BEYOND THE JUDGMENT

Sponsor: Young Lawyers Division
CLE Credit: 1.0
Thursday, June 18, 2015
8:30 a.m. - 9:30 a.m.
Thoroughbred 5-7
Lexington Convention Center
Lexington, Kentucky
A NOTE CONCERNING THE PROGRAM MATERIALS

The materials included in this Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered. No representation or warranty is made concerning the application of the legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how any particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of this Kentucky Bar Association CLE program disclaim liability therefore. Attorneys using these materials, or information otherwise conveyed during the program, in dealing with a specific legal matter have a duty to research original and current sources of authority.

Printed by: Evolution Creative Solutions
7107 Shona Drive
Cincinnati, Ohio 45237

Kentucky Bar Association
# TABLE OF CONTENTS

The Presenter .................................................................................................................. i

Beyond the Judgment ..................................................................................................... 1

Sample Rule Form ........................................................................................................ 15

Notice of Judgment Lien on Real Estate ........................................................................ 35

Probate Claim Form ...................................................................................................... 37
THOMAS L. CANARY, JR. is the president and shareholder in the Louisville firm of Mapother & Mapother, P.S.C., which joined the firm Fenton & McGarvey Law Firm, P.S.C. in May of 2015. He practices primarily in the areas of bankruptcy, collections, and creditors' rights. Mr. Canary received his B.S., with honors, from the University of Kentucky and was awarded his J.D. from the University of Kentucky College of Law. He is admitted to practice law in Kentucky, Indiana, West Virginia, and Ohio, the federal district courts in each of those states as well as the Sixth Circuit Court of Appeals. Mr. Canary is the Secretary to the National Association of Retail Collection Attorneys (NARCA) and past co-chair of its Education Committee. He was the recipient of NARCA's President's Award in 2009. Mr. Canary is also Vice-President of the Kentucky Creditors' Rights Bar Association. He is the current author and editor of Kentucky Collections. Mr. Canary has been picked as one of Louisville's "Top Attorneys" in both the field of bankruptcy and of creditor's rights and is a frequent writer and lecturer on bankruptcy and collections.
I. SCOPE

This outline will review matters that can arise after a judgment has been rendered in your client's favor in a civil matter. A presentation on appellate pratfalls was presented in the 10:40-11:40 a.m. segment yesterday and review of appellate decisions will be presented on Friday, June 19, as one of your choices in the 10:10-11:10 a.m. segment. Accordingly, this presentation will not focus on appeals, but on other events that occur after the judgment is entered, deemed "final,"¹ and not appealed. Given the author's background, the emphasis will focus on judgments for consumer debts, but most of the materials apply equally to any civil judgment.

A judgment for money may not be worth the paper upon which it is written, or these days, the space the image takes up on your hard drive. First, we will examine garnering information, then collection of those judgments—including the challenges faced there, then impediments to collection, namely bankruptcy and death claims.

II. POST-JUDGMENT DISCOVERY

CR² 69 encompasses provisional remedies and enforcement of judgments. CR 69.02 deals with garnishment, and CR 69.03 covers executions which allow specifically for the use of discovery in aid of execution.³ If yours is a consumer debt, you do not need to be concerned that taking the post-judgment deposition of a third party is an impermissible communication. 15 USCS §1692c(b) contains an express exemption for post-judgment discovery⁴ of third parties. Note that your actions must be reasonable and must be for the purpose of effectuating a post-judgment judicial remedy.

¹ CR 54.02.

² References to "CR" in this presentation is the shorthand used by the author for the Kentucky Rules of Civil Procedure.

³ CR 69.03: "...In aid of the judgment or execution, the judgment creditor, or his 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."

⁴ Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer,..." [Emphasis added]. Note that your actions must be reasonable and must be for the purpose of effectuating a post-judgment judicial remedy.
CR 60.03 does not limit the discovery tools you may use in aid of the judgment or execution. It could include written discovery, depositions, subpoenas and the like. Likewise, the discovery may be taken of any person. Taking the post-judgment discovery of friends, relatives, or associates of the debtor in order to determine the debtor's location and any assets maybe frowned upon by some clients and courts on a consumer debt, but this should not forestall a judgment creditor on other types of debt. Note that this could include discovery of a recalcitrant employer of a judgment defendant which fails to answer a garnishment (see the next section of this outline for a discussion of this circumstance). If the judgment-defendant is a corporation, the process agent, an officer, or even an employee can be deposed. You should always check with the secretary of state to get the address for the corporation, the agent for service of process, and to see if the corporate judgment-defendant is still in business. If the judgment-defendant is a partnership, discovery may be taken of another partner. Employees of corporations are also potentially useful sources of information regarding assets of the corporation, in particular if it is a closely held corporation.

Discovery may be taken of a third party whom the creditor believes may have property that belongs to the judgment-defendant. This could include debts owed by your judgment debtor to the third party, property, or money owed by the third party to the judgment debtor. If the third party is reluctant to provide information to you, the use of the proceedings supplemental and discovery incident thereto can serve two purposes: (1) such proceedings get that money into the possession of your client and, (2) it alleviates the third party's fears of paying the money to the creditor's attorney directly by paying the money or property into court. The judgment-defendant then can claim any exemptions or assert any other defenses. The creditor can safeguard that property from being transferred or placed beyond its reach. An orderly liquidation where everyone has an opportunity to have their day in court is always preferred.

Discovery also can be used in aid of enforcing the court's orders and liens, such as a garnishment. That will be discussed in further detail on the next section on Wage Garnishments.

III. WAGE GARNISHMENTS

As noted in the last section, CR 69.02 is the civil rule that addresses garnishments. It allows for service of the garnishment by first class or certified mail and

---

5 Or even the Consumer Financial Protection Bureau (CFPB), who could consider this an Unfair or Deceptive Act or Practice (UDAPP).

6 https://app.sos.ky.gov/ftsearch/.

7 (1) Service of post-judgment orders of attachment or garnishment upon third-party garnishees, such as employers and financial institutions, shall be served as prescribed in Rule 4 or, at the option of the plaintiff, may be directed by the plaintiff to the garnishee by regular first class or certified mail, or may be personally served by any person authorized to serve a subpoena pursuant to Rule 45.03. Expenses shall be recoverable as costs.
(2) Upon receiving a post-judgment order of garnishment, the garnishee shall answer within the time required by Rule 12.01, and unless otherwise ordered by the court shall
is served as you would a complaint or may be personally served by any person authorized to serve a subpoena pursuant to CR 45.03. These civil rules implement Chapters 425 and 426 of the Kentucky Revised Statutes. Garnishments are covered under Chapter 425.

KRS 425.501 details what must be done to process a garnishment once the judgment has been entered. There is no need to go into all the requirements here, because we are very fortunate to have the Kentucky Administrative Office of the Courts. It has developed forms that make the task much easier. These forms may be ordered from the Kentucky Administrative Office of the Court's Print Shop. For a garnishment you would choose Form Numbers 150, Order for Wage Garnishment. See also Forms 150.2, which is the form a party may use to challenge the garnishment, and Form 150.3, the Order for the Challenge. It is a multi-part form, color coded, detailing which copies go to whom. For the forms you can download online see: http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx. For those that may be ordered from the AOC Print Shop, see: http://courts.ky.gov/resources/legalforms/Documents/AllFormsListing.pdf. The top sheet of the form should be removed and mailed to the consumer. It contains the Notice of Rights to Assert Exemption. It details the amount that can be withheld from each paycheck and what to do if the consumer objects. Kentucky follows the federal wage garnishment exemptions in allowing a maximum withholding from weekly earnings of either 25 percent of the disposable earnings or the amount by which the disposable earnings exceed thirty times the federal minimum hourly wage, whichever is less. Disposable earnings are those amounts remaining after deduction of any amounts required by law to be withheld. Amounts required by law to be withheld include income taxes, occupational license taxes, social security, railroad retirement, retirement for teachers, state, and county employees, and court-ordered child support. The exempt earnings (meaning the greater of 75 percent of the disposable earnings) are to be paid to the employee in the usual manner.

make payments directly to the attorney for the party in whose behalf the order of garnishment was issued. If such party has no attorney of record, as, for example, in the instance of a "small claim," payments by the garnishee shall be made to the clerk of the court. Except for child support arrearages, where wages are garnished, the attorney for the party in whose behalf the order of wage garnishment was issued, or the clerk of the court if such party has no attorney of record, shall safely hold the garnished funds in escrow for a period of fifteen (15) days from the issuance date of the employer's garnishment check. If the debtor files an objection within that period, the funds shall continue to be held until the court rules upon the objection. If an exemption is asserted and a hearing held, the attorney or clerk of the court shall disburse the garnished funds as ordered by the court. If no exemption is asserted the attorney or clerk of the court shall after the fifteen (15) day period disburse the funds to the party in whose behalf the order of garnishment was issued.

8 KRS 425.506(3) & (4).

9 Defined at KRS 427.005 as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise." For a discussion of the term "earnings" see Rice, Seiller, Cantor, Anderson & Bordy v. Fitzgerald, 824 S.W.2d 435 (Ky. App. 1992).

10 KRS 427.010(2). The federal statute can be found at 15 U.S.C.A. §1673.
The second page is the Order of Wage Garnishment. It contains the worksheet the employer will use to calculate the amount to be sent to the creditor's counsel. The last page is the Affidavit for Order of Wage Garnishment that must be signed by the creditor's counsel. Use of this form helps to ensure uniformity and proper implementation of the statutory requirements.

The court cost/filing fee for issuing the garnishment is $10.00. Also, the garnishee-defendant (employer, bank, etc.) is entitled to a fee of $10.00. Keep tabs on these checks that you issue for this fee. They often go un-cashed as the garnishee-defendant does not know what to do with it. The fee to the court AND the cost to the garnishee-defendant should be collectable as costs. KRS 453.040 states that: "(a) The successful party in any action shall recover his costs." CR 54.04 further defines the recovery of costs by stating: "(1) Costs shall be allowed as of course to the prevailing party unless the court otherwise directs...." CR 69.02 specifically states that expenses shall be recoverable as costs. Reading the statute and these rules together leads your writer to the belief that both $10 fees can be taxed as a cost, added to the judgment and collected from the judgment defendant.

The garnishment creates a lien on all nonexempt earnings of the judgment-debtor for the pay period in which the garnishment is received and all subsequent pay periods until the judgment is paid in full. Unlike other states, the garnishment is paid until the judgment is paid in full, the consumer quits, files bankruptcy, or dies. If there are multiple garnishments received for the same judgment-debtor, then it is first in time, first in right. Once a prior garnishment is paid in full, the next in line should begin to be paid, immediately. The creditor should not have to file a subsequent garnishment. If you are second in line, prudence dictates you may want to check with the employer from time to time in the event they passed over your garnishment.

In some instances, you may receive a supplemental judgment for an award of costs, fees, damages incident to the collection of the original judgment, etc. In such instances you should complete and file an AOC-150.5, Affidavit and Supplemental Order of Wage Garnishment. Service of that form on the employer will continue the ongoing wage garnishment until the creditor is paid any costs and fees awarded after the original judgment. Payment of the supplemental sums should be paid prior to any subsequently filed garnishment lien.

When the payment is received by the creditor's representative, it is to hold the funds for fifteen days pending a challenge to the garnishment. If no challenge is received, the funds may be disbursed.

What if the garnishment is properly served and the garnishee-defendant fails to answer? KRS 425.511 allows the creditor's counsel to compel the garnishee-

---

11 KRS 425.501(3).

12 KRS 425.506(2).

13 CR 69.02(2).
defendant to appear in court and answer as to why it failed to respond. Oftentimes called a "Rule," this could lead to a judgment/order being entered against the garnishee-defendant for the payments that should have been made to the creditor but were not. For instance, if the garnishment was received by an employer who did not process the paperwork and failed to withhold the amounts allowed under the statute, a judgment could be entered against that employer for those sums. You can issue additional process, including garnishments, directly against the garnishee-defendant (employer) for assets in its name. Therefore, you may be collecting the original judgment against the consumer and a second judgment against his/her/its employer, bank, etc. A sample Rule has been attached to this outline.

IV. NON-WAGE GARNISHMENTS

Generally, these are garnishments sent to a party that owes the judgment-defendant money. It could be a bank, credit union, person leasing property from the judgment-debtor, person for whom the judgment-debtor is performing services, etc.

The lien is created once the garnishment is received by the garnishee-defendant. For example, when a non-wage garnishment is received by a bank, then it is to freeze any funds on deposit in which the judgment-debtor may have an interest, including joint accounts, as of the date of receipt. The non-wage garnishment should not include IRA accounts. KRS 427.150 totally exempts money in those accounts other than money contributed within 120 days before the debtor filed for bankruptcy. If there is money in the account on the day the garnishment is received by the bank, but the bank pays out that money and does not process the garnishment until the next day, the bank can be on the hook for the monies dissipated by the judgment-debtor.

For a graphic example of this, see McMahan & Co. v. Po Folks, Inc., 206 F.3d 627 (6th Cir. 2000), which cost the bank $114,830. Po Folks had an account at the subject bank that was swept every day into a general account that would not have been subject to the garnishment. At the time the garnishment was received by the bank – the time when the lien fixed to any funds in account on deposit at the bank – the sweep account contained funds. The bank only checked balances at the end of the day, and by that time, the accounts held zero since they had been swept. Through discovery, it was discovered that one account held $114,830 at the time of the garnishment but before the sweep, and the bank became liable to the creditor for that sum.

You may consider including reference to a safe deposit box. If it is attached, the bank should seal the box to deny the judgment-defendant access thereto. A letter can then be sent to the judgment-defendant to give them an opportunity to voluntarily open the box. If they refuse, a motion can be filed with the court, the result of which would be an order allowing the box to be drilled open in the presence of a sheriff, the contents inventoried and seized. The property could then be sold by the sheriff in satisfaction of the judgment.

The Order of Non-Wage Garnishment (AOC Form 150.1) states that the garnishee-defendant has twenty days to answer the garnishment and forward
that answer to the attorney. The reverse side of the second page of the form is an Answer and Affidavit for this purpose. If after fourteen days the garnishee-defendant has not received any further notice from the court, the money may be sent to the attorney for the creditor. The original of the Order must be returned to the court for filing.

KRS 426.381 states that once execution is issued in the county where the judgment was rendered, or in the county where the debtor resides, and is returned by the proper officer "no property found," the judgment creditor may file an amended and supplemental petition, re-docket the case, and join as additional defendants any persons believed to be either indebted or holding property and/or money belonging to the judgment debtor. At the judgment creditor's option, a separate suit in equity may be brought directly against the third party. This could include such entities as financial institutions, tenants or lessees of the judgment debtor, or even an estate in which the judgment debtor is a beneficiary. The "any person" language of the statute grants a judgment creditor great latitude.

An excellent example of the use of this statute, and all that it entails, was reviewed by the Kentucky Supreme Court. Inverultra, the judgment-creditor, received a $1.8 million dollar judgment against Zip Buffalo in New York. That judgment was then registered in Kentucky because Inverultra believed that Union Underwear, Inc, d/b/a Fruit of the Loom was paying rent to Zip and Inverultra wanted to attach those rent payments. A garnishment was issued to Union seeking that attachment. Union replied saying that it owed no funds to the judgment defendant, nor was holding property for it, nor had any contractual relationship with it. The court also denied a Motion to Enjoin Union from allegedly paying rent to the judgment defendant, the court being satisfied with an affidavit filed by Zip supporting Union's position that it did not owe money to the judgment-defendant. The creditor then moved to issue discovery in aid of execution on that judgment seeking to pierce an alleged corporate veil between Union and Zip. That motion was also denied because the discovery was being sought from a third party (Union), and not from the judgment defendant.

Next, the creditor invoked the execution provisions KRS 426.010, and had the circuit clerk issue to the sheriff of Warren County a writ of execution, served on Union, to attach any property it was holding that belonged to Zip, presuming no doubt that the writ would be returned "no property found" since Zip had already stated this in the affidavit noted above. The judgment creditor then sought leave, pursuant to KRS 426.381, to amend its complaint and institute a supplemental proceeding. As the Court of Appeals noted, such a proceeding is referred to as a "nulla bona" (no property) suit, the aim of which is to discover the judgment debtor's property and to subject it to the satisfaction of the judgment. This too

---

14 Wilkerson v. Phillips, 81 S.W. 691 (Ky. 1904).
15 Inverultra, SA v. Wilson, 449 S.W.3d 339 (Ky. 2014).
16 See also Universal C.I.T. Credit Corp. v. Bell High Coal Corp., 454 S.W.2d 706 (Ky. 1970).
17 See also CR 69.03.
was denied for the same reasons set forth above, the court seeing this as a thinly veiled attempt to revisit issues upon which the court had already ruled.

However, the court did allow discovery to proceed against Union, which sought a protective order, and Zip which objected to the discovery. The protective order was granted and the objections sustained. Frustrated by its inability to procure any discovery, the judgment creditor sought a writ of mandamus from the Court of Appeals to dissolve the injunction and require the parties to answer the post-judgment discovery; the writ was denied. This ruling, in turn, was appealed to the Kentucky Supreme Court.

The Supreme Court started its analysis by noting:

More than fifty years ago our predecessor Court explained that in cases where the trial court has jurisdiction but is alleged to be proceeding erroneously, mandamus (or prohibition) relief is generally not available "unless the petitioner establishes, as conditions precedent, that he (a) had no adequate remedy by appeal or otherwise, and (b) would suffer great and irreparable injury 'if error has been committed and relief denied.'” "This," the Court continued, "is a practical and convenient formula for determining, prior to deciding the issue of alleged error, if petitioner may avail himself of this remedy. As a general rule, if he has an adequate remedy by appeal or otherwise, or will not suffer great and irreparable injury, the petition should be dismissed forthwith." Bender v. Eaton, 343 S.W.2d 799, 801 (Ky. 1961) (citation omitted)

The Supreme Court went on to note that the judgment defendant has the opportunity to continue with its nulla bona suit in the trial court and thus did have a judicial remedy making further appeal premature. The Supreme Court continued with an excellent discussion of the use of the nulla bona suits and the general rule that rulings on discovery are interlocutory and not subject to appeal. This case is suggested—if not mandatory—reading for creditors seeking discovery in aid of execution.

While filing a nulla bona action may seem like a drastic measure, it sometimes is warranted. For instance, when property is discovered by the judgment creditor in the hands of an unrelated third party who is reluctant or refuses to release it, or if the debtor's interest or the priority of that interest in the property is not clear, proceedings supplemental become a viable solution. KRS 426.381 not only authorizes further post-judgment discovery, but the second subsection of that statute provides for attachment against the property held, in accordance with KRS Chapter 425. If attachment is not a preferred course of action, the judgment creditor may move the court to enter subsequent orders to reach any of the judgment debtor's property held by the third party. The court may also establish

---

18 See CR 81.
19 Inverultra, p. 6.
the priority of any competing interests in that property and, in the proper case, subject the property to the satisfaction of the outstanding judgment.

A similar method of instituting supplemental proceedings is provided under KRS 425.526. The difference between the two statutes is that KRS 425.526 authorizes the bringing of an action by petition or amended petition against a garnishee who fails to make a satisfactory disclosure to the judgment creditor/garnishor. Similar to KRS 426.381, this statute gives the petitioner the option of procuring an order of attachment in accordance with other provisions of that chapter. CR 69.02 governs the service of post-judgment orders of attachment and garnishment, garnishment answers, and disposition of funds.

Questions often come up about joint accounts – those situations where the creditor has a judgment against one party to a joint account. Questions arise on the parties' respective rights to those funds. Fortunately, the case law on this issue is very well developed.

Barton v. Hudson20 stands for the proposition that there is a presumption that the creditor is entitled to all of the money in a joint account as both parties to the account have an equal power of withdrawal over all the funds therein. Barton was modified later by the case of Brown v. Commonwealth.21 Brown adopted a two part test to determine the amount of funds in the account that would be subject to the judgment lien and details how the Barton presumption can be rebutted:

1. Proof of contributions by the party to the account who is not the judgment-defendant; and
2. Intention that the non-contributor's use of the others contributions be limited.

Therefore, if challenged, the objecting party would have to show the disputed amounts were deposited by them AND that they did not intend to allow the judgment defendant to access or use those funds. It is suggested that you get several months of account activity to show to what extent judgment defendant was allowed to use the funds and that may answer the question. Remember, the objecting party has the burden of proof since the presumption is in favor of the creditor until rebutted.

V. NOTICES OF JUDGMENT LIENS

KRS 426.720 allows a judgment creditor to place a lien against any interest in real property in which a judgment debtor has an interest. This is done by filing a single "notice of judgment lien" in the records of the clerk of every county in which that interest may exist. The fee for filing is currently $13.00.

The Notice of Judgment Lien (NJL) is filed with the court which rendered the judgment and is recorded in the land records of that county. For example, if the judgment-debtor owns property in Woodford and Nelson counties, you would need to record a NJL in both locations. Likewise, if a piece of property spans a county line, you would need to record a NJL in both counties to encumber the entire property.

The statute sets out the disclosures that must appear on the Notice of Judgment Lien. There is no AOC form, but a sample has been included in your materials.

The fact the judgment-defendant may not own full fee title to the real estate is not an impediment to the filing of the lien. KRS 426.190 allows for the sale under execution of property where the judgment-defendant owns less than the whole of the property, including, but not limited to, contingent interests or remainders, such as a dower or curtsey interest. Certainly, if property is owned by joint tenants with an indivisible fee interest, only a lien against both would encumber the property (versus tenants in common with a divisible interest). However, as noted, it is permissible to lodge the lien on the contingent fee in the event that party later accedes to the full fee interest. For example, suppose husband and wife own property as tenants in common with right of survivorship. You get a judgment against husband only and file a NJL against this property. If the wife were later to die, then the fee would pass to the husband to whom your NJL would attach.

You must also consider what would happen in a divorce in that situation. The divorce terminates or destroys an essential element of the tenancy – spousal unity. As a result, a decree of dissolution, by operation of law, terminates a tenancy by the entirety and parties then become tenants in common with a divisible one-half interest in the property. If you had filed a lien against one of those two parties prior to the divorce, you could argue that the Lien created in the prior indivisible interest in one of the two parties remains attached to the divisible one half interest upon the entry of the final divorce decree. If that property is awarded to the other spouse, it should be argued that it is transferred subject to your judgment lien. Domestic practitioners should run a title exam prior to accepting the martial property as part of the property settlement or their clients might get less than they bargained for... Find out what the result would be if the property is transferred as part of the divorce, prior to the final decree being entered. It is best to address this prior to the property settlement becoming final.

VI. BANKRUPTCY

Both a bankruptcy trustee and the debtor can take back property to which a lien has fixed within ninety days of the bankruptcy being filed. The federal bankruptcy statutes in question are 11 U.S.C. §547 (used by the trustee) and §522 (used by the consumer, in conjunction with §547).

---

Wage and Non-Wage Garnishments: Generally speaking, to the extent a creditor seizes from a consumer-debtor funds in excess of $600\textsuperscript{23} from any source (this could be a combination of garnishments from various paychecks and/or wages and attachments from bank accounts), within ninety days of the filing of the bankruptcy petition, the funds could be subject to turn over to the bankruptcy trustee. For purposes of wages, the time period is calculated from the date the consumer earns the wages\textsuperscript{24} since this is when the consumer "gets rights" in the wages. For purposes of a non-wage garnishment, it is when that garnishment is received by the bank or other garnishee-defendant. Many times a trustee will not seek a return of those monies since the return to the creditors of the bankruptcy estate would be minimal. If the expense of taking back the funds, less the trustee’s statutory fee, will result only in a small dividend being paid to the creditors of the bankruptcy estate, the trustee could decline and abandon any interest in the wages/accounts.

On the other hand, funds that may be deemed minor to the trustee could be significant to the consumer debtor. 11 U.S.C. §522(h) allows the consumer debtor to seek return of the same funds that a trustee could demand, with these restrictions:

1. The lien is a type that could be avoided by the trustee;

2. The trustee does not avoid the lien on behalf of bankruptcy estate's creditors; AND

3. The debtor has the ability to exempt the funds.

If the trustee could not avoid the transfer, then neither could the debtor, i.e., any defenses you have against the trustee you would have against the consumer-debtor. Even if the trustee could avoid the lien, the consumer debtor cannot step into the trustee's shoes unless he/she has the capacity to exempt the funds. If a motion for return of the funds is filed, you need to check the consumer's list of exemptions (Schedule C). Note: it is not that the consumer has plead the exemption, only that the debtor has the ability to claim the exemption, i.e., she/he has not exhausted all their exemptions available for these funds. If the debtor seeks return of the funds, the creditor's counsel should check both of these points and object where warranted.

Judgment Liens: Under 11 U.S.C. §522(f), the consumer-debtor can avoid the fixing of a judicial lien on real property unless that lien secures a domestic support obligation.\textsuperscript{25}

The test is straightforward and mathematical. If the judicial lien impairs an exemption to which the consumer-debtor is entitled, then the lien can be avoided. To determine if the judicial lien impairs the exemption, you use the following calculation found in 11 U.S.C.A. §522(f)(2)(A). If the sum of:

\[23\text{ See, 11 U.S.C.A. §547(c)(8).}\]

\[24\text{ 11 U.S.C §547(e)(3).}\]

\[25\text{ 11 U.S.C. §§522(f)(1)(A) and 523(a)(5).}\]
a. The creditor’s lien, plus;
b. All other liens on the property (unless that lien has already been avoided), plus;
c. The amount of the exemption that the debtor could claim on the property if there were no liens on the property exceeds the value of the debtor’s interest in the property, then the lien can be avoided. KRS 427.170 allows the consumer to pick between pleading the state and federal exemptions. The homestead exemption in Kentucky is $5000.²⁶ The same exemption under the federal scheme is $22,975,²⁷ plus a wildcard exemption of $1,225.²⁸ Remember, this is per consumer, so if you have a joint bankruptcy petition and both debtors are owners of the property, this figure is doubled.²⁹

Now for an example. Assume the property is owned in fee simple by a husband and wife:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Value</td>
<td>$150,000</td>
</tr>
<tr>
<td>Judgment Lien</td>
<td>$12,000</td>
</tr>
<tr>
<td>Mortgages on Property</td>
<td>$100,000</td>
</tr>
<tr>
<td>Exemptions that could be plead:</td>
<td>$45,950</td>
</tr>
<tr>
<td><strong>Total Liens + exemption</strong></td>
<td><strong>$157,950</strong></td>
</tr>
</tbody>
</table>

Since the sum of the liens and exemptions are greater that the value of the property, the lien can be avoided. Creditors should pay close attention to the value given to the property and may want to have an independent appraisal done.

VII. DEATH CLAIMS

After the entry of judgment, the judgment-defendant may pass away. Sometimes no estate is opened since the decedent has no assets to administer or the value of the assets is less than the exemptions available. However, if an estate for the decedent opened, there are deadlines for filing your claim.

KRS 396.015 states a claim must be presented by delivering or mailing a statement of the claim to the personal representative or by filing a statement of claim with the clerk of court in the form prescribed by rule. I would do both. I would send the claim to the estate’s representative by certified mail to evidence

---

²⁶ KRS 427.060.
²⁹ Note however that the Sixth Circuit Court of Appeals has held that if one of two tenants to a tenancy by the entireties files for bankruptcy relief, they are charged with the total value of the property, not just one half, since as a tenant by the entireties, he/she is deemed to own the entire property with an undivided interest. If it is a tenancy in common or joint tenancy, then only one half may be charged. See, In re Brinley, 403 F.3d 415 (6th Cir. 2005).
receipt in the event this became an issue. If the executor/administrator has
counsel, I would send a courtesy copy to them. **Sending the claim to the
attorney only does not comply with the statute** – the claim must be sent to
the representative.

There is no form in the statute, so a suggested form is included with this outline.
The basis of the claim must be stated. If the claim is not yet due, the date that the
obligation will become due must be stated. If the claim is contingent (i.e., there is
something left to be done before the debt is due), or unliquidated (the exact
amount of the debt has not been determined yet), the nature of the uncertainty
must be stated. If the claim is secured, the statement of claim must describe the
security. In the situation where a lawsuit is pending against the decedent, the
substitution of the personal representative (the executor or administrator) or a
motion to substitute the personal representative for the decedent will constitute
the presentation of the claim.

Creditors have six months **after the date of the appointment of a personal
representative** within which to file a claim. If no personal representative is
appointed, claims must be made within two years after the decedent's death.**

Once the claim is filed, the personal representative can do a couple of things
requiring a response by the creditor.

First, the personal representative, in writing, may require the creditor to present
an affidavit to prove the claim. The affidavit must state: (1) that the claim is just;
(2) whether any part of the claim has been paid, and, if so, the nature and
amount of payment; and (3) whether there is a set-off against the claim (i.e.,
money owed to the decedent by the creditor) and, if so, the nature and amount of
the set-off.**

Secondly, within sixty days of the claim being presented, the personal
representative may allow or disallow the claim.** If allowed, the claim still can be
disallowed within this sixty day period. However, once disallowed, the claim
cannot then be allowed. If the personal representative sends a notice disallowing
the claim, that notice MUST include a statement that unless the claimant
commences an action against the personal representative no later than sixty
days after the **mailing of the notice of disallowance**, the claim will be barred. If
the notice does not contain that warning, the disallowance is not effective.**

**Note that the claimant STILL must file suit in the probate action to
determine the claim – failure to include the warning simply means that the

30 KRS 396.011.

31 KRS 396.026.

32 KRS 396.055.

33 For example, see Patterson v. Estate of Boone, 150 S.W.3d 58 (Ky. App. 2003).
sixty day bar period is ineffective.\textsuperscript{34} Prevailing on the suit in probate court against the personal representative serves to allow the claim.\textsuperscript{35}

What if the claim is properly and timely presented, there is no disallowance, the assets are administered, and the claim simply is unpaid? Absent fraud or wrongdoing, the personal representative will not be liable to creditor as he/she did not benefit from the distribution. Claims can be made against the distributees of the estate to the extent they received a payment, and no more,\textsuperscript{36} with the option of seeking contribution from other distributees.

If the claim is secured, the estate need only pay the claim less the value of the security.\textsuperscript{37} However, even if a secured claim is disallowed or the claim not timely paid, that does not affect the security interest in property pledged on that debt. The claim of the creditor is limited to recovery and liquidation of its collateral and it does not get to participate with creditors who have timely filed claims that are allowed. Said differently, KRS 396.011 is a timer period within which a creditor must file a claim against the estate. KRS 396.135 makes it clear that the filing of a decedent's estate does not prevent the enforcement of mortgage, security interest, judicial lien or the like.\textsuperscript{38}

If you have an action pending and a party to that litigation dies, the issue of revivor and substitution of parties arises. Whether a personal representative seeks to continue an action in the name of the deceased or a party seeks to file suit against or join the personal representative to the action as the party-defendant to liquidate that cause of action, KRS 395.278 mandates the revivor be filed within one year from the death of that party. This is deemed a statute of limitations and cannot be extended, absent a showing of concealment. If that is not done, then the action may be dismissed as the proper party may no longer be before the court. In the event the personal representative dies, is replaced, or is superseded, KRS 395.280 allows his/her successor to be substituted, by order of the court, for the original plaintiff or defendant. Kentucky Rule of Civil Procedure 25.01 implements this statute and states that if the substitution is not made, the case may be dismissed as to the deceased party. You must first move to revive the action under KRS 395.278 and if that motion is sustained and order entered, then the Civil Rule allows for that party to be substituted in the action. Revive, then substitute.


\textsuperscript{35}KRS 396.055.

\textsuperscript{36}KRS 396.195.

\textsuperscript{37}KRS 396.105.

VIII. CONCLUSION

Certainly, there are a plethora of matters that can arise Beyond the Judgment affecting the ability to collect. These materials touch on but a few of the most common. As an attorney, a now bankruptcy judge was heard to say, you always "read the rule, read the rule, read the rule." Good luck and happy hunting or defending, as the case may be.
Please take notice that on {Hearing Date}, at {Hearing Time}, or as soon thereafter as counsel may be heard, Plaintiff, by counsel, will move as set forth below.

{KY Sig Block}
MAPOTHER & MAPOTHER, P.S.C.

By: __________________________
Thomas L. Canary, Jr.
Counsel For Plaintiff
815 West Market Street, Ste. 500
Louisville, KY 40202
502-587-5400

MOTION

Comes the Plaintiff, {PLAINTIFF NAME}, by counsel, and moves the Court to issue a Rule against the garnishee-defendant, {POE Name}, requiring it to appear and show cause why they should not be held in contempt for failure to {If garn payments have been rec'd from this POE} submit timely payments on ELSE file a good and legal answer to ENDIF the Court's Order of Continuous Garnishment served on said garnishee-defendant on or about {date garn served on POE} against the wages of defendant {Debtor Name Alternate Name}.

In support of said Motion, counsel for plaintiff tenders herewith his/her affidavit evidencing that he/she has not received any payments {If garn pyts have been received from this POE} since {last date garn pyt rec'd from this POE} from garnishee-defendant, {POE Name}, pursuant to the Court's Order of Continuous Garnishment against {Debtor Name Alternate Name}. Counsel for plaintiff has never been notified that the defendant has been discharged from his/her employment and even has verification as of {POE Verified Date}, that defendant was employed at {POE Name} (see affidavit of paralegal).

Further, counsel for plaintiff tenders herewith an affidavit evidencing that the paralegal assigned to this case has made several attempts by telephone and mail to discuss this matter with the garnishee-defendant.

The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose, and this communication is from a debt collector.
CERTIFICATE

I hereby certify that a copy of the foregoing {If Notice Required} Notice and ENDIF Motion together with tendered Order and Rule has been mailed to {POE name}, Garnishee-Defendant, {POE Address} this ____ day of _______________, 20___.

{KY Sig Left}
MAPOTHER & MAPOTHER, P.S.C.

By: ________________________________
Thomas L. Canary, Jr.
Counsel For Plaintiff
815 West Market Street, Ste. 500
Louisville, KY 40202
502-587-5400

KY_#### / {File No}
AFFIDAVIT

Comes the undersigned affiant, after first being duly sworn, states as follows:

1. That he/she is counsel for Plaintiff herein, {PLAINTIFF NAME};

2. That on or about {Date garn Served on POE}, a garnishment was issued against {Debtor Name Alternate Name} on behalf of the plaintiff, {PLAINTIFF NAME}, and served on said defendant's place of employment, {POE Name and Address};

3. That counsel for plaintiff has not received any monies {If garn pyts have been received from this POE} since {last date garn pyt rec'd from this POE} from on ELSE to date pursuant to ENDIF the Court's Order of Garnishment against {Debtor Name Alternate Name};

4. That as of this date, counsel has not been notified that the defendant has been discharged from his/her employment with {POE Name};

5. The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose and this communication is from a debt collector;

6. Further affiant sayeth naught.

_____________________________
Affiant
Counsel for Plaintiff
{Firm Address}
{Firm Phone}

{Insert Template for KY Notary Signature Block}
STATE OF KENTUCKY
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this ____ day of __________, 20__ by______________________________.

_____________________________
NOTARY PUBLIC, STATE AT LARGE, KY
My commission expires: ______________.

KY_#### / {File No}
ORDER FOR GARNISHMENT RULE

Motion having been made for a Rule against the garnishee-defendant, {POE Name}, and it appearing from the record herein that said garnishee-defendant has failed to {If garn pyts have been received from this POE} send timely payments or ELSE file a good and legal answer to ENDIF the garnishment of {PLAINTIFF NAME}, served on or about {Date Garn Served on POE}, against the wages of {Debtor Name Alternate Name}, and this Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that a Rule be issued directing said garnishee-defendant to appear before the Court to show cause, as to why it {If garn pyts have been received from this POE} has not or cannot send timely payments on ELSE should not file a good and legal answer to ENDIF the garnishment herein and to bring before the Court all books, records, etc., relating to the payroll and employment of the defendant, {Debtor Name Alternate Name}, or be punished for contempt of Court for failure in either regard. Said Rule is to be returnable______________, at __________________, or as soon thereafter as it can be heard.

_____________________________________
JUDGE
DATE:

This Order tendered by:

MAPOTHER & MAPOTHER, P.S.C.

By: ______________________________________
Thomas L. Canary, Jr.
Counsel For Plaintiff
815 West Market Street, Ste. 500
Louisville, KY 40202
502-587-5400

KY_#### / {File No}
THE COMMONWEALTH OF KENTUCKY

{Court name}, {Court County} County, Kentucky

Returnable before {Court Name} at

___________________________________

{PLAINTIFF NAME}

vs.  Plaintiff

{Debtor Name Alternate Name}

___ __ __ __

___ _     Defendant

_________________________________________

TO THE SHERIFF GREETINGS:

SERVE:  {POE Name}

{POE Address}

On motion of {PLAINTIFF NAME}, by counsel, a Rule was awarded against

{POE Name}, {POE Address}, returnable ______________________, at _________ at

the {Court Name}, {Court County}, County Courthouse, {Court City}, {Court State} to

show cause, if any, why the garnishee has not or cannot {If garn pyts have been

received from this POE} send timely payments on ELSE file a good and legal answer to

ENDIF the garnishment of {PLAINTIFF NAME}, served on or about {Date POE garn

Served}, against the wages of {Debtor Name Alternate Name}, and to bring before this

Court all books, records, and other documents relating to the payroll or employment

of the defendant, {Debtor Name Alternate Name}, or be punished for CONTEMPT OF

COURT for failure in either regard.

WITNESS ________________________________, Clerk of said Court, this ___

day of ________, 2015.

______________________________, Clerk

BY: ________________________________, D.C.

KY_#### / {File No}
No. 07-84878  ABC Merchants, Inc.  Plaintiff vs.  John Q. Public aka John Quincy Public  Defendant(s)

NOTICE

* * * * *

Please take notice that on December 15, 2015, at 9:30 a.m., or as soon thereafter as counsel may be heard, Plaintiff, by counsel, will move as set forth below.

MAPOTHER & MAPOTHER, P.S.C.

By: __________________________
Thomas L. Canary, Jr.
Counsel For Plaintiff
815 West Market Street, Ste. 500
Louisville, KY 40202
502-547-5400

MOTION

* * * * *

Comes the Plaintiff, ABC Merchants, Inc., by counsel, and moves the Court to issue a Rule against the garnishee-defendant, K-Mart, requiring it to appear and show cause why they should not be held in contempt for failure to submit timely payments on the Court's Order of Continuous Garnishment served on said garnishee-defendant on or about September 1, 2014 against the wages of defendant John Q. Public aka John Quincy Public.

In support of said Motion, counsel for plaintiff tenders herewith his/her affidavit evidencing that he/she has not received any payments since October 1, 2014 from garnishee-defendant, K-Mart, pursuant to the Court's Order of Continuous Garnishment against John Q. Public aka John Quincy Public. Counsel for plaintiff has never been notified that the defendant has been discharged from his/her employment and even has verification as of March 15, 2014 that defendant was employed at K-Mart (see affidavit of paralegal).

Further, counsel for plaintiff tenders herewith an affidavit evidencing that the paralegal assigned to this case has made several attempts by telephone and mail to discuss this matter with the garnishee-defendant.

The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose and this communication is from a debt collector.
CERTIFICATE
I hereby certify that a copy of the foregoing Notice and Motion together with tendered Order and Rule has been mailed to K-Mart, Garnishee-Defendant, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266, this _____ day of ____________, 20__. 

MAPOTHER & MAPOTHER, P.S.C.

By: ____________________________
Thomas L. Canary, Jr.
Counsel For Plaintiff
815 West Market Street, Ste. 500
Louisville, KY 40202
502-587-5400
AFFIDAVIT

Comes the undersigned affiant, after first being duly sworn, states as follows:

1. That he/she is counsel for Plaintiff herein, ABC Merchants, Inc.;

2. That on or about September 1, 2014, a garnishment was issued against John Q. Public aka John Quincy Public on behalf of the plaintiff, ABC Merchants, Inc., and served on said defendant's place of employment, K-Mart, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266;

3. That counsel for plaintiff has not received any monies since October 1, 2014 from on the Court's Order of Garnishment against John Q. Public aka John Quincy Public;

4. That as of this date, counsel has not been notified that the defendant has been discharged from his/her employment with K-Mart;

5. The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose, and this communication is from a debt collector;

6. Further affiant sayeth naught.

Affiant
Counsel for Plaintiff
801 West Jefferson Street
Louisville, KY 40202

STATE OF KENTUCKY
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this ____ day of ____________, 20__ by ______________________________.

NOTARY PUBLIC, STATE AT LARGE, KY
My commission expires: ____________.
ORDER FOR GARNISHMENT RULE

Motion having been made for a Rule against the garnishee-defendant, K-Mart, and it appearing from the record herein that said garnishee-defendant has failed to send timely payments on the garnishment of ABC Merchants, Inc., served on or about September 1, 2014, against the wages of John Q. Public aka John Quincy Public, and this Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that a Rule be issued directing said garnishee-defendant to appear before the Court to show cause, as to why it has not or cannot send timely payments on the garnishment herein and to bring before the Court all books, records, etc., relating to the payroll and employment of the defendant, John Q. Public aka John Quincy Public, or be punished for contempt of Court for failure in either regard.

Said Rule is to be returnable ________________, at ______________________, or as soon thereafter as it can be heard.

JUDGE
DATE:

This Order tendered by:
MAPOTHER & MAPOTHER, P.S.C.

By: __________________________________________
Heather R. Peters
Steven B. Mulrooney
Jenelle Coulter
Fred S. Hecht
Counsel For Plaintiff
801 West Jefferson Street
Louisville, KY 40202
502-587-5411
KY_####/07-12345
THE COMMONWEALTH OF KENTUCKY
Jefferson District Court, Jefferson County, Kentucky
Returnable before Jefferson District Court at

_________________________________________________

ABC Merchants, Inc.                                        Plaintiff
vs.                                                      Defendant
John Q. Public aka John Quincy Public

_________________________________________________

TO THE SHERIFF GREETINGS:
SERVE:  K-Mart
      Attn: Payroll Dept.
      1234 South Preston Street
      Louisville, KY  40266

On motion of ABC Merchants, Inc., by counsel, a Rule was awarded against K-Mart, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266, returnable___________________, at ______________________ at the Jefferson District Court, Jefferson, County Courthouse, Louisville, KY to show cause, if any, why the garnishee has not or cannot send timely payments on the garnishment of ABC Merchants, Inc., served on or about September 1, 2014, against the wages of John Q. Public aka John Quincy Public, or be punished for CONTEMPT OF COURT for failure in either regard.

WITNESS ______________________________, Clerk of said Court, this _____ day of ________________________, 2015.

______________________________, Clerk

BY:_______________________________________, D.C.

KY_####/07-12345
MOTION

Comes the Plaintiff, ABC Merchants, Inc., by counsel, and moves the Court to issue a Rule against the garnishee-defendant, K-Mart, requiring it to appear and show cause why they should not be held in contempt for failure to file a good and legal answer to the Court's Order of Continuous Garnishment served on said garnishee-defendant on or about September 1, 2014 against the wages of defendant John Q. Public aka John Quincy Public.

In support of said Motion, counsel for plaintiff tenders herewith his/her affidavit evidencing that he/she has not received any payments from garnishee-defendant, K-Mart, pursuant to the Court's Order of Continuous Garnishment against John Q. Public aka John Quincy Public. Counsel for plaintiff has never been notified that the defendant has been discharged from his/her employment and even has verification as of March 15, 2015 that defendant was employed at K-Mart (see affidavit of paralegal).

Further, counsel for plaintiff tenders herewith an affidavit evidencing that the paralegal assigned to this case has made several attempts by telephone and mail to discuss this matter with the garnishee-defendant.

The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose and this communication is from a debt collector.

MAPOTHER & MAPOTHER, P.S.C.

By: __________________________
Heather R. Peters
Steven B. Mulrooney
Jenelle Coulter
Fred S. Hecht
Counsel For Plaintiff
801 West Jefferson Street
Louisville, KY 40202
502-587-5411

CERTIFICATE

I hereby certify that a copy of the foregoing Notice and Motion together with tendered Order and Rule has been mailed to K-Mart, Garnishee-Defendant, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266, this ___ day of _____________, 20__.

MAPOTHER & MAPOTHER, P.S.C.

By: __________________________
Heather R. Peters
Steven B. Mulrooney
Jenelle Coulter
Fred S. Hecht
Counsel For Plaintiff
AFFIDAVIT

Comes the undersigned affiant, after first being duly sworn, states as follows:

1. That he/she is counsel for Plaintiff herein, ABC Merchants, Inc.;

2. That on or about September 1, 2014, a garnishment was issued against John Q. Public aka John Quincy Public on behalf of the plaintiff, ABC Merchants, Inc., and served on said defendant's place of employment, K-Mart, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266;

3. That counsel for plaintiff has not received any monies to date on the Court's Order of Garnishment against John Q. Public aka John Quincy Public;

4. That as of this date, counsel has not been notified that the defendant has been discharged from his/her employment with K-Mart;

5. The plaintiff's counsel is attempting to collect a debt and any information the plaintiff's counsel obtains will be used for that purpose, and this communication is from a debt collector;

6. Further affiant sayeth naught.

_____________________________
Affiant
Counsel for Plaintiff
801 West Jefferson Street
Louisville, KY 40202

STATE OF KENTUCKY
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this ____ day of ____________, 20__ by ______________________________.

_____________________________
NOTARY PUBLIC, STATE AT LARGE, KY
My commission expires: ____________.
ORDER FOR GARNISHMENT RULE

Motion having been made for a Rule against the garnishee-defendant, K-Mart, and it appearing from the record herein that said garnishee-defendant has failed to file a good and legal answer on the garnishment of ABC Merchants, Inc., served on or about September 1, 2014, against the wages of John Q. Public aka John Quincy Public, and this Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that a Rule be issued directing said garnishee-defendant to appear before the Court to show cause, as to why it has not or cannot send timely payments on the garnishment herein and to bring before the Court all books, records, etc., relating to the payroll and employment of the defendant, John Q. Public aka John Quincy Public, or be punished for contempt of Court for failure in either regard. Said Rule is to be returnable _______________________, at ____________________, or as soon thereafter as it can be heard.

This Order tendered by:

MAPOTHER & MAPOTHER, P.S.C.

By:____________________
Heather R. Peters
Steven B. Mulrooney
Jenelle Coulter
Fred S. Hecht
Counsel For Plaintiff
801 West Jefferson Street
Louisville, KY 40202
502-587-5411
KY_####/07-12345
THE COMMONWEALTH OF KENTUCKY
Jefferson District Court, Jefferson County, Kentucky
Returnable before Jefferson District Court at

_______________________________________________________

ABC Merchants, Inc.                                    Plaintiff
vs.                                                     Defendant

John Q. Public aka John Quincy Public

_______________________________________________________

TO THE SHERIFF GREETINGS:
SERVE:       K-Mart
             Attn: Payroll Dept.
             1234 South Preston Street
             Louisville, KY 40266

On motion of ABC Merchants, Inc., by counsel, a Rule was awarded against K-Mart, Attn: Payroll Dept., 1234 South Preston Street, Louisville, KY 40266, returnable ______________________ at ______________________ at the Jefferson District Court, Jefferson, County Courthouse, Louisville, KY to show cause, if any, why the garnishee has not or cannot file a good and legal answer to the garnishment of ABC Merchants, Inc., served on or about September 1, 2014, against the wages of John Q. Public aka John Quincy Public, or be punished for CONTEMPT OF COURT for failure in either regard.

WITNESS ______________________, Clerk of said Court, this ___ day of ____________, 2015.

__________________________________________, Clerk

BY: _____________________________________, D.C.

KY_####/07-12345

33
NOTICE OF JUDGMENT LIEN ON REAL ESTATE

JUDGMENT DEBTOR: Sterling Jewelers Inc. dba JB Robinson Jewelers 375 Ghent Road Akron, OH 44333-4601

Judgment Amount: PO-$2,991.79 JAmt-$2809.54, Int-$8.31, AF-$0.00, CC-$173.94, Pmts-$0.00
Interest Rate: 12.00% from February 12, 2015 until paid
Judgment Date: February 3, 2015

THE FILING OF THIS NOTICE IN THE COUNTY CLERK'S OFFICE BELOW ACTS AS A LIEN UPON ALL REAL ESTATE IN THAT COUNTY, IN WHICH THE JUDGMENT DEBTOR HAS ANY OWNERSHIP INTEREST.

TO THE CLERK OF THE COUNTY STATED BELOW:

Pursuant to KRS 426.720, you shall immediately enter this Notice of Judgment Lien in the lis pendens records of your office, to act as a lien upon all real estate in your County in which the above JUDGMENT DEBTOR has any ownership interest. You shall note your entry upon the original of this Notice, and return a copy thereof of the attorney for Judgment Creditor whose name and address are below.

TO: __________ County Clerk

NOTICE TO JUDGMENT DEBTOR:
YOU MAY BE ENTITLED TO AN EXEMPTION UNDER KRS 427.060, REPRINTED BELOW. IF YOU BELIEVE YOU ARE ENTITLED TO ASSERT AN EXEMPTION, SEEK LEGAL ADVICE.

KRS 427.060: “In addition to any exemption of personal property, an individual debtor’s aggregate interest, not to exceed five thousand dollars ($5,000.00) in value, in real or personal property that such debtor or a dependent of such debtor uses as a permanent residence in this state, or in a burial plot for such debtor or dependent of such debtor is exempt from sale under execution, attachment or judgment, except to foreclosure a mortgage given by the owner of a homestead or for purchase money due thereon. This exemption shall not apply if the debt or liability existed prior to the purchase of the property or the erection of the improvements thereon.”

I certify that a copy of this Notice of Judgment Lien on Real Estate has been hand-delivered or mailed to the last known address of the above judgment debtor and to the Court Clerk below, by regular first-class mail, postage pre-paid, on the following date: ______________________.
The Plaintiff’s counsel is attempting to collect a debt, any information the plaintiff’s counsel obtains will be used for that purpose, and this communication is from a debt collector.

TO: ____________ District Court Clerk

PREPARED BY:
Mapother & Mapother, P.S.C.

BY: ______________________________

815 West Market Street, Suite 500
Louisville, KY  40202-2654
(502) 992-1218
IN RE THE ESTATE OF _____________

PROOF OF CLAIM

This claim is presented pursuant to KRS 396.015.

1. **Basis of Claim:** This claim is based upon two (2) written contracts, copies of which are attached hereto as Exhibits 1-2.

2. **Name and Address of Claimant:**
   (Name of Creditor/Claimant)
   (Street Address for Creditor/Claimant)
   (City), (State) (Zip)

3. **CLAIM 1:** Amount Claimed (this is a liquidated sum): $___________, plus interest at the rate of ___% from ________ until paid, and a reasonable attorney fee pursuant to the contract and KRS (Eg. 411.195).

4. **Security:** This claim is secured as evidenced by the security agreement filed with this claim as part of Exhibit A. A description of the security is as follows:
   (Description of Collateral)
   VIN/SN: ______________

5. **CLAIM 2:** ___% from ______ __, ____ until paid, and a reasonable attorney fee pursuant to the contract and KRS (Eg. 411.195).

6. **Security:** This claim is unsecured.

7. Any pleadings, correspondence, or the like should be directed to the attorney for the Claimant signing below. Counsel states that he is not a salaried employee of the Claimant.
Respectfully Submitted

______________________________________________
(Name of Attorney)
(Firm)
Counsel for the Claimant
(Street Address)
(City), (State) (Zip)
(___) ___-____ Phone
(___) ___-____ Fax
emailaddress@domain.com Email

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Proof of Claim has been sent, via first class mail, postage prepaid to personal representative, and the Estate's attorney listed below this ___ day of __________, ____. 

______________________________________________
(Name of Attorney)

Author's Note:
A copy of this proof of claim also should be filed with the probate court and a file stamped copy retained for your records.