



The City of New York
Department of Investigation

New York City Marshals
Handbook of Regulations

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Foreword

In 1938, Mayor Fiorello LaGuardia delegated to the Commissioner of Investigation the responsibility to supervise New York City Marshals. Sixteen years later, in 1954, the Bureau of City Marshals was formally established at the Department of Investigation to carry out the Mayor's mandate. During Mayor Robert Wagner's third term, the State Court underwent reorganization, and as a result, the Municipal Court and City Court were replaced by the Civil Court of the City of New York.

Pursuant to Article 16 of the New York City Civil Court Act, marshals became officers of the Civil Court of New York City. The authority to appoint city marshals remained with the mayor; however, the power to suspend and remove city marshals became vested in the Appellate Divisions for the First and Second Judicial Departments. In 1968, these courts held that “the Appellate Divisions in the First and Second Judicial Departments are jointly vested with the power to supervise the activities of New York City Marshals and that the routine exercise of that power was lawfully delegated by the Appellate Divisions, through the Mayor, to the Department of Investigation.”¹

During the period of its supervision of marshals, the Department of Investigation has issued numerous directives from time to time prescribing the standards for marshals' official conduct, as well as the standards for the maintenance of official books and records.

On November 12, 1975 and February 27, 1976, the Appellate Divisions for the First and Second Judicial Departments issued Joint Administrative Orders 453 and 456, concerning the supervision of city marshals. These orders formally set forth the Department of Investigation's supervisory powers, which include the power to conduct investigations into marshals' activities, examine their books and records, promulgate directives concerning the official records to be kept by them and the procedures for performing their official duties, as well as the power to discipline them.

Joint Administrative Order 453 specifically authorized the Department of Investigation, with the approval of both Appellate Divisions, to promulgate a “handbook of regulations” for city marshals. Thus, this handbook is a direct result of the authority vested in the Department of Investigation by the Appellate Divisions for the First and Second Departments. This handbook, which the Appellate Divisions approved on March 25, 2013, replaces the previous Handbook of Regulations, issued in 1997.²

The purpose of updating the Marshals Handbook is to set forth in one reference this Department's directives, issued through the years (as well as certain new directives), for official conduct and record keeping. All current directives have been codified within this handbook. As always, a marshal shall be accountable for the duties, functions, and responsibilities that are delegated to him or her pursuant to judicial order, Department of Investigation directive, and this Handbook of Regulations.

¹ *Fraiman v. Mancuso*, 30 A.D. 2d 108, 109 (1st and 2nd Dep'ts 1968), *aff'd*, 24 N.Y.2d 891 (1969), *cert. denied*, 396 U.S. 885 (1969).

² Joint Administrative Order 2013-2. The complete text appears in the Appendix.

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CHAPTER I
INTEGRITY AND DISCIPLINE

Section 1: INTEGRITY

Section 1-1: Generally

City marshals are public servants who must maintain uncompromised standards of integrity in the management of their offices and the conduct of their official business. They must obey the law in all their activities, both official and personal. In dealing with the courts, public agencies, attorneys, parties to legal actions and proceedings, and the public, marshals must conduct their business honestly.

Marshals are further reminded that they are responsible for all ministerial duties performed for them by their office managers, bookkeepers, process servers, etc., which pertain to the performance of the marshal's office. Marshals, therefore, are urged to review periodically all of their official books and records, and other work performed by their employees.

Section 1-2: Respect for the Public

A city marshal shall at all times treat the public with respect and dignity, befitting the marshal's position as an officer of the Civil Court. Marshals and their staffs, agents, and independent contractors must be courteous and helpful to the public, and must avoid physical and verbal confrontations and the use of abusive language while conducting official business.

Section 1-3: Receipt of Benefits Prohibited

A marshal shall accept only the fees and reimbursements that he or she¹ is authorized by law to receive in connection with official acts. A marshal and the marshal's employee, contractor, or agent shall not accept, solicit, or agree to accept any other benefit or anything of value from or on behalf of any person in connection with the marshal's official action. A marshal shall not solicit, accept, or agree to accept any additional compensation or benefit or anything of value from or on behalf of another person upon an agreement or understanding

¹ Whenever words of the masculine or feminine gender appear in this handbook, they shall be deemed to refer to both male and female persons.

that the marshal's vote, opinion, judgment, action, decision, or exercise of discretion as a marshal will thereby be influenced. A marshal shall not solicit, accept, or agree to accept a benefit or anything of value from or on behalf of another person in consideration for having engaged in official conduct which the marshal was required or authorized to perform, nor shall the marshal solicit, accept, or agree to accept a benefit or anything of value for having failed to take some official action or for having violated an official duty.

A marshal's official action for the purposes of this section includes, but is not limited to, the selection, hiring and continued use of an employee, contractor, or agent to perform any service in furtherance of or in connection with the marshal's performance of official duties, including, but not limited to serving legal process, levying on property or income, and executing warrants of eviction and orders of seizure.

Section 1-4: Public Servant Defined; Benefit Defined

“Public servant” for purposes of this Handbook means (a) any public officer or employee of the State of New York or any political subdivision thereof or any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term “public servant” includes, but is not limited to a city marshal, any officer or employee of the City, any member of the committee on city marshals established pursuant to New York City Civil Court Act § 1601(2), and any person who has been elected or designated to become a public servant.

“Benefit” for purposes of this Handbook means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

Section 1-5: Conferring Property or Benefit in Consideration for Work Prohibited

A marshal shall not give, offer, or agree to give anything of value to, or to confer any benefit upon, any person or entity, as part of an agreement or understanding that the marshal will be retained, hired or otherwise directed to act as, or perform the duties of a marshal.

Nothing in this section prohibits a marshal who is a participant, or who is applying to be a participant, in the City of New York Marshal Vehicle Seizure program from paying the City a monthly fee or from paying any other charge to the City as directed in writing by the Commissioner of Finance or his or her designee.

Section 1-6: Bribery, Gratuities, Rewarding Official Misconduct Prohibited

A marshal shall not give, offer, or agree to give anything of value or confer any benefit upon a public servant, including, but not limited to, city employees and court personnel, in connection with the public servant's performance, non-performance, or violation of his or her official duties.

Section 1-7: Gifts to City Officials, Officers and Employees Prohibited

Marshals are reminded that Chapter 68, § 2604(b)(5) of the City Charter prohibits City officials, officers, and employees from accepting valuable gifts from persons who have, or intend to become engaged in, business dealings with the City. That section reads:

“No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.”

Because marshals frequently engage in transactions with the City that involve the provision or exchange of services and property, and in recognition of the supervision of marshals by the Department of Investigation, it would be inappropriate for a City official, officer or employee to accept a valuable gift from a marshal. Accordingly, a marshal shall not give or offer a valuable gift to any official, officer, or employee of the City.

“Valuable gift,” as defined by the Conflicts of Interest Board means, in part, “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.” The complete rule is attached as an appendix to this Handbook.

Section 1-8: Report Corruption to Department of Investigation

Every marshal shall have the affirmative obligation to report directly and promptly to the Department of Investigation any and all information concerning conduct which the marshal knows or should reasonably know to involve corrupt or other criminal activity or conflict of interest (a) by a City officer or employee, a marshal or marshal's employee, or other public servant which concerns the marshal's or any other public servant's office or employment, or (b) by persons dealing with the City or a marshal, which concerns such dealings. The knowing failure to report as required above shall constitute cause for removal from office.

Section 1-9: Interference with Investigation Prohibited; Cooperation Required

(a) No person shall prevent, seek to prevent, interfere with, obstruct, or otherwise hinder any study or investigation conducted pursuant to the New York City Charter, Joint Administrative Order 453, or this Handbook. A marshal's violation of this subsection shall constitute cause for removal from office or other appropriate penalty. A violation of this subsection by an employee, contractor, or agent of a city marshal shall constitute cause for termination of employment or contract, as provided by § 1-15 of this chapter, or other appropriate penalty.

(b) Full cooperation with the Department of Investigation shall be afforded by every city marshal and all employees, contractors, and agents of a city marshal. A marshal's violation of this subsection shall constitute cause for removal from office or other appropriate penalty. A violation of this subsection by an employee, contractor, or agent of a city marshal shall constitute cause for termination of employment or contract, as provided by § 1-15 of this chapter, or other appropriate penalty.

(c) In an investigation conducted by the Department of Investigation pursuant to Joint Administrative Order 453, this Handbook, or Chapter 34 of the New York City Charter, the refusal of a marshal to answer questions concerning any matter related to the marshal's official business after the marshal has been advised that neither his or her statements nor any information or evidence derived therefrom will be used against the marshal in a subsequent criminal prosecution other than for perjury or contempt arising from such testimony, shall constitute cause for removal from office or other appropriate penalty.

(d) In an investigation conducted by the Department of Investigation pursuant to Joint Administrative Order 453, this Handbook, or Chapter 34 of the New York City Charter, the refusal of a marshal's employee to answer questions concerning any matter related to the official business of the marshal, or the refusal of a person dealing with a marshal in any matter related to the marshal's official duties to answer questions concerning such dealings with the marshal, after such employee, or person dealing with a marshal has been advised that neither his or her statements nor any information or evidence derived therefrom will be used against him or her in a subsequent criminal prosecution other than for perjury or contempt arising from such testimony, shall constitute cause for termination of such person's employment, contract, or business association with the marshal, as provided by § 1-15 of this chapter, or other appropriate penalty.

Section 1-10: Duty to Maintain Accurate Records

A marshal and his or her employees, contractors and agents, shall make only accurate and truthful entries in all records and documents, including computer records, which relate

to the marshal's official activities. Any person who knowingly makes a false entry in any such record or document, or who omits to make a true entry in any such record or document in violation of a duty to do so, or who knowingly removes, mutilates, destroys, conceals, or falsely alters any such record or document is subject to criminal prosecution. A marshal shall be strictly responsible for the accuracy and integrity of all records and documents maintained by the marshal's office, and is subject to disciplinary action, including removal from office, if he or she fails to complete and maintain all such records and documents accurately and truthfully.

Where a marshal retains an independent contractor or agent to assist in the performance of official duties, the marshal shall be responsible for the accuracy and integrity of all records and documents, including computer records, that relate to the marshal's official activities, regardless of whether any such record or document is completed or maintained personally by the marshal, the marshal's employee, or by an independent contractor or agent. Marshals are therefore advised when they assign recordkeeping duties to an independent contractor or agent to ensure that the person who will perform such duties is qualified, to supervise the contractor or agent carefully, and to review such records and documents to ensure that they are completed and maintained accurately.

The Department of Investigation will consider the following and other pertinent factors in determining whether disciplinary action against a marshal is appropriate for an inaccuracy in a record or document completed or maintained by a marshal's employee, independent contractor or agent:

- the nature of the inaccuracy, e.g., whether intentional, negligent, inadvertent, etc.;
- the marshal's knowledge, if any, of the inaccuracy;
- evidence of repeated errors or inaccuracies in that record or document or other records or documents completed or maintained by the same employee, independent contractor or agent, and whether the marshal knew or should have known thereof;
- the frequency and diligence of the marshal's review of the records or documents;
- whether the marshal took prompt and appropriate corrective action when the marshal learned of errors or inaccuracies;
- whether the marshal promptly reported falsification of records or significant errors or inaccuracies in records to the Department of Investigation;

- evidence of a marshal's knowledge of facts suggesting that the person maintaining or completing a record or document lacked the ability or trustworthiness to perform this function properly;
- evidence of the marshal's willful avoidance of knowledge of one or more instances of falsification, errors or inaccuracies in such records and documents or that the person maintaining or completing a record or document lacked the ability or trustworthiness to perform this function properly;
- whether the marshal assigned the recordkeeping function to a qualified person for a bona fide reason related to the efficient operation of the marshal's office; and
- the importance of the record or document.

Section 1-11: Truthful Statements

A marshal and the marshal's employees, contractors, and agents shall provide only truthful and accurate information to the Department of Investigation in all oral and written communications. Knowingly providing false, deceptive or misleading information to the Department of Investigation is grounds for disciplinary action, including removal from office, and may result in criminal prosecution.

Section 1-12: Persons Pretending to be Marshals

According to § 1603 of the New York City Civil Court Act, "It shall be unlawful for any person, other than a marshal...to hold himself out to the public as being a marshal or as being...authorized to act as a marshal or to perform the duties of a marshal..." Furthermore, § 1603 also states that "it shall be unlawful for any city marshal to permit any person, other than a city marshal, to perform any act in his name, or to sign or to use his name in the performance of any act which must be performed personally by a city marshal." Violators of this section are guilty of a misdemeanor.

Accordingly, marshals are advised that neither their employees nor any person other than marshals may perform functions which can only be performed by marshals. Furthermore, a marshal may not allow employees of collection agencies to be based in the marshal's office.¹ A marshal shall not permit any person other than a marshal to use the marshal's name, badge, badge number, letterhead, office address, or any symbol or insignia

¹ Q-133 (October 22, 1985). Citations with the prefix "Q" refer to directives previously issued by the Department of Investigation and filed with the Appellate Divisions for the First and Second Departments. These directives are cited for the purpose of historical reference only. This Handbook of Regulations contains all operative rules as of its effective date.

of the marshal's official status or authority in any written or oral communication made to another person. This prohibition does not apply to bona fide office employees of a marshal acting under the marshal's direction and supervision in the regular performance of their duties and responsibilities. Any questions with respect to this section should be directed to the Bureau of City Marshals.

Section 1-13: Report Persons Pretending to be Marshals

A marshal must report to the Department of Investigation directly and promptly any and all information concerning conduct that the marshal knows or should reasonably know to involve a person other than a marshal holding themselves out to the public as being a marshal or as being in any way authorized to act as a marshal or to perform the duties of a marshal. A marshal must also report to the Department of Investigation directly and promptly any unauthorized use of a marshal's name, letterhead, office address, or any symbol or insignia of the marshal's official status or authority.

Section 1-14: Restriction on Employment of Former Marshal

A city marshal may not employ any former marshal who (a) has been convicted of a crime that is related to the performance of his or her official duties when such employment bears a direct relationship to the criminal offense for which the former marshal was convicted; or (b) because of official misconduct has been removed from office pursuant to administrative proceedings or has resigned during such proceedings.¹

Section 1-15: Termination by Direction of Commissioner

The Commissioner of Investigation ("Commissioner") may, after an investigation, direct a city marshal to terminate the employment of an employee or independent contractor, and may bar a marshal from a business association with any contractor, business entity, its principals, or former employee of a marshal.

The Commissioner's direction to a marshal to terminate the employment of an employee or independent contractor and to bar a marshal from a business association with any contractor, business entity, its principals, or former employee of a marshal shall be in writing and shall state the basis for the direction. The basis may include, but shall not be limited to, a finding that a person or business entity:

1) has prevented, sought to prevent, interfered with, obstructed, or otherwise hindered or has refused or failed to cooperate with any study or investigation conducted by the

¹ Q-104 (July 2, 1981).

Department of Investigation pursuant to Joint Administrative Order 453, this Handbook, or Chapter 34 of the New York City Charter; or

2) has engaged in conduct in violation of law, the rules of the Appellate Divisions for the First and Second Judicial Departments, the rules of the Supreme Court, the Family Court, or the Civil Court of the City of New York, this Handbook or other directives of the Department of Investigation; or

3) has by action or inaction behaved in a manner constituting incompetency or misconduct or that demonstrates that the person or business entity lacks the integrity necessary to conduct business with or on behalf of a city marshal.

Before issuing a written direction to the marshal pursuant to this section, the Commissioner shall give written notice of the proposed direction and the basis for it to the marshal and to the person or entity who is the subject of the proposed direction. Such persons shall also be given an opportunity to respond either orally or in writing, at the Commissioner's sole discretion, as to why such direction should not be issued. When responding to the Commissioner's notice, the marshal and the person or entity that is the subject of the Commissioner's proposed direction may be assisted by counsel. Nothing contained in this section shall require the Commissioner to hold a hearing before issuing a written direction.

The marshal shall, immediately upon receipt of the Commissioner's written direction, comply with that direction. The marshal's failure to do so shall be grounds for disciplinary action, including removal.

All contracts relating to the marshal's official duties entered into or renewed by a marshal on or after the effective date of this Handbook must provide for termination of the contract by the marshal at the direction of the Commissioner, unless such provision is waived by the Commissioner.

Section 1-16: Arrest of Marshal or Employee(s)

A city marshal must notify the Department of Investigation within two hours on a business day, or by 11:00 a.m. the next business day, if the occurrence is on a weekend or holiday, after the marshal's arrest or after the marshal learns of the arrest of any of his or her employees whether or not the conduct underlying the arrest was during the course of official duties.¹ In enforcing this section the Department of Investigation shall consider whether a marshal's failure to notify the Department of Investigation within the applicable time limits

¹ Q-146 (October 31, 1994).

was due to a circumstance beyond the marshal's control. If the criminal charges bear upon the marshal's fitness for office, the pendency of such charges may be cause for disciplinary action, including but not limited to an application to the Appellate Divisions for the marshal's suspension pending a hearing or pending resolution of the criminal charges.¹

Section 1-17: Outside Employment Restricted

The Corporation Counsel, in Opinion 44-80, interpreted the New York City Civil Court Act and applicable court cases relating to "outside employment" of city marshals.² New York City Civil Court Act § 1601-a(2)(a) provides that no city marshal shall actively engage or participate in any other occupation or employment, nor shall any marshal engage or participate in any trade or business which creates or might tend to create an actual or potential conflict of interest. The statute further provides that no marshal or member of his or her immediate family shall maintain any financial interest, direct or indirect, in a process serving agency, towing company, or furniture moving and storage company. A violation of the statute is grounds for disciplinary action, including removal.

Every marshal is urged to read Opinion 44-80. The opinion states that under the statute marshals are required to devote their full time to the performance of their duties as marshals. The opinion further states that the statute strictly prohibits marshals from engaging in any activity or having any financial interest in a trade or business, including the businesses mentioned above, that creates or might tend to create a conflict of interest.

A marshal who is employed or anticipates being employed in any other occupation or employment must immediately notify the Department of Investigation. A marshal who has a financial interest in a business or whose immediate family member has an interest in a business must disclose such interest to this Department. Upon receipt of a notification under this section, the Department of Investigation will review all pertinent facts and circumstances to determine whether the outside employment is permissible and whether the financial interest of a marshal or his or her immediate family member in a business creates or might tend to create a conflict of interest.

¹ See Civil Court Act § 1610.

² Q-92 (October 20, 1980).

Section 2: DISCIPLINE**Section 2-1: Generally**

Section 1610 of the New York City Civil Court Act provides that the Appellate Division may discipline by reprimand or censure, or may temporarily suspend or permanently remove any marshal for cause, provided that written charges are first filed with said court, and that the marshal be given due notice thereof and be afforded an opportunity to be heard at a full and complete hearing. In addition, Section 1610 of the Civil Court Act empowers the Appellate Division to suspend a marshal pending a hearing on disciplinary charges. Joint Administrative Orders 453 and 456 of the Appellate Division for the First and Second Departments, dated November 21, 1975 and February 27, 1976, respectively, deal in part with the disciplining of city marshals.

These orders authorize the Director of the Bureau of City Marshals, or anyone else designated by the Commissioner of Investigation, to present evidence of incompetency, misconduct, or other wrongdoing to the Commissioner of Investigation. The Commissioner may accordingly designate a qualified person to hear charges or refer the charges and evidence to the Appellate Divisions of the First and Second Departments for disciplinary action or removal proceedings.

After a hearing of the charges, the Commissioner of Investigation may impose penalties upon a marshal, including suspension from the performance of official duties for a period not to exceed six months, for violation of the civil laws, the rules of the Appellate Divisions of the First and Second Departments, the rules of the Supreme Court, the Family Court, or the Civil Court of New York, the Directives of the Department of Investigation, or for incompetency or misconduct.

A marshal, after being furnished with a copy of the charges preferred against him, may knowingly waive a hearing and agree to a penalty prescribed by the Commissioner of Investigation.¹

Section 2-2: Department of Investigation Appearances

The Bureau of City Marshals receives and acts on complaints concerning city marshals. In connection with these complaints, as well as inquiries into compliance with directives and other matters, marshals are directed, from time to time, to appear at the Department of Investigation. City marshals must appear when directed, and may appear with counsel if they wish.

¹ Joint Administrative Order 453, § 7.

In connection with an investigation, a city marshal, or any of the marshal's employees, independent contractors or agents may be directed to appear at the Department for the purpose of being photographed or of providing handwriting samples.

CHAPTER II

LEVIES

Section 1: **GENERALLY**

Levy and Sale is a manner of collecting a money judgment which gives the judgment debtor the option of paying the city marshal or having some of his or her personal property levied upon and sold at auction.

Before a marshal may make a levy, he or she must obtain a property execution from the clerk of the court where the judgment was docketed or from the judgment creditor's attorney.¹ A property execution is a mandate to the marshal to satisfy a money judgment out of the personal property of the judgment debtor and any debts due to the debtor. An execution may be issued only by the judgment creditor's attorney or by the clerk of the court in the county where the judgment was first docketed.² A city marshal who is also an attorney may not serve as an attorney for a judgment creditor and therefore may not issue an execution. The Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York has opined that a marshal's issuing an execution as an attorney and then enforcing it as a marshal would constitute an ethical violation, since "[a] marshal is an officer of the Court, and an obligation to act impartially is implicit in the office."³

Marshals are enforcement officers of the New York City Civil Court, and as such have the power to levy upon property pursuant to executions issued out of the Civil Court.⁴ In addition, current legislation has extended the power of marshals to enforce money judgments rendered by any Family Court or entered in any Supreme Court or docketed with the clerk of

¹ Civil Practice Law and Rules (hereinafter referred to as "CPLR") § 5232.

² CPLR § 5230(b). In the New York City Civil Court, judgments do not need to be formally docketed, and an execution may issue after judgment is entered. New York City Civil Court Act (hereinafter referred to as "CCA") § 1501.

³ The Committee on Professional and Judicial Ethics of The Association of the Bar of the City of New York, Formal Opinion No. 791, October 8, 1954 (citation omitted). *See also* CCA § 1601-a(2)(a)(stating that no marshal shall actively engage or participate in any other occupation or employment, nor shall any marshal engage or participate in any trade or business which creates or might tend to create an actual or potential conflict of interest).

⁴ CCA § 1609(1)(a).

any county.¹ Marshals may levy only against personal property of debtors and not against real property.² Moreover, a marshal's jurisdiction and authority to serve executions against personal property, as well as all other mandates and processes, extends through and is limited to the geographical boundaries of the City of New York.³

A properly issued execution must specify the date on which the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount due thereon and the names of the parties in whose favor and against whom the judgment or order was entered.⁴ The execution shall also state that, pursuant to CPLR § 5205(l), \$2,625 of a bank account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments⁵ is exempt from execution.⁶ In addition, the execution shall state that, pursuant to CPLR § 5222(i), the execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum wage or two hundred forty times the state minimum wage, except for a portion of the amount that the court determines to be unnecessary for the reasonable requirements of the debtor.⁷

Where voluntary payments or authorized collections have previously been made and applied to the judgment, the statement on the execution of the amount due on the judgment should reflect the reduced judgment balance. Executions generally also direct the collection

¹ CCA § 1609(1)(b). This section is deemed repealed as of 6/30/14 unless the Legislature renews it. If it is not renewed, after that date marshals will only be able to enforce Civil Court judgments.

² CCA §§ 1504, 1505, 1609(1)(b).

³ CCA §§ 1504, 1609; Q-6 (March 22, 1985).

⁴ CPLR § 5230(a).

⁵ Statutorily exempt payments include, but are not limited to, Social Security payments, SSI, child support, VA benefits, public assistance, workers' compensation, unemployment insurance, public or private pensions, railroad retirement, and black lung benefits. CPLR § 5205(l)(2).

⁶ Pursuant to CPLR § 5205(l)(3) and § 5253, this amount will be adjusted triennially by the State. This amount is current as of April 1, 2012; the next adjustment will be made on April 1, 2015. Information on the most current amount can be found on the website of the New York State Department of Financial Services.

⁷ If the State of New York or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, the execution shall bear a legend in 16-point type above the caption supplying that information, and neither of these exemptions shall apply. CPLR § 5230(a).

of interest on the judgment amount then due.¹ If previous payments or collections were applied to interest on the judgment, the date on the execution from which interest is to be collected should be the date following the last date for which interest was collected.

When seizing vehicles pursuant to property executions issued where the City is the judgment creditor, marshals shall use forms prescribed by the Department of Finance (DOF).

Furthermore, marshals are prohibited from using property executions to search out the assets of debtors.

Section 2: **PRIORITY OF EXECUTIONS**

When an execution is issued to a marshal, the date, hour, and minute of delivery must be recorded on it to protect the judgment creditor's rights against other executions. When two or more executions issued against the same judgment debtor are delivered to the same marshal, the executions must be satisfied out of the judgment debtor's property in the order in which the executions were delivered to the marshal. Where two or more executions issued against the same judgment debtor are delivered to different enforcement officers (different marshals or the sheriff and a marshal) and personal property levied upon is within the jurisdiction of all the officers, the enforcement officer who is first to levy will secure the priority.² Thus, it is extremely important for all executions to be acted upon promptly.

¹ See CPLR § 5004, which states "Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute."

² CPLR § 5234(b).

Section 3: OPTIONAL LETTER TO DEBTOR

Once a valid execution has been issued to a marshal, a marshal may choose to mail a letter to the judgment debtor informing the debtor of the issuance of an execution against his or her property and warning the debtor that, if he or she does not remit the monies due, certain of the debtor's assets are subject to levy and sale. This letter, previously referred to as a "notice of execution," may prevent the need for service of an execution and subsequent sale because the judgment debtor may be persuaded by the letter to remit the amount due, or it may lead to a payment plan or settlement. However, sending such a letter through the mail to the judgment debtor does not constitute a valid levy, and thus a marshal may not specify a sale date in the letter, nor may the letter purport to levy upon property whether or not described on the execution. The Civil Practice Law and Rules (CPLR) does not provide for a fixed fee for mailing or delivering such a letter, and therefore marshals shall not charge such a fee for this service.¹

In formulating this optional letter, marshals are advised to refrain from statements that are inconsistent with the requirements of Article 52, especially those concerning a debtor's rights and protections with respect to exempt property.

This optional letter does not satisfy the notice requirement of CPLR § 5232(c), which provides that if the execution does not state that a notice in the form presented by CPLR § 5222(e) has been duly served upon the debtor within a year, the marshal shall, not later than four days after service of the execution upon any garnishee, mail or personally deliver a copy of the execution together with such notice to the debtor who is a natural person.

¹ See CPLR § 8011(b).

Section 4: LEVY

If a marshal does not mail an optional letter, or if this has been done without any success, the next step (which may be done only by a marshal) is to effect a levy.¹

A levy is the act of a marshal in serving the execution and, if the property is capable of delivery, taking property into his or her custody, physically or constructively, to satisfy a money judgment.

There are two different types of personal property which may be levied upon: property which is not capable of delivery, and property which is capable of delivery.

Section 4-1: Property Not Capable of Delivery

If the property is “not capable of delivery,” for example, a debt owed to the judgment debtor or money in a bank account, a levy is made by serving a copy of the execution on the garnishee (that is, the person who owes a debt to the judgment debtor or an officer of the bank where the debtor maintains an account).² Property not capable of delivery has also been called “intangible” property.

This type of execution is usually entitled “execution with notice to garnishee.” An inventory is not taken when levying upon this type of property.

This levy will be effective only if the person served owes a debt to the judgment debtor at the time of service or is in possession or custody of property “not capable of delivery” in which the judgment debtor has an interest at the time of service. Otherwise, the levy is ineffective, even if the person served thereafter acquires such property.³

Section 4-2: Property Capable of Delivery

If the property is “capable of delivery,” which has also been called “tangible” property, a levy is made by physically or constructively seizing the property and immediately serving a copy of the execution, together with an inventory, upon the person from whose possession

¹ CPLR §§ 5230, 5232, 8011(b); CCA § 1504.

² CPLR § 5232(a); § 105(i) (“garnishee” defined).

³ CPLR § 5232(a).

or custody the property was taken.¹ The inventory must list in detail all property subject to the levy.

With respect to this type of property, a marshal may take physical possession by removing and storing it, or may retain a custodian at the premises where the property is located to ensure that the property is not removed. However, a marshal may not put his or her own lock on the door of a debtor's business without the debtor's written consent. Where a physical seizure is made, the property must be properly identified, tagged, and stored in the marshal's office or in a warehouse under the marshal's own lock and key.

To effect a valid levy on property "capable of delivery," a marshal may also merely assert "dominion and control" over the specific property levied upon.² If this manner of levy is relied upon, as it commonly is, a marshal must be capable of physically removing the property in order to assert "dominion and control." A levy cannot be made through the front window of a locked store.³ Therefore, a valid levy may be made by:

- a. going to where the judgment debtor's assets are and specifically declaring which items are subject to levy; and
- b. serving a copy of the execution; and
- c. making an inventory of the property subject to the levy, on the notice of levy form, and leaving a copy thereof with the person in whose possession or custody the property was found.

¹ CPLR § 5232(b).

² See *Sheridan Farms, Inc. v. Federico*, 48 Misc. 2d 599 (1st Dep't 1965); *Marine Midland Bank-Central v. Gleason*, 62 A.D.2d 429, 436 (4th Dep't 1978), *aff'd*, 47 N.Y.2d 759 (1979).

³ *Socony Mobil Oil Co. v. Wayne County Produce Co.*, 24 Misc. 2d 519, 524 (Sup. Ct. Queens Cty. 1959).

Section 5: SERVICE

Service of the execution is to be made in the same manner as the service of a summons.¹ The execution must be served by one of the following methods:

(a) delivering a copy of the execution within the City of New York to the person to be served; or

(b) delivering a copy of the execution within the City of New York to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing a copy to the person to be served at his or her last known residence or by mailing a copy by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from a city marshal or concerns an action against the person to be served, such delivery and mailing to be effected within twenty (20) days of each other.²

If neither of the above methods is successful, then the person to be served may be served by affixing a copy of the execution to the door of either the actual place of business, dwelling place or usual place of abode within the City of New York of the person to be served and by either mailing a copy of the execution to such person at his or her last known residence or by mailing a copy of the execution by first class mail to the person to be served at his or her actual place of business, in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from a city marshal or concerns an action against the person to be served, such affixing and mailing to be effected within twenty (20) days of each other. “Actual place of business” is defined by CPLR § 308(6) as any location that the defendant, through regular solicitation or advertisement, has held out as its place of business.³

The CPLR does not provide comprehensive guidelines as to the difference between property “capable of delivery” and property “not capable of delivery.” However, in either case, a copy of the execution must be served. The CPLR does state that property or a debt evidenced by a negotiable instrument for the payment of money, a negotiable title, or a certificate of stock of an association or corporation, shall be treated as property capable of

¹ CPLR § 5232(a).

² CPLR § 308(1)-(2).

³ CPLR §§ 308(4), 308(6).

delivery.¹ As noted in § 4-2 of this chapter, when a marshal levies on property capable of delivery by seizing it, the marshal must immediately serve a copy of the execution and a notice of levy form with an inventory upon the person from whose possession or custody the property was taken.

City marshals who enforce judgments for the City of New York, Parking Violations Operations (PVO), must follow the instructions for service of the execution and notice of the seizure set forth in the Standard Operating Procedures (SOP) promulgated by the Department of Finance. Upon seizing a vehicle under the SOP, the marshal shall serve a copy of the execution upon the person from whose possession or custody the vehicle was taken, if such person is present at the time of seizure.² See § 10-2 of this chapter for additional information.

Marshals must conduct themselves as befitting public officers in serving property executions. Therefore, marshals may not employ any device, threat, trick, or ruse to gain entrance into residences.³

Service on a corporation must be made according to the provisions of § 311 of the CPLR; that is, by personally serving (in-hand) an officer or other agent of the corporation. Under no circumstances may service be made by mailing a copy of the execution to the corporate garnishee.

In addition to proper service of the execution, the marshal must provide notice to the judgment debtor who is a natural person that certain property is exempt from seizure pursuant to an execution. See § 7-7 for the contents of this notice.

¹ CPLR § 5201(c)(4).

² NYC Dep't of Finance Enforcement Unit Marshal Vehicle Seizure Program Standard Operating Procedures (SOP), section V, subsection (A)(6), at p. 8.

³ Q-1 (October 28, 1954).

Section 6: EFFECT OF LEVY

A person served with an execution is required to immediately transfer to the marshal all property of the judgment debtor in his or her possession or custody, pay the marshal all debts owed to the judgment debtor as they become due, and execute any documents necessary to effect transfer of payment to the marshal. In addition, except at the direction of the marshal or pursuant to a Court order, the debtor or garnishee is forbidden by law to sell, transfer, assign, or interfere with any property or to pay or dispose of any debt subject to the levy. This restraint is effective until the debtor or garnishee satisfies the judgment or transfers the property to the marshal or until the levy expires.¹ If the person served with an execution fails or refuses to make delivery of property belonging to the judgment debtor, the judgment creditor or his or her attorney should be notified.²

There is an exception for levies served against a natural person's account at a banking institution in order to give the person time to submit an exemption form claiming that the money in the account is exempt from seizure. CPLR § 5232(g) provides that in that situation, banks may not transfer funds from the account to the marshal for at least 27 days. If, after 30 days, the bank has not received an exemption claim form from the debtor, or a court order directing otherwise, the bank may then transfer the funds to the marshal.³

With respect to property not capable of delivery and debts, a levy is effective for a period of ninety (90) days from the date of service of the execution.⁴ This means that the levy is effective as to all debts incurred by the garnishee and owed to the debtor within the ninety-day period. Unless the court provides for further time upon motion of the judgment creditor, after ninety days, the levy is void except as to property or debts which have been transferred or paid to the marshal by the garnishee pursuant to the execution.

¹ CPLR § 5232(a).

² In the event that a garnishee fails or refuses to make delivery of property belonging to the judgment debtor, the CPLR provides other methods for the creditor's use, such as a special proceeding under CPLR § 5225(b). Pursuant to that section, a court may issue a "delivery order" or "turnover order" to the garnishee, who may then deliver property to a marshal for sale. The Court of Appeals has found that a turnover order may be used to compel a garnishee with a presence in New York to turn over property located outside the State. *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 541 (2009).

³ CPLR § 5222-a(c)(5) also states that if the bank does not receive a claim of exemption form within 25 days after the notice and forms are mailed to the debtor, the funds remain subject to the execution.

⁴ CPLR § 5232(a).

Furthermore, once the garnishee transfers or pays to the marshal all of the property or all of the debts subject to the levy, the levy terminates and is not effective as to property thereafter coming into the garnishee's possession or custody in which the judgment debtor has an interest or any debts thereafter coming due to the judgment debtor.

With respect to property capable of delivery, a levy is valid for sixty (60) days from the issuance of the execution, but may be extended for an additional sixty-day period by a written request from the judgment creditor's attorney. Further extensions may be granted by written authorization of the attorney for the judgment creditor, unless another execution against the same judgment debtor has been delivered to the same enforcement officer and has not been returned.¹ CPLR § 5021(b) provides that small claims executions must be returned to the court whether wholly or partially satisfied, or unsatisfied, within ninety days after the marshal receives the judgment, and that the clerk shall make an appropriate entry on the clerk's docket of the judgment.² This provision does not differentiate between levies on property capable of delivery and those on property not capable of delivery.

¹ CPLR § 5230(c).

² It has been suggested that although the statute instructs that return of the execution is due ninety days from the marshal's receipt of the "judgment," the word "judgment" actually means the execution. See David D. Siegel, *New York Practice* § 425 n. 16 (5th ed. 2011). However, the statute says that the return shall be made within ninety days after receipt of the judgment by the sheriff.

Section 7: **SPECIFIC PROCEDURES**

Section 7-1: **Particular Garnishees**

Banks: Where a levy on a bank account is made, an execution with notice to the garnishee must be served on an officer of the bank. When serving an execution on a bank, the marshal must also provide the bank with an exemption notice and two exemption claim forms in the form set forth in CPLR § 5222-a(4). These forms explain what types of funds are exempt from seizure and how a debtor may claim an exemption, and will be served upon the debtor by the bank. Failure of the marshal to include these forms renders the execution void.¹

State of New York: Where the garnishee is New York State, the levy must be made in the same manner as an income execution; that is, the head of the particular department at the department's office in Albany must be served or the State Department of Audit and Control in Albany must be served. This may be done by sending the execution by registered or certified mail, return receipt requested.² (*See also* Chapter V, § 5-9.)

Section 7-2: **Dispossessed Tenants**

No levy may be made on the property of a tenant dispossessed for non-payment of rent under any execution within twenty-four (24) hours of the time of dispossession, if the property of which the tenant is being dispossessed was his or her residence. This rule applies only to residences and, therefore, does not preclude a marshal from immediately levying upon property found in a commercial eviction.³

¹ CPLR §§ 5222-a(2)-(3), CPLR 5232(g).

² *See* CPLR § 5232(a), which refers to § 5231(h) for details on the method of service to be used on the State and other governmental entities.

³ CCA § 1507.

Section 7-3: Death of Judgment Debtor

In the event of death of the judgment debtor, the judgment creditor or his or her attorney should be notified. CPLR § 5208 contains specific restrictions on levying upon the property of a judgment debtor after his or her death. In most instances, leave of the Surrogate's Court that has jurisdiction over the estate is required. Marshals shall not attempt to levy upon a deceased judgment debtor's property until they have obtained specific permission from the court.

Section 7-4: Protective Orders

Section 5240 of the CPLR permits the court, on its own initiative or the motion of any interested person, to make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure. If a city marshal is served with a protective order the marshal must abide by the instructions contained therein.

Marshals should promptly inform judgment creditors or, if they are represented, their attorneys of claims of exempt property and related documents and information brought to the marshal's attention. From time to time, marshals who serve and carry out property and income executions are contacted by judgment debtors and other persons affected by the marshal's collection efforts who may allege that they should not be subject to the collection, despite the existence of a judgment. As an impartial officer of the court, a marshal is encouraged to inform such persons that information regarding their cases may be obtained from the court where the judgment was entered and that court review and relief is available pursuant to CPLR § 5240. Marshals should further inform such persons that information regarding the State courts, such as court locations and hours, and "do-it-yourself" forms for persons representing themselves in response to default judgments for consumer debt, are available on the New York State Court System's website. In addition, marshals should promptly inform the judgment creditors or, if they are represented, their attorneys of communications received from judgment debtors or their representatives that relate to the collection efforts or to the enforceability or validity of the underlying judgments.

If a debtor requests a payment plan, the marshal should convey the request to the judgment creditor or his or her attorney for consideration, and should not unilaterally reject the request. Payment plans should only be entered into with the permission of the creditor or the creditor's attorney. Records of the requests and related communications referenced in this Section should be maintained in the marshal's docket record and file.

Section 7-5: Levy on Stock Certificates

In order to levy on stock certificates, a marshal must physically seize the certificates and take possession over them.¹

Section 7-6: Exempt Property

Section 5205 of the CPLR exempts certain personal property from application to the satisfaction of money judgments, except where the judgment is for the purchase price of the exempt property. Pursuant to this section, a marshal may not levy on, among other things, the following:

- a. all stoves and home heating equipment in residences and necessary fuel therefor for one hundred twenty (120) days;
- b. one sewing machine with its appurtenances;
- c. religious texts, family pictures and portraits, school books used by the judgment debtor or the debtor's family, and other books not exceeding five hundred dollars in value, kept and used as part of the family or judgment debtor's library;
- d. a seat or pew occupied by the judgment debtor or the family in a place of public worship;
- e. domestic animals with necessary food for one hundred twenty (120) days provided that the total value of such animals and food does not exceed \$1,000;
- f. food for the judgment debtor and his or her family for one hundred twenty (120) days;
- g. all wearing apparel, household furniture, one refrigerator, one radio, one television set, one computer and associated equipment, one cellphone, crockery, tableware, cooking utensils and all prescribed health aids;
- h. a wedding ring; a watch, jewelry and art not exceeding \$1,000.00 in value;
- i. tools of trade, necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furniture and library not exceeding \$3,000 in value, together with necessary food for the team for one hundred twenty (120) days, provided these articles are necessary to the carrying on of the judgment debtor's profession or calling;
- j. one motor vehicle not exceeding \$4,000 in value above liens and encumbrances of the debtor or \$10,000 if the vehicle is equipped for use by a disabled debtor; this exemption shall not apply, however, if the debt is for child support,

¹ CPLR §§ 5232(b), 5201(c)(4).

- spousal support, maintenance, alimony or equitable distribution, or if the State or any of its agencies or municipal corporations is the judgment creditor;
- k. if no homestead exemption is claimed, then \$1,000 in personal property, bank account or cash.

CPLR § 5205(1) also exempts from seizure a portion¹ of bank accounts into which statutorily exempt payments such as social security are made electronically or by direct deposit.² See CPLR § 5205 for a complete list of other personal property, including income and trusts, exempt from satisfying a money judgment.

Section 7-7: Notice to Debtors

Where the execution does not state that a restraining notice in the form prescribed by CPLR § 5222(e) has been duly served upon the judgment debtor within the year, the marshal shall, not later than four days after service of the execution upon any garnishee, mail by first class mail or personally deliver to the judgment debtor who is a natural person a copy of the execution together with such notice.³ The marshal should be sure that the notice includes all the information found in CPLR § 5222(e), which lists money and property that is exempt from levy, such as social security benefits, ninety percent of wages earned in the last 60 days, and a portion of a bank account (currently \$2,625)⁴ that contains exempt funds that are directly deposited within it; and includes instructions to the debtor on how to claim that his or her property is exempt.

When mailing, a certificate of mailing must be retained; when serving personally, a process server may be used.

The notice shall contain the name and address of the judgment creditor or his attorney and, if mailed, shall be sent first to the debtor at his or her residence and then if returned as undeliverable, or if the debtor's address is unknown, to the debtor at his or her place of employment in a plain envelope (not indicating that the communication is from a marshal or

¹ CPLR §§ 5205(1)(3) and 5253 provide that the amount of money that cannot be seized from such a bank account will adjusted every three years by the Superintendent of the New York State Department of Financial Services. As of April 1, 2012, the amount is \$2,625. The next adjustment is scheduled for April 1, 2015.

² CPLR §§ 5205(1), § 5232(e).

³ CPLR § 5232(c).

⁴ See p. 25, footnote 1 above concerning triennial adjustment of the amount.

concerns a debt), marked “personal and confidential.” If no residence or business address is known, the notice shall be served and mailed to the debtor at any other known address.¹

Section 7-8: Execution against a Marshal

Pursuant to § 1503 of the New York City Civil Court Act, an execution against a marshal (or his or her sureties) may be issued only to the sheriff.²

Section 7-9: Levy on Partnerships

If a judgment debtor has an interest in a “partnership,” the marshal may levy upon the debtor/partner’s interest. The proper garnishee is any other partner besides the judgment debtor.³ A marshal may only levy on a partnership's assets when a judgment is rendered against the partnership itself.⁴

¹ CPLR § 5232(c); Q-116 (August 9, 1982).

² Q-68 (April 6, 1977); CCA § 1503(a).

³ CPLR § 5201(c)(3).

⁴ CPLR § 5201(b).

Section 8: RETURN OF EXECUTION

Marshals must make a prompt return of their executions to the clerk of the court that issued the execution, with an endorsement thereon of the action taken (e.g., satisfied, partially satisfied, unsatisfied, or vacated).¹ In addition, § 5021(b) of the CPLR requires marshals, upon request, to provide the person making payment with a certified copy of the execution and of the return of satisfaction or partial satisfaction. The Courts, as a matter of practice, do not accept return of completely unsatisfied executions except in Small Claims matters.²

Section 5230(c) of the CPLR provides that the execution shall be returned to the court within sixty days after issuance unless the execution has been served in accordance with CPLR § 5231 (income execution) or § 5232(a) (levy upon personal property not capable of delivery); in the latter instance the levy lasts for ninety (90) days. The sixty-day period may be extended for an additional sixty days by written authorization of the attorney for the judgment creditor, and for additional sixty-day periods by such additional written authorizations unless another execution against the same judgment debtor has been delivered to the same enforcement officer and has not been returned. CPLR § 5021(b) provides that small claims executions must be returned to the court whether wholly or partially satisfied, or unsatisfied, within ninety days after the marshal receives the judgment, and that the clerk shall make an appropriate entry on the clerk's docket of the judgment.³ The requirement of return of execution applies both to property and income executions, though the CPLR does not provide a deadline for return of income executions in cases other than Small Claims matters.

¹ CPLR §§ 5230(c)-(d), 5021(b).

² CPLR § 5021(b).

³ See footnote to § 6 of this chapter (noting commentary suggesting that the ninety-day period should be measured from the enforcement officer's receipt of the execution).

Section 9: SMALL CLAIMS**Section 9-1: Executions**

An execution upon a small claims judgment may be issued by the judgment creditor's attorney or, if the judgment creditor does not appear by attorney, by the clerk of the court in the county where the judgment was entered.¹ The combined property and income execution, which must be used for collecting judgments entered in the various small claims parts of the Civil Court may be obtained by requisitioning the execution from the clerk. The marshal may obtain the execution by submitting a written requisition to the clerk of the small claims part in the appropriate county. The requisition should contain the court's index number, the names of the parties to the claim, the date judgment was rendered, the date of the requisition, and the marshal's signature. The clerk will examine the court's record of the judgment, prepare the execution, and issue it to the marshal.

Moreover, Civil Court Directive 358, issued by the Administrative Judge of the Civil Court of New York City, requires all city marshals to return all unsatisfied executions, as well as all fully and partially satisfied executions, to the County Division of the Small Claims Part from which the execution was issued.² Please note that this directive is applicable only to executions involving Small Claims matters.

Section 9-2: Reporting

All marshals must execute and enforce Small Claims judgments within the City of New York whenever such judgments are delivered to their offices.³

The Department of Investigation pursuant to Joint Administrative Order 490 assigns marshals to specified quarterly reporting periods for Small Claims activity. These assignments are given on a rotating basis.

Regardless of the quarterly activity, all marshals, as officers of the Civil Court, are required to act upon all Small Claims judgments brought to them for execution.⁴

¹ CCA § 1501.

² Q-57 (July 1, 1975).

³ Joint Administrative Order 490 (December 31, 1979).

⁴ Q-108 (January 7, 1982); Q-88 (January 21, 1980).

All reports are to be filed with the Department of Investigation on the approved form, which may be obtained from the Bureau of City Marshals. Small Claims reports are to be received by the Department within thirty (30) days after the close of the quarter. In the event a marshal has received no Small Claims matters during the assigned quarter, the form still must be filed with the Department of Investigation in a timely manner and must reflect that there was no Small Claims activity.

Section 10: LEVY ON MOTOR VEHICLES**Section 10-1: Generally**

When seizing a motor vehicle pursuant to a property execution, a marshal must notify the local police precinct of his or her levy and seizure.¹ Notification must be by police report, delivered to the local precinct within two hours² after each levy and seizure is made. It is not proper for a marshal to notify the precinct at the end of the day's work or after the seizure of many vehicles.

To ensure against the loss of personal property from seized vehicles and/or physical damage to the vehicles, a city marshal must complete an inventory of all items of personal property found in an automobile at the time of its seizure. Before towing a vehicle, the marshal must check all doors. If any door is unlocked, the marshal must enter the vehicle and conduct a physical inventory of its contents before towing it. Where applicable, the inventory should include the make, model, and serial number of the articles listed. The existence or lack of a radio, CD player, or other special electronic equipment should also be noted. If no items of personal property are found in the vehicle, the inventory should reflect this fact. If any area within the seized vehicle can be accessed without a key (e.g. "pop lock" trunk, glove box, etc.) this area should be checked and inventoried as well. Locked car trunks that cannot be opened from within the car should not be opened. The condition of the exterior and interior of the auto must also be noted, with reference to possible physical damage to the vehicle. Where there is existing damage, it should be specified (e.g., dented right front fender, ripped seat).³ If a vehicle is fully locked and the marshal is unable to see the entire interior while standing outside of it because of tinted windows or for any other reason, the marshal must open and enter the vehicle and conduct a physical inventory of its contents before towing it. The obligation to inventory vehicles applies to every vehicle that a marshal tows, without exception.

¹ Q-3 (October 24, 1957).

² N.Y.C. Admin. Code § 20-528.

³ Q-99 (February 9, 1981).

Section 10-2: Parking Violations Operations (PVO) Standard Operating Procedures

City marshals who enforce judgments for the City of New York, Parking Violations Operations (PVO), must follow the Standard Operating Procedures (SOP) and any other relevant directives promulgated by the Department of Finance (DOF). Failure to comply with the SOP, this Handbook, or any other DOF directives or instructions, as applicable, may result in suspension or removal from the PVO program and disciplinary action against the marshal by the Department of Investigation.

The SOP requires a marshal to serve a copy of the execution upon the person from whose possession or custody the vehicle is taken if that person is present at the time of seizure.¹ This rule is in accordance with CPLR § 5232(b).

Furthermore, unless the vehicle is redeemed, the SOP requires that within 72 hours, the marshal shall obtain from the New York State Department of Motor Vehicles the address(es) of the vehicle's registered owner, title holder and/or lien holder. The marshal must then notify the registered owner, title holder and/or lien holder by certified mail, return receipt requested, or first class mail with certificate of mailing that the car has been seized and will be sold at public auction if outstanding parking violations judgments and fees are not paid.² In practice, this notice is referred to as a "ten-day letter." The ten-day letter required by the SOP and a copy of the execution together with the notice required by § 5232(c) should be mailed within four days of seizure, unless the vehicle has been redeemed.³

¹ NYC Dep't of Finance Enforcement Unit Marshal Vehicle Seizure Program Standard Operating Procedures (SOP), section V, subsection (A)(6), at p. 8.

² SOP, section VII, subsection (A)(1-4), at p. 13.

³ See CPLR § 5232(c).

Section 10-3: PVO Fees

When computing fees with respect to PVO executions (or any other executions) the amount must be based upon the number of executions received, regardless of the number of judgments that a particular execution may contain.¹

Section 10-4: PVO Fee Waivers

City marshals are permitted to waive advance fees for executions issued directly to them by PVO or the Transit Adjudication Bureau (TAB).²

When Parking Violations Operations issues a property execution on a seized vehicle, it reflects only those tickets that were entered into judgment as of that time. If, after the seizure, PVO discovers that additional tickets have been reduced to judgment on that particular car PVO may issue another execution to cover the additional tickets that have been entered into judgment. Since two executions are being issued, this could result in duplicate fees for the same seizure.

Pursuant to § (3)(e) of Joint Administrative Order 453, marshals are now authorized to waive all statutory fees on the second or subsequent execution. They are authorized to do so but can choose to charge the full statutory fees on the second or subsequent execution for services actually performed. Poundage shall still be charged on all amounts collected on the judgment.

If the marshal chooses to waive these fees, a new docket record³ should not be opened for the second or subsequent execution. Marshals shall indicate the following information in the original docket record in the area set aside for "Remarks:"

- a. that a second or subsequent execution was issued by PVO against the same plate;
- b. the amount of the execution;
- c. the additional poundage collected; and
- d. the index number, if any.

¹ Q-72 (August 15, 1978).

² Q-140 (December 2, 1986); Q-142 (June 25, 1987).

³ See Chapter XII, § 2 for instructions on maintaining docket records.

This authorization applies only to second or subsequent executions issued against a vehicle already in the marshal's custody. On additional executions against the same debtor for seizure of a vehicle not in the marshal's custody all appropriate fees should be charged and each new execution should be assigned a separate docket number.

Section 10-5: Out-of-State Notice

A city marshal is required to notify an out-of-state motor vehicle bureau of a PVO seizure not sooner than seventy-two (72), and not later than one-hundred-twenty (120) hours after such seizure. This notification by the marshal may be waived only if the registered owner of the vehicle appears in person and with proper identification prior to the expiration of the 120-hour period and redeems the vehicle,¹ or the Department of Finance makes the required notification and inquiry to the out-of-state motor vehicle bureau on behalf of the marshal.

Section 10-6: PVO Lawsuits

Any marshal named as a defendant in a civil action arising out of a PVO judgment will be required to forward photocopies of all papers served upon him or her to:

Special Counsel
Parking Violations Operations
Office of Legal Affairs
Department of Finance
66 John Street, Room 104
New York, New York 10038

and

Corporation Counsel
City of New York
100 Church Street
New York, New York 10007

This will help the City coordinate its involvement in litigation when it is, or may become, a party to a lawsuit. It should be noted, however, that the forwarding of such

¹ Q-96 (December 16, 1980).

papers to the Office of the Corporation Counsel does not create any obligation on the part of the City to indemnify or defend the marshal.

Note that this reporting requirement is in addition to the present requirements under Chapter X, § 2-1 of the Handbook relating to each marshal's responsibility to notify the Department of Investigation of all pending litigation.¹

¹ Q-113 (April 29, 1982).

CHAPTER III

SALES

Section 1: **GENERALLY**

After a copy of the execution and inventory has been served on the debtor, there are certain preliminary steps which must be taken prior to selling the property at a public sale.¹

The first step is placing an advertisement in a proper newspaper. Section 5233 of the CPLR authorizes a marshal to either (a) advertise and publicly post notices of sale, or (b) advertise the sale in the auction column of any morning newspaper published daily and Sunday in New York City, editions of which appear on the newsstands the night previous to the sale date, and which have a circulation of not less than 300,000.² Any notice published in an appropriate newspaper must be sufficiently detailed so as to inform the public of the nature of the property to be sold. Additionally, these notices must state that the sale is public and must list the telephone number of the marshal conducting or attending the sale.³

In instances where the marshal is in actual possession of property seized pursuant to a levy, the sale must be advertised two (2) calendar days prior to the scheduled date of sale. For example, if the sale is scheduled for Friday, the advertisement must appear Wednesday. Likewise, if the sale is scheduled on Tuesday, the advertisement must appear in the Sunday paper. Note: This applies only to property seized pursuant to levy and in the marshal's possession.

In instances where the marshal is not in possession of the property slated for sale, the advertisement must be placed in an appropriate newspaper dated the day of the sale.⁴

¹ CPLR § 5233.

² CPLR § 5233(b).

³ Q-64 (August 9, 1976); CPLR § 5233(b).

⁴ Q-93 (October 21, 1980).

Sales shall be conducted between the hours of 9:00 a.m. and 4:00 p.m., unless there are special circumstances which prevent the sale during these hours. All property subject to the sale must be present and in public view.

On the day of the sale, several announcements must be made prior to commencing a sale. A marshal must state that only the debtor's right, title, and interest in the property is being sold and that the property is being sold subject to all liens and encumbrances, if any. The marshal must explain that the property is being sold only to the extent of the debtor's interest and it is sold subject to the interest of any third parties (such as parties holding filed security agreements). In addition, a marshal must also state that he or she reserves the right to adjourn the sale at any time if the bids are too low.

A marshal must notify the creditor's attorney (and the creditor, if possible), by regular mail, telephone, or facsimile transmission, of the date and place of any anticipated sale. If the notification is mailed it must be postmarked at least five (5) days before the anticipated sale.

If a marshal is aware of the interest of any lienors upon the property to be sold, he or she must announce the existence and amounts of the liens, and must also notify the lienors of the time and place of the sale. If a marshal becomes apprised of a lienor subsequent to a sale, the marshal should provide the lienor with the buyer's name and address.

The law requires a marshal to sell the personal property of the judgment debtor in bulk or in lots or in any combination thereof which in the marshal's judgment will bring the highest price.¹ If a marshal wants to sell after receiving two bids, one bulk and one lot, the marshal must first determine the bulk bid and then the lot bid.

A marshal may, at his or her option, conduct the auction personally or use a licensed auctioneer. However, on the specific written request of any party involved, a licensed auctioneer must be used. If a marshal conducts a sale through an auctioneer, the marshal must be present at the time of sale. Any compensation paid to the auctioneer shall be deducted from the proceeds of the sale.²

¹ CPLR § 5233(a).

² N.Y.C. Admin. Code § 7-508.

Section 2: COLLUSIVE SALES

A marshal must attempt to obtain the highest bid for property offered for sale and, accordingly, must receive more than one bid. A marshal shall not permit individuals or groups to make bid-restricting arrangements or influence the result of the sale by resorting to intimidation or persuasive conduct that would hinder bidding.¹ Furthermore, neither a marshal, nor his or her office staff, nor members of his or her family may bid at any sale held by any city marshal.

A marshal shall not sell any vehicle seized under the PVO Vehicle Seizure Program to any of the following:

- a marshal, an auctioneer in the program, or members of their families;
- employees of a marshal or an auctioneer in the program or members of such employees' families; or
- a collection agency, impound-storage facility, or towing company in the program, their owners or employees, or members of their owners' or employees' families.²

¹ Q-105 (September 11, 1981).

² Family includes but is not limited to spouse, parent, child, stepchild, sibling, and sibling's spouse.

Section 3: REMOVAL OF PROPERTY

Property purchased at a marshal's sale shall be removed from the premises by the buyer as soon as possible. The buyer has no right to occupy the premises, and the marshal shall not surrender the key to the premises to any person other than the tenant or landlord.

Section 4: ADJOURNMENTS

A marshal may exercise reasonable discretion in the adjournment of a sale, provided such adjournment does not cause injury to the parties. The marshal must announce at the outset of the sale that he or she reserves the right to exercise discretion with regard to adjourning the sale if the bids are unreasonably low or if there are fewer than two bids.

Section 5: **BILL OF SALE**

After the sale, a bill of sale must be signed by the marshal and prepared in duplicate by the marshal. One of the copies shall be delivered to the purchaser of the property, and the other retained by the marshal. Bills of sale are to contain a description of the property sold and the names and addresses of the purchasers. This information must also be posted in the marshal's records. A marshal must demand identification from the purchaser and must record on the bill of sale, as well as in the marshal's docket book or record, the number from the identification piece, e.g., a driver's license number.

Bills of sale for motor vehicles, in addition to the above information, must also contain the following: Name, address, and registration plate of the prior owner; and the year, make, model, and vehicle identification number of the vehicle sold. A marshal is authorized to issue only one bill of sale for each automobile sold at auction. If the individual who purchased the vehicle from the marshal at auction later requests a duplicate bill of sale from the marshal, the marshal is advised to ask the purchaser why the duplicate is needed. If the marshal is informed that the original bill of sale was lost, destroyed, or stolen, the marshal is advised to require a copy of a police report filed by the purchaser and an affidavit, notarized, from the purchaser specifying the circumstances giving rise to the need for the duplicate bill of sale. The marshal may at his or her discretion issue a duplicate. The duplicate should contain an indelible marking, integral to the document, such as a watermark, clearly indicating that it is a duplicate. The purchaser's affidavit should be attached to the duplicate bill of sale. The marshal should note on the face of the duplicate bill of sale that it was issued in reliance upon the attached affidavit of the purchaser. Marshals should exercise caution to prevent their official documents, including bills of sale from being used improperly.

It is the marshal's responsibility to comply with all applicable State Department of Motor Vehicle regulations pertaining to the sale of motor vehicles, including the issuance to the buyer of all required forms.¹

¹ See 15 N.Y.C.R.R. § 78.

Section 6: SALE OF ALCOHOLIC BEVERAGES, DRUGS, AND CIGARETTES**Section 6-1: Alcoholic Beverages**

A marshal must make application to and receive a permit from the State Liquor Authority before conducting a sale of any liquor stock seized pursuant to an execution.¹ A buyer at a marshal's sale may take title to all contents of a licensed bar, retail store, or any equity therein. The buyer of any liquor must be a licensee under the rules of the State Liquor Authority. Any request for information relating to the sale of alcoholic beverages should be directed to the permit section of the State Liquor Authority, 317 Lenox Avenue, New York, New York 10027 (518) 474-3114.

Section 6-2: Drugs²

Prior permission is required from the U.S. Department of Justice, Drug Enforcement Administration (DEA), 99 Tenth Avenue, New York, New York 10019 (212) 337-1810, in all instances regarding the disposition of controlled drugs by marshals. When making a levy and sale or executing a warrant of eviction, if a marshal has knowledge that substances under the jurisdiction of the DEA will be subject to sale or transfer, he or she must first request permission to do so by submitting to the Special Agent in Charge of the New York Field Office a letter stating:

- a. the marshal's name and address;
- b. the name and quantity of each controlled substance to be disposed of;
- c. how the marshal obtained the substance; and
- d. the name, address, and registration number, if known, of the person who possessed the controlled substance prior to the marshal.

The Special Agent will authorize and instruct the marshal to dispose of the substance in one of the following manners:

- a. by transfer (e.g. sale) to a person authorized to possess the substance;

¹ Alcoholic Beverage Control Law § 99-b(1)(a).

² Education Law § 6808(1); Q-5 (July 1, 1959).

- b. by delivery to an agent of the DEA or the nearest office of the DEA. In this case, the marshal shall complete a special inventory form available from the DEA;
- c. by destruction in the presence of an agent of the Bureau or other authorized person; or
- d. by such other means as the Special Agent may determine to assure that the substance does not become available to unauthorized persons.

In addition, the marshal shall notify the Senior Investigator of the Office of Professional Discipline, New York State Education Department, 163 West 125th Street, Room 819, New York, New York 10027 (212) 961-4369. The Office shall be notified at least seven days prior to sale. The Office, at its option, will send a licensed pharmacist as an inspector to the public sale of pharmaceuticals.

Section 6-3: Cigarettes

The New York City Administrative Code, Title 11, Chapter 13 requires a person who intends to sell cigarettes first to obtain a license. A marshal who intends to sell cigarettes should first contact the New York City Department of Finance, Enforcement Division, CTX Unit, 30-10 Starr Avenue, 2nd Floor, Long Island City, New York, 11101, (718) 610-44080.¹ The Department of Finance will determine whether the marshal will be issued a wholesale or retail license. Wholesale licenses are issued by the Department of Finance, and retail licenses by the Department of Consumer Affairs Licensing Center, 42 Broadway, 5th Floor, New York, New York 10004, call 311 to reach by phone. The marshal should also inquire of the Enforcement Division what other units within the Department of Finance should be notified of a pending sale.

Additionally, Article 20 of the New York State Tax Law, “Tax on Cigarettes and Tobacco Products,” requires that a person who intends to sell cigarettes or tobacco products as a retailer must obtain a Certificate of Registration and that a person who intends to sell cigarettes or tobacco products as a wholesale distributor must obtain a license from the New York State Department of Taxation and Finance.² A marshal who intends to sell a cigarette or tobacco product must first contact the New York State Department of Taxation and

¹ Q-14 (July 23, 1969).

² Tax Law §§ 480(1), 480-a(1).

Finance, Metro NYC Regional Office, Criminal Investigations Division, 15 Metro Tech Center, 2nd Floor, Brooklyn, New York 11201 (347) 390-7481. The New York State Department of Taxation and Finance will determine whether the relevant registration or license will be issued and the cigarettes or tobacco sold, or whether the cigarettes or tobacco products are contraband and subject to seizure by the Department of Taxation and Finance.

Section 7: SALES TAX

Sales tax must be paid by purchasers. In cases where the property is purchased for resale, the marshal must be presented with a current New York State tax re-sale certificate, the number of which shall be recorded on the bill of sale and in the marshal's docket book.

Section 8: DEPOSITS AND PAYMENTS

A marshal, at his or her discretion, may require a ten percent (10%) deposit on all bids over fifty dollars (\$50) and must receive payment of the balance after the final bid. However, in all cases, the final payment must be in cash or certified check, to avoid the inherent risk of accepting the buyer's credit.

CHAPTER IV

SUMMARY PROCEEDINGS:
EVICTIONS AND LEGAL POSSESSIONS¹Section 1: **BACKGROUND**Section 1-1: **Grounds for Removal**

Article 7 of the Real Property Actions and Proceedings Law (RPAPL) governs summary proceedings to recover possession of real property. Grounds for such proceedings are specified in §§ 711, 713, and 715 of the RPAPL. Generally, § 711 contains grounds for such proceedings where a landlord-tenant relationship exists. The most common proceedings under § 711 are holdover proceedings,² where the tenant is alleged to have remained in possession of the premises after the expiration of his or her term without the landlord's permission, and non-payment proceedings,³ where the tenant is alleged to have defaulted on the payment of rent.

The lease term for the premises must have expired before the landlord starts a holdover proceeding. The term may expire either at a time fixed in the written lease or, if the written lease so provides, at an earlier time following a specified event. One such event could be the landlord's giving notice that the lease will expire at a particular time as a result of a breach by the tenant. The courts refer to such a lease provision as a "conditional limitation" on the term of the lease.⁴

¹ Reference in this chapter to eviction shall apply equally to legal possession, and vice versa, unless otherwise specifically noted.

² RPAPL § 711(1).

³ RPAPL § 711(2).

⁴ For a discussion of the requirement that the lease must have expired before a landlord can bring a holdover proceeding under § 711(1) of the RPAPL and of the difference between "expiration" and "termination" of a lease after a tenant breaches a lease obligation, see *Watervliet Hous. Auth. v. Bell*, 262 A.D. 2d 810 (3d Dep't 1999); *Calvi v. Knutson*, 195 A.D. 2d 828 (3d Dep't 1993); *Perrotta v. Western Regional Off-Track Betting Corp.*, 98 A.D.2d 1 (4th Dep't 1983); *Fowler Court Tenants Inc. v. Young*, 119 Misc. 2d 492

Additional grounds for summary proceedings include, among others, illegal use or occupancy of the premises.¹

Section 1-2: Parties to be Named

Generally, all persons in possession of real property who derive their right or title to possession through the respondent (tenant) must be named in the papers. If a sub-tenant is in possession, he or she must be joined in the proceedings. If he or she is not named, such sub-tenant in possession may not be evicted, even though the prime tenant may be evicted. Generally, the children, spouse, or guests of a tenant need not be named. Where a landlord does not know the name of the tenant, or subtenants, the landlord may proceed against them by designating such tenant "John or Jane Doe."

(N.Y.C. Civ. Ct. 1983); 2 Robert F. Dolan, *Rasch's New York Landlord and Tenant including Summary Proceedings* §§ 30:3-30:6 (4th ed. 1998).

¹ See, e.g., RPAPL §§ 711(5), 715.

Section 2: NOTICE OF PETITION AND PETITION

Section 2-1: Generally

The notice of petition and petition are the legal papers whereby a landlord commences removal proceedings against a tenant. These papers, commonly called dispossess papers, may be prepared only by an attorney or by a landlord personally. Pursuant to §§ 484 and 492 of the Judiciary Law, a city marshal who prepares these papers commits a misdemeanor.¹

A marshal may not use any lettering, language, or signs on the windows or doors of his or her office, stationery, or anywhere else which would indicate that the marshal prepares or specializes in “landlord and tenant cases,” “dispossess,” or “summary proceedings.”² This language, furthermore, may not be used in the telephone directory or in the marshal’s online advertising, if any. (See Chapter X, § 1-5)

Section 2-2: Service

The Real Property Actions and Proceedings Law (RPAPL) requires that service of the notice of petition and petition be made by delivering the papers personally to the tenant or, if that is not possible, that it be made on a person of suitable age and discretion who resides or is employed at the property which is sought to be recovered. If the second method of service is followed, a marshal must, within one day, mail two (2) copies to the tenant, one by certified or registered mail and another by regular first class mail.³ The marshal must obtain receipts for certified or registered mailings and retain the receipts in his or her office. For the notice sent by regular first class mail marshals are advised to obtain and retain a “certificate of mailing” or other proof of mailing such as a manifest stamped by the post office.⁴ It is essential to effect in-hand service on the tenant when the petitioner is seeking a money judgment along with removal of the tenant.

¹ Q-10 (February 1, 1967); Q-40 (February 7, 1973); Q-75 (September 27, 1978).

² Q-10; Q-40, *supra*.

³ RPAPL § 735; Q-21 (August 18, 1971).

⁴ Q-22 (October 21, 1971); Q-90A (September 25, 1980).

Marshals must first attempt the above methods of service. However, when neither is effective, a marshal may resort to conspicuous service, the so-called “nail and mail” method. This method consists of affixing a copy of the notice of petition and petition to a conspicuous part of the property to be recovered, or under the door thereof, and within one day, mailing to each respondent two (2) more copies, one by certified or registered mail and another by regular first class mail.¹

When a notice of petition and petition in a holdover or non-payment proceeding are given to a marshal to serve, they may not be held indefinitely. In holdover proceedings, the papers must be served at least five (5) days, but not more than twelve (12) days, before the date on which the petition is noticed to be heard.² In non-payment proceedings, the notice of petition shall be returnable before the clerk within five (5) days after its service.³ Furthermore, within three (3) days from the time of service, a marshal must file the notice of petition and petition with an affidavit of service in the Court where the matter is to be heard.⁴ The marshal should be aware that pursuant to RPAPL § 735(2), service is considered complete at the time of personal delivery to the respondent, but in the case of service by any of the other above-described methods, service is complete only when proof of service is filed with the court. Accordingly, a marshal who serves by any method other than personal delivery must take care to include a return date on the petition that takes into account the date service is complete.

The Corporation Counsel of New York City has rendered an opinion which states that the provisions of § 1603 of the New York City Civil Court Act do not prohibit a marshal from retaining the services of a licensed process server to serve a notice of petition and petition upon a tenant⁵. However, if the services of a process server are utilized, the marshal still has the responsibility to ensure there was proper service.

¹ RPAPL § 735(1); Q-16 (December 7, 1980); Q-90 (September 15, 1980).

² RPAPL § 733(1).

³ RPAPL § 732(1).

⁴ RPAPL § 735(2).

⁵ Q-28 (February 29, 1972); CCA § 1603.

Before hiring a process server, the marshal should conduct an initial review of the server's logbooks and affidavits to determine whether they are in compliance with State and City law, including the requirements of the City Rules governing process servers.¹ If a marshal uses a process server regularly, he or she should periodically review and compare the server's logbooks and affidavits of service, checking for accuracy and completeness and ensuring that the server has successfully made personal service and substituted service upon identifiable individuals in a reasonable percentage of the cases. A high proportion of conspicuous-place service should prompt the marshal to inquire further and to assess the process server's diligence, reliability, and suitability for work with a City marshal. Marshals are advised to document the dates and results of these reviews.

The marshal must keep accurate records of the name, home and business address of all process servers used. The process server's license number, and the exact time, date, place and method of service of the notice of petition and petition must be adequately set forth in the affidavit of service, which must be executed on the date of service.² In addition, Section 20-410 of the New York City Administrative Code requires all licensed process servers to carry an electronic device that uses a global positioning system or other technology to electronically establish and record the time, date, and location of service, and to maintain this data for seven (7) years. The marshal should ensure that any process server he or she utilizes is in compliance with this requirement.³

¹ These rules can be found at 6 RCNY §§ 2-231-2-238. Among other requirements, logbooks must be kept in bound and paginated volumes, with entries made in chronological order in only one logbook at a time (not separate logbooks for different clients or different kinds of papers), with no blank spaces permitted, and errors crossed out with a single line. The date, time and address of every attempted and effected service must be recorded contemporaneously in the logbook. 6 RCNY § 2-233(b). Process servers are also required to maintain electronic records. 6 RCNY § 2-233a. *See also* General Business Law § 89-cc; N.Y.C. Admin. Code § 20-406.3(a).

² Q-28 (February 29, 1972).

³ The marshal should also ensure that the process server is in compliance with any City Rules regarding the gathering and maintenance of this type of data. 6 RCNY § 2-233b.

Section 3: **MILITARY AFFIDAVITS**

At the time the notice of petition and petition is served, a marshal may be required by the landlord or his attorney to prepare an affidavit of non-military service or dependency. This requires an inquiry as to whether the tenant being evicted is in or is dependent upon anyone in the military. It may be accomplished by talking to a neighbor or a superintendent or anyone else who may have such knowledge. The affidavit must summarize the findings accurately.

Pursuant to the Servicemembers Civil Relief Act,¹ and the rules of the New York City Civil Court, a non-military affidavit is required for every Landlord and Tenant proceeding affecting residential housing before a default judgment may be issued against a respondent who has failed to answer. A non-military affidavit may also be required in a case where the respondent has answered and is proceeding *pro se*, but has failed to appear, and more than thirty (30) days have elapsed since his or her last appearance in court.²

If the marshal (or marshal's process server) prepares the necessary non-military or military affidavit, it must be noted in the marshal's notice of petition and petition books or docket record, and the marshal must retain a copy in his or her records.

In a 2010 case, the First Department made clear that affidavits based on conclusory statements and hearsay are insufficient.³ Marshals are advised to become familiar with the court's detailed rules for submitting these affidavits.⁴ The non-military affidavit is subject to the marshal's duty to maintain accurate records, as provided by Chapter I, § 1-10 of this Handbook, the marshal's duty to conduct official business in accordance with law, and his or her responsibility for the ministerial duties performed by the marshal's office managers and

¹ 50 U.S.C. App. § 521(b); *see also* Military Law § 303(3).

² New York City Civil Court Legal/Statutory Memorandum No. LSM 152B, effective May 27, 2010.

³ *Tracey Towers Assocs. v. Cobblah*, 26 Misc. 3d 132A (1st Dep't 2010).

⁴ *See* New York City Civil Court Legal/Statutory Memorandum No. LSM 152B, effective May 27, 2010 (setting forth the procedure and timelines for filing non-military affidavits with the Civil Court); New York City Civil Court Chief Clerk's Memorandum No. CCM 158A, effective June 1, 2010 (setting forth the procedure for using proof of military status acquired from the Department of Defense Manpower Data Center). The marshal is advised that these procedures are subject to change. Updated procedures may be found on the Civil Court website.

process servers (*See* Chapter I, § 1-1). Falsification of such an affidavit is a ground for criminal prosecution under the Penal Law and removal from office. In addition, under federal law, a person who knowingly makes or uses a false non-military affidavit commits a misdemeanor punishable by a one-year term of imprisonment and a fine of up to \$5,000.¹

¹ 50 U.S.C. App. § 521 (c).

Section 4: WARRANT REQUISITION

After being notified by a landlord that he or she has been awarded a judgment, it is the marshal's responsibility to requisition the warrant of eviction from the court. Neither attorneys, nor landlords, nor agents of the landlord may requisition warrants; only a city marshal may requisition a warrant.¹ However, a marshal or any bona fide office employee or agent of a marshal acting under his or her direction and supervision may deliver or mail the requisitions to the court. The issuance of warrants is a duty of the clerks in the courts and not a favor. As noted in Chapter I, § 1-6 of this Handbook, a marshal shall not give, offer, or agree to give anything of value or confer any benefit upon a public servant including but not limited to court personnel in connection with the public servant's performance, non-performance or violation of his or her official duties. Only a marshal or his or her bona fide employee may receive a warrant that has been issued by the court, either by retrieving it from the court in person or receiving it in the mail.²

A city marshal shall not pay a landlord, a landlord's attorney, or any other agent or representative of the landlord for preparing any document in connection with the eviction. If the marshal has not previously assigned a docket number to the case, the marshal must, before requisitioning the warrant from the court, enter all required information on the docket record or page, and note in the appropriate field or in the "remarks" section the date that the marshal received from the landlord or the landlord's representative the request to obtain the warrant. The marshal must enter the docket number on the warrant requisition form before submitting it to the court.

The fee for requisitioning, receiving, entering a warrant of eviction in the appropriate records or books, and for return of a warrant of eviction shall be charged once for each warrant, without regard to the number of requisitions the marshal submits to the court.³ The fee may be charged in advance and shall not be waived (*See* Chapter IX § 2-3).

¹ RPAPL § 749(1).

² New York City Civil Court Warrant Request Procedure (September 11, 2006).

³ CPLR § 8011(f)(2).

Section 5: NOTICE OF EVICTION

Section 5-1: Form and Content of the Notice

Real Property Actions and Proceedings Law (RPAPL) § 749(2) provides that the enforcement officer to whom the warrant of eviction is issued shall give at least seventy-two hours notice, excluding any period which occurs on a Saturday, Sunday or a public holiday, in writing, to the person or persons to be evicted. See § 5-2 for how the notice must be given. The written notice advises the tenant that if he or she has not vacated the premises, he or she will be evicted by a marshal on any business day after the notice period.

Two approved forms for the notice of eviction are attached as appendices to this Handbook. Marshals shall use these forms unless they obtain prior approval from the Department of Investigation to use others that contain all the required information. One form (“72-Hour Notice of Eviction--Personal Service”) advises the respondent that he or she may be evicted on the fourth business day after the date of the notice or on any business day thereafter. This form may be used only when the notice is served personally upon the respondent. The other form (“Notice of Eviction--Alternative Service/Mailing”) advises the respondent that he or she may be evicted on the sixth business day after the date of the notice or on any business day thereafter. This form may be used when the notice is delivered personally to the respondent, and must be used when served or given by any method that requires a mailing.

The following information must be included on all notices of eviction:

- a. the marshal's name, address, telephone number, and badge number;
- b. the name and county of the court;
- c. the title of the action, including the index number;
- d. the address of the premises, including a designation or description of the rooms or apartments concerned;
- e. a statement in bold type designating the notice as a notice of eviction;
- f. the date of the notice, which must be on or after the date the notice is delivered personally to the respondent, or if served or given by any method that requires a mailing, the date on which it is mailed (*See* §§ 5-2 and 5-3 for instructions concerning service and the date of the notice); and
- g. the following statements:

- **[Only for 72-Hour Notice served by personal delivery to the respondent]:**
Please take notice that the Court has issued a warrant for your eviction. If you fail to vacate the described premises, **YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE, ON THE FOURTH BUSINESS DAY AFTER THE DATE OF THIS NOTICE** or on any business day thereafter. “Business days” are Monday through Friday except legal holidays.
- **[For Notice of Eviction served or given by any method that requires a mailing]:**
Please take notice that the Court has issued a warrant for your eviction. If you fail to vacate the described premises, **YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE, ON THE SIXTH BUSINESS DAY AFTER THE DATE OF THIS NOTICE** or on any business day thereafter. “Business days” are Monday through Friday except legal holidays.
- **The ONLY way you can stop this eviction is if a Court issues an order to show cause that stays your eviction. You may apply for such an order at the Civil Court, Landlord-Tenant part, in your borough.**
- If the Court has stayed your eviction and the stay is now in effect, you will be evicted only if the stay ends or is vacated by the Court. If the Court has already ordered that you may be evicted if you fail to make a payment or comply with the Court's order by a certain date, your failure to pay or comply with the Court's order by that date may result in your eviction without further notice.
- If you are dependent upon a person in the military service of the United States, advise the clerk of the court immediately in order to protect your rights.
- If you need legal assistance, the Legal Aid Society may be able to assist you (check telephone listing in your borough). If you are a senior citizen, you may seek assistance by dialing 311.
- If you receive public assistance, notify your caseworker immediately. The Human Resources Administration may be able to help you with back payments whether or not you receive public assistance. Call (718) 557-1399 for information.

Section 5-2: Service

Personal Delivery to Respondent

The law provides that a notice of eviction must be served in the same manner as a notice of petition, as previously described.¹ See § 2-2. If the 72-hour notice is delivered personally to the respondent, the 72-hour notice period shall begin the next day and shall run for three days. Pursuant to Department of Investigation Directive Q-17 (March 23, 1971), the three day period excludes Saturdays, Sundays, or holidays. Thus, if personal service upon the respondent is made on a Wednesday, the 72-hour period will begin Thursday and end Monday, and the earliest the eviction can occur is Tuesday. The table below specifies the minimum time periods between the date of personal service and the earliest eviction date. In each case, the earliest eviction date is the fourth business day after the date of service.

| Day Personally Served | 72-Hour Notice Period Begins | Earliest Eviction Day [‡] |
|-----------------------|------------------------------|------------------------------------|
| Monday | Tuesday | Friday |
| Tuesday | Wednesday | Monday |
| Wednesday | Thursday | Tuesday |
| Thursday | Friday | Wednesday |
| Friday | Monday | Thursday |
| Saturday | Monday | Thursday |

[‡] **Exception (Holiday):** When there is a holiday on any weekday (Monday through Friday) after the notice is personally served and on or before the day shown in this column, the earliest eviction day becomes the business day **after** the day shown in this column.

¹ RPAPL §§ 749(2), 735. See also Q-16 (December 7, 1970); Q-21 (August 18, 1971).

Other Methods of Service

Where any method of service other than personal delivery to the respondent is used, RPAPL § 749(2) requires that copies of the notice of eviction be mailed to the respondent by registered or certified mail and by regular first class mail.¹ The marshal must obtain receipts for certified or registered mailings and retain the receipts in his or her office. For the notice sent by regular first class mail marshals are advised to obtain and retain a “certificate of mailing” or other proof of mailing such as a manifest stamped by the post office.² In the City of New York, seventy-two hours is not sufficient time to allow for delivery of the mailed notices.

Therefore, to give the occupant of the premises adequate notice of his or her impending eviction, city marshals shall add two business days to the 72-hour notice period when the notice is given by any method requiring a mailing.

Copies of the notice of eviction must be mailed within one day of whichever of the following methods of delivery to the premises is used:

- delivery to a person of suitable age and discretion who resides or is employed at the premises; or
- affixing a copy of the notice upon a conspicuous part of the premises to be recovered; or
- placing a copy of such notice under the entrance door of such premises.

The notice period begins the day after the date of mailing and shall run for five days, excluding Saturdays, Sundays, and holidays. The table below specifies the minimum time periods between the date of mailing and the earliest eviction date. In each case the earliest eviction date is the sixth business day after the mailing date.

¹ See RPAPL §§ 735(1)(a) and (b) for the places to which the mailed notices should be addressed.

² Q-22 (October 21, 1971); Q-90A (September 25, 1980).

| Day Mailed | Earliest Eviction Day [†] (6th Business Day) |
|------------|---|
| Monday | Second Tuesday |
| Tuesday | Second Wednesday |
| Wednesday | Second Thursday |
| Thursday | Second Friday |
| Friday | Second Monday |
| Saturday | Second Monday |

[†] **Exception (Holiday):** When there is a holiday on any weekday (Monday through Friday) on or between the day mailed and the day shown in this column, the earliest eviction day is the business day **after** the day shown in this column.

Marshal Responsible for Service

The marshal must retain the affidavit of service for the notice of eviction in his or her office and provide a photocopy to the tenant and/or the tenant's attorney upon request.

The Corporation Counsel has advised this Department that marshals may retain the services of a licensed process server to serve the notices of eviction as required by the RPAPL.¹ However, responsibility for the actions of the process server rests with the marshal. See § 2-2 above for details on the marshal's responsibilities with respect to the use of a process server.

¹ Corporation Counsel Opinion #107,883 (April 3, 1974).

Section 5-3: Date of the Notice

The written notice of eviction must be dated. By referring to the date and the applicable statement on the notice, the occupant of the premises will be able to ascertain the earliest date on which he or she may be evicted.

The marshal shall date the written notice of eviction by printing legibly in the space captioned "Date of Notice" either the date the notice is personally delivered to the respondent, or for a notice served by one of the alternative methods authorized by RPAPL § 735(1), the date copies are mailed. When notice by mail only is authorized by § 5-4, below, the date of the notice shall be the date it is mailed.

As noted in § 5-1, the marshal must use the appropriate notice of eviction form when the notice is served or given by any method that requires a mailing ("Notice of Eviction--Alternative Service/Mailing"). If the marshal elects to use the notice form for alternative service and mailing, but serves it personally upon the respondent, the marshal shall also mail a copy of the notice to the respondent and enter the date of mailing on all copies of the notice in the space captioned "Date of Notice." The respondent shall not be evicted before the sixth business day after the "Date of Notice," in accordance with the statement on the notice.

The marshal may enter a "Date of Notice" that is later than the date the notice is served or mailed, provided that the earliest eviction date is determined as if the notice was served or mailed on the "Date of Notice." The "Date of Notice" shall not be earlier than the date the notice is delivered personally or mailed to the respondent.

The marshal may conduct the eviction on the earliest eviction date, or any business day thereafter, subject to the thirty day limit described in § 5-4, below.

Section 5-4: Additional Notice of Eviction after Thirty Days or Stay of Eviction

The public policy underlying the requirement of the 72-hour notice is to ensure that a tenant will have adequate notice of his or her impending eviction. Where, after delivery, the notice becomes stale, it no longer fulfills its purpose. Consequently, the Department of Investigation requires city marshals to give tenants additional notices of eviction in two situations:

- The marshal must give the respondent an additional notice of eviction where thirty days have elapsed since the earliest eviction date specified by the previous notice of eviction and the warrant has not yet been executed.
- The marshal must give the respondent an additional notice of eviction where a Court order stays the eviction after service of a notice of eviction and the stay later expires or is vacated, unless the Court specifically waives the requirement of an additional notice of eviction and the warrant of eviction is then executed forthwith.

This Department has interpreted “forthwith” to mean within five business days of the earliest date of eviction authorized by the Court's order. If the Court authorizes the eviction without an additional notice of eviction, but the marshal does not execute the warrant of eviction within five business days of the earliest date of eviction authorized by the Court's order, another notice must be given.¹

Furthermore, even if the Court's order waives the additional notice of eviction, if thirty days have elapsed since the earliest eviction date specified by the previous notice, an additional notice must be given, unless the Court's order also authorizes execution of the warrant of eviction within five business days of the date on which the Court issues its order and the warrant of eviction is then executed within five business days of that date.

Unless the Court orders otherwise, the additional notice of eviction required by this section may be given by regular mail, provided that the appropriate notice form is used and that a certificate of mailing is retained for the marshal's records.² If the additional notice of

¹ Q-153 (August 18, 2005).

² Q-44 (May 14, 1974).

eviction is mailed, the notice form for alternative service and mailing must be used and two business days must be added to the 72-hour notice period. The notice period begins the day following the date of mailing and runs for five business days. The table in § 5-2 specifies the minimum time periods between the date of mailing and the earliest eviction date.

If the additional notice of eviction required by this section is given by regular mail, the fee provided for by CPLR § 8011(f)(2)(ii) for “service of a notice of eviction on a person or persons to be served,” at the amount specified in that section “for each person to be served,” shall apply, and no mileage fee shall be charged.¹ The fees that may be charged for mailing “additional notices of eviction” will be capped in any individual docket case as follows:

- (1) The per-person fee will be limited to two persons. The fee for mailing the additional notice of eviction to a second person will be charged only if (a) that person is individually named in the warrant and (b) the notice is mailed in a separate envelope to that person. The fee may not be charged for mailing the notice to a third or any additional person named in the warrant.
- (2) The fee will be limited to two instances in which an additional notice of eviction is mailed to one or more respondents. The fee may not be charged for the third or any subsequent instance of mailing such notice of eviction to one or more persons in connection with a single warrant of eviction.
- (3) Postage costs, as reimbursable expenses, are not subject to the aforementioned caps.²

In the alternative to mailing, the additional notice of eviction may be served by delivering it personally to the respondent, provided that an affidavit of service is completed and retained in the marshal's records. If the 72-hour notice form for personal service is delivered personally to the respondent on or before the date printed in the “Date of Notice” space, the eviction may be conducted on the fourth business day after the “Date of Notice.”

A marshal shall comply with the Court's order insofar as the Court specifies how the additional notice of eviction must be given. Where the Court, either by citing the statute or

¹ CPLR § 8011(f)(2)(ii).

² Q-154 (December 1, 2008).

by using any form of the verb “serve,” orders that the notice must be served in the manner prescribed in RPAPL § 735, the marshal shall serve the notice in accordance with § 5-2 of this Chapter. Where the Court either does not specify how the additional notice of eviction must be given or uses any form of the verb “mail,” the marshal’s mailing of the notice is sufficient for the purposes of this section.¹

¹ Q-151 (May 11, 2000).

Section 5-5: Service of Notice of Eviction during Stay of Proceedings

The following rules shall apply to service of notices of eviction while Court-ordered stays are in effect:

- If the Court's order stays all proceedings until a future date, a marshal shall not serve a notice of eviction until after that date.
- If the Court's order stays only the execution of the warrant until a specified future date, the notice of eviction may be served before that date.

Section 5-6: Reimbursement of Mailing Expenses

Any postage fees incurred in the mailing of notices of eviction are reimbursable expenses. As such, every marshal is required to ask for and receive such expenses.¹ (See Chapter IX, § 3, "Reimbursable Expenses.")

¹ CPLR § 8013; Q-123 (January 7, 1983).

Section 6: EVICTION AND LEGAL POSSESSION PROCEDURES¹**Section 6-1: Notifications**

After the 72-hour notice of eviction has been served upon the tenant, the landlord or his attorney must be advised that the eviction may take place at any time after the 72 hours, between 8:00 a.m. and 5:00 p.m., Monday through Friday. Marshals may not execute warrants of eviction on those public holidays set forth in Section 24 of the General Construction Law. With respect to a marshal's religious beliefs, or those of the tenant, discretion is advised in acting upon any warrant of eviction.² It should be noted that no warrant of eviction may be executed unless the landlord or his or her representative is in attendance throughout the entire eviction procedure.

When a marshal closes his or her office to the public before 5:00 p.m. on any day, Monday through Friday, which day is not a legal public holiday as defined by the General Construction Law, the marshal shall not enforce any warrants of eviction on the next succeeding business day,³ and shall not arrange for another marshal to execute any warrants of eviction issued to him or her on the next succeeding business day.

The Department of Investigation, Bureau of City Marshals must be notified by facsimile transmission or other means approved by the Department of Investigation received by 4:00 p.m. of all evictions scheduled for the next business day. The following information must be provided to the Department of Investigation as part of the notification of the evictions scheduled for the next day:

- a. name and address of each tenant;
- b. whether each matter is scheduled as an eviction or a legal possession;
- c. name of the moving company, if any, to be used in each matter;
- d. the name and business address of the landlord;
- e. Adult Protective Services (APS) control number, if applicable.

¹ Q-12 (July 7, 1967).

² Q-69 (April 12, 1978).

³ Q-83 (October 16, 1979).

In transmitting the next day's evictions and legal possessions, each marshal must inform the Department of Investigation of the order in which the evictions and legal possession are scheduled to take place.

If after the marshal has transmitted the schedule of evictions it becomes necessary to change the order in which they are conducted because of circumstances beyond the marshal's control, the marshal shall notify the Department of Investigation of the change before conducting an eviction out of order. The notification of change shall be made by facsimile transmission or other means approved by the Department of Investigation. This procedure does not apply to scheduled evictions that are cancelled and rescheduled for a later date.

The rule is that, absent exceptional circumstances, the marshal must inform the Department one day in advance of all evictions and the order in which they will occur. Accordingly, changes in the order of evictions to be performed on a particular date should be made rarely and only in exceptional circumstances (e.g. moving truck or locksmith delayed). Changes in the order of evictions shall not be made merely for the convenience of any person, nor shall the order of evictions be changed for the purpose of affecting a person's opportunity to obtain or comply with a court order or stipulation pertaining to the execution of the warrant of eviction. The Department of Investigation may direct a marshal, either in advance or in response to a specific notification, not to change the order of any eviction or evictions if in the judgment of the Department such direction is necessary either to enforce the policy requiring one day's notice or to carry out the Department's supervisory responsibility with respect to the official activities of city marshals.

If an eviction will be conducted by a marshal other than the marshal to whom the warrant of eviction was issued, the marshal to whom the warrant of eviction was issued shall so notify the Department of Investigation the day prior to the eviction, noting clearly on the prescribed form the full name of the city marshal who is executing the warrant of eviction. The appropriate form may be obtained from the Bureau of City Marshals.

If the marshal receives a request from the landlord, after notification has been made to the Department of Investigation pursuant to this section, to conduct a legal possession instead of an eviction, or if the landlord requests an eviction after the marshal has notified the Department of Investigation that the marshal will conduct a legal possession, the marshal must notify the Director of the Bureau of City Marshals or his or her designee of the change before the close of business the following day. The notification of the change shall be made by facsimile transmission or other means approved by the Department of Investigation.

Section 6-2: Preliminaries

Before executing a warrant, a marshal must determine whether an order to show cause has been served upon his or her office, or a Court Attorney to the NYC Civil or Housing Court Judge or other authorized employee of the New York State Court System has notified the marshal's office, by telephone or facsimile transmission, of a stay ordered by the court.¹ When the term "service" or "served with" is used in this section it includes such notification by a Court Attorney or authorized court employee. If the eviction has been stayed by court order, the marshal may not proceed any further, but must await further direction by the court. Marshals are advised to implement procedures in their offices to ensure that the marshal receives and complies with orders served under this section.

The marshal who has received the warrant of eviction from the court (receiving marshal) shall be responsible to accept service of any court order staying or otherwise affecting the warrant. Where the receiving marshal arranges for another marshal to execute the warrant (executing marshal), the receiving marshal shall be responsible for notifying the executing marshal of any court order affecting execution of the warrant. This responsibility cannot be delegated. Should a person be wrongfully evicted after the receiving marshal has been served with a court order staying the eviction, or after an attempt to serve the receiving marshal during business hours has failed because of the unavailability or other fault or neglect of the receiving marshal, the receiving marshal shall be subject to disciplinary action unless the receiving marshal actually and personally notified the executing marshal in time to have prevented or halted the eviction.

Furthermore, the marshal may only proceed if the marshal has in his or her possession at the eviction site, the warrant of eviction, and a photocopy of the warrant to provide to the tenant upon request, as well as proof of service of the notice of eviction (including the affidavit of service and if applicable, certificates of mailing and mailing receipts).

In executing a warrant, a marshal must first knock on the tenant's door, identify himself or herself as a city marshal, and state his or her purpose. For a marshal's own safety and that of the public, the marshal must conspicuously wear his or her official badge while executing

¹ Joint Administrative Order 534 (July 12, 1988).

a warrant or performing any other official function as required by § 1602 of the New York City Civil Court Act.

The marshal must ensure before conducting an eviction or legal possession that the marshal is at the premises specified in the warrant of eviction.

If the tenant is not home or will not admit the marshal, the marshal has the authority to break into the apartment to execute the warrant. However, this must be done in the least disruptive way, e.g., using the landlord's key. This breaking and entering must be done either by the marshal or in the marshal's presence and under his or her supervision.

If a marshal is aware of facts and circumstances from which he or she should reasonably foresee that a disturbance at the premises is likely to occur the marshal should contact the local precinct and await the arrival of the police before proceeding.¹ Facts and circumstances that should result in the marshal's contacting the police before proceeding include, but are not limited to, an occupant's physical resistance to the marshal's entry, a person's use or threatened use of a weapon or physical force to impede the eviction, and any other conduct by the occupant, or other facts of which the marshal is aware, indicating that the occupant will not leave the premises voluntarily in response to the marshal's direction.

¹ Q-1 (October 28, 1954).

Section 6-3: Effect of Bankruptcy Proceedings

This section is to alert City marshals to issues that may arise from time to time by virtue of a bankruptcy filing by a tenant during an eviction proceeding. It is not intended as legal advice or as an authoritative statement of law and cannot be cited or relied upon as such by a marshal or any other person. If a marshal encounters a tenant who claims that he or she is entitled to a stay of eviction by virtue of the automatic stay provision of the federal bankruptcy code, the marshal is advised to ascertain the pertinent facts by reviewing any bankruptcy court papers presented by the tenant or served upon the landlord and contacting the bankruptcy court if necessary, and to review the applicable law and if necessary seek independent legal counsel from an attorney regarding the effect of the pending bankruptcy proceeding and the automatic stay, if any, upon the warrant of eviction in the particular case. Marshals are advised that bankruptcy is a complex body of law, which may change after the effective date of this Handbook, and to exercise caution.

Marshals should be aware that as of 2005 there have been some changes to the bankruptcy code that affect residential evictions. The Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) of 2005 created an express statutory exception to the automatic stay of eviction proceedings that might otherwise be available to or claimed by some residential tenants who file for bankruptcy.¹ Pursuant to BAPCPA, a residential tenant who files for bankruptcy after a judgment of possession has been entered against him or her will not have the benefit of the automatic stay.² However, such a residential tenant is entitled to a temporary, 30-day automatic stay of eviction if the tenant includes in his or her bankruptcy filing and serves on the landlord a certification under penalty of perjury that (1) under New York law, the tenant is entitled to cure his or her entire monetary default³ even after a judgment has been rendered; and (2) a deposit of the rent that would come due during

¹ See 11 U.S.C. § 352(a)(3).

² 11 U.S.C. § 362(b)(22).

³ As of this writing, courts have interpreted the statutory reference to “curi[ng] the entire monetary default that gave rise to the judgment for possession” to limit the availability of the 30-day automatic stay provision to tenants who have a judgment against them for nonpayment of rent. 11 U.S.C. § 362(l)(1)(A). See, e.g., *In re Harris*, 424 B.R. 44, 54 (Bankr. E.D.N.Y. 2010) (finding 30-day automatic stay unavailable when judgment of possession was based on holdover); *In re Griggsby*, 404 B.R. 83, 88 (Bankr. S.D.N.Y. 2009) (finding 30-day automatic stay unavailable when judgment was based on “Collyer conditions”).

the 30-day stay has been deposited with the court clerk.¹ A landlord is entitled to file an objection to this certification and have a hearing in front of a federal bankruptcy judge to seek an exception from the 30-day automatic stay; similarly, the tenant may also file objections to any certifications made by the landlord. After such a hearing, the court will issue an order indicating whether the 30-day stay will remain in effect.

¹ 11 U.S.C. § 362(l)(1). If the tenant cures the entire monetary default during the period of the 30-day stay, the stay will continue in effect. 11 U.S.C. § 362(l)(2).

Section 6-4: Removal of Tenant's Property

The distinction between an eviction and a legal possession is that in an eviction both the tenant and his or her personal property are removed from the premises, whereas in a legal possession the tenant is removed from the premises and his or her property remains under the care and control of the landlord as bailee for the tenant. Marshals are required to perform whichever service is desired by the landlord and may not restrict themselves to legal possessions.

If the landlord indicates that he or she desires mere possession of the property rather than having the premises delivered to him or her in "broom clean" condition, upon giving possession of the tenant's premises to the landlord, the landlord or landlord's representative must endorse the back of the warrant as follows:

"Possession of the tenant's premises with the contents intact is hereby acknowledged. The landlord accepts responsibility for all the property on the premises, releases the marshal from any liability, and agrees to save the marshal harmless from any action resulting from the enforcement of this warrant."

Signature of landlord, or his or her attorney or agent

This "hold harmless" clause may not be used during an eviction; it is reserved solely for legal possession.

In the event the landlord demands that the premises be turned over in "broom clean" condition, the marshal must conduct an eviction. The marshal must hire a bonded moving company which is licensed by the New York State Department of Transportation. The marshal must also direct the moving company to deliver the items removed from the premises to a warehouse licensed by the Department of Consumer Affairs pursuant to Title 20, Chapter 2, subchapter 28 of the New York City Administrative Code.

The Department of Investigation can restrict marshals from using certain movers or storage companies due to improper acts and past criminal behavior on the part of the movers or storage companies. Further clarification of this power is elaborated upon in Appendix K, Joint Administrative Order 514.¹

¹ Q-126 (May 5, 1983).

With respect to legal possessions, marshals are prohibited from making any arrangements with a moving company on behalf of the landlord.

The New York City Administrative Code § 20-482 provides that: “No representative of the city, including but not limited to sheriffs and marshals, shall deposit any household goods in a warehouse that is not licensed pursuant to this subchapter.”

It is the responsibility of the marshal to check periodically with the Department of Consumer Affairs to ensure that the warehouse(s) used is (are) continually licensed.¹

In all situations where the marshal and mover have access to the tenant's premises at the same time, and a tenant's property is to be removed, a marshal must remain on the premises until all property has been removed and placed on and secured in the moving van.² This rule applies whether the marshal performs an eviction or legal possession. Under no circumstances shall the tenant's property ever be permitted to remain on the sidewalk.

If the landlord has requested a legal possession and no property is being removed, a marshal must remain until the landlord has possession of the premises and the premises are secured in accordance with Section 6-15 of this chapter. A landlord has possession of the premises when the marshal has secured the premises by changing the locks, or having them changed under the marshal's direction and in his or her presence.

Where a landlord has requested a full eviction (e.g. possession of premises in broom-clean condition) the cost of removal of the tenant's property and its delivery to a bonded warehouse must be borne by the landlord.

In every instance in which the moving bill is paid by a marshal, a copy of such bill must be retained on file for a period of three years.

¹ Q-125 (March 2, 1983).

² Q-95 (December 11, 1980); Q-39 (October 3, 1973); Q-12 (July 7, 1967).

Section 6-5: Inventory of Property

All marshals are required to prepare a written inventory of all items contained in the premises of any tenant to be evicted. The inventory shall be prepared regardless of whether the marshal does an eviction or a legal possession.¹ The inventory must be complete and accurate, giving a description of all appliances, household furniture, goods, and properties present. Both the quantity and condition of the property must be noted. Numbers are to be used rather than "hash marks."

The full name of the tenant must be present on all inventories.² The inventory form must be dated, and signed by the marshal, landlord (or landlord's representative), and, whenever feasible, the tenant. The inventory form used should have a specially designated place for each of the above mentioned signatures. A copy of this inventory must be provided to the tenant at the time of the eviction whether or not it is specifically requested. If the tenant is not present, the marshal must make a copy of the inventory available to the tenant upon request. An inventory must be prepared whether the marshal performs an eviction or a legal possession.

Whenever electronic equipment such as stereos, televisions, appliances, etc., is inventoried, the make, model, and where possible, the serial number must be recorded on the inventory.

The marshal should take extra care to ensure that the carton count is correct and legible. Numbers rather than "hash marks" are to be used in reflecting the number of cartons inventoried. If no cartons are prepared, indicate in the quantity column, the number zero, "0."

All valuables, e.g., money, jewelry, negotiable instruments, etc., should be inventoried even when the items are small enough to fit into a carton. Any valuables which, in the marshal's opinion, need to be safeguarded should also be inventoried. The inventory should reflect that the valuables are being safeguarded. To safeguard these items, the marshal should deposit them in a safe place in his or her office. The items should be properly tagged for identification, and the tenant should be notified as to the valuables' location -- it is

¹ Q-29 (May 24, 1972).

² Q-38 (June 26, 1973).

recommended that the marshal keep an accurate record of the marshal's attempts to notify the tenant.

Inventoried items which are carried away by a tenant or his or her representative should also be noted on the inventory form. A tenant's signature should be present on the inventory as a release authorization. Any property which is inventoried but not removed (e.g., washing machine, etc.) should be noted as such on the inventory. (*See also* Chapter IV, § 6-10.)

If a marshal finds money, he or she must leave it in the custody of the local police precinct. If this is not possible, the marshal should keep the money in a safe place in his or her office. If any contraband such as drugs or guns is found, the local precinct must be contacted.

If the apartment is completely vacant, a marshal must still prepare an inventory form indicating that the apartment inventoried contained no property.

Section 6-6: Items Not to be Removed

The following articles are not to be removed from the premises of a tenant:¹

- a. food;
- b. groceries, including canned goods and packaged food;
- c. dishes encrusted with food particles;
- d. any fixture so attached to the realty that its removal will cause damage to the realty;
- e. rugs and wall-to-wall carpets which are firmly affixed to the floor;
- f. linoleum or tiles.

¹ Q-19 (June 2, 1971).

Section 6-7: Social Service Call-Ins¹

Periodically, a marshal may discover, when carrying out an eviction, an unattended child or a person unable to fend for himself or herself located at the premises on which the marshal is executing the warrant. While it is the marshal's duty to carry out the terms of a warrant of eviction, certain procedures must be carried out by the marshal to protect the rights, health, and safety of children, mentally ill, handicapped, elderly, or other persons not able to take care of themselves. Therefore, marshals are now required, when an eviction² is referred to them by a landlord or a landlord's attorney, to find out in advance (prior to service of the notice of eviction), if the premises are occupied by any individuals unable to fend for themselves. A marshal must make a reasonable effort to obtain this information by contacting a person who is familiar with the occupants of the apartment, for example, the landlord, the landlord's attorney, employee, or agent, or the tenant's attorney, or the occupant's immediate family or neighbors. The marshal must then make a notation in the "remarks" section of his or her docket book of such inquiry, specifying the name of the person contacted, date contacted, and the results of the inquiry. If the marshal is informed that there are no such individuals living at the premises in question, this finding must also be clearly noted.

However, when the marshal is apprised that such an individual resides at the premises at which the eviction is to take place, the marshal must notify the Department of Investigation, before scheduling the eviction. If the marshal is informed only that the individual is elderly, the marshal must make a further inquiry to attempt to ascertain the elderly person's approximate age and whether the elderly person is believed to have any mental or physical impairment. The marshal must include the results of this further inquiry, including any information provided to the marshal regarding the individual's possible impairment, when notifying the Department of Investigation.³

In all instances, except when a child is unattended, this Department will immediately notify the appropriate social welfare agency, usually Adult Protective Services (APS), a division of the Human Resources Administration. In order to give the appropriate social welfare agency the opportunity to assist the occupant who appears to be unable to fend for

¹ Q-103 (June 18, 1981); Q-139 (August 15, 1986).

² For the purposes of this section, the term "eviction" includes legal possession.

³ Q-156 (August 18, 2011).

himself or herself, the Department of Investigation will advise the marshal to schedule the eviction approximately two weeks after the marshal's notification to this Department.

In all instances where the marshal finds unattended children at an eviction site, the local police precinct must be notified immediately. The marshal must remain at the premises with the children until the police arrive. Performance of this service is not intended to expedite an eviction. The purpose of calling the police when an unattended child is found at the eviction site is to provide a service to an individual not capable of fending for himself or herself.¹ The police should not be called for the purpose of expediting an eviction. Marshals must make certain that neither they nor the landlord for whom they are acting abuse this service.

At times, a marshal may be incorrectly advised that the occupants of the premises do not include any individuals who are unable to fend for themselves. If a marshal appears at the eviction site and discovers mentally ill, handicapped, elderly, or other persons unable to take care of themselves, who have not been brought to the attention of the Department of Investigation and the appropriate social welfare agency, he or she must immediately notify the Department of Investigation and postpone the eviction. As described above, the Department of Investigation will notify the appropriate social welfare agency and advise the marshal to reschedule the eviction for approximately two weeks later in order to give the appropriate social welfare agency an opportunity to provide assistance to the occupant who appears to be unable to fend for himself or herself.

Once a notification has been made, the city marshal must inform APS, or other appropriate social welfare agency providing assistance to the occupants, at least 24 hours in advance of the new eviction date so that the social welfare agency may send a representative to meet the marshal at the eviction site to provide assistance to the occupants.

The Department of Investigation may advise the marshal to reschedule the eviction, if necessary, to give the appropriate social welfare agency additional time to provide assistance to occupants of premises subject to a warrant of eviction.

If at any time the social welfare agency notifies the marshal that the occupant is ineligible for its services, or that the agency will not provide additional services to the occupant, the

¹ Q-103 (June 18, 1981).

marshal shall note the date of the notification and the name of the person providing it in the “remarks” section of the marshal’s docket records, and may proceed with the eviction on the next available date.

Section 6-8: Sick and Disabled Children

Periodically, a marshal may discover, when carrying out an eviction, that a sick or disabled child or a new-born infant resides at the premises where the marshal is executing the warrant. While it is the marshal's duty to carry out the terms of a warrant of eviction, the marshal must take precautions to protect the rights, health, and safety of sick, disabled, and new-born children. This section requires the marshal to exercise good judgment and discretion in carrying out his or her responsibilities.

If a marshal learns that a child, under age 18, suffering from an illness or disability or a new-born infant, age two months or less, resides on the premises, and the marshal has reason to believe that evicting that child will place the life, health, or safety of the child at risk, the marshal must delay the eviction for a brief period of time, such as two calendar days, to give the parent or other adult responsible for the child's care an opportunity to arrange for the child's safe movement to another residence or to a medical facility, or to apply for a court order staying the eviction, or to determine that the child may be safely moved after such brief delay. Factors that the marshal should consider in determining whether evicting a child will place the child's life, health or safety at risk include but are not limited to a statement to such effect by a physician who has examined the child, a fever, or severe weather, such as freezing temperatures or heavy precipitation, when the child is a new-born infant or very young child, or where the child has an illness or condition that is likely to be aggravated by exposure to such conditions. If the marshal delays the eviction pursuant to this section, he or she should tell the parent or other adult responsible for the child's care that the marshal is briefly delaying the eviction to give such parent or adult an opportunity to take steps to protect the child's health and safety and that after such brief delay the marshal will return to execute the warrant of eviction unless otherwise directed by the court.

If after delaying an eviction the marshal learns that a parent or other adult responsible for a sick, disabled, or new-born child's care has failed to take any action to protect the child's health and safety and the child remains at risk when the marshal returns to the premises to conduct the eviction the marshal must exercise his or her own judgment to determine whether the eviction should be further delayed or other steps taken to avoid endangering the health and welfare of the child or new-born infant.

If a marshal has reasonable cause to suspect that a child is an abused or maltreated child the marshal is urged to report the pertinent information immediately to the statewide central register (SCR) by calling 1-800-342-3720. When calling the SCR the marshal should obtain

an SCR number and if he or she does so, must record it on the marshal's docket page or record. If the marshal believes that the child is in imminent danger the marshal should contact the police immediately.

Section 6-9: Evictions of Schools, Day Care Centers, Senior Facilities, and Similar Institutions Serving Children and the Elderly¹

From time to time, City marshals are called upon to execute warrants of eviction or ejection for the removal of institutional tenants, such as schools, day care centers, and senior centers that, during the business day, provide on-site services for children or the elderly. "Eviction" herein includes "legal possession" or "ejection." While it is the marshal's duty to carry out the terms of the Court's order or warrant of eviction, the marshal's official action should be performed, and scheduled, in a manner that avoids exposing the affected children or senior citizens to any unnecessary risks and disruptions, including those posed by their unplanned removal, relocation, or exclusion from the premises where their caretakers expect them to be.

Accordingly, City marshals must notify the Department of Investigation before scheduling or proceeding with any eviction that would involve (1) the removal or relocation of children or senior citizens from the premises of a school, day care center, senior facility, or similar institution, or (2) the exclusion of children or senior citizens arriving at the institution, i.e., where executing the warrant before the institution opens, with no advance notice having been given to parents, guardians, and school bus operators, or affected seniors or their caretakers, is likely to result in children or senior citizens arriving and being turned away or relocated. A City marshal may not proceed with such an eviction until the marshal (a) has consulted with the Department, (b) is assured that appropriate steps have been taken to minimize, as far as feasible, the risk that the eviction will result in the unplanned removal or exclusion of children or senior citizens from the institution, and (c) is advised by the Department that the marshal may proceed.

The Department, to minimize the disruptive effect of an eviction on children or senior citizens in the care of an institution, may advise a City marshal to schedule the eviction of a school, day care center, senior facility or similar institution for a time other than one between 8:00 a.m. and 5:00 p.m., Monday through Friday, provided that the warrant is executed at a time permitted by § 749(2) of the Real Property Actions and Proceedings Law.

¹ Q-152 (November 16, 2004).

Marshals are encouraged to take reasonable steps, either directly or through the landlord, the landlord's attorney, or the Court, to elicit, in advance, the cooperation of an institutional tenant's management, so that when the marshal arrives at the premises on the scheduled date of eviction, the children or senior citizens will be elsewhere. Reasonable steps might include notifying the institutional tenant's management, in advance, of the scheduled eviction date and time and specifically requesting, or seeking a court order directing, that the institutional tenant's management make any necessary arrangements so that at the scheduled eviction time, if there is no court-ordered stay in effect, the children or senior citizens will be elsewhere and will have been given an opportunity to remove their personal belongings. If such arrangements have been made, the Department will advise the marshal that the marshal may proceed on the scheduled date, provided no children or senior citizens are present. If, however, the institutional tenant's management is uncooperative, or if it refuses or fails to make the necessary arrangements to ensure that the children or senior citizens are elsewhere at the time of the eviction, or if the landlord interferes or refuses to cooperate with the marshal's efforts, the marshal must notify the Department, and the Department may recommend the intervention of the Court or the appropriate regulatory and licensing agencies and, if necessary, the police.

Nothing in this section is intended to deprive any person or institution of his, her, or its legal rights, or to discourage any person or institution from pursuing all appropriate legal remedies, or to delay or expedite any particular eviction. This section is solely to ensure that City marshals, in performing their duties, take precautions to avoid exposing children and senior citizens in the care and supervision of institutions to unnecessary risks and disruptions.

Section 6-10: **Animals**

If a marshal finds any living animals in an apartment where he or she is enforcing a warrant, the marshal must notify Animal Care & Control of NYC to remove such animals.¹ Marshals should note that § 355 of the Agriculture and Markets Law states that "A person being the owner or possessor, or having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road or public place,...is guilty of a misdemeanor."

¹ Q-19 (June 2, 1971).

As in all cases wherein the marshal is required by law to perform an official function and incurs expenses in connection therewith, any fees or charges paid to Animal Care & Control of NYC under the above-mentioned circumstances are reimbursable expenses.¹

Section 6-11: Show Cause Orders

If, during the course of performing an eviction, a marshal is served with an Order to Show Cause, he or she should immediately halt the eviction. If property has been placed on a truck, every effort should be made to facilitate an arrangement whereby the property is taken off and placed back into the apartment. If such an agreement cannot be made, the property on the truck should be taken to a licensed warehouse and any other property should be returned to the premises. If the show cause order has been served after its appearance date, a marshal must inform the tenant that the order is not valid, and the marshal may execute the warrant. If the show cause order has not been served within its prescribed time for service, but is served prior to its appearance date, the order must be honored.²

Oftentimes, the marshal arrives at the eviction site and is served with an Order to Show Cause which is returnable on the same day as the eviction, but the time listed on the Show Cause Order for the Court appearance has already passed, and neither the landlord, the marshal nor the landlord's attorney have been previously served. In this situation, before proceeding any further with the eviction, the marshal must make a good faith effort to ascertain, from court personnel, the disposition of the Order to Show Cause. If after making such good faith inquiry, the marshal cannot ascertain the disposition of the Order, he or she may not proceed with the eviction on that same day.

If after making such good faith inquiry, however, the marshal is informed by court personnel that the tenant's application for an order was denied, then the marshal may evict the tenant on that same day provided that no additional 72-hour notice is required by the court or this Handbook. (Requirements for service of additional 72-hour notices of eviction are set forth in Chapter IV, § 5-4 of the Handbook). Note that the marshal may proceed only after the marshal has been informed by court personnel that the Order to Show Cause was either denied or not on the calendar. The marshal may not rely on information provided by the parties or their attorneys regarding the disposition of the Order.

¹ Q-50 (December 2, 1974).

² Q-131 (December 26, 1984).

Section 6-12: Valuables and Third Parties

If the tenant is present during the eviction or legal possession, it is important that such tenant be informed that he or she may remove any personal property or valuables. A list of what the tenant removes should be made (*see* Chapter IV, § 6-4). If a third party appears during the eviction or legal possession, identifies himself or herself as a friend, relative, or neighbor and asks to remove certain property, a marshal must not release any property until the marshal is satisfied that the person has the authority to take the property. A list of the articles removed is to be prepared by the marshal with the person's full name, address, and signature.

Section 6-13: Notification of Location of Property

After the warrant has been executed, a marshal is required to notify evicted tenants, in English and in Spanish, of the whereabouts of their property.¹ A notification form, which may be obtained from the Bureau of City Marshals, must be affixed to the front door of the apartment. A notice must be posted regardless of whether the marshal has performed an eviction or a legal possession, and regardless of whether the property is stored in a private warehouse, is left in the vacated premises, or is otherwise left in the care and custody of the landlord. In the case of a legal possession it is sufficient for the notice to state that the property is in the custody of the landlord without specifying the location. If an eviction or legal possession prevents customers from retrieving personal property from a business such as a laundromat, the marshal must post reliable contact information for customers to utilize to retrieve their property.

A copy of the Notification of Location of Property form must be provided to the tenant if he or she is present during the eviction. If the tenant is not present, the marshal must make a copy of the form available to the tenant upon request.

The notifications must be printed on paper which is at least 8.5 x 6.75 inches. As with all forms and notices used by marshals, they must be imprinted with the marshal's name, address, telephone number, and badge number.²

Section 6-14: Revival of Landlord-Tenant Relationship

The RPAPL provides that the issuance of a warrant to remove a tenant cancels the lease and terminates the landlord-tenant relationship.³ However, if, after the warrant has been issued in a non-payment summary proceeding, the tenant offers and the landlord accepts the entire rent arrears as set forth in the petition, the landlord may be deemed to have agreed to continue the tenancy and to have waived his or her rights to consider the lease cancelled.⁴

¹ Q-18 (May 17, 1971); Q-58 (July 14, 1975).

² Q-35 (March 20, 1973); Q-47 (October 22, 1974).

³ RPAPL § 749(3).

⁴ See 3 Robert F. Dolan, *Rasch's New York Landlord and Tenant including Summary Proceedings* § 46:23 (4th ed. 1998); *Voorhies v. Cummings*, 42 A.D. 260 (2d Dep't 1899).

(The landlord's acceptance of partial payment of rent in a non-payment proceeding, or of rent after commencement of a holdover proceeding, or after a judgment awarding him or her possession does not by itself disturb his or her right to possession.¹) The controlling factor is the landlord's intent when he or she accepts the money.² The landlord may accept the money from the tenant and still retain the right to possession of the premises if it was the landlord's intention not to revive the landlord-tenant relationship at the time of the acceptance.³

In a non-payment proceeding, where the tenant's premises are subject to rent control, the tenant can effect a stay of eviction by paying the entire rent due at any time before the warrant of eviction is executed.⁴ Although issuance of the warrant cancels the lease, the statute provides that the tenant shall not be removed so long as he or she pays the rent to which the landlord is entitled.⁵ One court has held that the eviction is stayed even when the landlord rejects the rent payment.⁶ A rent-stabilized tenancy requires a lease, but is also protected by statute.⁷ The statutory protection continues so long as the tenant is in possession of the premises, including after a warrant has been issued.⁸ Therefore, in a non-payment proceeding, a rent-stabilized tenant who pays or tenders all the rent due before the warrant is executed may be able to obtain a court-ordered stay of eviction.⁹

¹ RPAPL § 711(1).

² *Fisk Building Assocs., LLC v. Shimazaki II, Inc.*, 76 A.D.3d 468 (1st Dep't 2010), citing *J.A.R. Mgt. Corp. v. Foster*, 109 Misc.2d 693 (App. Term. 1980).

³ *Id.*

⁴ *Novick v. Hall*, 70 Misc. 2d 641 (N.Y.C. Civ. Ct. 1972); see also *Whitmarsh v. Farnell*, 298 N.Y. 336 (1949); *Walker v. Ribotsky*, 88 N.Y.S.2d 205 (Sup. Ct. 1949), *aff'd*, 275 A.D. 112 (1st Dep't 1949).

⁵ See New York City Admin. Code § 26-408(a); 9 NYCRR § 2104.1.

⁶ *Novick v. Hall*, *supra*.

⁷ New York City Admin. Code § 26-501 et. seq. See also Rent Stabilization Code, 9 NYCRR § 2524.1; *Shapiro v. Townan Realty Co.*, 162 Misc.2d 630 (N.Y.C. Civ. Ct. 1994).

⁸ See *Tegreh Realty Corp. v. Joyce*, 88 A.D.2d 820 (1st Dep't 1982).

⁹ *Harvey 1390 LLC v. Bodenheim*, 2012 N.Y. Slip Op. 5116 (1st Dep't 2012). For a discussion of the legal status of a rent-stabilized tenant who continues to occupy his premises after issuance of the warrant of eviction, see *In re Muniz*, 1999 U.S. Dist. LEXIS 4060 at **6-7 (S.D.N.Y. 1999), citing *Shapiro v. Townan Realty Co.*, 162 Misc. 2d 630 (N.Y.C. Civ. Ct. 1994).

The discussion of the law in this section is for the information and guidance of city marshals only. A marshal must not offer legal advice to any party to a summary proceeding. Marshals also must not substitute themselves for the court as the body to resolve issues between the parties. Where the parties disagree as to whether the tenant's payment or tender of the rent should stay the eviction, they should be referred to the court.

Section 6-15: Securing the Premises

After all of the tenant's property has been removed, or after the landlord has been given possession, the marshal must secure the premises by seeing to it that the lock is changed and leaving the key with the landlord or the landlord's representative. The marshal must remain on the premises until the locks have been changed or the premises have been adequately secured. Marshals are advised that to ensure that the premises are adequately secured and in the possession of the landlord, the marshal, wherever feasible, should require all persons present during the marshal's execution of the warrant of eviction, including but not limited to the landlord or his or her representative, to step outside the premises before the marshal completes the eviction. The marshal should then exit and lock or otherwise secure the premises and leave the key to the changed lock with the landlord or landlord's representative, outside the locked door, after posting the notification form required by Section 6-11 of this chapter.

Section 6-16: Re-entry by Dispossessed Person

Once a warrant of eviction has been executed and the landlord is placed in possession, the summary proceeding is terminated. If a tenant re-enters and takes possession, the marshal cannot re-execute the warrant and "re-evict" him.¹ An exception is where a court order specifically directs the marshal to re-execute the warrant. Absent such court order, it is up to the landlord to call the police to have the tenant ejected as a trespasser. Every marshal must cooperate when asked by the police to show their court warrant.

¹ *Sweet v. Sanella*, 46 A.D. 2d 688 (2d Dep't 1974).

Section 6-17: Controlled Substances; Drug Enforcement Administration Notification

Prior permission is required from the U.S. Department of Justice, Drug Enforcement Administration (DEA) in all instances where a marshal or persons acting at his or her direction will transfer or come into possession of a controlled substance. Therefore, before executing a warrant of eviction at a premises used for a business or a profession involving the authorized sale or dispensing of controlled substances, such as a medical office or pharmacy, a marshal should inquire with persons familiar with the premises whether there are any controlled substances in the premises. If a controlled substance is in the premises, the marshal must notify the DEA before proceeding and follow DEA's instructions to assure that the substance does not become available to unauthorized persons. (*See Chapter III, § 6-2*). As noted in § 6-5, contraband, including controlled substances found in premises not known to be used for a business or profession in which possession of such substances is authorized, must be reported immediately to the police.

Section 7: REPORTS OF COMPLETED EVICTIONS¹

The New York City Civil Court requires that within five days of execution the Court's copy of the executed warrant of eviction must be returned to the Court by the marshal who requisitioned and received it, signed by the appropriate marshal, specifying the execution date, whether the execution was by full eviction or legal possession, and the Adult Protective Services (APS) control number, if one was assigned.²

Executed warrants may be returned to the Court in batches by mail or by hand-delivery by an employee or agent. Each executed warrant must be returned to the same county, branch and unit, e.g., "warrant section," of the Court that issued the warrant. When the mail is used, the envelope containing the warrant(s) and the transmittal form required by Section 7-1, as detailed below, should be marked "ATTENTION: RETURNED WARRANTS CLERK." The date each executed warrant is returned must be recorded on the marshal's docket book page or in the marshal's computerized docket record of the case.

Section 7-1: Itemized Transmittal Forms Listing All Executed Warrants Returned to the Court

Each City marshal must return his or her executed warrants to the issuing county branch of the Court with a properly completed transmittal form, listing as a separately-numbered item each and every executed warrant being returned to that county branch of the Court at that time. The transmittal form must include the marshal's name, badge number, address, telephone and fax numbers and e-mail address and the execution date or date-range of the accompanying executed warrant or warrants. The transmittal form must identify each executed warrant by Civil Court index number, marshal's docket number, and title of action (petitioner and respondent). The warrants must be listed in numerical order, by Civil Court index number. If only one executed warrant is being returned, the transmittal form must be used, showing all the above information for that warrant.

¹ Q-155 (December 20, 2010).

² New York City Civil Court Warrant Request Procedure (September 11, 2006).

The transmittal form must also include the following acknowledgement:

“Return of the above-listed warrants on _____ is
acknowledged. (date)

Clerk, NYC Civil Court”

The Court clerk, upon verifying that the Court has received all the executed warrants listed on the transmittal, will sign or stamp the acknowledgement on the form, scan the signed or stamped form, and return it to the marshal by e-mail, as an attachment. As an alternative, when a marshal returns the warrants with a properly completed transmittal form by hand-delivery, the clerk will have the option of immediately providing a signed or stamped copy of the transmittal form to the marshal or the person hand-delivering the documents for the marshal.

To track the status of their warrant-returns, marshals are further directed to retain in an “open transmittals” file, in paper or electronic form, a “control copy” of each completed transmittal form delivered or mailed to the Court until the marshal receives the signed or stamped copy returned from the Court. Marshals must also keep a copy of each executed warrant. Each marshal is advised and expected to monitor his or her “open transmittals” and to inquire with Court personnel within ten business days to ascertain whether the marshal’s “open transmittals” were received by the Court. If the marshal is informed that the Court did not receive or cannot find a particular transmittal form and the warrant(s) listed on it, the marshal must make and send additional copies of the transmittal form and the corresponding warrants to the Court. When the marshal receives the signed or stamped transmittal from the Court by email or return hand-delivery, the marshal should remove the “control copy” from the “open transmittals” file and retain the signed or stamped copy in paper or electronic form, organized by year, month, and county. Control copies may then be destroyed.

Copies of a model transmittal form are available from the Department of Investigation. Marshals must use a form that when properly completed will contain all the information and entries called for in the model form.

Section 7-2: Maintaining Year-to-Date Count of Completed Evictions, Possessions, and Ejectments

Every City marshal is required to maintain in the same form as required for the annual financial statement an accurate year-to-date count and summary of evictions, possessions, and ejectments conducted in each county. This information must be maintained on an ongoing basis, starting on the first business day of the year and continuing through the last business day of the year. Marshals may be required to provide this information to the Department at any time.

Marshals who do not maintain their official records in Department-approved computerized form in accordance with Chapter XII of this Handbook are advised to develop alternative tracking procedures, using their official diaries of daily activities, the standard summary form included in the annual financial statement, and other records to maintain the required running year-to-date count and summary of evictions, possessions, and ejectments.

CHAPTER V**INCOME EXECUTION****Section 1: GENERALLY**

An income execution (also known as a garnishment) is another manner of collecting a money judgment. When a money judgment is rendered in favor of one party and the judgment debtor fails to pay voluntarily, the judgment creditor may enforce his or her judgment with an income execution against a source of the debtor's income. This manner of judgment collection in effect gives the judgment debtor the choice of paying the city marshal directly or having a portion of some income (usually salary) deducted and remitted to the marshal.

A marshal's authority to levy upon property is no longer limited to executions issued pursuant to judgments of the New York City Civil Court. Current legislation has extended the power of marshals to enforce money judgments rendered by any Family Court or entered in any Supreme Court or docketed with the clerk of any county.¹

¹ CCA § 1609(1)(b). This section is deemed repealed as of 6/30/14 unless the Legislature renews it. If it is not renewed, after that date marshals will only be able to serve executions on judgments issued out of the Civil Court.

Section 2: CONTENTS OF AN INCOME EXECUTION

Only an attorney for the judgment creditor as officer of the court or the clerk of the court in the county where the judgment was first docketed¹ may issue an income execution.² A properly completed income execution will contain the following:³

- a. the requirements of CPLR § 5230(a) (see below);
- b. the name and address of the person from whom the judgment debtor is receiving or will receive money;
- c. the amount of money;
- d. the frequency of its payment;
- e. the amount of the installments to be collected;
- f. a notice to the judgment debtor that if he does not commence paying immediately, the person from whom he is receiving income will be served; and
- g. a statement in the form provided by CPLR § 5231(g).

Pursuant to CPLR § 5230(a), the execution must also specify the date on which the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount due thereon and the names of the parties in whose favor and against whom the judgment or order was entered. The execution shall also state that, pursuant to CPLR § 5205(1), \$2,625 of a bank account containing direct deposit or electronic payments reasonably identifiable as statutorily exempt payments is exempt from execution.⁴ In addition, the execution shall also state that, pursuant to CPLR § 5222(i), the execution shall not apply to an amount equal to or less than ninety percent of the greater of two hundred forty times the federal minimum wage or two hundred forty times the state

¹ In the New York City Civil Court, judgments do not need to be formally docketed, and an execution may issue after judgment is entered. CCA § 1501.

² CPLR § 5230(b).

³ CPLR § 5231(a).

⁴ Pursuant to CPLR §§ 5205(1)(3) and 5253, this amount will be adjusted triennially by the State. This amount is current as of April 1, 2012; the next adjustment will be made on April 1, 2015. Information on the most current amount may be found on the website of the New York State Department of Financial Services.

minimum wage, except for a portion of the amount that the court determines to be unnecessary for the reasonable requirements of the debtor.¹

Where voluntary payments or authorized collections have previously been made and applied to the judgment, the statement on the execution of the amount due on the judgment should reflect the reduced judgment balance. Executions generally also direct the collection of interest on the judgment amount then due.² If previous payments or collections were applied to interest on the judgment, the date on the execution from which interest is to be collected should be the date following the last date for which interest was collected.

¹ If the State of New York or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony, the execution shall bear a legend in 16-point type above the caption supplying that information, and neither of these exemptions shall apply. CPLR § 5230(a).

² See CPLR § 5004, which states "Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute."

Section 3: INCOME SUBJECT TO COLLECTION

An income execution is effective against the earnings of a judgment debtor defined as: compensation paid or payable for personal services, including wages, salary, commission, bonuses, and periodic payments of a pension or retirement program, and disposable earnings, defined as that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.¹

CPLR § 5205(d) provides that income from certain sources is exempt from garnishment to satisfy a money judgment except as specifically ordered by a court. Payments made to a judgment debtor from certain individual retirements accounts (IRA), or part of a Keogh (HR-10), retirement, or other qualified plan of the kind specified in CPLR § 5205(c)(2) are exempt. Marshals are advised to consult these sections carefully before attempting to levy on income from trusts, custodial accounts, annuities, insurance contracts, monies, assets, or interests that may have been established as part of such a plan.

An income execution may direct that installments from a judgment debtor's income of not more than 10% of the income be withheld and paid to the marshal, but no amount may be withheld for any week unless the judgment debtor's disposable earnings for that week exceed thirty (30) times the federal or state minimum hourly wage, whichever is greater, in effect at the time the earnings are payable.²

Further, the amount withheld from the judgment debtor's earnings for any week may not exceed the lesser of 25% of the judgment debtor's disposable earnings for that week or the amount by which the disposable earnings of the judgment debtor for that week exceed thirty (30) times the federal or state minimum hourly wage, whichever is greater, in effect at the time the earnings are payable. Where the earnings of the judgment debtor are also subject to deduction for alimony, support or maintenance for family members pursuant to CPLR § 5241 or § 5242, the amount withheld pursuant to the income execution may not exceed the amount by which 25% of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings, in accordance with CPLR § 5241 and § 5242.³

¹ CPLR § 5231(c).

² CPLR § 5231(b).

³ CPLR § 5231(b).

Please refer to the following chart and CPLR § 5231 to determine the proper amount to withhold in an income execution:

| Where Disposable Income is: | Amount to Deduct: |
|---|---|
| 30 times federal or state minimum wage, whichever is greater, or less | No deduction |
| More than 30 times and less than 40 times federal or state minimum wage, whichever is greater | The lesser of the excess over 30 times the federal or state minimum wage, whichever is greater in disposable earnings, or 10% of gross earnings |
| 40 times the federal or state minimum wage, whichever is greater, or more | The lesser of 25% of disposable earnings or 10% of gross earnings |

A judgment creditor or debtor may move the civil court for an order modifying an income execution.¹

It should also be noted that all the earnings of a judgment debtor who is receiving public assistance are exempt from income execution and levy, as are the public assistance payments themselves.²

¹ CPLR § 5231(i).

² Social Services Law §§ 137 to 137-a.

Section 4: SERVICE AND RETURN

In serving an income execution and collecting the money, a marshal must follow the procedures set forth in CPLR § 5231. First, within twenty days of a marshal's receipt of an income execution, he or she must serve a copy of it on the judgment debtor. Service is accomplished in the same manner as the service of a summons, either by delivering the execution to the judgment debtor directly, or delivering it to a person of suitable age and discretion at the debtor's place of business or residence together with mailing a copy within twenty days to the debtor at his or her residence or place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served. If neither of these methods of service can be effected, conspicuous service may be used. This is done by affixing a copy of the income execution to the door of the judgment debtor's residence or place of business and within twenty days mailing a copy to the debtor at his or her residence or place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served.¹

As an alternative to personal service, CPLR § 5231(d) permits the service of an income execution by certified mail.² A marshal may therefore serve an income execution on a judgment debtor by certified mail, return receipt requested, provided that an additional copy of the income execution is sent by regular mail to the debtor. If a marshal elects to serve by mail, the marshal must retain the certified mail receipt in addition to the post office certificate of mailing for the regular mail as proof of service. A mileage fee may not be charged for service by mail.³

Service on the judgment debtor is known as the "first stage." If the judgment debtor remits monies after service of the income execution, then a marshal need serve no further papers. However, if the debtor fails to begin remitting the amount described above in § 3 within twenty days of service or fails to meet his or her scheduled payments, then the

¹ CPLR § 308.

² Q-56 (May 23, 1975).

³ CPLR § 8012; Q-56 (May 23, 1975).

marshal may turn to the employer. This is known as the “second stage” of an income execution. This must be done by serving on the employer a copy of the execution, endorsed to show what monies have been received, if any. Again, it may be served in the same manner as a summons or, in the alternative, by certified mail, return receipt requested.¹ These receipts must be retained by the marshal. If a marshal decides to serve the employer by personal delivery, he or she should serve an officer of the company or corporation or anyone in a position of authority. A marshal may not retain the services of a licensed process server for this purpose.

Once properly served, the employer must pay to the marshal the proper amount, not to exceed the amount described in § 3, above. If the employer fails to do so, the judgment creditor or his or her attorney should be informed, and the creditor or attorney may commence a turnover proceeding to compel the employer to comply with the execution.² Income executions must be returned when wholly or partially satisfied, and those issued in Small Claims matters must be returned even if unsatisfied. For further information, see Chapter II, § 8 of this Handbook.

A city marshal’s authority extends only to the five boroughs of the City.³ Therefore, if the judgment debtor is employed within the City limits but resides in New York State, outside the City limits, the income execution should be delivered in the first instance to the sheriff or enforcement officer with jurisdiction in the county where the debtor resides.⁴ If that sheriff or enforcement officer is unable to serve the debtor within twenty days, or if the debtor fails to begin remitting the required amount within twenty days of service, and the sheriff or enforcement officer returns the execution unsatisfied in whole or in part because he or she is unable to serve the debtor’s employer, a city marshal, under CPLR § 5231(j), may serve the second stage on the debtor’s employer within the City limits.⁵ The income execution will retain its priority based on the date of delivery to the first enforcement officer

¹ CPLR § 5231(e).

² CPLR § 5231(f).

³ Q-6 (March 22, 1965); CCA §§ 701(a), 702.

⁴ CPLR § 5231(b).

⁵ CPLR §§ 5231(e), 5231(j).

so long as it is delivered to the marshal within twenty days after its return.¹ Where service of second stage of the income execution is authorized under CPLR § 5231(e) or (j) and the judgment debtor's employer has a representative authorized to receive service within the City limits, the marshal may serve the income execution upon the employer within the City limits. Marshals should note that under CPLR § 5231(b), if the judgment debtor is a non-resident of the state, the income execution may be delivered in the first instance to the sheriff or enforcement officer with jurisdiction in the county (within the state) where the debtor is employed. Service of the income execution upon the judgment debtor must then be made in accordance with CPLR 5231(d).

¹ CPLR § 5231(j).

Section 5: SPECIFIC EXECUTIONS**Section 5-1: Exemptions**

Generally, the benefits of individuals receiving public assistance and/or Worker's Compensation benefits may not be levied upon.¹ CPLR § 5205(e) exempts the pay of certain members of the armed forces. The marshal should refer to the applicable law on the subject.

Section 5-2: Priorities

Priorities are set by date of delivery of the income execution to the enforcement officer, sheriff or marshal, not by date of levy.² Therefore, immediately upon receiving an income execution, a marshal must endorse the time, e.g., the minute, hour, and date, on the execution.

Section 5-3: Loss of Employment

If a judgment debtor leaves his or her position any time after the execution is served upon the employer, the execution is ineffective unless the employee is rehired within ninety (90) days.³ If an employee changes jobs after his or her first employer has been served with an income execution, the debtor's new employer may be served with the second stage of an income execution without re-serving an additional first stage execution.

Section 5-4: Release

After a judgment has been satisfied, a marshal must send a letter of release to the employer indicating that no more deductions should be made. Any monies collected beyond the amount of the judgment, plus poundage on the monies, must be returned to the judgment debtor's employer.

¹ Social Services Law § 137.

² CPLR § 5231(j).

³ CPLR § 5231(f).

With respect to the Office of Payroll Administration (OPA), to ensure the timely termination of payroll deductions from paychecks of City employees whose judgment has been satisfied, the OPA will accept a letter of release from the marshal. The letter must be written on the marshal's letterhead stationery and must contain the employee's name, social security number, and garnishee file number.

Section 5-5: Accountings

When collections pursuant to an income execution run for an extended period of time, a marshal must, upon request, send a statement or an accounting to the judgment debtor to indicate to the debtor the status of the collections.

Section 5-6: Affidavits

Pursuant to Directive 354 of the Civil Court of the City of New York, a judgment creditor is no longer required to provide an affidavit alleging where and by whom the judgment debtor is employed and the amount of his or her earnings.¹

Section 5-7: City Employees

When garnishing the salary of City employees, marshals must provide the OPA with the following information:²

- a. Fees Charged
- b. Mileage
- c. Additional Disbursements
- d. Total

Employees of the City of New York sometimes make payment directly to marshals after OPA has been served with an income execution. These payments are usually unknown to OPA, and as a result, payroll deductions are made in excess of the judgment amount, causing undue hardship for the judgment debtor.

¹ Q-55 (April 1, 1975). The complete text of Civil Court Directive 354 appears in the Appendix.

² Q-7 (September 23, 1965).

Consequently, henceforth, when any city employee makes payments totaling fifty (\$50.00) dollars or more subsequent to the service of an income execution on OPA, a letter on the marshal's official stationery, signed by the marshal, must be mailed or sent by facsimile transmission to the Director of the Office of Payroll Administration Municipal Building, One Centre Street, Room 200N, New York, New York 10007. This letter must contain the following information:¹

- a. name and social security number of debtor;
- b. OPA's file number; and
- c. dates and amounts paid.

Section 5-8: Service on New York City Office of Payroll Administration

OPA has developed an intake and tracking system for income executions that features the use of data files transferred electronically by secure file transfer protocol (FTP). OPA has asked city marshals who regularly serve income executions upon it to enter all new "second stage" income executions in the data file using secure FTP, and to serve a hard copy of the corresponding executions by certified mail, return receipt requested approximately once each week.²

Such service, upon OPA only, is approved, subject to the requirement that the marshal retain proof of service for each income execution. Such proof must, at a minimum, consist of the postal receipt, signed by an authorized representative of OPA, and a list of all income executions contained in the envelope that corresponds to the receipt, also signed by an authorized representative of OPA.³ The list of income executions contained in the envelope may be computer-generated from the electronic data file. However, the city marshal is responsible to ensure that all of the income executions on the list have in fact been served. Entry into the data file without service of the corresponding income execution documents is not sufficient service. The marshal must also enter the postal receipt number and date of mailing in the docket book section for each income execution served upon OPA in the above manner.

¹ Q-71 (August 14, 1978).

² Marshals may also continue to serve OPA with income executions on CD in the manner set forth in Q-148 (June 13, 1996), or serve hard copies only.

³ Q-148 (June 13, 1996).

A marshal may use the above procedure only after serving the “first stage” of the income execution upon the judgment debtor pursuant to CPLR § 5231(d).

Section 5-9: State Employees

Where the garnishee is New York State, either the head of a particular department at the department's office in Albany or the State Department of Audit and Control in Albany must be served.¹

Section 5-10: Small Claims

Combination property-income execution forms are available through the Small Claims part of the Civil Court in every borough.² If a plaintiff has appeared pro-se, that is, without benefit of counsel, the marshal is required to have the clerk of the appropriate court issue an execution on the combination form. However, when the plaintiff is represented by an attorney, the attorney may issue an income execution without specific use of this combination execution form.

¹ CPLR § 5231(h).

² Q-57 (July 1, 1975).

CHAPTER VI

RECOVERY OF CHATTELS

Section 1: GENERALLY

An action to recover chattels may arise when a seller of goods wants to reclaim an item sold on installments because of the purchaser's nonpayment. Such an action is commenced prior to litigating the question of how much the seller is owed. This type of action also may involve utility companies, such as Con Edison or National Grid, which want to reclaim their meters from customers who have failed to pay their bills.

Replevin--a term no longer used in the CPLR-- is not synonymous with an action to recover a chattel.¹

¹ CPLR § 7101.

Section 2: ORDER OF SEIZURE

In order for a marshal to proceed with a seizure of a chattel, he or she must receive certain papers from the plaintiff or plaintiff's attorney. These papers play the same role in this type of action as an execution plays in levies and sales or a warrant plays in landlord and tenant matters. These papers give a marshal the needed authority to act.

Section 2-1: Papers to Proceed

The following are the papers which a marshal must have in order to proceed:¹

- a. The application for an order of seizure by an affidavit of the moving party that clearly identifies the chattel to be seized and that states:
 1. the plaintiff is entitled to possession;
 2. the defendant is holding the property wrongfully;
 3. the present status of any action to recover and, if the defendants have appeared, where papers may be served upon them;
 4. the value of the property claimed;
 5. facts sufficient to authorize the inclusion in the order of a provision authorizing the marshal to break and enter to search for the chattel, where the plaintiff seeks this provision;
 6. that no defense to the claim is known to the plaintiff;² and
 7. if the plaintiff seeks an order of seizure without notice, facts to show that unless the order is granted, it is probable that the chattel will become unavailable for seizure;
- b. A copy of the order of seizure;
- c. A copy of the undertaking (which is a bond in the amount of at least twice the value of the property); and
- d. A copy of the summons and complaint bearing the index number and date of filing with the clerk of the court.

¹ CPLR § 7102.

² In the case of an application for an order of seizure for a utility meter, the utility's affidavit or affirmation customarily will state that the defendant is not experiencing a medical emergency, is not elderly, blind, or disabled, and whether the termination will affect heat-related service. See the subsequent reference in this section for additional information.

It is the marshal's responsibility to examine the papers to make certain that all have been provided and are sufficiently detailed. Specifically, the defendant's name and address, including apartment number, if any, as well as a description of the chattel, must be provided to avoid breaking and entering the wrong residence and/or taking the wrong chattel.

With respect to plaintiff-utilities, Civil Court Directive 288¹ requires that the defendant be given prior notice of the application for an order of seizure authorizing the marshal to break and enter, and an opportunity to be heard. However, while it is the plaintiff who has this responsibility, a marshal should always verify with the plaintiff that the notice has been sent. Once the order has been signed, the marshal to whom it is delivered must mail a seventy-two (72) hour notice of seizure to the defendant in accordance with the order, which generally requires the notice to be mailed seven days in advance. The notice must advise the defendant of the date of the intended breaking and entering to search and seize the meter, and stating whether it is to take place in the morning or afternoon.

City marshals are advised that State law requires utility companies to take precautions in relation to the termination of residential service to a customer who is likely to suffer a serious impairment to his or her health or safety if heat-related service is terminated, or who is experiencing a medical emergency, or to a customer who is 62 or older, or blind, or disabled.² As part of its application for the order of seizure, the utility's supporting affidavit or affirmation customarily states in substance, among other things, that its records do not indicate that a medical emergency, disability or similar condition affects any customer who lives at the affected premises. Accordingly, if the marshal encounters or learns of such a customer who has not been brought to the attention of the court, he or she is advised to postpone the meter seizure and inform the utility of the situation for its further investigation and appropriate action. The marshal is advised to maintain in the marshal's docket record a notation of the date and content of all pertinent communications and information brought to his or her attention and forwarded to the utility and of the action taken.

¹ The complete text of Civil Court Directive 288 appears in the Appendix.

² See Public Service Law § 32(3).

Section 3: BREAKING AND ENTERING

The order of seizure may specify that a marshal has the authority to break and enter to collect property.¹ However, a marshal may do so only when a court so orders. If such authority is not in the order, a marshal may not break and enter, and may gain entrance only if he or she is voluntarily admitted.

Generally, if the court does not order breaking and entering to seize the chattel, the court will restrain the defendant, in its order, from removing or disposing of the property. If the property disappears, the defendant may be held in contempt of court.

¹ CPLR §§ 7102(d)(1), 7110.

Section 4: PROCEDURE

If the order authorizes a marshal to break and enter, this authority must be exercised with caution. That is, a marshal should find the easiest and least disruptive means of entry. If the property to be seized is a meter, a marshal should search the area where the plaintiff's records indicate the meter is located. Once a marshal has gained entry, he or she must serve all of the papers listed in § 2-1 above on each defendant in the same manner as a summons, as described in Chapter II, § 5.¹ After the chattel has been removed, the premises must be secured.

Once the marshal seizes the chattel, the marshal must retain custody of it for ten (10) days, unless the court order specifies to the contrary.² At the expiration of such period, the marshal must deliver the chattel to the plaintiff, provided that a notice of exception to the surety, a notice of motion for an impounding or returning order, or necessary papers to reclaim the chattel have not been served. Within twenty (20) days after delivery of the chattel, a marshal must file a return with the clerk of the court, which shall include all papers delivered to or served on the marshal and a statement of all actions the marshal has taken.³

¹ CPLR § 7102(b).

² CPLR § 7102(f).

³ CPLR § 7107.

CHAPTER VII

ATTACHMENT

Section 1: **GENERALLY**

An order of attachment is a means of providing a plaintiff with security for a money judgment prior to the termination of his or her lawsuit. It is used when a plaintiff is fearful that, once the plaintiff wins a money judgment, the plaintiff will not be able to enforce it against a judgment debtor. The order of attachment empowers a marshal to seize and possess property belonging to the judgment debtor until the conclusion of the litigation.

This order is obtained from the Court by a plaintiff and may be granted at any time prior to judgment, even before the service of a summons and complaint.¹ However, if it is obtained before the service of a summons and complaint, it is valid only if within sixty (60) days after the order is granted a summons is served on the defendant, unless an additional sixty (60) day extension is granted by the court.²

Section 2: **ORDER**

The order of attachment must specifically state the amount the plaintiff is demanding (which then dictates the amount of property that may be attached), and it must be endorsed with the name and address of the plaintiff's attorney. The order gives the marshal the authority to levy upon any personal property in which the defendant has an interest, or any debts owed to the defendant within the confines of New York City. A marshal may levy upon as much property as the marshal feels will reasonably satisfy the plaintiff's demand, together with interest, costs, and marshal's fees and expenses.³ It is not necessary to levy upon property which will meet the exact dollar amount in the attachment order, but a marshal should be cautious and exercise discretion.

¹ CPLR § 6211(a). There is one situation in which an order of attachment may be granted even after judgment: when the plaintiff has been awarded a money judgment against a foreign state. CPLR § 6205.

² CPLR § 6213.

³ CPLR § 6211.

Section 3: LEVY BY SERVICE

A marshal may levy upon any interest of the judgment debtor in personal property or upon any debt owed to him or her by serving a copy of the order of attachment, in the same manner as a summons, upon the garnishee or upon the defendant himself or herself, if he or she is in possession of the property to be levied upon.¹ The attachment is effective only if, at the time of service, the garnishee owes a debt to the defendant or is in possession of property in which the defendant has an interest. The levy is then effective for ninety (90) days as to any of the defendant's personal property that comes into the garnishee's possession or any debt that becomes due to the defendant within the effective period of the levy. After ninety (90) days, or such further time as provided by order of the court served on the garnishee, the levy is ineffective except as to that property already within a marshal's control.²

As in a property execution, unless the court orders otherwise, a garnishee served with an attachment is required to transfer all personal property of the judgment debtor to the marshal forthwith, to pay to the marshal all debts owed to the defendant as they become due, and to execute any documents necessary to effect transfer of payment. Where the garnishee fails or refuses to make delivery of the defendant's property, the marshal should notify the plaintiff's attorney. Remedies are available, but only by a special proceeding in court.³ The marshal does not institute this proceeding. It is brought by the judgment creditor or his or her attorney.

¹ CPLR § 6214(a).

² CPLR § 6214(b).

³ CPLR § 6214(d).

Section 4: LEVY BY SEIZURE

As an alternative to levying by service of the attachment order, if the property is “capable of delivery,” a marshal may effect a valid levy by serving a copy of the order, in the same manner as a summons, upon the person from whose possession or custody the property was taken, and seizing the defendant's property. However, this may be done only at the direction of the plaintiff, and he or she must provide the marshal with indemnity against wrongful levy to the satisfaction of the marshal or the court.¹ As with a property execution, a marshal need not actually take the property into the marshal’s possession, but must at least exercise dominion and control over the property.

Section 5: DUTIES AFTER LEVY

Once a marshal has attached the defendant's property, it is the marshal’s responsibility to keep safe all property attached, or debts paid him or her, in order to satisfy any judgment that may be obtained against the defendant.²

If the situation requires it, the court may direct the sale or other disposition of the property levied upon. If the case is pending in the New York City Civil Court, pursuant to New York Civil Court Directive 334, within three (3) days after the levy is made, the plaintiff must make a motion, on notice to the defendant, to any garnishee, and to the marshal for leave to prove the ground upon which the order of attachment was issued. If no such motion is made, the order of attachment shall be deemed vacated. No disposition of the levied property shall be made until final determination of the motion.

Within fifteen (15) days after the service of an order of attachment (or forthwith if the order has been vacated), a marshal must file an inventory of the property seized, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon.³ Money shall be kept in an interest-bearing account.

¹ CPLR § 6215.

² CPLR § 6218(a).

³ CPLR § 6218(b).

Section 6: GARNISHEE'S STATEMENT

Within ten (10) days after service of an order of attachment upon a garnishee, or such shorter time as the court may direct, the garnishee must serve upon the marshal a statement specifying all debts of the garnishee owed to the defendant, when the debts are due, all personal property of the defendant which is in the possession of the garnishee and the amounts and value of the debts and property specified.¹

Section 7: DISCHARGES, VACATUR, AND ANNULMENT

A defendant whose property or debt has been levied upon may make a motion, upon notice to the marshal and to the plaintiff, for an order discharging the attachment, as to all or part of the property or debt, provided he or she pays marshal fees and expenses, and gives an undertaking in an amount equal to the value of the property levied upon sought to be discharged.²

Any person with an interest in the property levied upon may make a motion for a vacatur or modification of the order of attachment.³

An order of attachment is annulled when judgment is entered in favor of the defendant, when the plaintiff's judgment is satisfied, or when the underlying action is discontinued. An attachment is not annulled, however, when the plaintiff simply wins a judgment.⁴

When an execution is issued against a defendant, a marshal's duty with respect to the disposition of the attached property is the same as if the marshal had levied upon it pursuant to the execution.⁵

¹ CPLR § 6219.

² CPLR § 6222.

³ CPLR § 6223.

⁴ CPLR § 6224.

⁵ CPLR § 6226.

Section 8: PRIORITY OF ORDERS OF ATTACHMENT

Where two or more attachments are delivered to the same marshal, they shall be satisfied out of the proceeds of personal property in the order in which they were delivered to the marshal. Where the attachment orders are delivered to different marshals or to a marshal and the sheriff, priority is given to the plaintiff whose attachment is served first. Thus, a marshal must note the date and time of delivery of the order and should act upon it as quickly as possible.¹

Section 9: RETURN OF PROPERTY

The court may direct the clerk of any county to cancel a notice of attachment and may direct the marshal to return or release the attached property, subject to the payment of marshal's fees and expenses.²

¹ CPLR § 6226.

² CPLR § 6225.

CHAPTER VIII

MARSHAL'S AUTHORITY RESTRICTED

Section 1: CIVIL ARREST AS PROVISIONAL REMEDY PROHIBITED

City marshals are not authorized to use civil arrest as a provisional remedy in the exercise of their official duties.¹

Section 2: MARSHALS NOT PEACE OFFICERS

The Criminal Procedure Law classifies a city marshal as a peace officer if he or she has received training in firearms handling from the Federal Bureau of Investigation or the New York City Police Academy and has received a firearms permit from the License Division of the Police Department at One Police Plaza.² However, the City of New York has not applied for state certification of marshals, as would be required by the Criminal Procedure Law before marshals could be designated peace officers. Accordingly, marshals are not peace officers.

¹ CPLR § 105(s-1); CCA § 1609(1)(b).

² Criminal Procedure Law § 2.10(33).

Section 3: RESTRICTIONS ON FIREARMS**Section 3-1: Firearm Permits**

The Appellate Division of the First Department has ruled that marshals are not peace officers¹, and therefore, marshals may not carry a firearm without a valid permit issued by the Police Department.² A marshal may apply for a license through the New York City Police Department, One Police Plaza, New York, New York 10038.

Section 3-2: Firearms Training

Every city marshal who possesses a permit to carry a concealed firearm must receive annual training in the handling of firearms from an organization authorized by the NYPD.³ Such training shall include instruction in the following areas:

- a. safe storage, use, and cleaning of a firearm; and
- b. legally permissible use of deadly force.

Once each calendar year, the marshal must obtain a written certification that he or she has completed this training, and shall forward such certification, along with a photocopy of his or her permit to carry a concealed firearm, to the Director of the Bureau of City Marshals. At its discretion, the Department may require an individual city marshal to obtain additional training.

Any marshal who does not complete this training must surrender his or her permit to carry a concealed firearm to the NYPD and comply with the NYPD regulations concerning the disposition of his or her firearm, and provide documentation of this compliance to the Director of the Bureau of City Marshals.

¹ *Aponte v. Dep't of Investigation*, 51 A.D.2d 905 (1st Dep't 1976).

² Q-52 (January 2, 1975); Q-62 (May 5, 1976).

³ Q-150 (March 27, 1998).

Section 3-3: Department Of Investigation Notification Upon Display or Discharge of Weapon

City marshals must notify the Department of Investigation within two hours on a business day, or, if the occurrence is on a weekend or holiday, by 11:00 a.m. the next business day, after the marshal learns of the display or discharge of any firearm at any time by a marshal or his or her employees or agents.¹ Excluded from this requirement are uses of a firearm for training or recreational purposes. In enforcing this section the Department of Investigation shall consider whether a marshal's failure to notify the Department of Investigation within the applicable time limits was due to a circumstance beyond his or her control.

¹ Q-146 (October 31, 1994).

CHAPTER IX**FISCAL REQUIREMENTS****Section 1: ANNUAL PAYMENT**

Pursuant to § 1611 of the New York City Civil Court Act, every city marshal is required to pay the City of New York four and one-half percent (4.50%) of the gross fees, including poundage, received by the marshal during the preceding calendar year, and every marshal who serves in office for any portion of the calendar year is required additionally to pay an annual fee of fifteen hundred dollars (\$1,500.00).¹

Accordingly, every marshal must pay these sums annually to the Department of Investigation. Liability for the total assessment accrues on January 1 of each year; therefore, any marshal who holds office for any portion of a year must pay the total assessment. When one marshal performs official functions on behalf of another marshal, the marshal who receives payment for the services must pay the assessment, regardless of whether the funds received are eventually remitted to the marshal who actually performed the services. Payment is due March 15 of each year.² The payment must be made by one (1) check or electronic funds transfer (EFT) payable to the Commissioner of Finance drawn on the marshal's operating account.

¹ Q-102 (May 4, 1981).

² Q-147 (January 24, 1995).

Section 2: FEES**Section 2-1: Generally**

The fees of the New York City Sheriff are set forth in §§ 8011 and 8012 of the CPLR. Pursuant to § 1915 of the New York City Civil Court Act, these fees apply to the services of city marshals.¹

Every marshal is advised to study these sections carefully and become familiar with the fees to which he or she is entitled. Marshals are urged to contact the Bureau of City Marshals with any questions concerning these fees.

Generally, the judgment debtor is responsible for paying the marshal's fees.²

Section 3(e) of Joint Administrative Order 453 of the Appellate Divisions for the First and Second Judicial Departments, dated November 12, 1975, states that “No fee to which a city marshal is entitled may be waived without specific written authorization of the Commissioner of Investigation” (emphasis added).³ Thus, a marshal may not charge or receive more or less than the fees provided by statute without written authorization from the Commissioner of Investigation.

Section 2-2: Mileage Fees; Specific Requirements

A mileage fee is to be charged only when a marshal must travel within the city in executing a court mandate or performing an official act specified in CPLR § 8011.⁴ With respect to each order of attachment, property execution, order of seizure, or sale, when two or more official acts, including service of papers, levy, seizure of property, and inventory of property, are performed at the same time and place, only one mileage fee is charged. With respect to summary proceedings, where two or more notices of petition or notices of eviction are to be served at the same time, within the same site or location, only one mileage fee is

¹ Q-63 (July 30, 1976).

² CPLR § 8101.

³ Q-66 (December 16, 1976).

⁴ CPLR §§ 8012 (a), (d).

charged.¹ Where more than one attempt at personal service or substituted service is necessary and is made to satisfy the requirements of RPAPL § 735, the marshal must charge an additional mileage fee, provided one of the attempts is made within normal working hours (8:00 a.m. to 6:00 p.m.) and the other is made outside those hours. Under no circumstances may a marshal charge more than two (2) mileage fees.²

Section 2-3: Requisition Fee; Warrant of Eviction

For requisitioning, receiving, entering a warrant of eviction in the appropriate books, and for the return of a warrant of eviction, city marshals shall charge the fee provided by CPLR § 8011(f)(2)(i). This fee shall be charged once for each warrant, without regard to the number of requisitions the marshal submits to the court. The fee may be charged in advance and shall not be waived.

¹ CPLR §§ 8011(f)(1)(v), 8011(f)(2)(iii).

² Q-136 (February 19, 1986).

Section 3: REIMBURSABLE EXPENSES

The Department of Investigation, through the Appellate Division, has interpreted § 8013(c) of the CPLR to mean that a marshal must collect all expenses which are classified as “reimbursable.” Examples of reimbursable expenses include all 72-hour notice mailing costs, mailing costs for income executions (first and second stage), sale advertising costs, and expenses incurred upon notification of Animal Care & Control (for removal of animals).¹ The mailing of an optional letter to a judgment debtor informing the debtor that an execution has been issued against his or her property is not considered a reimbursable expense.

Since the failure to receive reimbursable expenses is tantamount to cutting fees, marshals are required to ask for and receive reimbursement for all such expenses. Should a marshal bill for reimbursable expenses and not receive them within a reasonable period of time, § 8013(d) of the CPLR allows the marshal to require that such clients pay reimbursable expenses in advance. Marshals must also advise this Department in writing of the name of, and the amount due from, any individual, firm, or company which fails to pay reimbursable expenses.²

¹ Q-50 (December 2, 1974).

² Q-123 (January 7, 1983).

Section 4: MARSHAL'S BOND

Marshals are currently required to post a one hundred thousand dollar (\$100,000) bond prior to performing duties of office.¹ The bond may issue from a properly licensed insurance company or, in the alternative, must be executed by the marshal with two (2) sufficient sureties, each of whom must be a resident of the City of New York and must own real estate therein of the value of double the penalty of the bond. The bond must be approved by the court and upon approval must be filed with the City Clerk of New York City within thirty (30) days after the appointment of the marshal, and a copy must be filed with the Bureau of City Marshals. Copies of bond renewals, which must specify the effective dates and bond amount, must also be filed with the Bureau of City Marshals.²

¹ CCA § 1604.

² Q-110 (February 9, 1982).

Section 5: FIDUCIARY

A copy of Joint Administrative Order 511 is attached as an appendix to this Handbook. It supplements and amends Joint Administrative Order 453 with respect to establishing a fiduciary.

The order indicates that a marshal must submit the name of the individual chosen to be the fiduciary. The proposed fiduciary must execute a sworn affidavit and must complete a Department of Investigation background questionnaire. The marshal must also prepare a proposal for the fiduciary's compensation. Once the Department has approved the fiduciary and the compensation rate, the marshal is then required to execute an agreement with the fiduciary. The agreement must be forwarded to the Department for approval within three (3) weeks from notification of the fiduciary's approval.

This agreement, the Department's written approval of the agreement, and the Joint Order must then be given to each bank in which the marshal maintains an account. This must be done within one (1) week from the receipt of the Department's written approval of the agreement.

Section 6: PENSION

City marshals who are eligible for either a New York State¹ or New York City² pension are barred from receiving the benefits while holding the position of city marshal. These benefits are suspended until the marshal's position is vacated. The suspension of pension benefits must be agreed to by affidavit prior to appointment as a marshal.

The above paragraph does not apply if a marshal is a “retired person” as defined in Section 210 of the Retirement and Social Security Law (RSSL) who retired from the New York City Police Pension Fund; the New York City Fire Department Pension Fund as a fire marshal; or from the New York City Employees’ Retirement System as a uniformed member of the NYC Department of Correction or as a deputy city sheriff level one or two, supervising deputy sheriff or administrative sheriff. The retirement allowance of such marshals may not be suspended or reduced because of compensation earned as a city marshal.³ The definition of “retired person” excludes a person receiving a disability retirement allowance.⁴ Marshals affected by these statutes may wish to confer with their pension system or a qualified advisor.

¹ Retirement and Social Security Law (RSSL) § 101.

² New York City Charter § 1117.

³ RSSL § 214-b.

⁴ RSSL § 210.

Section 7: TIMELY REMITTANCE OF TAX REVENUE

Any tax revenue collected (e.g. withholding tax, sales tax, FICA) must be timely remitted to the appropriate tax authority.

Section 8: CREDIT CARDS

If a city marshal intends to use a credit card for bona fide business purchases he or she must designate and use a particular credit card solely for that purpose.¹

¹ Q-145 (November 23, 1988).

CHAPTER X**ADMINISTRATIVE REQUIREMENTS****Section 1: THE MARSHAL'S OFFICE****Section 1-1: Office Hours**

The position of city marshal is full time and, thus, each marshal must maintain regular office hours of at least eight (8) hours every business day. These hours must be posted in a prominent location at the entrance to the marshal's office.

Each marshal is required to inform the Department of his or her business address, regular office hours, and business telephone number(s). Marshals are also required to notify the Department of any changes in this information.¹

When a marshal closes his or her office to the public before 5:00 p.m. on any day, Monday through Friday, which day is not a legal public holiday as defined by the General Construction Law, the marshal may not enforce any warrants of eviction on the next succeeding business day.² Additionally, absent an unavoidable emergency, marshals are required to notify the Department, in writing, at least twenty-four (24) hours in advance of their intention to close their office to the public for any period of time during business hours. When an unavoidable emergency requires the marshal to close his or her office, the marshal must notify the Department of Investigation by telephone or facsimile transmission as soon as practicable.

¹ Q-100 (February 24, 1981).

² Q-83 (October 16, 1979).

Section 1-2: Lawful Occupancy Only

A marshal's office must be located only in premises where such occupancy is lawful pursuant to the Administrative Code of the City of New York, the building code, and the Rules and Regulations of the City of New York.¹ A marshal must maintain in his or her records a true and accurate copy of the certificate of occupancy, permit, or other document that establishes the lawful occupancy, and must produce such documentation for inspection when requested by the Department of Investigation.

Section 1-3: Marshal's Office Public

A marshal's office must be accessible to all persons who have or may conduct business with the marshal and must be clearly identified by a sign visible to the public. Persons who appear at the office during regular office hours to conduct business must be admitted, and the marshal must provide a suitable area within his or her office for such persons to conduct their business. The public area must be maintained in a clean and orderly condition befitting the marshal's position as a public officer.

Section 1-4: Sign; Complaints

Marshals are required to place, in a conspicuous and public area of their offices, a cardboard sign, provided by the Department of Investigation, which states that marshals are supervised by the Department of Investigation and which also lists a phone number for complaints. Such sign shall be displayed in its original form and shall not be reproduced in a smaller format.

Section 1-5: Telephone Listings

A marshal must maintain a published telephone number at his or her office and provide his or her telephone numbers and fax numbers to the Department. When arranging for a listing in any public telephone directory, the marshal shall include "City marshal." The listing shall not state that the marshal specializes in executing any particular type of court mandate.

The Department of Investigation must be notified in advance when a marshal changes telephone or fax numbers.

¹ N.Y.C. Admin. Code § 28-118.1.

Section 1-6: Advertising for Business

Marshals are not prohibited from advertising their services, but may not have signs or use words that indicate that specialty work is done. For example, a marshal may not state that he or she specializes in “landlord and tenant” or “dispossess” matters.¹

Section 1-7: Stationery and Office Forms

All letterhead and other papers used by marshals in furtherance of official business must have the name, address, telephone number, and badge number of the marshal printed on it. Additionally, all mailing envelopes, except where the service requirements of the Civil Practice Law and Rules require plain envelopes, should bear a return address, to ensure that undelivered mail will be returned directly to the marshal's office.²

A city marshal shall not use the seal of the City of New York on any correspondence, form, record, business card, or other document while carrying out his or her official duties except under the following circumstances:

- when imprinted on such documents as an integral part of a representation of the marshal's official badge; or
- when imprinted on such documents and the marshal's name, address, and badge number appear next to or below the seal; and
- the words “City of New York” are not imprinted above, next to, or below the seal except when immediately preceded, in the same size and style, by the word “Marshal;” and
- nothing in the layout or design of the document suggests that it is prepared or issued by an agency of the City of New York.

The official design of the City seal is attached as an appendix to this Handbook.

A city marshal may not use a signature stamp in place of the marshal's original signature on any form or document that the marshal is required to submit to the Department of Investigation.

¹ Q-10 (February 1, 1967); Q-40 (November 7, 1973).

² Q-35 (March 20, 1973).

Section 1-8: Badge and Identification

Section 1602 of the New York City Civil Court Act requires each marshal to wear his badge “at all times while engaged in the discharge of his official duties.”¹ This statute also requires every marshal to display his badge upon demand. A violation of the statute is a misdemeanor. Accordingly, to comply with the law, and to ensure the safety of the marshal and the general public, all marshals are required to wear their badges conspicuously during the performance of any official act.

A marshal may not carry out official duties without having first been issued a badge and identification (ID) card. If one or both of these items are lost or stolen, the Department of Investigation and the local police precinct must be notified immediately. The cost of the original and replacement badge shall be borne by the marshal.

As required by the above-cited statute, a marshal shall not perform any official act unless the marshal possesses his or her badge. A marshal who has lost that badge may request in writing from the Department of Investigation authorization to obtain and use a replacement badge temporarily until the marshal obtains a permanent replacement. Before authorizing the marshal's use of a temporary badge, the Department of Investigation will ordinarily require an explanation of the circumstances under which the marshal's badge was lost and whether the loss was reported promptly. When the marshal obtains his or her permanent replacement badge the marshal must notify the Department of Investigation in writing and surrender the temporary badge to the Department.

A marshal is permitted to possess only one badge. No extra badges or miniature badges are permitted. The above-cited statute requires every marshal to surrender his or her badge to the City Clerk forthwith upon vacating office for any reason. City marshals leaving office should surrender their badges immediately to the Department of Investigation, and the Department will turn them over to the City Clerk's office. See Chapter X, § 4, Termination of Office Procedure. A marshal's failure to surrender his or her badge as required by the statute is a misdemeanor.

A marshal is not authorized to place badges, insignia, or other emblems on the marshal's automobile indicating he or she is a city marshal.

¹ Q-60 (December 31, 1975).

Section 1-9: Employee Data

Each city marshal shall provide to the Department of Investigation the following information regarding every employee, within one month of hire:

- full name (last, first, middle initial);
- Social Security number;
- date of birth;
- home address;
- home telephone number;
- individual's signature; and
- recent (within six months) passport-size photograph.

If directed by the Commissioner or his or her designee, a city marshal shall require any independent contractor or agent to provide the same information described above for any individual employed by that contractor or agent to assist a city marshal in the performance of any official act, or in the completion or maintenance of any record or document, including a computer record, that reflects the marshal's official activities, or any fees and sums received by the marshal therefor, the expenses of the marshal in connection with the performance of the marshal's official duties or his or her gross and net income as a marshal.

The Department of Investigation may require additional information regarding a marshal's employees, independent contractors or agents, including but not limited to licenses held by such individuals and information concerning their education and experience.

Section 1-10: Unusual Incident Reports

Marshals are required to report to the Department of Investigation all unusual incidents encountered in the course of performing their official duties, including but not limited to incidents requiring significant police intervention. Such incidents may include, but are not limited to, arrests, assaults, physical injuries and/or the discovery of contraband such as drugs or weapons, or individuals who need medical or social service assistance, in the course of towing a vehicle or performing an eviction or meter seizure. Such incidents shall also include errors made by the marshal, such as seizing the wrong vehicle or property or entering premises other than those specified in the warrant or order the marshal was attempting to execute.

Before leaving the scene, the marshal should report the incident to the Department and ensure that an incident report on the form provided by the Department is completed and submitted to the Department by facsimile or electronically within two hours.

Section 2: LEGAL PROCEEDINGS**Section 2-1: Department Of Investigation Notification of Service of Legal Process upon a Marshal**

In connection with any legal action or proceeding to which a marshal is a party (plaintiff, defendant, joined or impleaded party, etc.) in his or her official capacity, the Department of Investigation must be supplied with the following information within ten (10) days after the marshal becomes aware of the action:¹

- a. title of action;
- b. index number;
- c. name of court and county;
- d. names of all parties to the action; and
- e. a copy of the complaint.

If the marshal is named as a defendant in a civil action arising out of a Parking Violation Bureau execution or demand, the marshal must supply the Department of Investigation with the information specified above and must forward copies of all papers served upon him or her to the Special Counsel for Parking Violations Operations at the Department of Finance and to the Corporation Counsel of the City of New York. (See Chapter II, § 10-6.)

Section 2-2: Department Of Investigation Notification of Service of Subpoena on a Marshal

A city marshal must notify the Department of Investigation within two hours on a business day, or by 11:00 a.m. the next business day if the occurrence is on a weekend or holiday, after the marshal learns of service of a subpoena upon the marshal, or his or her employees, regarding any official duties.²

¹ Q-45 (June 21, 1974).

² Q-146 (October 31, 1994).

Section 3: NOTARIES

Any person whose signature is notarized must execute such signature in the presence of the notary. Each notary in the marshal's office must comply with this requirement.

Additionally, each notary must keep and maintain, for a period of not less than three (3) years, records of each affidavit of service of process and “non-military” affidavit sworn to before and notarized by him. The records must contain the following information:

- a. name and address of notary;
- b. name and address of affiant;
- c. date of affidavit;
- d. title of action or proceeding and name of court in which it is brought or pending;
and
- e. name and address of person upon whom process was served, or who was questioned concerning military status, and the date of service or the date of the interview upon which the non-military affidavit was based.

In place of the above, conformed copies of all such affidavits may be retained by the notary.¹

¹ Q-42 (January 24, 1974).

Section 4: TERMINATION OF OFFICE PROCEDURE

Prior to vacating the office of city marshal for any reason, a marshal is required to prepare a final report of his or her official acts (*see* Chapter XIII, § 3). A marshal's resignation is governed by the Joint Administrative Orders of the Appellate Divisions for the First and Second Departments and this Handbook. The specific requirements found therein supersede the general requirements contained in § 31 of the Public Officers Law.¹

A marshal resigning from office must tender a letter of resignation to the Commissioner of Investigation or his or her representative. Furthermore, a marshal who is vacating his or her office for any reason must surrender his marshal's identification card and badge to an authorized member of the Department of Investigation.

Upon vacating office for any reason a city marshal must deliver his or her books and records, including electronic records, to the Department of Investigation. See § 6-5 of Chapter XII for details on the proper procedures to be followed when delivering records to the Department upon termination of office.

¹ *In Re Roman* (Department of Investigation Disciplinary Matter 005/83), App. Divs. 1st & 2nd Dep't (1984).

CHAPTER XI

REQUIRED BANK ACCOUNTS

Section 1: **GENERALLY**

Pursuant to § 1609 of the New York City Civil Court Act and Joint Administrative Order 453 of the Appellate Divisions for the First and Second Departments, every marshal must maintain bank accounts as prescribed by the Department of Investigation.

A marshal must open an operating account and at least one trust account before the marshal may commence his or her official activities. These accounts and the restrictions on their use and maintenance are fully described in the sections that follow. All monies collected and disbursed by the marshals must be channeled through a trust fund bank account. All fees and certain expenses must be drawn from a trust account and immediately deposited into the marshal's operating account. Withdrawals or disbursements from either account may be made only by check or electronic funds transfer (EFT), provided that the marshal retains in his or her records information regarding the EFT that is equivalent to the information that must be retained for a computer-issued check, including the docket number, payee, check amount, and date issued and that the marshal's bank statement identifies the originator and recipient or transferee of each EFT.

Under no circumstances are funds in the marshal's trust or operating account to be commingled with any other funds. A marshal's personal obligations or expenses may not be paid through his or her trust or operating account. Donations and contributions paid through a marshal's official accounts are also prohibited. Charitable contributions and political club dues are personal expenses which may not be paid out of a marshal's official account.¹

The closing of any of the marshal's bank accounts requires advance approval from the Department of Investigation. After a month-end closing and bank reconciliation of the account to be closed, provided there are no pending adjustments to the statement, such as deposits in transit, a check or EFT for the exact amount of the balance in the account minus

¹ Q-145 (November 23, 1988).

an amount sufficient to cover any outstanding checks and bank fees should be drawn to the marshal and deposited into the new trust fund bank account on the same day. Entries should be made in the “total amount disbursed” field or column and the “miscellaneous” field or column. An explanation of the transactions should be entered in the “remarks” field or column.

Other than the above-described check or EFT to the new account, no checks or EFTs should be drawn on the old account, once the funds have been transferred to the new account, and the old account shall be used solely to allow outstanding checks to clear. The marshal shall not use the old account for any other purpose. Unauthorized use of an official account will subject the marshal to disciplinary measures. Within one hundred eighty (180) days after opening a new account, a final month-end closing and bank reconciliation must be completed and the old account must be closed. If any checks remain outstanding after the old account is closed and the payee can be located, the marshal should ensure that the original check is returned, voided, and replaced with a new check or EFT from the new account. If the check cannot be located, the marshal should place a stop payment order on it. If the payee cannot be located, the check should be treated as unclaimed funds in accordance with Section 3-3 of Chapter XII below.

Section 2: TRUST FUND BANK ACCOUNT

Every city marshal must maintain a separate bank account as the depository for trust funds in his or her custody. The account must be kept in the name of the marshal and designated as a trust account, e.g., John Jones, City Marshal-Trust Account.

A marshal may have more than one trust fund bank account. Marshals handling funds for Parking Violations Operations (PVO) must have a separate trust fund bank account for funds collected pursuant to PVO judgments.

The Department of Investigation must be informed in writing of the location and account numbers of all bank accounts. If a marshal desires to maintain more than one trust account, he or she must inform the Department of the reason for utilizing the additional account(s) and receive written permission from the Department of Investigation prior to opening the account(s).¹

- A marshal must deposit in the trust fund bank account(s) all the funds the marshal receives in connection with his or her official acts as a marshal, including collections, fees, expenses, moving money, and the full proceeds of all sales. Deposits of all monies received must be made no later than the next banking day following the date of the receipt of these funds.
- If necessary, a marshal may make an initial deposit to open a trust fund bank account. The amount of such initial deposit must be reported to the Department of Investigation. Except when such an initial deposit is necessary, no personal funds shall be deposited in the trust fund bank account. Any initial investment must be transferred to the marshal's operating account and withdrawn within one year after the marshal commences his or her official duties. If additional time is needed before withdrawal of the initial investment from the operating account, the marshal must inform the Department in writing, in advance, and abide by any further instructions from the Department.
- In the event that a marshal does not have enough funds available in his or her operating account to meet the marshal's business obligations, a personal loan may be

¹ Q-59 (October 29, 1975).

made to the business. Written approval of the Department, pursuant to a written request from the marshal, is required prior to the making of such a loan.

- The balance in the trust fund bank account must never be less than the sum of the amounts due to attorneys, plaintiffs, and defendants, the amounts due to the State of New York for sales tax, and the amounts owing for trust fund expenses (e.g., moving costs).
- All checks drawn on the trust fund bank account must be serially numbered. No post-dated checks may be drawn.
- Funds may also be disbursed from the trust fund bank account in the form of electronic funds transfers (EFTs), provided that the marshal retains for his or her records all information about the EFT that the marshal would retain for a computer-issued check, including the docket number, payee, check amount, and date issued, and further provided that the bank statement identifies the recipient or transferee of each EFT.
- All checks must be recorded, including those which have been voided. Voided checks must be attached to the check stubs, or otherwise retained. The signature portion of any voided check must be torn off.
- All information called for on check stubs must be entered in a complete and legible manner. A marshal who uses a computer to issue checks must maintain for each numbered check a record of the docket number, payee, check amount, and date issued.
- No checks drawn on the trust fund bank account may be made payable to "Cash." Cash may not be withdrawn from the trust fund bank account by any means.
- All fees and expenses shall be withdrawn from the trust fund bank account by a check or EFT payable to the marshal's operating account or, in the case of an expense, the person entitled to payment. Fees and expenses may be withdrawn on the same or separate checks or EFTs. However, it is not recommended that separate checks or EFTs be drawn for fees due the marshal in each action. Fees and expenses shall not accumulate in the trust fund bank account for longer than two months.
- Errors, whether made by the bank or the marshal, must be corrected immediately.

- A monthly bank reconciliation shall be performed no later than forty-five (45) days after the end of the relevant month. (*See* Chapter XII, § 3-9.)
- A marshal may execute a power of attorney conferring upon a designated person the authority to exercise certain specific powers covering banking transactions, as defined in the General Obligations Law, § 5-1502D, including the power to make or sign checks on behalf of the marshal or to withdraw funds from the marshal's accounts. A marshal who wishes to grant such a power of attorney must first submit a proposed power of attorney form for approval by this Department.¹

¹ Q-135 (January 30, 1986).

Section 3: OPERATING FUND BANK ACCOUNT

Every city marshal must maintain, in addition to his or her trust fund bank account(s), a single, separate bank account for the marshal's operating account, e.g., John B. Jones, City Marshal-Operating Account. The trust account and the operating account may be maintained in the same or different banks. A marshal may never have more than one operating account at any time. All deposits to the operating account must come from an authorized trust account.

- All fees and expenses drawn by the marshal from his or her trust fund bank account must be deposited into the marshal's operating account.
- All operating expenses of the marshal (rent, payroll, taxes, telephone, etc.) are to be paid from the operating account.
- The marshal must draw his or her net fees from this account by issuing checks or EFTs payable to himself or herself for marshal's fees. The use of an automatic teller machine to obtain cash is prohibited.
- Under no circumstances is the marshal permitted to satisfy personal obligations or expenses from the marshal's operating account.
- A monthly bank reconciliation must be performed within forty-five (45) days after the end of the reported month. (*See also* Chapter XII, § 4.)
- All checks drawn on the operating fund bank account must be serially numbered. No post-dated checks may be drawn.
- Funds may also be disbursed from the operating fund bank account in the form of electronic funds transfers (EFTs), provided that the marshal retains for his or her records all information about the EFT that the marshal would retain for a computer-issued check, including the payee, check amount, and date issued, and further provided that the bank statement identifies the recipient or transferee of each EFT.

- All checks must be recorded, including those which have been voided. Voided checks must be attached to the check stubs, or otherwise retained. The signature portion of any voided check must be torn off.
- All information called for on check stubs must be entered in a complete and legible manner.

CHAPTER XII

MAINTENANCE OF MARSHALS' RECORDS

Section 1: **GENERALLY**Section 1-1: **Mandatory Conversion to Computerized Records**

Pursuant to § 1609 of the New York City Civil Court Act and Joint Administrative Order 453 of the Appellate Divisions for the First and Second Judicial Departments, every marshal must keep a record of all his or her official acts in a manner prescribed by the Department of Investigation. With the publication of this Handbook, the Department is mandating the use of computerized recordkeeping by all marshals. As detailed below, any marshals who currently use manual records may convert to computerized recordkeeping in two phases, if necessary:

1. **As of January 1, 2014, all marshals' offices that have not previously implemented an approved comprehensive computerized record-keeping system must institute a practice of converting and storing all manual records electronically.** All manual records regularly received by a marshal's office, e.g., mailing manifests, affidavits of service, court orders, executions and other such documents, must be scanned or otherwise converted into electronic form on a regular basis, and the electronic copies must be stored in a manner that includes a reliable data backup system, in accordance with § 6 of this chapter. Manual records created by the marshal's office, e.g., invoices, receipts, listings of seized vehicles, inventories, records of auction sales and other such documents, must also be scanned or otherwise converted into electronic form and stored, unless the marshal's computer system is capable of reproducing an identical copy, including the date and time of the original record. Manual records that are kept by the marshal's office in bound books, e.g., docket books, must be scanned or otherwise converted into electronic form as soon as practicable after all required entries have been made. Stored electronic documents must be searchable by the marshal's docket number, the court's index number, and the name of the debtor or tenant. After they have been scanned or otherwise converted and stored

electronically in accordance with the provisions of this chapter (*see* § 6), manual records may be disposed of, i.e., destroyed, with the exception of certain original court orders and documents that may need to be submitted to the Department in connection with an investigation or other request. See §§ 6-1 and 6-3(a) of this chapter for details on these exceptions.

For older manual records that have not been converted and stored electronically, marshals should consult the NYC Marshals Records Retention Schedule (the "Schedule") then in effect to determine the date on which each such manual record may be disposed of pursuant to § 6-4 of this chapter. The Schedule as of the effective date of this Handbook can be found in the Appendix.

Before a marshal leaves office and surrenders his or her records to the Department, all remaining manual records in the marshal's office that are eligible for conversion to electronic form must be converted and stored electronically and the manual records must then be disposed of in accordance with § 6 of this chapter.

2. As of January 1, 2015, all marshals must have instituted a comprehensive system of computerized record-keeping. All information previously maintained in bound books, as described in § 1-2 below, must be maintained in a computerized system. A marshal may choose to utilize a system that has been designed specifically for use by city marshals or to develop and configure a system that meets all applicable requirements. Before being utilized, each marshal's system must be approved by the Department. In order to obtain approval, a marshal must submit to the Director of the Bureau of City Marshals a system design describing a comprehensive plan which must include, at a minimum, a detailed description of the following:

- a. information to be retained by the computerized records;
- b. hardware with complete technical specifications;
- c. software, including user manuals;
- d. electronically-stored and hard-copy reports (e.g. docket pages and reports);
- e. standards for archival record-keeping and back-up;
- f. hardware and software security features; and
- g. identification of each authorized user.

The Department will consider and evaluate each system design to determine its capability in relation to the marshal's workload and the Department's ability to audit all transactions. Marshals are encouraged to propose a computerization scheme that incorporates potential for future growth. The marshal must obtain prior written approval of the system design by the Department before entering into a contract with any person or business entity to computerize the marshal's records pursuant to this section. Failure to obtain such prior written permission shall be grounds for disciplinary action.

Any agreement between a marshal and a vendor or a consultant with respect to computerization of a marshal's records must provide for full, unrestricted access by the Department to all data, software, and hardware used or maintained in connection with the marshal's official activities. In addition, any such agreement must provide for a perpetual license for the Department to operate, at its offices, all software necessary to carry out the Department's investigative and supervisory responsibilities with respect to city marshals. All such software and updates shall be provided to the Department free of charge on or before the dates they are used on the marshal's computer system. The Department's access and use of all such data, software, and hardware, shall be for the sole purpose of enabling the Department to carry out its investigative and supervisory responsibilities with respect to city marshals.

If a marshal proposes a computerized system that requires hardware and software not then in use at the offices of the Department, he or she shall bear the costs to acquire, install, configure, and maintain, at the Department's offices, the hardware and software necessary for the Department to carry out its investigative and supervisory responsibilities.

The Department reserves the right at any time to issue standards regarding any aspect of computerization of a marshal's records. City marshals must make the hardware, software, and documentation immediately available to the Department at any time.

The software must be designed to record, at a minimum, the information that was required to be recorded in the manual records previously approved by the Department. Each record must be clearly annotated with headings which show the content, source, date, time (where material), and other appropriate identifying information.

3. Phase-in Period for New Marshals. Any marshal whose first term commences after the effective date of this Handbook shall have two (2) years from the start of his or her term to comply with the requirements of numbered paragraph 2 of Section 1-1 of this chapter.

Section 1-2: **Manual Records**

Marshals who have not yet converted to approved computerized record-keeping must maintain a set of bound books, including a Trust Fund Cash Receipts and Disbursements Book, a Property Execution Docket Book, a Landlord and Tenant Docket Book, an Income Execution Docket Book, a Notice of Petition and Petition Docket Book, and a Miscellaneous Docket Book. Prototypes for the docket pages which must be used may be obtained from the Bureau of City Marshals. Furthermore, every marshal must maintain a record of his or her operating expenses.

As described above, if a marshal is still utilizing a system of manual record-keeping, by January 1, 2014 he or she must have instituted a system for scanning or otherwise converting all manual records that the marshal receives or creates into electronic form on a regular basis. By January 1, 2015, the marshal must have converted to a comprehensive system of computerized record-keeping. Where the marshal performs a low volume of a particular category of work, he or she may utilize a computerized record-keeping system supplemented by a docket book for that category of case, as described in Section 1-3 of this chapter.

Section 1-3: **Low Volume Docket Books**

A marshal who receives a low volume of a particular type of court order or mandate for enforcement may continue to maintain a record of that category of case in a bound docket book in lieu of the full computerization of that category of case records that would otherwise be required by numbered paragraph 2 of Section 1-1 of this chapter, so long as the marshal maintains an index of those cases in computerized form searchable by the marshal's docket number, the court's index number, and the name of the debtor or tenant. A marshal's volume of a particular category of case will be considered low for purposes of this section if it does not exceed the number of cases set forth below:

- a. for property executions, other than PVO seizures, 100 cases per year;
- b. for PVO seizures performed for other marshals, 600 cases per year;
- c. for landlord and tenant cases, 600 cases per year;
- d. for income executions, 100 cases per year;
- e. for serving petitions and notice of petitions, 500 cases per year;
- f. for utility meter seizures, 600 cases per year.

A marshal's Trust Fund Cash Receipts and Disbursements Book may also be kept as a bound book if its entries do not exceed one bound receipts book and one bound disbursements book per year. As noted in Section 1-1, once all entries are complete, these docket books and all other manual records associated with these cases must be scanned or otherwise converted to electronic form and retained in accordance with Section 6 of this chapter.

Section 1-4: Requirements

Marshals are reminded that all official computerized records, books, manual records, and bank accounts are public records and, as such, are subject to unannounced inspections by the Department of Investigation or anyone designated for that purpose by the Commissioner of Investigation or the Appellate Divisions.¹ These records must be in the marshal's office or accessible for unannounced inspection by the abovementioned persons at all times. The Department of Investigation may take into its custody any or all of the official records of a city marshal, including any and all electronic data, for the purpose of inspecting them.

All sums, including fees and expenses, received by city marshals in connection with the performance of their official duties must be entered in the computerized record or in the Cash Receipts Book as well as in the appropriate docket record or book. All expenses must be documented with receipted bills or invoices that have been converted into electronic

¹ Q-101 (April 24, 1981).

form. This documentation is also part of a marshal's official records and, as such, shall be available at all times for inspection by the Department of Investigation.

All manually created docket books must be labeled with the marshal's name and the number of the first and last docket page included in that volume. The cash books and check stub books for a marshal's bank accounts must bear the marshal's name and the inclusive dates of entries. All labeling must be done with a black marking crayon on the spine of each book.

The following sections set out the basic requirements for maintaining proper records in computerized or book form, though the marshal is reminded that after January 1, 2015, books will no longer be acceptable and computerized record-keeping will be mandatory. It is imperative that all entries be posted promptly and in complete detail. A marshal must fully detail any erroneous entry. A single line should be drawn in pen or pencil through all such entries. Do not erase, white-out, cross out or blot out these entries or erroneous entries on the report of any computerized record. Entries must be cross-referenced whenever appropriate. No letters, paper, or other memoranda may be attached to any page of an official record book, except for inventories prepared while executing a warrant.

Upon resignation or termination from office, every city marshal shall surrender to the Department of Investigation all official records. All manual documents not eligible for destruction under the Schedule must be converted to electronic form in accordance with § 6 of this chapter and surrendered to the Department in electronic form, including, but not limited to cash books, docket books, files, checkbooks, bank statements, and cancelled checks. (*See* § 6 of this chapter.)

Section 2: DOCKET RECORDS OR BOOKS¹**Section 2-1: General Instructions**

Each matter received by the marshal shall be entered into the docket records or the docket book as soon as practicable but no later than twenty-four (24) hours after its receipt by the marshal. Each matter shall be assigned a permanent identification docket number. Docket numbers must be assigned in the sequence in which cases are entered. The docket books are bound books with pages numbered in sequence. Each book shall contain an accurate and up-to-date alphabetical index. The docket pages or records must reflect in detail all actions taken with respect to a particular matter and all financial transactions, including cash deposits into and withdrawals from the trust fund bank account. All docket books and records must contain all of the information required on each page.

Money entries in the docket books or records must correspond to money entries in the cash books or the cash receipts and disbursement records (*see* § 3-1 of this chapter). The docket books or records must indicate the exact amount of undistributed funds in the trust fund bank account at any given time. Checks or EFTs disbursed from any trust account must be recorded simultaneously in the Trust Fund Disbursement Book or in the trust disbursement records. Any checks which are voided must be voided individually, and a notation of the voiding must be made in the appropriate docket book or record. Any adjustment in the cash book or the cash receipts or disbursement records made as the result of a bank reconciliation must also be reflected in full detail in the appropriate docket book or record entry. Failure to take these steps will result in an incorrect computation (e.g., an overstatement) of the amount available to a marshal from the trust account as fees. Expenses and fees must be listed or recorded and explained in full detail.

The following are some common errors found by the Department of Investigation when auditing marshals' manually created books:

- insufficient detailing of entries;
- failure to record fees;

¹ Q-54 (March 17, 1975).

- failure to record dates of receipts;
- failure to cross-reference entries into the cash book records;
- failure to record disbursements;
- failure to record and detail expenses; and
- failure to record details of show cause orders received.

Section 2-2: Cross-Referencing Docket Records or Books

All docket pages or records shall provide a space or a field in which each marshal must supply the name of any other marshal who takes part in the execution of a judgment relating to that particular docket book page or record, whether it be an income execution, property execution, or landlord and tenant matter. In addition to the name of the other marshal(s), the other marshal(s)' docket number(s) must also be entered in the appropriate place. Furthermore, the property and income execution docket pages or records shall provide a place in the upper right hand side of the page (labeled "Cross Ref. Docket Number") or a field in which the marshal must cross-reference any of his or her own property or income execution docket pages which are pertinent to the judgment entered on the original docket page.

Moreover, any warrant issued to one marshal but executed by another marshal must be properly cross-referenced by docket number in the landlord and tenant docket book or docket record, and the name of the marshal who executes the warrant must be indicated in the appropriate place (e.g., "or executed by Marshal _____.") Conversely, the marshal who executes the warrant must enter the name of the marshal from whom the warrant was received in the area or field which states "Warrant issued to Marshal _____," or in such other record as the Department authorizes.

Section 2-3: Poundage

A marshal is entitled to poundage of five percent (5%) of the sum collected by virtue of an execution or an order of attachment. A marshal is entitled to poundage upon the total amount collected, including fees and expenses.¹

Poundage shall be computed at five percent (5%) of the sum due and actually collected, including fees, expenses, and interest, except in cases where a settlement is made after the levy or where the execution order is vacated.

Where a settlement between the parties is made after the marshal serves the execution or after he or she levies, the marshal is entitled to poundage upon the judgment or the settlement amount, whichever is less.² Where an execution is vacated or set aside after levy, the marshal is entitled to poundage upon the value of the property levied upon; not exceeding the amount specified in the execution, and the court may order the liable party to pay this amount to the marshal.³

To be entitled to poundage, a marshal must have taken some action in furtherance of the collection of the judgment (e.g., served an execution or collected money by virtue of an execution). Specific actions that entitle the marshal to poundage are set forth in CPLR § 8012. The judgment debtor is responsible to pay poundage, unless there is a settlement agreement that otherwise apportions the poundage fee between the judgment debtor and creditor or a court determines which party is responsible.

¹ CPLR § 8012(b)(1); Q-118 (October 7, 1982).

² CPLR §§ 8012(b)(2), 8012(b)(4).

³ CPLR §§ 8012(b)(2), 8012(b)(4). For calculation of poundage due after levy by service of an order of attachment, *see* CPLR § 8012(b)(3).

Section 2-4: Calculating Interest

Every money judgment shall bear interest from the date of its entry by the Court. Interest for judgments rendered after 1981 is calculated at the rate of nine percent (9%) per annum from the time the judgment is entered.¹

Interest may be computed as collections are made on the declining balance of the judgment. An exact computation is quite simple and based on the exact number of days since the last collection. Interest may be calculated by using the following formula:

$$\text{Interest} = \text{Unpaid principal judgment balance} \times \frac{.09 \times \text{the number of days since last collection}}{365}$$

Under no circumstances shall interest be assessed in advance.

Section 2-5: Property Execution Docket Record or Book

All actions taken in connection with property executions must be recorded in the property execution docket record or book. The information called for on each docket page or in each docket record field must be provided. All entries need to be legible, complete, and must accurately reflect the status of the matter. It is essential that a detailed inventory of personal property levied upon is recorded. General statements such as "sufficient property to satisfy the judgment" are not acceptable. If a settlement is made between the judgment creditor and the judgment debtor, the details of the settlement must be provided in the docket record or on the docket page.

The financial section of the docket record or page must contain the details of all money transactions in the matter concerned. This information must agree with corresponding entries in the trust fund record or cash book. Fees and expenses received in advance, in addition to those which are later billed, must be entered in the summary section of the docket record in a field entitled "advances," or in the box labeled "advances" on the receipt side of the docket page. When the collection is eventually made by the marshal, any expenses

¹ CPLR § 5004. Interest is calculated at six percent (6%) per year on judgments issued and entered between 1972 and 1981.

received must be refunded to the attorney or plaintiff from the proceeds collected. After the appropriate entry has been made for the expenses collected from the proceeds of a sale, the refund entry must be made in the appropriate field or place (labeled "Refund to attorney/plaintiff for advances..." etc.)

After a marshal has made his or her last collection by virtue of a particular execution, a footing must be made in both the receipts and disbursements columns or the receipts and disbursements must be added by the computer, and the summary section must be completed. Totals "to marshal" and "to attorney/plaintiff" plus taxes, if any, should equal the total amount of receipts. The total "to attorney/plaintiff" should equal the total amount in the disbursements column. If New York State sales tax has been collected, this amount should be entered in the field or box labeled "Distribution of all monies received." The total amount in the trust column of the receipts in the trust record or on the trust side of the page should equal the total amount of disbursements on the disbursement record or the disbursement side of the page.

Marshals are required to collect sales tax on all sales, except where the purchaser presents a resale tax certificate, and to accurately record the amount of any tax paid.

The property execution record or page provides a field or place for the purchaser's name and address and proof submitted by him. Marshals are prohibited from transferring any property at a marshal's sale to any person who does not present some valid form of identification (e.g., driver's license). The type of proof submitted and the identifying number on the proof must be indicated on the docket record or page. Marshals conducting sales for PVO are required to keep a copy of the Bid Report.

On the lower left hand corner of the docket page, the notation "garnishee (if other than debtor)" is found; or, a field entitled "garnishee (if other than debtor) shall be included on each docket record. In the adjacent space provided or in an adjacent field, a marshal must indicate the name of the garnishee if he or she is someone other than the debtor (e.g., the name and address of the bank in the event that a levy has been made on a bank account.)

Section 2-6: Income Execution Docket Record or Book

All actions taken in connection with income executions must be recorded in the income execution docket record or book. All entries must be legible, complete, and must accurately reflect the status of the matter. Fees and expenses received in advance from an attorney or plaintiff (including filing fees) must be entered in the box on the receipt side of the page or in the field labeled "Advance Fees." Additionally, this amount must be entered at the time of receipt in the summary section of the page, on the right hand side, under the caption or in a field entitled "Received from attorney/plaintiff." The balance of fees due to the marshal and received from the debtor or from the employer (e.g., the debtor's salary), such as service, levy, or mileage fees, should be entered when received in the appropriate area of the summary section. A running total of monies received and paid must be reflected in the receipts and disbursements columns or reports generated weekly. Proper entries into the docket book or record for "n.g." ("not good") or voided checks must be made.

When the totals "to marshal" and "to attorney/plaintiff" (in the summary section) plus taxes, if any, are added, the grand total should equal the total amount collected and noted in the record book on the receipts side of the page (including the advances entered in the appropriate box). Thus, a footing or summary section should be kept for each docket record or page to detail, at the termination of the collection, whether the judgment was satisfied or unsatisfied. The total amount "to attorney/plaintiff," in the summary section, should equal all remittances received and recorded, or the footing representing the total of all remittances in the disbursements column. Where it is necessary to make a refund to the debtor, this amount should be entered in the field or summary section next to the caption "Over-collection refunded." Therefore, in the case of an over-collection, the sum of the over-collection plus the total "to attorney/plaintiff" should equal the total remittance, which is recorded in the docket book in the disbursements column.

Over-collections must be refunded within thirty (30) days of the receipt of the overage. Where the judgment debtor cannot be located, the funds must be turned over to the City of New York (*see* Chapter XII, § 3-5).

The total amount of statutory fees retained by the marshal may never exceed forty (\$40) dollars. Where both stages of the income execution are served, advances received from the attorney or plaintiff in excess of fifteen (\$15) dollars must be refunded to the attorney or the

plaintiff, and an entry must be made in the summary section in the appropriate field place (labeled "Refund to attorney/plaintiff").

If a single judgment is collected through more than one type of execution, the docket numbers must be cross-referenced in all records.

The terms of any settlement made between the judgment creditor and the judgment debtor must be detailed on the proper docket record or page.

Section 2-7: Landlord and Tenant Docket Record or Book

All data relating to landlord and tenant actions must be entered on the appropriate docket record or page, and all information on the docket record or page must be provided. All entries must be accurate, complete, up-to-date, and reflect the present status of the matter.

The receipt of every warrant to remove a tenant in possession of real property must be detailed in the docket record or book. The fee received for obtaining and entering a warrant must also be recorded in the docket record or book. It is impermissible to maintain a subsidiary record or ledger for recording the receipt of warrants. If a warrant is not used, indicate that disposition by noting "not used" in the remarks section of the record or by checking the "not used" ("N.U.") box on the docket page.

A marshal is required to record in the record or book the names of all persons present during the eviction or legal possession, including: the landlord and landlord's representatives, police officers, together with their badge numbers and precinct; and any movers and laborers.

All fees and expenses received must be recorded in the docket record or in the financial section of the docket page and must be deposited into the trust fund bank account. Any expenses incurred must be described in detail in the docket record or on the appropriate line of the docket page. Marshals are required to document all expenses incurred with invoices, which are part of marshals' official books and records and which must be retained for inspection by the Department of Investigation.

When a payment is received and entered in the docket record or book, the date of the corresponding entry in the trust receipt record or book must also be noted in the docket record or book. The date noted in the docket record or book must be the date the money was actually received (not the date posted to the docket record or book). Fees and expenses must be traceable to the trust fund cash receipts record or book by the exact date of receipt. If there is a lump sum entry in the cash record or book, supporting invoices must show all details which would appear in the cash book if they had been entered individually. The supporting documents must be retained by the marshal and remain on hand available for examination at all times.

A marshal must maintain subsidiary accounts payable records or a bound subsidiary accounts payable ledger if he or she hires a moving company to assist in an eviction. A separate page or record must be used for each mover hired. The entries in this field or ledger must be sufficiently detailed to enable an examiner to trace the item to a specific docket record or page. In addition, payments from landlords or their attorneys for moving expenses must be traceable to the trust fund cash receipts record or book and payments to the mover must be traceable to the trust fund cash disbursements record or book or the operating fund cash record or book, depending on which account is drawn upon for payment. All invoices must be filed in the sequence in which they were recorded. The files must be in good order to insure easy verification by an examiner. The balance due to the mover at any given time must be clearly indicated. The marshal is required to use licensed and bonded movers at all times.

For each check or EFT issued to a moving company, the marshal must indicate in the appropriate disbursements record the docket number and individual amount due for every eviction covered by that check or EFT. Indicate the same information on the corresponding field in the docket record or check stub.

Section 2-8: Notice of Petition and Petition Docket Record or Book

All notices of petition and petitions which are submitted to a marshal's office for service shall be entered in the notice of petition and petition record or book. There shall be a separate record kept, or a separate line on each page must be completed for each notice of petition and petition. All information called for by the manual record book must also be supplied in the docket record. For all cases where a warrant of eviction is requisitioned, each notice of petition and petition must be cross-referenced by docket number or page number and line in the appropriate section of the landlord and tenant docket record or book.

Section 2-9: Miscellaneous Docket Record or Book

All miscellaneous functions performed by city marshals for which no other docket book or record has been specifically designated shall be recorded in the Miscellaneous Docket, or "M" record or book. Thus, for example, actions to recover chattels and orders of attachment shall be entered into the M record or book. Like the previous docket records or books, the M record or book must contain all necessary information where appropriate, and the entries must be accurate, up-to-date and complete.

Section 3: TRUST FUND RECEIPTS AND DISBURSEMENTS RECORD OR BOOK**Section 3-1: Explanation of Cash Record or Book Entries**

All financial transactions involving the receipt or disbursement of trust fund monies must be recorded in the trust fund cash record, or in ink or felt tipped pen in the trust fund cash book. Abbreviations of information recorded or written are not acceptable. The following is intended to clarify what entries are to be made in the Trust Fund Cash Receipts and Disbursements Record or Book:

Cash Receipts**Field Title or
Column Heading**

- Date** Enter the date of receipt in this field or column. All amounts received should be recorded and deposited immediately.
- Docket** Enter the docket record or page number of the case involved. If a payment is received on an invoice rendered by the marshal covering several dockets, record the number of the invoice and the word "invoice." Enter the inclusive numbers of those dockets covered by the invoice in the "Title of Action" field or column.
- Title of Action** Enter the plaintiff's name and the debtor's name, e.g., John Jones v. Mary Smith.
- Received From** Enter the name of the person from whom the funds were received. No abbreviations or codes may be used in the displayed or printed output or in the book. Full name must be shown.

| | |
|---|---|
| <u>Total Amount Received</u> | Enter the total amount received at any one time in connection with action taken and indicate whether the receipt is cash, check or EFT. "Initial deposits" must be entered here. |
| <u>Fees</u> | Enter that portion of the total amount received at any one time that represents statutory fees and poundage. |
| <u>Trust Payable</u> | Enter that portion of the total amount received at any one time that is to be paid to the plaintiff or plaintiff's attorney. |
| <u>Expenses (Reimbursed or Advanced)</u> | Enter the amount received from the plaintiff, defendant, or attorney for expenses incurred in the enforcement of the court mandate. <u>All</u> expenses, including advertising and postage costs, are entered in this column. |
| <u>Trust Sales Tax</u> | Enter the amount of the sales tax collected. <u>Proceeds of all sales, including sales tax, must be deposited into the Trust Fund Bank Account.</u> |
| <u>Miscellaneous</u> | Enter the amount of any unidentified funds or any funds initially deposited by the marshal in this column. Note details in the "Remarks" field or column. |
| <u>Amount of Deposit/Date of Deposit</u> | Enter the date of deposit and the total amount of the deposit made into the trust fund bank account. This should equal the total amount recorded on the bank deposit receipt for the date of the entry. |
| <u>Remarks</u> | Enter any information with respect to unidentified funds, initial deposits, or adjusting entries. |

All "n.g." (not good) checks should be recorded in the cash receipts record or book in red ink. If a check is later honored, it should be recorded as a new entry. All "n.g." checks must be reflected in the docket record or book.

Cash Disbursements

**Field Title or
Column Heading**

- Date** Enter the date of issuance of the check or EFT. This date should correspond to the date on the check or EFT. Remember that no post-dated checks or EFTs may be issued by the marshal.
- Docket Number** Enter the docket number for which the check or EFT is issued.
- Remitted To** Enter the name of the person to whom the check or EFT is payable. No abbreviations are permissible.
- Check Number** Enter the number of the check. Checks must be issued and entered in numerical order.
- Total Amount Disbursed** Enter the amount for which the check or EFT is drawn.
- Fees** Enter the amount of any check or EFT issued to the marshal as fees. Remember that all fees must be deposited into the marshal's operating account.

- Trust Payable** If the check or EFT drawn covers payments on more than one docket, indicate the amount of the total attributable to each docket number.
- Expenses (Reimbursed or Advanced)** Enter the amount of any check or EFT issued to the marshal or vendor for expenses recovered. This should correspond to the amount entered in the "Expense" field or column on the Receipts page.
- Trust Sales Tax** Enter the amount of any check or EFT issued to the State of New York for payment of the sales tax collected, and held in trust.
- Miscellaneous** Enter any miscellaneous amounts here.
- Remarks/Bank Reconciliation** Enter here any pertinent information with respect to disbursements and/or the monthly bank reconciliation.

Marshals are reminded that all payments by a city marshal must be made by check or electronic funds transfer. All checks or EFTs issued (including void checks) must be entered in the cash disbursement record or book in numerical or, in the case of EFTs, chronological order.

Section 3-2: Voided Checks

- a. If a check must be voided before it is issued or delivered to the payee, take the following steps to account for the voided check:
 1. Write the word "void" on the check stub or other record and indicate the reason for voiding the check.
 2. If applicable, tear off and discard the part of the check designated for the marshal's signature and staple the check to the stub.
 3. Record the check number, in number sequence, in the cash disbursements record or book and write "void" in the field or column headed "Remitted To."
- b. To void a check which is outstanding, take the following steps:
 1. Stop payment on the check.
 2. Enter every detail of the voided check in the cash disbursements record or in red ink in the cash disbursements book. This is a new entry; by making it, the marshal is, in effect, offsetting the original entry. Under no circumstances should two or more checks be voided together. Each check must be entered individually, and the particular reason for voiding it must be recorded. Make the necessary corresponding entries in the proper docket record or book.

Section 3-3: Unclaimed Funds

If a check is outstanding for over six (6) months, and the payee cannot be located, the amount of the check is to be categorized as an “unclaimed” fund. Under no circumstances do these funds belong to the marshal. Unclaimed funds denoted as such for at least one (1) year are to be transferred on or before March 15th each year to the New York City Department of Finance, accompanied by the prescribed form that you may obtain from the Bureau of City Marshals as part of the Annual Financial Statement.

Section 3-4: Unidentified Funds

An “unidentified” item is a check, EFT, money order, or currency sent under a remitter's name that is legible and unrecognized by the marshal, or illegible and untraceable to any debtor. If efforts to find the remitter fail, the item should be described as “unidentified.” Funds that remain unidentified for at least one (1) year must be reported to the Department of Finance using a form which may be obtained from the Bureau of City Marshals.

Under no circumstances are unidentified funds to be omitted from the daily deposit or delayed pending identification. Record in the cash receipts record or book all pertinent data, such as the name of the bank on which the instrument was drawn, the check, EFT or money order number, the date, and the name of the sender or any legible part thereof.

Section 3-5: Accounting for Unclaimed and Unidentified Funds

All unclaimed and unidentified funds must be accounted for in the following way:

- a. Stop payment on and void any unclaimed check which has remained outstanding longer than six (6) months. Each check must be
 1. voided individually,
 2. detailed fully in the trust fund cash disbursement record or book,
 3. posted in the docket record or book, and
 4. designated in the docket record or book as an unclaimed fund.

- b. In a field specifically set off for this purpose, or in the back of the trust fund cash book in a special section, list all unclaimed or unidentified funds on hand. On the schedule or list of unclaimed funds, include all pertinent data, such as the title of the action, the index number, the county and court, and the attorney for the plaintiff. On the schedule or list of unidentified funds, indicate the name of the sender or any legible part thereof, or the description "illegible," the date, the number of the check or money order or the designation "Currency," and the amount.
- c. To transfer unclaimed and unidentified funds denoted as such for at least one (1) year, draw on the trust fund bank account a check or EFT payable to the "New York City Commissioner of Finance" for the total amount of unclaimed and unidentified funds.
- d. Enter the total amount of the check or EFT issued to the New York City Commissioner of Finance in the "trust amount disbursed" field or column of the trust fund cash disbursement record or book and each individual unclaimed or unidentified amount in the "trust payable" field or column. Enter the docket number or word "unidentified" in the field or column headed "docket page number." Do not neglect to post into the docket record or book the number and date of the check or EFT issued to the Department of Finance and the amount included in that check or EFT which corresponds to the particular unclaimed items.
- e. Forward the check or EFT and schedules to the New York City Department of Investigation together with the annual financial statement on or before March 15th each year.

Section 3-6: Lump Sum Entries

No lump sum entries may be recorded in the cash record or book unless they are supported and explained in detail in the subsidiary record or bound book or by the invoices (see below). This subsidiary is considered an integral part of the cash record or book and must be maintained in accordance with the requirements for the primary trust fund cash book. It is not permissible to utilize a loose-leaf binder to record information which supports trust fund cash book entries.

In the alternative, instead of using a bound subsidiary book, the marshal may bind invoices in a loose-leaf binder. The invoices must:

- a. be numbered sequentially; and
- b. contain the docket numbers to which the funds received will be allocated; and
- c. be filed or bound in sequence (NOT BY DATE); or
- d. be maintained permanently by the computer in the exact form in which the hard copies were issued to the recipients. .

Section 3-7: Marshal's Invoices and Receipts

City marshals shall bill clients in writing, which may be delivered by electronic transmission, for all fees and reimbursable expenses within thirty days of performing the service described in CPLR § 8011 or incurring a reimbursable expense pursuant to CPLR § 8013(c). When a marshal bills clients for fees and expenses, the invoices used must be printed or created as an electronic document with sequential numbers and must be completed in detail, including the billing date, invoice number, docket numbers of the matters concerned, the date service was performed, specific services rendered, and the amount due. The standard invoice form that provides for the inclusion of this information may be obtained from the Bureau of City Marshals.

Codes on the form identify the service rendered. If a paper invoice is issued, it must be printed at least in duplicate with a "customer copy" and an "office copy," which must be maintained permanently by the computer in the exact form in which the hard copies were issued to the recipients. Upon receipt of payment, the office copy of the invoice, if maintained in a separate invoice file, must be annotated to show the amount of the payment

and the date payment was received. Receipt of payment pursuant to an invoice must be recorded in the trust fund cash record or book. In the field or on the receipts page in the column headed "Docket," enter the appropriate invoice number and the word "Invoice." (*See also* § 3-1 of this chapter.)

Invoices may not be used out of sequence, and those on which mistakes have been made and which are not used must be properly voided and filed. When supplies of the forms are replenished, serialization must begin at the number following the last number of the previous order. No number may be used more than once. Where a marshal creates invoices using an approved computerized recordkeeping system, each invoice must have a unique number, which must be assigned in the order in which they are created.

Furthermore, whenever a marshal or an employee issues or electronically transmits a sequentially numbered receipt for monies, the receipt must contain the following information: date of receipt, the title and docket number of the matter concerned, the service performed, and the amount received. A copy of an acceptable receipt form may be obtained from the Bureau of City Marshals. Marshals must either use these forms or similar forms that contain all the required information. If a paper receipt is issued, the form must be printed at least in duplicate, with a "customer copy" (provided to the customer) and an "office copy" which is maintained in permanently by the computer in the exact form in which the hard copies were issued to the recipients.

As with all forms used by city marshals, both the invoice and receipt form or electronic transmission must contain the marshal's name, badge number, address, and telephone number.

Section 3-8: Month-End Closing Receipts and Disbursements

At the end of each month, marshals are required to prepare, in their cash disbursements record or book, a closing statement which includes the following information:

- a. Total amount received for the month. The total in the amount field or column must equal the sum of the totals in all the other field or columns on the receipt side.
- b. Monthly bank charge. This should be entered in the disbursements record or book in the "total amount disbursed" field or column and the "fee" field or column.
- c. Total amount disbursed for the month. The total amount disbursed must equal the sum of the totals in all other fields or columns in the disbursements book. If there is a difference, the error should be located and corrected.

The month-end closing statement should be recorded in the manner set forth in the chart below:

| Total Amount Received | Fees/Poundage | Trust Amount Owing | Expenses | Sales Tax |
|---------------------------------------|---------------|--------------------|----------|-----------|
| Balance, beginning of month | | | | |
| Add receipts, current month | | | | |
| Total | | | | |
| Subtract disbursements, current month | | | | |
| Balance | | | | |

Section 3-9: Bank Reconciliation

A bank reconciliation in good form and detail must be recorded in the trust fund disbursements record, or in ink in the book each month. No adjusting entries may be made without good reason and full disclosure of the reason for adjusting such entry. Any adjustments must be posted to the docket records books, when appropriate.

Reconciliation is an analysis of two sets of related data, the purpose of which is to: (1) prove they are the same or equal, or (2) isolate and identify the elements of difference between them.

In a bank reconciliation, the two related sets of data are found in the cash record or book and the bank statement. The cash receipts and disbursements records (commonly referred to as "cash" or "book") and the bank statement (commonly referred to as "bank") presumably reflect the same transactions and data. In fact, however, their balances are seldom the same. The bank reconciliation determines why they are not the same and also serves as a basis for correcting any errors in either or both.

The following are items which may require adjustments when preparing a bank reconciliation:

- a. Outstanding checks: Checks which were issued by the marshal but not cleared by the bank before the bank statement was prepared. The balance per the bank must be reduced by the amount of the outstanding checks. Outstanding checks must be fully detailed with the date, number, and amount of each individual check.
- b. Unclaimed funds: See above, Chapter XII, § 3-3.
- c. Deposits in transit: Funds received on the last day of the month and recorded that day but not deposited until the following month. These must remain distinct from the new month's receipts. Thus, a marshal must prepare separate deposit slips for those which were received in the new month. The amount of the deposit in transit is added to the bank balance to reconcile the bank balance with the cash record or book balance.

- d. Bank service charges: Various charges made by the bank, which are entered on the bank statement. These charges normally appear on the bank statement. Bank charges on "N.G." (not good) checks may be recouped from the judgment debtor. If this is done, they are treated in the same manner as other expenses charged to the debtor. If the marshal pays any bank charge, it is treated as a cost of operation. The amount of this operating expense should be entered on the last line of the month's disbursements record in the field or column entitled "Total Amount Disbursed" and "Fees."
- e. Adding machine tapes, deposit slips, bank advice slips: Copies or carbons of any adding machine tapes which are submitted with deposit slips must be attached to the appropriate deposit slip carbons, and both must be retained in the mailing envelope with the bank statement and cancelled checks returned each month by the bank. Similarly, bank advice slips must be retained. In addition, write the date and year on the front of the mailing envelope, and file in proper sequence.

Section 3-10: **Adjusting Entries**

A marshal shall not make unexplained adjusting entries in the cash record or book. Under no circumstances will unexplained adjusting entries into the cash record or books be permitted.

If an entry is made to correct the cash record or book, every docket affected must also be corrected. In addition, the title of the action and the reason for the entry must be indicated in the cash record or book. The marshal will be required to explain any undetailed adjusting entries in the cashbook made by the marshal or the marshal's accountant or bookkeeper. A marshal bears full responsibility for the accuracy of his or her books and records.

Section 3-11: Sixty-Day Credit Limit

In accordance with good business practice, marshals should make reasonable efforts to collect all fees and expenses within thirty (30) days of the invoice date (*See* § 3-7, above) and shall not extend credit to any client for a period longer than sixty (60) days from the invoice date. Marshals shall advise this Department in writing of the name of, and the amount due from, any individual, firm, or company that fails to pay fees or reimbursable expenses within sixty days. The failure to make good faith efforts to collect fees and reimbursable expenses within a reasonable time can be the equivalent of waiving fees and expenses. Pursuant to Joint Administrative Order 453, § (3)(e), marshals may not waive fees without specific written authorization of the Commissioner of Investigation.

Section 3-12: Funds Held Over Thirty Days

All monies received in garnishment proceedings shall be turned over to the judgment creditor or his or her attorney within thirty (30) days. In the event that the creditor or the creditor's attorney requests that the marshal retain funds received for a longer period of time or until a fixed sum is reached, the marshal should obtain and keep in the marshal's files written authorization for such retention from the appropriate party.

Section 3-13: Amounts Owning From Trust Fund

Each month, the marshal must prepare a schedule of amounts owing from each trust fund bank account. A sample form may be obtained from the Bureau of City Marshals.

Section 4: OPERATING ACCOUNT BOOKS AND RECORDS**Section 4-1: Generally**

All marshals' fees and expenses, after being drawn from the trust account, must be deposited into a separate bank account, to be known and designated as an operating account, e.g., John Jones, City Marshal-Operating Account. All payments to cover operating costs must be disbursed from this account. The marshal shall not co-mingle the money in this account with any other funds. Under no circumstances is the marshal permitted to pay personal expenses from this account. Reimbursed expenses, such as moving costs, towing, advertising, etc., are not to be considered as operating expenses.

In addition to the records or bound books required to be kept for the trust account, it is recommended that a marshal maintain a separate record or use a separate bound book to detail the marshal's operations. Thus, he or she may designate one record or section to contain the general journal, the general ledger, the record of operating cash receipts and disbursements, the record of petty cash, and payroll records of individual earnings. The marshal may also use this record or a section of this book to note the analysis of the trust fund bank accounts.

Section 4-2: Requirements for Operating Account Cash Record or Book

- a. The cash receipts section of the operating account cash record or book must be set up to reflect the exact source of the deposit.
- b. Each check or EFT issued to a moving company must reflect, on both the check or EFT and the corresponding check stub, the individual amount included for each eviction and the landlord and tenant docket number pertaining thereto.
- c. Headings in the cash disbursements section should include separate fields or columns for all overhead and operating expenses, such as salaries, payroll taxes, postage, stationery, utilities, and reimbursed expenses, such as moving, towing, advertising, etc.
- d. A bank reconciliation in good form and detail must be recorded in the operating record or in ink in the operating book at the end of each month. This reconciliation should follow the formula discussed above, in § 3-9.
- e. A sufficient balance of fees and reimbursed expenses collected by the marshal must be maintained in the marshal's official bank accounts to cover all taxes withheld from employees, in addition to other taxes payable and amounts due to creditors.
- f. A petty cash record or book must be set up to reflect daily out-of-pocket disbursements made by the marshal.
- g. If a marshal regularly uses any moving, towing, or trucking company or any other vendor, an accounts payable subsidiary must be used. A separate record or page for each vendor, including moving companies involved in landlord and tenant work, should be maintained and should reflect the individual amounts of invoices, dates of payments, check numbers, record of EFTs, etc. In addition, a file must be maintained wherein all invoices are retained in good order for examination by the Department of Investigation.
- h. Reimbursed expenses are not to be considered a cost of operations.

- i. Payroll records must be kept in good order. Records of individual earnings (941, WRS-2, W-2, and W-4 forms and payroll tax returns) must be available to the Department of Investigation for inspection at any time.
- j. A record of payments to each individual process server must be maintained. Such record is to include the server's name, address, telephone number, and license number.
- k. All legal costs in connection with the activity of a marshal must be supported by an invoice from the attorney, which includes the title of the action, the marshal's docket number, and all other pertinent details.

Section 5: DIARY OF DAILY ACTIVITIES

Every marshal is required to keep a diary of his or her daily activities. In this diary, the marshal must record, in chronological order, all locations visited, the times of such visits, the names of the people contacted, a summary of action taken, and the docket number of the cases involved. This diary shall be kept as a computerized record, and shall be open to inspection by the Department of Investigation.¹

¹ Q-46 (June 24, 1974).

Section 6: RECORDS RETENTION AND DISPOSAL**Section 6-1: Generally**

As set forth in Section 1 of this chapter, the Department has mandated that as of January 1, 2014, any marshal who has not previously implemented an approved, comprehensive computerized record-keeping system must institute a practice of converting and storing all manual records electronically, i.e., converting manual records into electronic form, in accordance with § 6-3 below.

This section also establishes a records retention schedule and procedures for the electronic conversion and disposal of marshals' manual books and records. The Schedule, which may be found in the Appendix, specifies how long each kind of record must be retained. If a manual book or record is older than the specified time period, the marshal may dispose of it in accordance with the procedure in § 6-4 below without converting it into electronic form.

Electronic records that have been created as copies of manual records or as part of a comprehensive computerized record-keeping system must also be retained for the period of time set forth in the Schedule for the corresponding category of manual record. After that period has passed, an electronic record may be retained or deleted by the marshal in accordance with the procedure in § 6-4 below.

Nothing in this chapter shall relieve a marshal of the obligation to preserve all relevant records in the marshal's custody or control that are responsive to a request for records or information from the Department, or that are relevant to any investigation by the Department of which the marshal is aware. A marshal's violation of this provision shall be grounds for disciplinary action. In addition, it is the marshal's sole responsibility to maintain and preserve such records as may be required by law, including but not limited to, records relating to taxes, business expenses, employment, insurance, litigation, and other matters that may relate to the marshal's operation of his or her office, and nothing in this section or the Schedule shall relieve a marshal of any such obligation.¹

¹ Marshals are advised that the scope of the obligation to preserve records in anticipation of litigation is a complex and evolving area, subject to interpretation by the State and federal courts. *See, e.g., Pension Comm.*

Section 6-2: Application and Definitions

(a) This section shall apply to the records of all marshals. No record, whether it exists in manual, computerized or electronic form, shall be destroyed or disposed of except as provided by this section.

(b) The term "manual record" as used in this section means any document, book, paper, check, photograph, tape, sound recording, or any other tangible material, regardless of physical form or characteristics, made or received by a marshal or marshal's office pursuant to law or in connection with a marshal's official activities but does not include computerized or electronic records. Extra copies of documents preserved only for convenience of reference are not manual records as used in this section and may be disposed of at the marshal's discretion.

(c) The terms "computerized record" and "electronic record" as used interchangeably in this Handbook mean a copy of a manual record or other data, made or received by a marshal or marshal's office pursuant to law or in connection with a marshal's official activities, evidencing any act, transaction, occurrence, or event, produced and/or stored electronically in a computer and capable of being accurately reproduced, but do not include any manual record printed out or otherwise generated in tangible form by a computer.

(d) The term "marshal's records" refers collectively to all manual, computerized and electronic records maintained by a marshal.

(e) The term "closing date" as used in this section means the date of the last entry in the marshal's record.

(f) Guidelines for determining whether a document or record must be retained by virtue of this section:

of the Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC, 685 F. Supp. 2d 456, 466 (S.D.N.Y. 2010) (holding that persons who reasonably anticipate that their electronic records may be relevant to an impending litigation must suspend their routine destruction and place a "litigation hold" on the relevant records).

(i) Records named and described in the NYC Marshals Records Retention Schedule in the Appendix, as it may be updated from time to time, including official correspondence in tangible or electronic form, e.g., e-mail, sent or received by the marshal pursuant to law or court order in the course of the marshal's official duties, are "marshals' records" subject to this section.

(ii) Other correspondence and documents, including but not limited to notes, memoranda, non-official correspondence and e-mail, and extra copies of documents preserved only for convenience of reference are not "marshals' records" subject to this section. Paper documents, tangible materials, and electronic files that are not "marshals' records" subject to this section may be retained or disposed of by the marshal based upon the marshal's judgment and determination of whether and for how long they are needed.

Section 6-3: Procedure for Conversion of Manual Records into Electronic Form

As discussed in § 1-1(1) of this chapter, effective January 1, 2014, marshals who have not previously instituted a computerized record-keeping system will be required to convert manual records that they receive, create or maintain the regular course of business to electronic records through proven, reliable technologies and processes. After a marshal converts a manual record to an electronic record through electronic scanning or a process that stores an exact image or the full content of any writing, entry, print or representation and which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes, and the marshal determines that the converted record serves for all purposes as a complete, true and accurate copy, front and back, or equivalent of the manual record and that no statute, regulation, or decision or order of a court requires the marshal to preserve the manual record after such conversion, the marshal may dispose of and destroy the manual record without further notification to the Department subject to the conditions set forth in subparagraphs (a)-(f) below:

(a) The document shall not be disposed of and destroyed if it is an order or mandate issued directly and impressed with an official seal by the court that must be executed and returned to court by the marshal (if the party entitled to enforcement of the order has relinquished that right, and the marshal is not required to return the order to the

court, e.g., an unused warrant of eviction, the document may be converted to an electronic copy, and the paper document may then be destroyed).

(b) Any destruction and disposal of a marshal's manual records shall be by cross-cut shredder or such other lawful method that the marshal determines and certifies is equivalent, or superior, to cross-cut shredding for purposes of preventing access to the information in the record by other persons.

(c) The converted record shall be stored electronically in such a manner as to be (1) secure from loss, degradation, and unauthorized access, (2) readily accessible to the marshal, the Department, court personnel, and anyone else authorized to inspect a City marshal's records under applicable law, and (3) readily locatable through a simple search using any one of the following terms: (a) a party's last name, (b) the marshal's docket number, (c) the court index number, and (d) the date (year and month) of the transaction, occurrence, or activity recorded in the record.

(d) The converted record shall be stored electronically and securely in at least two separate locations at all times, at least one of which is a reliable data backup system through and into which the marshal's data is copied from the marshal's computers and servers to one or more storage devices, such as an external hard drive, network-attached storage device, DVD, CD, USB/flash drive, tape, or remote server over the internet at least once per week.

(e) No bound docket book that serves as the marshal's official record of any official act, transaction, occurrence, event, or other activity required to be entered therein may be disposed of or destroyed under this section unless and until the marshal has completed his or her official action and made all required entries in the docket book with respect to all mandates required to be recorded therein, including but not limited to all financial transactions and the return of the mandate to the court or issuing party where required, and the complete docket book has been converted to a computerized or electronic record in accordance with this section.

(f) No bound trust fund cash receipts or disbursements book that serves as the marshal's official record of any official financial transaction, occurrence, event, or other activity required to be entered therein may be disposed of or destroyed under

this section unless and until the marshal has made all required entries in such book and the complete book has been converted to a computerized or electronic record in accordance with this section.

Section 6-4: Procedure for Disposition of Marshal's Records Pursuant to NYC Marshals Records Retention Schedule

(a) A marshal who intends to dispose of (1) manual records that have not been converted to electronic form and stored as such, and/or (2) electronic records, shall make a written notification of the marshal's intention to dispose of such records to the Director of the Bureau of City Marshals on a properly completed Notification of Intended Disposal of City Marshal's Records form ("Notification Form") provided for such purpose by the Department. The Notification Form, sworn to and signed personally by the marshal, shall describe in appropriate detail, in accordance with the Schedule, as updated from time to time, the records to be disposed of, specifying the Record Series Number, Record Name, and Related Records, if applicable, as reflected on the Schedule, the docket numbers, if applicable, and the closing dates of the records that the marshal intends to dispose of. The Notification Form shall specify the date of intended disposal, which shall not be sooner than 10 business days following the date the Notification Form is received by the Department. The marshal shall be responsible to obtain confirmation of the date on which the Department receives the Notification Form.

(b) Each and every Notification Form for the intended disposal of a City marshal's records shall comply with the Schedule in effect on the date the Notification Form is submitted to the Department. The Notification Form shall contain the marshal's sworn statement of the following: (1) the records described therein are eligible for disposal under the Schedule; (2) the records are no longer required for the current operation of the marshal's office and are of no further administrative, legal or fiscal value to the marshal's office or the public; and (3) no record that is related or relevant to pending litigation that has been made known to the city marshal is included.

(c) Provided that the Department has not instructed otherwise, the records listed in a properly completed Notification Form signed and certified by the marshal may be disposed of by the marshal as provided by this section not sooner than 10 business days following the date such Notification Form is received by the Department.

(d) Any destruction and disposal of a marshal's manual records shall be by cross-cut shredder or such other lawful method that the marshal determines and certifies is equivalent, or superior, to cross-cut shredding for purposes of preventing access to the information in the record by other persons. Any destruction and disposal of a marshal's computerized or electronic records shall be achieved using secure file deletion software or such other lawful method that the marshal determines is equivalent, or superior, to secure file deletion software for purposes of preventing access to the information in the record by other persons.

Section 6-5: Requirements for Surrender of a City Marshal's Manual Records Upon Termination of Office

(a) Marshals must convert all eligible manual records to computerized and electronic records and dispose of all eligible manual records in accordance with this section well in advance of a planned or reasonably foreseeable termination of office.

(b) Manual records surrendered to the Department under Joint Administrative Order 453 § 3, this Handbook, or any other applicable Directive must be organized, boxed, and labeled, on the exterior of the boxes, in accordance with the Schedule, including but not limited to, the most recent closing date of the manual records in the box, and in accordance with any additional instructions of the Department, and must be delivered to the storage location designated by the Department, at the expense of the marshal. In accordance with the Department's mandate set forth in § 1-1 of this chapter, after January 1, 2014, manual records will no longer be accepted by the Department for storage.

(c) The Department will not accept any manual record of any City marshal past the applicable destruction date on the Schedule applicable thereto unless ordered to do so by a court of competent jurisdiction. It is the responsibility of the marshal to dispose of all manual records eligible for destruction under the Schedule and in accordance with this section.

CHAPTER XIII**ANNUAL FINANCIAL STATEMENT****Section 1: GENERALLY**

Every city marshal is required to file annually, with the Bureau of City Marshals, a detailed statement showing his or her financial position at the end of each year. The instructions and forms for this information are distributed to all city marshals in January, each year, and the deadline for submission of the statement to the Bureau of City Marshals is March 15th of each year. In addition, the Department of Investigation may direct a marshal to file a similar statement relating to the marshal's financial position and official activities at any time during the year.

All requested information must be supplied. If any of the forms do not apply, they must be signed, nonetheless, and forwarded to the Department of Investigation with the words "not applicable" thereon. If the information supplied to the Department is incomplete or not in the correct form, all papers will be returned to the marshal, and he or she will be required to resubmit them in proper form. The completed forms must be dated, signed, and sworn to by the marshal, where indicated. The Department of Investigation at any time may amend the annual financial statement forms to require additional financial information related to the operation of the marshal's office.

The annual financial statement must be forwarded to the New York City Department of Investigation, 80 Maiden Lane, New York, New York 10038, Attention: Director, Bureau of City Marshals, on or before March 15 of each year (except the summary of evictions and legal possessions described below, which must be forwarded to this Department by no later than December 31st of each year). Marshals must keep a copy of these financial statements as part of their official records. Marshals are required to convert and store such copies as electronic records on an ongoing basis, as they are created, as of January 1, 2014 pursuant to Chapter XII, Section 6-3, and may dispose of paper copies in accordance with the NYC Marshals Records Retention Schedule (*see* Chapter XII, § 6 and Appendix).

Section 2: REQUIREMENTS¹

To meet the annual financial statement filing requirement, every marshal must provide the following data, showing his or her official financial position as of the close of business on December 31st of each year:

- A certified copy of the bank statement for the month ending December 31st, for every account, including the operating account, into which funds received from official activity have been deposited.

If the bank statement runs into the early part of January, disregard all January figures and use the balance for December 31st shown by the bank. All records for the year are to run only to December 31st, inclusive. (In the same manner, each month's records throughout the year are to be for the calendar month.)

- A reconciliation of each bank statement, itemizing outstanding checks by date, number, and amount, deposits in transit, bank charges, adjustments, and any other pertinent data.
- An analysis of the trust fund cash receipts and disbursements is to be completed on the forms provided.
- A detailed statement of all amounts payable out of the Trust Accounts. For any amount due over thirty (30) days, the date received and the reason for non-payment must be shown.
- A list of all unclaimed money, such as trust amounts for some reason never remitted to litigants, and unidentified payments received.

Funds which are either unclaimed or unidentified do not belong to the marshal. These funds must be transferred to the New York City Department of Finance after one year. Definitions of these funds and explicit instructions for the correct

¹ Q-132 (January 16, 1985).

procedures to transfer the funds are attached to Schedule II of the annual financial statement.

- A list of all accounts billed for fees on a monthly basis. (Please indicate any account which is consistently delinquent in remitting payment.)
- A statement of operating income and expenses.
- A balance sheet as of December 31st, showing in proper detail all assets, liabilities, and the marshal's equity in the operating account.
- A list of all persons employed by the marshal, including, but not limited to, office workers, process servers, and other city marshals.
- A summary of the number of processes received and served for the year ending December 31st.
- A detailed summary of execution work, including work done on behalf of another marshal.
- A list of all persons from whom office space was rented, including addresses of such persons and monthly rents paid.
- A list of all docket books purchased during the year and/or fees paid to maintain, upgrade, or expand a computer-based electronic record-keeping system.
- A summary of evictions and legal possessions completed in the marshal's own cases or on behalf of other marshals, by borough, including those requiring intervention by a social welfare agency (e.g. Adult Protective Services).

Section 3: TERMINATION OF OFFICE AND FINAL REPORT

Before a city marshal vacates his or her office, the marshal must prepare a final report of his or her official acts. This is called a “winding down report.” Instructions and forms similar to those used in the annual financial statement are provided to a marshal before his termination from office. Other information regarding termination of office is found in Chapter X, § 4 of this Handbook.

Upon vacating office for any reason a city marshal must deliver his or her books and records to the Department of Investigation. Marshals must convert all eligible manual records to electronic form well in advance of termination in accordance with Chapter XII, § 6 of this Handbook. Any manual records that have not been converted must be disposed of, if eligible for destruction, in accordance with the Schedule in the Appendix. The Department will not accept any manual record past the applicable destruction date. Marshals and former marshals may be required to bear the expense of storage by the Department or the City of New York of manual records upon the marshal’s termination of office if such records were eligible for conversion. See § 6-5 of Chapter XII for details on the proper procedures to be followed when delivering records to the Department upon termination of office.

Appendix

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NYC Marshals Records Retention Schedule 212

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Notice of Eviction 217

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The Appellate Division of the Supreme Court, First Judicial Department, and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them, and for the purpose of providing controls and close supervision of City Marshals, do hereby jointly order as follows:

- (1) The Commissioner of Investigation of the City of New York or his designee, is empowered to supervise and monitor the official acts of New York City Marshals and to take complaints, make inquiries and conduct investigations into all aspects of marshals' activities.
- (2) The Commissioner of Investigation or his designee, in order to investigate and monitor the activities of city marshals, may hold hearings, compel the attendance of and examine under oath a marshal and his employees regarding the official acts of any marshal.
- (3) (a) Each city marshal shall keep detailed books and records and maintain bank accounts as prescribed by the Appellate Divisions or the Department of Investigation.

(b) A city marshal's official books, records and bank accounts are public records and as such are subject to unannounced inspections by the Department of Investigation or anyone designated for that purpose by the Commissioner of Investigation or the Appellate Divisions.

(c) Should the Commissioner of Investigation deem it proper, the Department of Investigation may take into its custody any or all of the official records of a city marshal for the purpose of inspecting them.

(d) Each city marshal shall surrender all official books and records including, but not limited to, cash books, docket books, check books, bank statements, and cancelled checks to the Department of Investigation upon termination of office. Should it become necessary, access to such official books and record for the purpose of examination shall be accorded to the city marshal surrendering the same. Upon termination of office, each city marshal shall further prepare a final report of his official acts, as prescribed by the Department of Investigation, which shall include a final statement of monies held in trust, expenses incurred, and fees earned.

- (e) A city marshal is entitled to only those fees for those services which are prescribed by law and set forth in an official schedule of fees issued by the Commissioner of Investigation. A city marshal shall perform all other services required of him by law without any other fees or charges, except as otherwise expressly prescribed by law. No fee to which a city marshal is entitled may be waived without specific written authorization of the Commissioner of Investigation.
- (f) Each city marshal shall henceforth, in accordance with the procedures prescribed by the Department of Investigation, provide for a fiduciary who shall, upon the death or incapacity of said marshal, assume complete responsibility for the marshal's bank accounts and official records, and shall distribute any monies held in trust or otherwise collected by the marshal to the proper judgment creditors or to any other individual(s) to whom such monies are due and owing. Such a fiduciary shall be compensated at the marshal's own expense.
- (4) (a) The Commissioner of Investigation is empowered to continue to issue directives regarding marshals' official day to day activities including, but not limited to, the official records to be kept by city marshals, the procedures for performing their duties, and the conduct of marshals and their employees. Copies of all directives shall be forwarded to the Appellate Divisions, and each directive shall remain in full force and effect unless and until nullified by joint order of both Appellate Divisions.
- (b) Any handbook of regulations for city marshals which may be promulgated by the Department of Investigation shall become effective upon the approval of both Appellate Divisions. Any substantial policy changes therein shall require similar approval. However, copies of any other changes therein by directive or otherwise shall be forwarded to the Appellate Divisions and such changes shall remain in full force and effect unless and until nullified by joint order of both Appellate Divisions.
- (5) The Director of the Bureau of Marshals at the Department of Investigation or any other person or persons designated by the Commissioner of Investigation may, after an investigation, present evidence of incompetency, misconduct, or other wrongdoing as set forth in Section (6) herein to the Commissioner of Investigation. The Commissioner may accordingly designate a deputy commissioner, assistant commissioner, or other qualified person to hear charges as provided herein or, in the alternative, at the option of the

Commissioner, refer these charges and this evidence to the Appellate Divisions for disciplinary action or removal proceedings.

- (6) (a) The Commissioner of Investigation may, after a hearing on charges preferred against a city marshal, impose penalties upon him including, but not limited to, suspension from the performance of his official duties for a period not to exceed six months for violation of the civil laws, the rules of the Appellate Divisions of the First and Second Departments, the rules of the Civil Court of the City of New York, the directives of the Department of Investigation, or for incompetency or misconduct.
- (b) A city marshal against whom such disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him, and shall be allowed at least eight days for answering the same in writing. The marshal shall be entitled to a full and complete hearing with the assistance and presence of counsel.
- (c) The hearing upon such charges shall be held by such deputy commissioner, assistant commissioner, or other person designated by the Commissioner of Investigation for that purpose.
- (d) The deputy commissioner or assistant commissioner holding such hearing shall, upon the request of the city marshal against whom charges are preferred, permit him to be represented by counsel, and shall allow him to summon witnesses on his behalf. The burden of proving incompetency, misconduct or other wrongdoing shall be upon the Director of the Bureau of Marshals or other person designated by the Commissioner of Investigation for the purpose of preferring charges and shall be by a fair preponderance of evidence. The deputy or assistant commissioner holding such hearing shall receive evidence in the same manner as if this hearing were held pursuant to section 75 of the Civil Service Law, in that compliance with technical rules of evidence shall not be required.
- (e) If the city marshal is found guilty, a transcript of the hearing, and a written statement of the determination and the reason therefor, shall be filed in the office of the Department of Investigation. A copy of the transcript shall, upon request of the city marshal affected, be furnished to him without charge.

- (f) If desired, the city marshal may appeal any decision by the Commissioner of Investigation to the appellate divisions. The marshal shall file such appeal in writing within 20 days after service of written notice of the determination to be reviewed, such written notice to be delivered personally or by registered mail to the last known office address of such city marshal. When notice is given by registered mail, such city marshal shall be allowed an additional three days in which to file an appeal.
- (7) A marshal, after being furnished with a copy of the charges preferred against him, may knowingly waive a hearing as provided in subdivision (6) of this section, and agree to a penalty prescribed by the Commissioner of Investigation.
- (8) Perjury by a city marshal or his failure to testify concerning his official duties at an investigative or administrative hearing held at the Department of Investigation after being granted immunity from the use of the testimony in a criminal prosecution shall be ground for removal.
- (9) Failure to comply with penalties imposed by the Commissioner of Investigation shall be ground for removal.

This Order is effective immediately and shall remain in full force and effect unless and until modified or nullified by Joint Order of both Appellate Divisions.

Dated: New York, N.Y. and
Brooklyn, New York
November 12, 1975

FOR THE FIRST DEPARTMENT

/S/
HAROLD A. STEVENS
Presiding Justice

FOR THE SECOND DEPARTMENT

/S/
FRANK A. GULOTTA
Presiding Justice

Joint Administrative Order 456

The Appellate Division of the Supreme Court, First Judicial Department, and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them, and for the purpose of supplementing and amending their joint administrative order (J.ADM 453 dated November 12, 1975), with respect to providing controls and close supervision of City Marshals, do hereby, effective immediately, jointly order as follows:

- (1) Any and all charges preferred by the Commissioner of Investigation shall be in writing and filed with both Appellate Divisions pursuant to Section 1610 of the Civil Court Act.
- (2) The Commissioner of Investigation or his designee, as provided in paragraph (5) of Joint Administrative Order #453, may thereupon conduct hearings on the charges filed with both Appellate Divisions, except with respect to such charges warranting immediate suspension of a city marshal pending a hearing as hereinafter provided.
- (3) Should the Commissioner of Investigation, following a hearing, conclude that a penalty in excess of a suspension of six months is warranted, he may impose such six months' suspension, and shall thereupon refer the entire matter together with the minutes of all proceedings had therein and his report and recommendations to both Appellate Divisions for their joint consideration and disposition.
- (4) Should the Commissioner of Investigation deem the charges to be of such a nature as to warrant the immediate suspension of a city marshal pending a hearing on removal proceedings, he shall not conduct such hearings or proceedings but shall file such charges in writing with both Appellate Divisions pursuant to Section 1610 of the Civil Court Act, together with his request for the immediate suspension of such city marshal and for such removal proceedings as the Appellate Divisions may be advised to pursue under the circumstances.
- (5) In all other respects the provisions of Joint Administrative Order #453 dated November 12, 1975, shall remain in full force and effect.

Dated: New York, N.Y. and Brooklyn, New York
February 27, 1976

FOR THE FIRST DEPARTMENT
/S/
HAROLD A. STEVENS
Presiding Justice

FOR THE SECOND DEPARTMENT
/S/
FRANK A. GULOTTA
Presiding Justice

Joint Administrative Order 490

The Appellate Division of the Supreme Court, First Judicial Department, and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them by statute (New York City Civil Court Act, Article 16) and for the purpose of supplementing their joint administrative orders (J. ADM. 453 dated November 12, 1975 and J. ADM. 456 dated February 27, 1976) do hereby, effective January 1, 1980, jointly order as follows:

- (1) The Commissioner of Investigation of the City of New York or his designee, is directed and empowered to establish a training program for persons seeking to assume the office of New York City Marshal.
- (2) The Marshal's training program shall consist of lectures given by members of the Marshals Bureau of the Department of Investigation and officials from the Civil Court of the City of New York. The lectures shall review in detail the following areas of responsibilities:
 - (a) Levies and Sales
 - (b) Summary Proceedings
 - (c) Income Executions
 - (d) Orders of Arrest, Attachment and Seizure
 - (e) Maintenance of Books and Records
 - (f) Required Bank Accounts
 - (g) Financial Statements
- (3) All prospective marshals must attend all lectures. If a prospective marshal cannot reasonably attend any lecture, he must review a tape recording of any lecture which is missed.
- (4) All prospective marshals shall be issued a Handbook of Regulations for which they will be held accountable.

- (5) The Department of Investigation shall administer an examination at the conclusion of the lecture series which shall test materials contained in the lectures as well as the Handbook of Regulations.
- (6) The Commissioner of Investigation shall issue a certificate of satisfactory completion to all those prospective marshals who have attended all the lectures or tape recordings and who have passed the examination.
- (7) New York City Marshals shall execute and enforce small claims judgments within the City of New York whenever such judgments are delivered to such Marshals in accordance with law.
- (8) The Department of Investigation shall issue directives providing for the assignment of specified marshals on a rotating basis during fixed time periods to the task of executing and enforcing such small claims judgments. The marshals so specified shall submit quarterly reports to the Department of Investigation reporting each such judgment collected and each unsuccessful attempt at collection and the reason or reasons for any lack of success at collection.

Dated: New York, N.Y. and
Brooklyn, New York
December 31, 1979

FOR THE FIRST DEPARTMENT

/S/
FRANCIS T. MURPHY, JR.
Presiding Justice

FOR THE SECOND DEPARTMENT

/S/
MILTON MOLLEN
Presiding Justice

Joint Administrative Order 511

The Appellate Division of the Supreme Court, First Judicial Department and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them, and for the purpose of supplementing and amending their Joint Administrative Order (J.ADM. 453, dated November 12, 1975), with respect to providing controls and close supervision of City marshals, do hereby, effective immediately, jointly order as follows:

ORDER THAT each City marshal shall forthwith forward, in writing, to the Commissioner of the Department of Investigation or his designee (the Department) for its approval, the name of an individual he/she chooses to be designated as the fiduciary for the marshal's bank accounts and official records. This request shall be accompanied by a sworn affidavit from the prospective fiduciary, indicating that he/she accepts such responsibility and swears to abide by this Order and all Directives promulgated by the Department. The affidavit must be accompanied by a completed Department of Investigation background questionnaire. Such fiduciary proposed by the marshal must be an individual with sufficient knowledge of marshal's books, records and functions to fulfill the fiduciary role.

ORDERED THAT each City marshal shall forthwith forward to the Department, for its approval, a proposal for compensation for his/her fiduciary. Such proposal must indicate the rate of payment for the fiduciary and the fact that the fiduciary will be compensated from funds in the marshal's operating account. After the fiduciary and the method of compensation have been approved by the Department, in writing, an agreement establishing the fiduciary relationship, the rate of compensation and an agreement to abide by the guidelines for the fiduciary must be executed by both the marshal and that individual and forwarded to the Department. The Department will then approve the entire agreement. This agreement, the subsequent Department approval and this Order must be given to each bank in which a marshal maintains an account and the fiduciary must be established for each account.

ORDERED THAT, under all circumstances of death and incapacity of a City marshal, the fiduciary cannot assume his/her responsibility without written approval from the Department at the time the fiduciary is to actively function.

ORDERED THAT, in the event of the death of a City marshal, the fiduciary must provide the Department with sufficient proof of the death of the marshal. The Department will then, in writing, authorize the fiduciary to assume control. This written authorization must be provided to each bank in which a marshal maintains an account.

ORDERED THAT in the event of the incapacity of a City marshal, the fiduciary or another individual must, in writing, inform the Department of the specific facts relating to the incapacity and request that the fiduciary assume control. A determination will be made by the Department that the marshal is incapacitated to the point of being unable to function as a City marshal and will then, in writing, authorize the fiduciary to assume control. This authorization must be presented to each bank in which a marshal maintains an account. Should the Department determine that the marshal is so incapacitated that he will be unable to return to his duties, the Department will approve the fiduciary and begin an administrative action against that marshal, seeking his removal.

ORDERED THAT the fiduciary shall assume complete responsibility for the marshal's bank accounts and official records and shall distribute any monies held in trust or otherwise collected by the marshal to the proper judgment creditors or to any other individuals to whom such monies are due and owing.

ORDERED THAT the fiduciary shall transfer all appropriate fees, poundage and reimbursable expenses from the trust account to the operating account for the purpose of paying all operating expenses. Only after all outstanding operating expenses have been paid can the fiduciary draw his/her compensation. In the event of the death of the marshal, the remainder of the monies in the operating account must remain in the account pending the appointment of the estate representative. In the event of incapacity, the remainder or part thereof of the monies in the account are to be paid to the marshal in an amount sufficient so as to maintain the on-going marshal's business.

ORDERED THAT in the event of the death of a City marshal, the fiduciary's responsibilities end upon the appointment of an executor or an administrator to the deceased marshal's estate. The fiduciary must immediately inform the Department of the termination of his/her responsibilities. The Department will acknowledge, in writing, this fact. The fiduciary must apprise each bank in which a marshal has an account that his/her responsibilities have ended.

ORDERED THAT, in the event that a City marshal who had been declared incapacitated seeks to return to his/her position, he/she must advise the Department, in writing, that he/she is capable of returning to his position and must receive in writing from the Department authorization to return to his duties. The return of the City marshal returns the fiduciary relationship to its initial state of dormancy.

ORDERED THAT the City marshal can, at any time, replace the established fiduciary or alter the rate of compensation. Such changes, in order to be valid, must be made in accordance with all procedures set forth in this Order.

ORDERED THAT if for any reason the fiduciary refuses to take complete responsibility for the marshal's books, bank accounts and official records, or if a dispute as to the fiduciary or the rate of compensation arises, or if the Department finds that the fiduciary is failing to act in the best interest of all parties, the Department is empowered to make an application to the Appellate Division to remove such fiduciary and substitute an individual chosen by the Department, who will be compensated at the same rate as the fiduciary designated by the marshal, or at a rate to be set by The Appellate Division.

Dated: New York, N.Y., and
Brooklyn, New York
December 16, 1982

FOR THE FIRST DEPARTMENT

/S/
FRANCIS T. MURPHY, JR.
Presiding Justice

FOR THE SECOND DEPARTMENT

/S/
MILTON MOLLEN
Presiding Justice

Joint Administrative Order 514

The Appellate Division of the Supreme Court, First Judicial Department and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them and for the purpose of clarifying their Joint Administrative Order (J. ADM. #453, dated November 12, 1975), with respect to providing controls and close supervision of City Marshals, do hereby, effective immediately, jointly order as follows:

- (1) The Commissioner of Investigation of the City of New York, for the purpose of supervising and monitoring the official acts of New York City Marshals may, after an investigation of a moving or storage company which removes or stores property as a result of a dispossession of a tenant by a City Marshal, bar a City Marshal from any direct or indirect association with that company and/or its principals.
- (2) The barring of City Marshals from any association with a moving or storage company and its principals shall occur only after a finding by the Commissioner of Investigation that the company and/or its principals has engaged or is engaging in any acts in violation of criminal or civil law, the rules of the Appellate Division of the First and Second Departments, the rules of the Civil Court of the City of New York, the Directives of the Department of Investigation, or acts constituting incompetency or misconduct.
- (3)(a) Prior to a determination by the Commissioner of Investigation to bar a City Marshal from direct or indirect association with a moving or storage company and its principals that company must be given the opportunity, in writing, to appear before the Commissioner of Investigation or his designee to contest the allegations against it. The written request from the Department to appear must include the following: specifications of the allegations against the company; a statement that the company shall be entitled to the assistance and presence of counsel; a statement that the company shall be entitled to present witnesses on its behalf; a statement that a record of the appearance shall be made; and a statement that if there is a finding against the moving or storage company Marshals may be barred from any direct or indirect association with that company and/or its principals.

- (b) Prior to any determination, the Commissioner of Investigation shall review the entire investigative file, including the record of the moving or storage company's appearance.
- (4) Should the Commissioner of Investigation determine that a City Marshal be barred from any association with a moving or storage company and/or its principals, the Commissioner of Investigation shall so notify the Marshal and the moving or storage company and the Appellate Division of the Supreme Court, First and Second Judicial Departments, in writing.
- (5) The City Marshal shall, immediately upon receipt of the Commissioner's determination, cease any association with that moving or storage company and its principals. The Marshal's failure to do so shall be grounds for removal.

DATED: New York, New York
and Brooklyn, New York
April 21, 1983

FOR THE FIRST DEPARTMENT

FOR THE SECOND DEPARTMENT

/S/
FRANCIS T. MURPHY, JR.
Presiding Justice

/S/
MILTON MOLLEN
Presiding Justice

Joint Administrative Order 2013-3

The Appellate Division of the Supreme Court, First Judicial Department and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them, do hereby, effective immediately, jointly order that the first decretal paragraph of Joint Administrative Order 511, as amended by Joint Administrative Order 533, is amended as follows:

ORDER THAT each City marshal shall forthwith forward, in writing, to the Commissioner of the Department of Investigation or his designee (the Department) for its approval, the name of an individual he/she chooses to be designated as the fiduciary for the marshal's bank accounts and official records. This request shall be accompanied by a sworn affidavit from the prospective fiduciary, indicating that he/she accepts such responsibility and swears to abide by this Order and all directives promulgated by the Department. The affidavit must be accompanied by a completed Department of Investigation background questionnaire. Such fiduciary proposed by the marshal must be an individual with sufficient knowledge of marshal's books, records and functions to fulfill the fiduciary role. Such fiduciary shall be a domiciliary of the City of New York or of the county of Nassau, Westchester, Suffolk, Orange, Rockland or Putnam.

Additions to text are indicated by underline.

Dated: New York, New York
March 25, 2013

Brooklyn, New York
March 15, 2013

FOR THE FIRST DEPARTMENT

FOR THE SECOND DEPARTMENT

/S/
LUIS A. GONZALEZ
Presiding Justice

/S/
RANDALL T. ENG
Presiding Justice

Joint Administrative Order 534

The Appellate Division of the Supreme Court, First Judicial Department, and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in each of them, for the purpose of supplementing and amending their joint administrative orders (J. ADM 453 dated November 12, 1975 and J. ADM 456 dated February 27, 1976) with respect to providing controls and close supervision of City Marshals do hereby, effective immediately, jointly order as follows:

- (1) Where an eviction or legal possession is to be carried out by a Marshal in a county other than the county where the Marshal maintains an office, and an order to show cause is obtained staying the eviction or legal possession, the court may provide that notification by telephone to the Marshal's office by the court or its designee informing the Marshal or a member of his staff that the order was obtained shall be sufficient to stay execution of the warrant, provided that the tenant shall send a copy of the order to show cause to the Marshal's office by certified mail within one day after the date of the order. Where the order is silent as to whether or not notification by telephone is sufficient to stay execution of the warrant, such notification shall be sufficient provided the order is subsequently served on the Marshal by certified mail as provided herein. The court may designate only a Civil Court Law Assistant to telephone the Marshal's office on the court's behalf.
- (2) Nothing herein shall be construed to relieve the tenant of the obligation to serve the order to show cause upon the petitioner-landlord or petitioner's-landlord's attorney.

Dated: New York, New York and
Brooklyn, New York
July 12, 1988

FOR THE FIRST DEPARTMENT

FOR THE SECOND DEPARTMENT

/S/
FRANCIS T. MURPHY
Presiding Justice

/S/
MILTON MOLLEN
Presiding Justice

Joint Administrative Order 2013-2

The Appellate Division of the Supreme Court, First Judicial Department, and the Appellate Division of the Supreme Court, Second Judicial Department, pursuant to the authority vested in them by Article Sixteen of the New York City Civil Court Act, for the purpose of providing continuing controls and close supervision of city marshals, and in order to supplement Joint Administrative Orders 453 and 456, do hereby jointly order as follows:

- (1) Pursuant to Joint Administrative Order 453 § 4(b), the New York City Marshals Handbook of Regulations submitted to these Courts on February 28, 2013 by the Commissioner of the New York City Department of Investigation is hereby approved.
- (2) The above titled handbook of regulations shall become effective thirty days after the date of this order.

DATED: New York, New York
March 25, 2013

Brooklyn, New York
March 15, 2013

FOR THE FIRST DEPARTMENT

FOR THE SECOND DEPARTMENT

/S/
LUIS A. GONZALEZ
Presiding Justice

/S/
RANDALL T. ENG
Presiding Justice

Civil Court Directive 288

**Replevin - Minimal Guidelines for Utilities
(Supplement to Directives 176 and 219
of March 17 and December 5, 1972 Respectively)**

Where a plaintiff-utility seeks to include a provision authorizing the Sheriff or Marshal to break open and enter premises to search for a gas an electric meter the order, except in exigent or most unusual circumstances, shall be signed only where the defendant has been given prior notice of the application and an opportunity to be heard thereon, as follows:

The application shall:

- 1. Include a copy of a notice bearing boxed legends or caveats at the top thereof in not less than 12 point bold upper case type, as follows:

**NOTICE! YOUR GAS OR ELECTRICITY MAY BE CUT OFF!
IF YOU WISH A HEARING YOU MUST
GO TO THE CLERK'S OFFICE OF THE
CIVIL COURT AT (fill in address),
PROMPTLY!**

-----**AVISO!**
**SU GAS O ELECTRICIDAD PUEDEN SER
CORTADOS! SI USTED DESEA UNA
AUDIENCIA USTED DEBE IR A LAS
OFICINAS DEL SECRETARIO DE LA
CORTE CIVIL EN (ponga la direccion),
IMEDIATAMENTE!**

- (a) The copy of the notice shall have adequately apprised the defendant of the:

- (1) index number of the proceeding, the nature of the application and the basic elements of the impending complaint. This shall include:

- (i) the amount of money alleges to be due, the proof of which, shall be made available at the hearing;
 - (ii) the date of the last billing rendered to the defendant;
 - (iii) either the actual meter readings, or the estimated meter readings, the basis of which, shall be made available at the hearing; and
 - (iv) the defendant's account number.
- (2) consequences of the Marshal's or Sheriff's execution of the order, if signed, i.e., that his dwelling may be entered and searched, or the public areas of the multiple dwelling in which he resides may be entered and searched; and that either event his gas or his electric services will be terminated and the meter seized;
- (3) right to be heard on this application;
- (4) fact that if he wishes a hearing, he or his designated representative must appear in the Civil Court of the City of New York, County of _____, at _____ address _____, at Special Term, Part II weekdays between 9 A.M. and 5 P.M. within ten (10) days from the date of service of the notice as set forth in Section 2 hereof, in order to obtain a return date for the hearing;
- (5) fact that at the hearing he will be required to be present, shall have the right to be represented by an attorney and shall have an opportunity to refute the bill;
- (6) fact that if he does not appear in court by the last day permitted, the order of seizure will be presented for the Judge's signature.
2. State that service of the notice and accompanying papers, if any, had been made by:
- (a) delivery within the City of New York pursuant to Section 308(1), 308(2), or 308(5) of the CPLR; or

- (b) affixing a copy thereof upon the door of the residence of the defendant at the premises in which the property to be seized is located, and in addition, within one day thereafter, by mailing a copy to the defendant; or
- (c) registered or certified mail to the defendant, and in addition by ordinary mail addressed in the following manner:

(named defendant) or Occupant
(address)
(apartment number), if available; and

the affidavit of service of the notice must have been filed within seven (7) days of such service.

3. Include an affidavit which contains all the elements upon which this application is based together with a statement that there has been compliance with the statutory provisions relating to discontinuance of service, and

- (a) a refusal by the defendant or by a person of suitable age in the premises (setting forth the date of the refusal and by whom made) to permit the utility employees to enter into or upon the premises to disconnect the meter, or
- (b) that no one was home after at least two attempts to gain such admittance (setting forth the dates and times of day thereof).

The Marshal or Sheriff to whom the order of seizure is delivered shall give at least a full seventy-two hours notice, in writing, by mail, to the defendant advising him of the date and whether in the morning or afternoon, of the intended breaking and entering upon his premises to search for and seize the meter, and shall execute the order, a copy of which is attached thereto, only between the hours of sunrise and sunset.

The proposed order shall direct service of the copies of the affidavit, order, summons and verified complaint upon the defendant in accordance with the appropriate sections of the CPLR, and the filing of the affidavits of service thereof with the Clerk of this Court. It shall

Department of Investigation

APPENDIX

CIVIL COURT DIRECTIVE 288

NEW YORK CITY MARSHALS HANDBOOK OF REGULATIONS

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also contain a particular description of the gas or electric meter to be seized (identification number) and shall specify the place on the defendant's premises where the meter is located.

An undertaking shall be submitted in a sum of not less than \$500.00 supported by appropriate affidavit.

Edward Thompson, J.S.C.
Administrative Judge

March 19, 1974

Civil Court Directive 334

Notice to Judges and Clerks - All County Divisions

Attachment - Minimum Guidelines

Article 62 of the CPLR relating to the provisional remedy of attachment has been declared unconstitutional by a three judge Federal Court "to the extent that a New York defendant has no meaningful opportunity to vacate an order of attachment granted ex parte and without prior notice" (*Sugar et al. v. Curtis Circulation Company et al.*, U.S.D.C., S.D.N.Y., 74 Civ. 78, October 10, 1974).

- (A) Accordingly and effective immediately, all orders of attachment shall contain the following: "It is further ordered that the plaintiff within 3 days after levy is made, shall make a motion on notice to defendant, garnishee and sheriff for leave to prove the grounds upon which the order of attachment was issued, the burden of proof as to such issue being on the plaintiff. If no such motion is made the order of attachment shall be deemed vacated. No disposition of the levied property shall be made by the sheriff until final determination of the motion."
- (B) The foregoing shall not be deemed in any way to prevent the sheriff from levying upon the defendant's property, subject, however, to such levy being vacated after the hearing on the motion as aforesaid.
- (C) The foregoing shall apply equally to marshals as well as sheriffs.

Edward Thompson, J.S.C.
Administrative Judge - Civil Court
Deputy City Administrative Judge,
Civil Division

October 28, 1974

Civil Court Directive 354

Civil Court of the City of New York

Notice to Judges and Clerks - All County Divisions

**Income Executions to be Issued
for Judgment Creditors Appearing in Person**

Under Directive No. 34, before an income execution is issued by the clerk where the judgment creditor appears in person, the judgment creditor was required to provide an affidavit alleging where and by whom the judgment debtor is employed and the amount of his earnings.

Effective immediately, such an affidavit is no longer required. The clerk shall issue such execution when such completed execution is submitted to him for signature by the Sheriff or Marshal.

Edward Thompson, J.S.C.
Administrative Judge - Civil Court
Supreme and Civil Courts

March 6, 1975

Civil Court Directive 358

**Directive to Sheriff and Marshals of the City of New York
Return of Executions - Record Keeping**

Effective immediately, you are hereby directed to return all unsatisfied, partially satisfied and fully satisfied executions to the County Division of the Small Claims Part from which they were issued. Explanations setting forth the reasons why they are not fully satisfied shall be set forth thereon.

Said executions shall thereon be recorded by the Clerk on the docket cards of the respective cases.

In all cases where a judgment has not been fully satisfied, the Clerk shall prepare and file alphabetically under the name of the judgment debtor, a card setting forth the judgment creditor's name, the index number of the case and the amount still unpaid on the judgment.

Each month, the file cards shall be sent to Central Files at 111 Centre Street, New York, where they will be maintained in alphabetical order for inspection by the Department of Consumer Affairs of the City of New York, any interested governmental agency, civic organization, or the general public.

Also for public inspection, the Clerk of each Small Claims Part shall keep permanently a chronological list of said information as the executions are returned, and interchange such lists with the Clerks of all county divisions of the Small Claims Court monthly.

Thereby, an alphabetical and chronological list of judgment debtors who fail to pay is kept for public information.

Edward Thompson, J.S.C.
Deputy City Administrative Judge
Civil Division
Supreme & Civil Courts

April 15, 1975

Civil Court Directive 627

Civil Court of the City of New York

**Notice to All Judges, Housing Judges,
Law Assistants and Clerks Housing Part**

Effective June 29, 1981, Chapter 360 of the Laws of 1981 amends Section 309(1) of the Military Law.

As such non military affidavits will be required in all landlord and tenant proceedings affecting residential housing. Final judgment of possession upon default should not be granted in the absence of such an affidavit.

This Directive supersedes Directive No. 320 issued August 16, 1974.

Francis X. Smith, J.S.C.
Deputy City Administrative Judge
Civil Branch

July 15, 1981

Corporation Counsel Opinion 107,883

Hon. Nicholas Scoppetta
Commissioner, Department of Investigation

Dear Mr. Scoppetta:

This is in reply to your letter, dated December 10, 1973, requesting an opinion as to whether in view of section 1603 of the New York City Civil Court Act, a city marshal may retain the services of a licensed process server to serve the "seventy-two hour notice" required by section 749, subdivision 2 of the Real Property Actions and Proceedings Law to be served upon a person to be evicted.

Section 1603 of the New York City Civil Court Act prohibits any person from pretending to be a city marshal and makes it unlawful for a city marshal "to permit any person, other than a city marshal, to perform any act in his name, or to sign or to use his name in the performance of any act which must be performed personally by a city marshal." (emphasis added)

Real Property Actions and Proceedings Law, §749 provides for the issuance of a warrant by the Civil Court directed to an officer, commanding him to remove all persons and restore possession of the property to the successful petitioner. Subdivision 2 of that section provides that "[t]he officer to whom the warrant is directed and delivered shall give at least seventy-two hours notice, in writing and in the manner prescribed in this article for the service of a notice of petition, to the person or persons to be evicted or dispossessed ***". The subdivision requires the marshal to "give" seventy-two hours notice of eviction. It does not require the marshal personally to serve the notice.

The manner prescribed in RPAPL, Art. 7 for the service of a notice of petition is contained in section 735 thereof. That section is silent, however, as to who may make service and the matter is therefore governed by the CPLR (*see* CPLR §1010 which, in pertinent part, provides as follows:

“Rule 2103. Service of papers.

(a) Who can serve. Except where other wise prescribed by law or order of court, papers may be served by any person not a party of the age eighteen years or over.”

Research fails to disclose any provision of law which requires a city marshal personally to serve a seventy-two hour notice of eviction in a summary proceeding to recover possession of real property.

Accordingly, you are advised that New York City Civil Court Act, §1603 does not prohibit a city marshal from retaining the services of a licensed process server to serve the “seventy-two hour notice” required by RPAPL, §749, subd. 2, since that act is not one “which must be performed personally by a city marshal.”

Sincerely

s/Adrian P. Burke
Corporation Counsel

April 3, 1974

Corporation Counsel Opinion 44-80

Hon. Stanley N. Lupkin
Commissioner, Department of Investigation

Dear Mr. Lupkin:

This is in response to your request for an Opinion whether a City marshal may perform any other type of work aside from his duties as a marshal.

Section 1601-a of the New York City Civil Court Act, which deals with the qualifications for service as, and prohibitions placed upon, marshals, was added by Chapter 533 of the Laws of 1979, and became effective on January 1, 1980. Subdivision 2 of this section provides, in pertinent part, as follows:

a. *** [N]o marshal shall actively engage or participate in any other occupation or employment, nor shall any marshal engage or participate in any trade or business which creates or might tend to create an actual or potential conflict of interest. No marshal or member of his or her immediate family shall maintain any financial interest, direct or indirect, in a process serving agency, a towing company or a furniture moving and storage company.

Subdivision 2(a) places prohibitions on three distinct categories of outside activities of City marshals. The first prohibits marshals from “actively” engaging or participating “in any other occupation or employment”. The second prohibits marshals from engaging or participating in any trade or business which creates or might tend to create an actual or potential conflict of interest. The provision further prohibits marshals and their immediate families from maintaining any direct or indirect financial interest in certain specifically identified enterprises: process serving, towing, and furniture moving and storage.

In providing that no marshal shall “actively engage or participate in any other occupation or employment”, it was the intent of the Legislature to require that marshals devote their full time to the performance of their duties as marshals. *See* Memorandum of the City of New York, 1979 Leg. Ann. 323. The statute is plain on its face and provides that while serving

his term of office as a marshal an individual shall not have any other employment or occupation. Interpreting a substantially similar provision of law, Charter, §1100, subd. a, requiring heads of city departments and certain elected officials to devote their whole time to their duties,* this office has repeatedly held that permissible outside activities for a covered official are strictly limited to those “which do not involve the active management of a business or profession and which do not require him to devote a substantial amount of time thereto.” Opinion No. 22-80, dated April 30, 1980; *See Matter of Deuel*, 127 App. Div. 640 (1st Dept., 1908); *Matter of Levy*, 198 App. Div. 326 (1st Dept., 1921); *McQuade v. Stoneham*, 263 N.Y. 323 (1934). Thus, section 1100, subd. a, has been held to prohibit a covered official from engaging in the practice of law (Opinion No. 108,353, dated August 26, 1976), while limited outside activities which do not interfere with official duties, for example teaching a two-hour per week course at a university, have been held to be permissible. *See* Opinion No. 22-80, *supra*.

Section 1601-a(2) (a) further provides that no marshal shall “engage or participate in any trade or business which creates or might tend to create an actual or potential conflict of interest.” The fact that the amount of time devoted by a marshal to a trade or business is insubstantial is of no significance where a marshal's engagement or participation in a trade or business creates or might tend to create an actual or potential conflict of interest. In contrast to the prohibition discussed above, the Legislature has not, with respect to this prohibition, used the adverb “actively” to modify the term “engage or participate”. Therefore, it is my opinion that any financial interest or participation in a trade or business, including, but not limited to, stock ownership or partnership, or serving as a director or trustee, regardless of the amount of time devoted thereto by a marshal is strictly prohibited if the activity creates or might tend to create an actual or potential conflict of interest.

The final prohibition contained in the provision is specific and requires no interpretation:

“No marshal or member of his or her immediate family shall maintain any financial interest, direct or indirect, in a process serving agency, a towing company or a furniture moving and storage company.”

The term “immediate family” is expressly defined to mean the “spouse, parent, child, stepchild or sibling” of a marshal.

This office is, of course, prepared to advise you concerning the application of the prohibitions contained in §1601-a(2) (a) to particular sets of factual circumstances.

* Charter, §1100, is entitled "Head of department; whole time". Subd. a provides:

"Every head of an administration or department or elected officer except council members who receives a salary from the City shall give his whole time to his duties and shall not engage in any other occupation, profession or employment."

Sincerely,

s/Allen G. Schwartz
Corporation Counsel

September 8, 1980

The Seal of the City of New York

The Seal of the City of New York¹ is described follows: Arms: Upon a shield, saltire wise, the sails of a windmill. Between the sails in chief a beaver, in base a beaver, and on each flank a flour barrel. Supporters: Dexter, a sailor, his right arm bent, and holding in his right hand a plummet; his left arm bent, his left hand resting on top of the shield; above his right shoulder, a cross-staff. Sinister, an Indian of Manhattan, his right arm bent, his right hand resting on top of the shield, his left hand holding the upper end of a bow, the lower end of which rests on the ground. Shield and supporters rest upon a horizontal laurel branch. Date: Beneath the horizontal laurel branch the date 1625, being the year of the establishment of New Amsterdam. Crest: An American eagle with wings displayed, upon a hemisphere. Legend: Upon a ribbon encircling the lower half of the design the words “Sigilium Civitatis Novi Eboraci.” [Seal of the City of New York]. The whole is encircled by a laurel wreath.

The following design is the official and standard design of such corporate seal:



¹ N.Y.C. Admin. Code § 2-102.

The Official Compilation of the Rules of the City of New York

Volume 12

Title 53, Chapter 1

Conflicts of Interest - Valuable Gift Rule

§1-01 Valuable Gifts.

- (a) For the purposes of Charter § 2604(b)(5), a “valuable gift” means any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for purposes of this subdivision and Charter § 2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances: (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should know are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firms.
- (b) As used in subdivision (a) of this section, (1) “relative” shall mean a spouse, child, grandchild, parent, sibling, and grandparent; a parent, domestic partner, child, or sibling of a spouse or domestic partner; and a spouse or domestic partner of a parent, child, or sibling; (2) firms are “affiliated” if one is a subsidiary of the other or if they have a parent firm in common or if they have a stockholder in common that owns at least 25 percent of the shares of each firm; (3) “firm,” “spouse,” and “ownership interest” shall have the meaning ascribed to those terms in § 2601 of the Charter; (4) domestic partner means a domestic partner as defined in New York City Administrative Code § 1-112(21).
- (c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

- (1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and
- (2) the public servant's receipt of the gift would not result in or create the appearance of:
 - (i) using his or her office for private gain;
 - (ii) giving preferential treatment to any person or entity;
 - (iii) losing independence or impartiality; or
 - (iv) accepting gifts or favors for performing official duties.
- (d) For the purposes of Charter §2604(b)(5), a public servant may accept awards, plaques and other similar items which are publicly presented in recognition of public service, provided that the item or items have no substantial resale value.
- (e) For the purposes of Charter §2604(b)(5), a public servant may accept free meals or refreshments in the course of and for the purpose of conducting City business under the following circumstances:
 - (1) when offered during a meeting which the public servant is attending for official reasons;
 - (2) when offered at a company cafeteria, club or other setting where there is no public price structure and individual payment is impractical;
 - (3) when a meeting the public servant is attending for official reasons begins in a business setting but continues through normal meal hours in a restaurant, and a refusal to participate and/or individual payment would be impractical;

- (4) when the free meals or refreshments are provided by the host entity at a meeting held at an out-of-the-way location, alternative facilities are not available and individual payment would be impractical;

and

- (5) when the public servant would not have otherwise purchased food and refreshments had he or she not been placed in such a situation while representing the interests of the City.

(f) For the purposes of Charter §2604(b)(5), a public servant may:

- (1) accept meals or refreshments when participating as a panelist or speaker in a professional or educational program and the meals or refreshments are provided to all panelists;
- (2) be present at a professional or educational program as a guest of the sponsoring organization;
- (3) be a guest at ceremonies or functions sponsored or encouraged by the City as a matter of City policy, such as, for example, those involving housing, education, legislation or government administration;
- (4) attend a public affair of an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization, provided that this exception does not apply when the invitation is from an organization which has business dealings, as defined in Charter § 2601(8), with, or a matter before, the public servant's agency;
- (5) be a guest at any function or occasion where the attendance of the public servant has been approved in writing as in the interests of the City, in advance where practicable or within a reasonable time thereafter, by the employee's agency head or by a deputy mayor if the public servant is an agency head.

- (g) For the purposes of Charter §2604(b)(5), a public servant who is an elected official or a member of the elected official's staff authorized by the elected official may attend a function given by an organization composed of representatives of business, labor, professions, news media or organizations of a civic, charitable or community nature, when invited by the sponsoring organization. For the purpose of this subdivision, the authorizing elected official for the central staff of the council is the speaker of the council.
- (h)(1) For the purposes of Charter §2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:
- (i) the trip is for a City purpose and therefore could properly be paid for with city funds;
 - (ii) the travel arrangements are appropriate to that purpose; and
 - (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.
- (2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.
- (i) A public servant should not accept a "valuable gift," as defined herein, from any person or entity engaged in business dealings with the City. If the public servant receives such valuable gift, he or she should return the gift to the donor. If that is not practical, the public servant should report the receipt of a valuable gift to the inspector general of the public servant's agency, who shall determine the appropriate disposition of the gift. Nothing in this section shall be deemed to authorize a public servant to act in violation of any applicable laws, including the criminal law, City agency rules, or Mayoral Executive Orders (including, but not limited to, Executive Order No. 16 of 1978 (as amended)), which may impose additional requirements to

report gifts and offers of gifts to the agency's inspector general, whether or not a gift is accepted or returned.

- (j) City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than as set forth in Charter §2604(b)(5) as interpreted by this section.

- (k)(1) Nothing in this section shall be deemed to authorize a public servant to accept a gift of any value in violation of any other applicable federal, state or local law, rule or regulations, including but not limited to the New York State Penal Law.

- (2) The provisions of this section shall be read in conjunction with the provisions of Charter § 2604(b)(2) and § 1-13 of the Rules of the Board (prohibiting certain conduct that conflicts with the proper discharge of a public servant's official duties); § 2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain); and § 2604(b)(13) of the Charter (prohibiting receipt by public servants of compensation except from the City for performing any official duty and prohibiting receipt of gratuities).

NYC Marshals Records Retention Schedule

Updated: February 1, 2013

Note: "CL" = closing (date of last entry in the record).

| Record Series # | Record Name | Definition | Related Records | Retention/ Years |
|-----------------|---|---|--|---------------------|
| 18306 | Marshals' Docket Books | Record of actions taken by marshals to enforce civil court judgments. Pre-numbered docket page lists plaintiff's name, defendant's name and address, court, by county, index number and year, cross-reference docket number and marshal, if applicable, plaintiff's attorney, nature of process, date issued, accounting of amounts and fees received, and checks disbursed. Includes an index of docket page numbers by date. Large volumes arranged by name of marshal, then chronologically by year. | N/A | CL+20 |
| 18071 | Trust Fund Cash Receipts and Disbursement Books | Used to record financial transactions involving the receipt or disbursement of trust fund monies and marshal's operating expenses. Includes date, docket number, title of action, receipts, and disbursements from trust account and operating expenses. Volumes arranged by marshal's name, then by date. | N/A | CL+20 |
| 18307 | Marshals' Banking Records | Record of operating accounts and trust accounts used by marshals. Includes bank statements, cancelled checks, deposit slips, and bank reconciliations. Arranged by marshal name, then by date. | N/A | CL+7 |
| M0001 | Property Execution | A mandate to the marshal to satisfy a money judgment out of the personal property of the judgment debtor and any debts due to him or her. | Notice to Judgment Debtor, Notice to Garnishee, Marshal's Notice of Execution, Final Notice, Levy and Inventory form, proof of service, Certified Mail Receipt/Return Receipt, Certificate of Mailing, Bank Manifest of Executions Served, Exemption Notice, Exemption Claim Form, Accounting, 60-Day Extension Authorization, Order to Show Cause, Court Order, Subpoena, Small Claims Notice of Judgment, Requisition, Return of Execution, official correspondence. | CL+5 |

| Record Series # | Record Name | Definition | Related Records | Retention/ Years |
|-----------------|-------------------------------------|---|---|------------------|
| M0002 | Auction Sales Records | Records of sale at public auction of the interest of the judgment debtor in personal property obtained by the marshal pursuant to execution or order (non-PVO). | Marshal's Notice of Levy and Sale, marshal's Report to Judgment Creditor or Attorney, UCC Report, Public Notice/Print Copy of Newspaper Advertisement, Bill of Sale. | CL+5 |
| M0003 | PVO Property Execution | A mandate to the marshal issued by attorney for the judgment creditor, City of New York Department of Finance, Parking Violation Operation, used for street vehicle seizures. | Execution, Impound/Inventory/Police Report, Release Form, Payment Receipt, DMV Report, Sheriff's Inspection, Letter to Respondent and Lien Holder, proof of service, Certified Mail Receipt/Return Receipt, Certificate of Mailing, Property Release Form, photo copy of I.D. and registration, photographs, official correspondence. | CL+6 |
| M0004 | PVO Daily Report of Seized Vehicles | Report transmitted each day to City of New York Department of Finance listing each and every vehicle seized that day. | N/A | CL+6 |
| M0005 | PVO Daily Report of Redemptions | Report transmitted each day to City of New York Department of Finance listing each and every vehicle redeemed that day. | N/A | CL+5 |
| M0006 | PVO Auction List and Bid Report | Lists of vehicles eligible for auction and report of vehicles sold at public auction and related records. | Auction List, Bid Report, Auctioneer Bill, Public Notice/Print Copy of Newspaper Advertisement, Certificate of Sale, Affirmation of Sale, Odometer and Damage Disclosure Statement, Paddle, copy of purchaser's driver license, manifest of license plates removed and transported to Department of Finance. | CL+6 |

| Record Series # | Record Name | Definition | Related Records | Retention/ Years |
|-----------------|--|---|---|---------------------|
| M0007 | Income Execution | A mandate to the marshal to satisfy a money judgment out of the income of the judgment debtor, such as compensation paid or payable for personal services. | Notice to Garnishee, proof of service, Certified Mail Receipt/Return Receipt, Certificate of Mailing, Notice to Judgment Debtor, marshal's Report to Judgment Creditor or Attorney, Accounting, Order to Show Cause, Court Order, Subpoena, Small Claims judgment, Requisition, Return of Execution, official correspondence. | CL+6 |
| M0008 | Warrant of Eviction – Executed | Court order signed by judge or clerk of the New York City Civil Court commanding City marshal to remove respondent and all other persons from the premises and to put petitioner in full possession of the premises executed by a City marshal. | Warrant Requisition Request, Warrant of Eviction, Notice of Eviction, proof of mailing, Certified Mail Receipt/Return Receipt, Certificate of Mailing, Affidavit, APS Referral, Bankruptcy Filing, Article 81, Order to Show Cause, Court Order, Inventory, Return of Execution, official correspondence. | CL+6 |
| M0009 | Warrant of Eviction – Not Executed | Court order signed by judge or clerk of the New York City Civil Court commanding City marshal to remove respondent and all other persons from the premises and to put petitioner in full possession of the premises not executed by a City marshal. | Warrant Requisition Request, Warrant of Eviction, Notice of Eviction, proof of mailing, Certified Mail Receipt/Return Receipt, Certificate of Mailing, Affidavit, APS Referral, Bankruptcy Filing, Article 81, Order to Show Cause, Court Order, official correspondence. | CL+5 |
| M0010 | Notice of Petition and Petition | Legal papers whereby a landlord commences removal proceedings against a tenant. These papers, commonly called dispossess papers, may be prepared only by an attorney or a landlord. | Notice of Petition, Affidavit of Service. | CL+6 |
| M0011 | Replevins/Orders of Seizure – Executed | Court order signed by judge of the New York City Civil Court directing City marshal to seize identified utility meter or other identified property. | Seizure package, copy of letter to respondent, manifest, affidavit of service, second notice to respondent if he/she was not present when meter was pulled. | CL+6 |

| Record Series # | Record Name | Definition | Related Records | Retention/ Years |
|------------------------|--|--|--|---------------------------------|
| M0012 | Replevins/Orders of Seizure – Not Executed | Court order signed by judge of the New York City Civil Court directing City marshal to seize identified utility meter or other identified property. | Seizure package, copy of letter to respondent, manifest, affidavit of service, second notice to respondent, if applicable. | CL+5 |
| M0013 | Invoices and Receipts | Sequentially numbered invoices to clients within 30 days of performing the service. Sequentially numbered receipts of payments. | N/A | CL+6 |
| M0014 | Contracts and Agreements | Contracts and agreements between the marshal and a person or entity for services necessarily performed or expenses necessarily incurred in the marshal's execution of any mandate and in the protection, presentation, transportation or sale of property. | Billing and payment records. | Last contractual transaction +3 |
| M0015 | Annual Financial Statement | A detailed statement showing the marshal's financial position at the end of each year. | N/A | CL+7 |

Marshal's name,
address, telephone and
badge number

Landlord
v.

Tenant and Undertenant

Civil Court of the City of New York - County of
Corte Civil De La Ciudad De New York - Condado De

Premises address

Index No:
Marshal's Docket No.:

72 HOUR NOTICE OF EVICTION

Personal Service

To the above named tenants and undertenants:

Please take notice that the Court has issued a warrant for your eviction. If you fail to vacate the described premises, **YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE, ON THE FOURTH BUSINESS DAY AFTER THE DATE OF THIS NOTICE** or on any business day thereafter. "Business days" are Monday through Friday except legal holidays.

The ONLY way you can stop this eviction is if a Court issues an order to show cause that stays your eviction. You may apply for such an order at the Civil Court, Landlord-Tenant part, in your borough.

If a Court stay of your eviction is in effect, you will be evicted only if the stay ends or is vacated by the Court. If the Court has already ordered that you may be evicted if you fail to make a payment or comply with the Court's order by a certain date, your failure to pay or comply with the Court's order by that date may result in your eviction without further notice.

If you are dependent upon a person in the military service of the United States, advise the clerk of the Court immediately in order to protect your rights.

If you need legal assistance, the Legal Aid Society may be able to assist you (check telephone listing in your borough). A senior citizen who needs legal assistance may call 311.

If you receive public assistance, notify your caseworker immediately. The Human Resources Administration may be able to help you with back payments whether or not you receive public assistance. Call (718) 557-1399 or 311 for information.

Date of Notice[†]
Fecha[†]

NOTIFICACIÓN DE DESAHUCIO DE 72 HORAS

Notificación Personal

A los susodichos inquilinos y sub-inquilinos:

Tenga a bien notar que la Corte ha emitido una orden de desahucio en contra de usted. Si no desaloja el local descrito, **USTED PUEDE SER DESHAUCIADO, SIN NOTIFICACIÓN ADICIONAL, EL CUARTO DÍA HÁBIL A PARTIR DE LA FECHA DE ESTA NOTIFICACIÓN** o en cualquier día hábil de ahí en adelante. Los "días hábiles" son de lunes a viernes, excepto los días de fiesta legales.

Usted puede detener este desahucio SOLAMENTE si una Corte emite una orden judicial instruyéndole a usted a mostrar motivos justificantes para suspender su desalojo. Usted puede solicitar esa orden (Order to Show Cause) en la Corte Civil, Sección del Propietario-Inquilino (Civil Court, Landlord-Tenant part) en su condado.

Si una suspensión de su desahucio por orden de la Corte está en efecto, usted será desalojado sólo si la suspensión caduca o la Corte la anula. Si la Corte ha ordenado ya que usted puede ser desalojado si no cumple con hacer un pago o con la orden de la Corte a partir de una fecha de vencimiento, su incumplimiento con el pago o con la orden de la Corte al llegar esa fecha puede resultar en su desahucio sin notificación adicional.

Si usted depende de una persona que pertenece al Servicio Militar de los Estados Unidos, notifíquesele inmediatamente al Secretario de la Corte (Court Clerk) para así proteger sus derechos legales.

Si usted necesita ayuda legal, la Legal Aid Society tal vez pueda ayudarlo (consulte la guía telefónica de su condado). Una persona de edad avanzada que necesita ayuda legal puede comunicarse con el 311.

Si usted recibe asistencia pública, notifíquesele a su trabajador social (caseworker) inmediatamente. La Administración de Recursos Humanos tal vez pueda ayudarlo con los pagos atrasados, reciba usted o no asistencia pública. Llame al (718) 557-1399 o 311 para información.

[†] The date of this notice shall be on or after the date the notice is served by personal delivery to the respondent. La fecha de esta notificación se fijará el día en que la notificación sea entregada personalmente al apelado.

Marshal's name,
address, telephone and
badge number

Landlord
v.

Tenant and Undertenant

NOTICE OF EVICTION[†]
Alternative Service / Mailing

To the above named tenants and undertenants:

Please take notice that the Court has issued a warrant for your eviction. If you fail to vacate the described premises, YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE, ON THE **SIXTH BUSINESS DAY AFTER THE DATE OF THIS NOTICE** or on any business day thereafter. "Business days" are Monday through Friday except legal holidays.

The ONLY way you can stop this eviction is if a Court issues an order to show cause that stays your eviction. You may apply for such an order at the Civil Court, Landlord-Tenant part, in your borough.

If a Court stay of your eviction is in effect, you will be evicted only if the stay ends or is vacated by the Court. If the Court has already ordered that you may be evicted if you fail to make a payment or comply with the Court's order by a certain date, your failure to pay or comply with the Court's order by that date may result in your eviction without further notice.

If you are dependent upon a person in the military service of the United States, advise the clerk of the Court immediately in order to protect your rights.

If you need legal assistance, the Legal Aid Society may be able to assist you (check telephone listing in your borough). A senior citizen who needs legal assistance may call 311.

If you receive public assistance, notify your caseworker immediately. The Human Resources Administration may be able to help you with back payments whether or not you receive public assistance. Call (718) 557-1399 or 311 for information.

Date of Notice[‡]
Fechada[‡]

Civil Court of the City of New York – County of
Corte Civil De La Ciudad De New York – Condado De

Premises address

Index No.:
Marshal's Docket No.:

NOTIFICACIÓN DE DESAHUCIO[†]
Notificación Alternativa / Postal

A los susodichos inquilinos y sub-inquilinos:

Tenga a bien notar que la Corte ha emitido una orden de desahucio en contra de usted. Si no desaloja el local descrito, USTED PUEDE SER DESHAUCIADO, SIN NOTIFICACIÓN ADICIONAL, **EL SEXTO DÍA HÁBIL** A PARTIR DE LA FECHA DE ESTA NOTIFICACIÓN o en cualquier día hábil de ahí en adelante. Los "días hábiles" son de lunes a viernes, excepto los días de fiesta legales.

Usted puede detener este desahucio SOLAMENTE si una Corte emite una orden judicial instruyéndole a usted a mostrar motivos justificantes para suspender su desalojo. Usted puede solicitar esa orden (Order to Show Cause) en la Corte Civil, Sección del Propietario-Inquilino (Civil Court, Landlord-Tenant part) en su condado.

Si una suspensión de su desahucio por orden de la Corte está en efecto, usted será desalojado sólo si la suspensión caduca o la Corte la anula. Si la Corte ha ordenado ya que usted puede ser desalojado si no cumple con hacer un pago o con la orden de la Corte a partir de una fecha de vencimiento, su incumplimiento con el pago o con la orden de la Corte al llegar esa fecha puede resultar en su desahucio sin notificación adicional.

Si usted depende de una persona que pertenece al Servicio Militar de los Estados Unidos, notifíquesele inmediatamente al Secretario de la Corte (Court Clerk) para así proteger sus derechos legales.

Si usted necesita ayuda legal, la Legal Aid Society tal vez pueda ayudarlo (consulte la guía telefónica de su condado). Una persona de edad avanzada que necesita ayuda legal puede comunicarse con el 311.

Si usted recibe asistencia pública, notifíquesele a su trabajador social (caseworker) inmediatamente. La Administración de Recursos Humanos tal vez pueda ayudarlo con los pagos atrasados, reciba usted o no asistencia pública. Llame al (718) 557-1399 o 311 para información.

[†] Formerly known as "72-hour notice." Additional time has been allowed for mailing. Anteriormente conocida como "Aviso de Desahucio de 72 Horas." Se ha concedido tiempo adicional para enviar por correo.

[‡] The date of this notice shall be on or after the date the notice is mailed to the respondent. La fecha de esta notificación se fijará el día en que se le envíe al apelado o después de ese día.