number. In such cases, if the judgment debtor's correct social security number is not shown in the place provided on the summons, and the judgment debtor's name and address as shown on the garnishment summons do not match the name and current address of any employee as shown on the current payroll records of the garnishee, the garnishee shall file a written answer to that effect and shall have no liability to the judgment creditor, such summons being void upon transmission of the answer.

The judgment creditor shall, in the suggestion, specify the amount of interest, if any, that is claimed to be due upon the judgment, calculated to the return day of the summons. He shall also set out such credits as may have been made upon the judgment.

No summons shall be issued pursuant to this section at the suggestion of the judgment creditor or his assignee against the wages of a judgment debtor unless the judgment creditor, or his agent or attorney, shall allege in his suggestion that the judgment for which enforcement is sought either (i) involves a business, trade or professional credit transaction entered into on or after January 1, 1984, or (ii) does not involve a business, trade or professional credit transaction entered into on or after January 1, 1984, and a diligent good faith effort has been made by the judgment creditor, or his agent or attorney, to secure the social security number of the judgment debtor.

In addition, the suggestion shall contain an allegation that:

1. The summons is based upon a judgment upon which a prior summons has been issued but not fully satisfied; or

2. No summons has been issued upon his suggestion against the same judgment debtor within a period of eighteen months, other than under the provisions of subdivision 1; or

3. The summons is based upon a judgment granted against a debtor upon a debt due or made for necessary food, rent or shelter, public utilities including telephone service, drugs, or medical care supplied the debtor by the judgment creditor or to one of his lawful dependents, and that it was not for luxuries or nonessentials; or

4. The summons is based upon a judgment for a debt due the judgment creditor to refinance a lawful loan made by an authorized lending institution; or

5. The summons is based upon a judgment on an obligation incurred as an endorser or comaker upon a lawful note; or

6. The summons is based upon a judgment for a debt or debts reaffirmed after bankruptcy.

Any judgment creditor who knowingly gives false information upon any such suggestion or certificate made under this chapter shall be guilty of a Class 1 misdemeanor.