Trial Rule 69(E): Proceedings Supplemental to Execution

I. Introduction

In 1969 the Indiana Supreme Court adopted the Indiana Rules of Trial Procedure.[1] Proceedings supplemental to execution are embodied in Trial Rule 69(E).[2] The new rule greatly simplifies the procedure applicable to a judgment creditor's attempt to enforce its judgment. A verified motion, filed in the court where the judgment was rendered, must generally allege that the plaintiff owns the judgment against the defendant and that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the

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[1] Ind. R. Tr. P.

[2] *Id.* at 69(E) provides:

Proceedings supplemental to execution. Notwithstanding any other statute to the contrary, proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered alleging generally

(1) that the plaintiff owns the described judgment against the defendant;

(2) that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment;

(3) that the defendant be ordered to appear before the court to answer as to his non-exempt property subject to execution or proceedings supplemental to execution or to apply any such specified or unspecified property towards satisfaction of the judgment; and,

(4) if any person is named as garnishee, that garnishee has or will have specified or unspecified nonexempt property of, or an obligation owing to the judgment debtor subject to execution or proceedings supplemental to execution, and that the garnishee be ordered to appear and answer concerning the same or answer interrogatories submitted with the motion. If the court determines that the motion meets the foregoing requirements it shall, ex parte and without notice, order the judgment debtor, other named parties defendant and the garnishee to appear for a hearing thereon or to answer the interrogatories attached to the motion, or both. The motion, along with the court's order stating the time for the appearance and hearing or the time for the answer to interrogatories submitted with the motion, shall be served upon the judgment debtor as provided in Rule 5, and other parties and the garnishee shall be entitled to service of process as provided in Rule 4. The date fixed for appearance and hearing or answer to interrogatories shall be not less than twenty (20) days after service. No further pleadings shall be required, and the case shall be heard and determined and property ordered applied towards the judgment in accordance with statutes allowing proceedings supplementary to execution. In aid of the judgment or execution, the judgment creditor or his successor in interest of record and the judgment debtor may utilize the discovery provisions of these rules in the manner provided in these rules for discovery or as provided under the laws allowing proceedings supplemental.

judgment. The motion must move that the defendant be ordered to appear before the court to answer as to his non-exempt property or to apply any such property toward satisfaction of the judgment.[3]

The notice requirement of Trial Rule 69(E) is unclear in Indiana.[4] Trial Rule 69(E) is indefinite as to whether the judgment creditor is required to give notice to the judgment defendant; if notice is required, the Rule does not specify the type of notice necessary.[5]

While proceedings supplemental are an important aid to the judgment creditor seeking to satisfy a judgment, additional assistance is provided by *Union Bank and Trust Co. v. Vandervoort*.[6] In *Vandervoort*, decided under pre-1969 statutory law relating to proceedings supplemental,[7] the Indiana Supreme Court held a bank liable to the judgment creditor because, after having been served with process in proceedings supplemental, it honored the request of its depositor, the judgment debtor, to withdraw money from his account.[8] This decision, in effect, requires a bank to freeze the judgment debtor's bank account, at least up to the amount of the judgment, when it is served with a motion for proceedings supplemental and interrogatories. If the bank fails to act, it will be liable to the judgment creditor.

The relationship between a bank and its depositor is generally that of debtor-creditor.[9] If the bank is in error in freezing the account, it will be liable to its depositor for damages proximately caused by the wrongful dishonor of a check presented for payment on the account[10] unless the bank has been notified of an adverse claim to the depositor's bank account.[11] There is no Indiana case law directly on point in this area.[12] Whether or not proceedings supplemental to execution come within the purview of Indiana Code section 28-1-20-1(a)[13] will be discussed in this Note.

This Note will examine proceedings supplemental to execution as governed by Trial Rule 69(E), specifically as it relates to notice to

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[3]*Id.*

[4]*Id.*

[5]*See* Citizen's Nat'l Bank v. Harvey, 339 N.E.2d 604 (Ind. Ct. App. 1976). The court held that notice was required, but imposed no penalty for noncompliance.

[6]122 Ind. App. 258, 101 N.E.2d 724 (1951).

[7]Act of April 7, 1881, ch. 38, § 593, 1881 Acts (Spec. Sess.) 240, 346 (current version at IND. CODE §§ 34-1-44-1 to 8 (1976)).

[8]122 Ind. App. at 265-66, 101 N.E.2d at 727-28.

[9]10 AM. JUR.2d *Banks* § 339 (1963).

[10]IND. CODE § 26-1-4-402 (1976).

[11]*Id.* § 28-1-20-1(a) provides a bank with protection from liability for damages to any party if it does not honor its agreement with its depositor after it has been notified of an adverse claim to the depositor's bank account.

[12]There have been cases citing other provisions of *id.* § 28-1-20-1. *See, e.g., In re* Estate of Fanning, 263 Ind. 414, 333 N.E.2d 80 (1975).

[13]If the statute applies to proceedings supplemental, the bank will be protected.

the judgment debtor and garnishee defendant. The Note will also analyze Indiana Code section 28-1-20-1(a) to determine if it affords a bank any protection in proceedings supplemental to execution. Finally, this Note will conclude with some suggestions for change in Trial Rule 69(E).

II. Analysis of Law Prior to Trial Rule 69(E)

Prior to the adoption of the Indiana Rules of Trial Procedure, proceedings supplemental to execution were governed exclusively by statute.[14] The statutory remedies provided in proceedings supplemental to execution are the same today as they were immediately prior to the adoption of Trial Rule 69(E) and are divided into three main parts. The first part entitles the judgment creditor to an order by the court requiring the judgment debtor to appear before the court and answer concerning his property, income, or profits.[15] The second part allows the judgment creditor to have proceedings for the application of any property, income, or profits of the judgment debtor toward the satisfaction of the judgment.[16] The third provision allows the judgment creditor to proceed against a third party who is indebted to the judgment debtor or is holding money belonging to him.[17]

Under these sections of the Indiana proceedings supplemental to execution statute, the judgment creditor must establish that execution was issued or returned unsatisfied. Indiana Code section 34-1-44-1 provides in part:

> When an execution against the property of the judgment debtor or any of several debtors in the same judgment, issued to an officer authorized to serve the same . . . , is returned unsatisfied, in whole or in part, the judgment creditor, after such return is made, shall be entitled to an order, . . . requiring the judgment debtor to appear . . . .[18]

In construing the predecessor to the present statute on proceedings supplemental the Indiana Supreme Court in *West v. State ex rel. Benedict*[19] stated: "Before a party may proceed under § 827 . . . he must have a judgment, an execution against the property of the

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[14]Act of April 7, 1881, ch. 38, § 593, 1881 Acts (Spec. Sess.) 240, 346 (current version at Ind. Code §§ 34-1-44-1 to 8 (1976)). *See generally* Levin, *An Outline of Proceedings Supplementary*, 14 Ind. L.J. 353 (1939).

[15]Ind. Code § 34-1-44-1 (1976).

[16]*Id.* § 34-1-44-2.

[17]*Id.* § 34-1-44-5.

[18]*Id.* § 34-1-44-1.

[19]168 Ind. 77, 79 N.E. 361 (1907).

defendant issued to the sheriff of the county, and a return of such execution by the sheriff unsatisfied."[20]

Under the second part of the statute which provides for the application of the judgment debtor's property to satisfy the judgment, only issuance of an execution, and not a return unsatisfied, is apparently necessary:

> If, after the issuing of an execution against property, the execution plaintiff, or other person in his behalf, shall make and file an affidavit with the clerk of any court of record of any city, county or township to the effect that any judgment debtor, . . . has property or income or profits, . . . which he unjustly refuses to apply . . . , the court, . . . shall issue a subpoena requiring the judgment debtor to appear . . . .[21]

Under Trial Rule 69(E), however, execution is not a necessary condition precedent. "The old formal requirements that the plaintiff prove that execution was issued or returned unsatisfied are eliminated."[22]

Another significant change in proceedings supplemental to execution made by Trial Rule 69(E) is the retention of venue or jurisdiction over proceedings supplemental to execution by the court initially rendering the judgment.[23] This is contrary to prior law.[24] As a result of the simplification of the Rule, proceedings supplemental, with rare exceptions, must be filed in the court where the judgment was rendered.[25] The change is significant in that it allows the motion to be filed with the court. And, if the motion meets the requirements the court will, ex parte and without further notice, order the judgment debtor and any other named parties to appear in court for a hearing or to answer interrogatories.[26]

Prior to Trial Rule 69(E) proceedings supplemental were filed as new causes of action.[27] In reference to the Rule, Professors Harvey and Townsend comment: "Its basic tenet is that proceedings supplemental to execution is a continuation of the original cause . . . ."[28] The Indiana Court of Appeals in *Myers v. Hoover*[29] agreed with Harvey and Townsend: "Given the terms of Trial Rule 69(E) and the

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[20]*Id.* at 81, 79 N.E. at 363.
[21]IND. CODE § 34-1-44-2 (1976).
[22]4 W. HARVEY & R. TOWNSEND, INDIANA PRACTICE 441 (1970).
[23]Protective Ins. Co. v. Steuber, 370 N.E.2d 406 (Ind. Ct. App. 1977).
[24]Pouder v. Tate, 111 Ind. 148, 12 N.E. 291 (1887).
[25]4 W. HARVEY & R. TOWNSEND, *supra* note 22, at 470.
[26]IND. R. TR. P. 69(E)(4).
[27]Myers v. Hoover, 157 Ind. App. 310, 300 N.E.2d 110 (1973).
[28]4 W. HARVEY & R. TOWNSEND, *supra* note 22, at 469-70.
[29]157 Ind. App. 310, 300 N.E.2d 110 (1973).

procedure thereunder, we are compelled to the conclusion that in adopting the new rule, our Supreme Court intended that proceedings supplemental to execution no longer be considered new and independent civil actions."[30] Since proceedings supplemental are designated as a continuance of the original cause of action, service on the judgment debtor may be made in a similar fashion as service of any other motions or orders in the cause.[31] This means that service on the judgment debtor need not be made by a summons or subpoena.[32]

Even though there are three distinct parts to the proceedings supplemental statute, it has been held that the third provision relating to proceedings against the garnishee must be used in connection with the second provision compelling the debtor to apply property to the judgment.[33] Therefore, both the judgment debtor and the garnishee are necessary parties to the action[34] since the court cannot adjudicate the rights of others in property unless they are made parties.[35] In this situation the procedure is governed by the third provision of the statute.[36]

One must keep in mind that the statutory remedy of proceedings supplemental is substantially an equitable one.[37] The policy in Trial Rule 69(E) is that the judgment debtor has a duty to come forward and pay the judgment.[38] If the judgment debtor does not make property available to satisfy the judgment or arrange for its payment, the judgment creditor's remedy by way of execution is inadequate.[39]

III. Notice to Judgment Defendant

Under the proceedings supplemental statute prior to Trial Rule 69(E) the judgment debtor was a necessary party.[40] Under Trial Rule 69(E) it is not clear whether a hearing is necessary before the court

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[30]*Id.* at 314, 300 N.E.2d at 113.

[31]Service on parties may be made as provided in Ind. R. Tr. P. 5. Under Trial Rule 5, if the party is represented by an attorney of record, service shall be made upon the attorney.

[32]Ind. R. Tr. P. 5(b). *Contra*, Ind. Code § 34-1-44-2 (1976) which *does* require a summons or subpoena.

[33]Mitchell v. Bray, 106 Ind. 265, 6 N.E. 617 (1886).

[34]Earl v. Skiles, 93 Ind. 178 (1883); Mims v. Commercial Credit Corp., 297 N.E.2d 892 (Ind. Ct. App. 1973), *aff'd*, 261 Ind. 591, 307 N.E.2d 867 (1974).

[35]Eilts v. Moore, 117 Ind. App. 27, 30-31, 68 N.E.2d 795, 796 (1946).

[36]Ind. Code § 34-1-44-5. *See* Eilts v. Moore, 117 Ind. App. 27, 68 N.E.2d 795 (1946).

[37]2 R. Townsend, Securities and Creditor's Rights 490 (1950).

[38]4 W. Harvey & R. Townsend, *supra* note 22, at 470.

[39]2 R. Townsend, *supra* note 37, at 479.

[40]Mitchell v. Bray, 106 Ind. 265, 6 N.E. 617 (1886); Earl v. Skiles, 93 Ind. 178 (1884).

may issue a final order in garnishment. Part of the Rule states: "If the court determines that the motion meets the foregoing requirements it shall, ex parte and without notice, order the judgment debtor, other named parties defendant and the garnishee to appear for a hearing thereon or to answer the interrogatories attached to the motion, or both."[41] The language appears to allow the court discretion to hold a hearing on the motion and to allow the judgment debtor to have his day in court.

The Fifth Circuit Court of Appeals held in *Brown v. Liberty Loan Corp.*[42] that due process of law[43] did not require notice and an opportunity for a hearing before authorizing a post-judgment garnishment of an individual's wages.[44] The case dealt with a Florida statute providing for a garnishment of wages prior to notice.[45] In reversing the district court, the Fifth Circuit said that competing governmental and individual interests must be closely analyzed to see what due process requires.[46] While the district court found that garnishment was a disfavored governmental function, the Fifth Circuit criticized the district court because it compared prejudgment garnishment cases[47] with the case at hand. The court pointed out that the state has an interest in facilitating the enforcement of judgments. The court said that the judgment creditor is distinguishable from a prejudgment creditor because a judgment creditor has a "judicially-awarded judgment that evidences the defendant's debt."[48] Thus, a judgment creditor's interest is not the freezing of debtor

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[41]IND. R. TR. P. 69(E).

[42]539 F.2d 1355 (5th Cir. 1976), *cert. denied*, 430 U.S. 949 (1977).

[43]The court discussed due process of law and the property interest at stake when a statutory procedure deprives a person of entitlements under the law. *Id.* at 1362-69. In this case the entitlement was a wage exemption.

[44]539 F.2d at 1368.

[45]FLA. STAT. §§ 77.01, 77.03 (Supp. 1977-78) provide in part:

77.01 Right to garnishment

Every person who has sued to recover a debt or has recovered judgment in any court against any person, natural or corporate, has a right to writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person.

77.03 Writ; procurement after judgment

After judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, his agent or attorney, shall file a motion . . . stating the amount of the judgment and that movant does not believe that defendant has in his possession visible property on which a levy can be made sufficient to satisfy the judgment.

[46]539 F.2d at 1363.

[47]*Id.* at 1355, 1365-66. The district court found that Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969), controlled.

[48]539 F.2d at 1366.

assets pending adjudication of an alleged debt, but an enforcement of a judgment against those assets. While the judgment debtor had an interest in the use of his wages, he also had an opportunity for a hearing on his exemption after the garnishment. Therefore, the court held that the Florida statute satisfied due process of law.[49]

Even if construed to mean that a hearing was not necessary prior to garnishment, Trial Rule 69(E) is still not clear as to whether notice to the judgment debtor is required. The leading Indiana case interpreting Trial Rule 69(E) and its notice to the judgment debtor provision is *Citizen's National Bank v. Harvey*.[50] The Indiana Court of Appeals' opinion, described by one legal commentator as "accompanied by a sad lack of judicial enthusiasm,"[51] concluded that failure by the trial court to follow procedural requirements under Trial Rule 69(E) did not render the final order in garnishment void as a violation of due process of law.[52] In *Harvey* the defendants had been served with a summons on the original complaint by copies left at their last known address and by mail. Default judgment was entered against them on October 5, 1971, and one week later the judgment creditor returned to court with a Petition in Garnishment. The trial court granted the petition on the same day and the garnishment was in effect until March 1973, when the defendant filed a motion to set aside the garnishment.[53] The trial court granted the motion and set aside the garnishment order as void;[54] the court of appeals reversed and remanded the case to the trial court on the question of laches as well as the reasonableness of time as limited in Trial Rule 60(B).[55] While the court of appeals did not void the orders for lack of jurisdiction over the defendants in the proceedings supplemental nor because they violated the defendants' due process rights, the court stated: "It is undisputed that Citizens' petition failed to comply with Trial Rule 69(E)(3) and (4) in that it did not provide for an order to appear to issue to the Harveys, or an order to appear or to answer interrogatories addressed to the Harveys' employers."[56] This state-

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[49]*Id.* at 1369.

[50]339 N.E.2d 604 (Ind. Ct. App. 1976).

[51]Townsend, *Secured Transactions and Creditors' Rights, 1976 Survey of Recent Developments in Indiana Law*, 10 IND. L. REV. 310, 333 (1976).

[52]339 N.E.2d at 608.

[53]*Id.* at 606. In Pisarski v. Glowiszyn, 220 Ind. 128, 133, 41 N.E.2d 358, 360 (1942), the court held that in proceedings supplementary to execution, an order requiring payment of money to satisfy a prior judgment was itself a judgment. *But cf.* Protective Ins. Co. v. Steuber, 370 N.E.2d 406, 412 (Ind. Ct. App. 1977) (order against the garnishee defendant held to be an interlocutory order appealable without a motion to correct errors).

[54]339 N.E.2d at 607.

[55]*Id.* at 611.

[56]*Id.* at 606.

ment by the court would seem to indicate that an order to appear at a hearing is necessary before garnishment can be ordered. Alternatively, the decision realistically informs judgment creditors that they can file a motion for proceedings supplemental with the court and proceed to garnishment without a hearing. This procedure would be valid until the garnished debtor decided to take action.

In *Ettinger v. Robbins*,[57] decided before the adoption of Trial Rule 69(E), the Indiana Supreme Court interpreted the present statute[58] pertaining to the judgment creditor proceeding against a third party. The court stated that Indiana Code section 34-1-44-5 did not provide for notice to the judgment defendant, but, because proceedings supplemental to execution was an independent civil action, the general rules of civil procedure applied "even to supply an obvious omission with respect to notice in the statute under which it was brought."[59]

The Indiana Supreme Court could have cited authority that section 34-1-44-2 must be used in connection with section 34-1-44-5, thus requiring notice by subpoena to the judgment debtor.[60] In *Ettinger* the judgment debtor was served with a summons by the sheriff who left a copy at the judgment debtor's usual or last place of residence.[61] The court held that such service complied with the statute.[62]

While in proceedings supplemental to execution under Indiana Code sections 34-1-44-1 to 8 notice is served on the judgment debtor by subpoena[63] or summons,[64] under Trial Rule 69(E) service is made upon the judgment debtor as provided in Trial Rule 5. Trial Rule 69(E)(4) provides in part: "The motion, along with the court's order stating the time for the appearance and hearing *or* the time for the answer to interrogatories submitted with the motion, shall be served on the judgment debtor as provided in Rule 5 . . . ."[65] It should be noted that Trial Rule 5(A)(6) states: "No service need be

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[57]223 Ind. 168, 59 N.E.2d 118 (1945).

[58]IND. CODE § 34-1-44-5 (1976).

[59]223 Ind. at 174, 59 N.E.2d at 120.

[60]Mitchell v. Bray, 106 Ind. 265, 6 N.E. 617 (1886).

[61]*See* IND. R. TR. P. 4.1. Trial Rule 4.1 allows the sheriff to leave a copy at the residence and then to mail a copy to the last known address.

[62]223 Ind. at 175, 59 N.E.2d at 121.

[63]IND. CODE § 34-1-44-2 (1976).

[64]Ettinger v. Robbins, 223 Ind. 168, 174-75, 59 N.E.2d 118, 120-21 (1945).

[65]IND. R. TR. P. 69(E)(4) (emphasis added). IND. R. TR. P. 5 states in part:

> (B) Service: How made. Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to him at his last known address.

made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4."[66] This language could mean two things: (1) No service is needed for parties in default, or (2) if the pleading is asserting a new claim or an additional claim, a party in default must be served pursuant to Trial Rule 4. The result of combining literal language of Trial Rule 69(E)(4) and Trial Rule 5 is that an order to appear or an order to answer interrogatories along with a motion for proceedings supplemental must be served on a judgment debtor if he is not in default for failure to appear. If the judgment debtor is in default for failure to appear, no service is necessary unless a new or an additional claim for relief is pleaded.

The crucial issue is whether a motion for proceedings supplemental is a new or an additional claim for relief. Harvey and Townsend state that the relief sought in proceedings supplemental to execution is a new or an additional claim.[67] Thus, the defendant in default must be served by a summons as required in Rule 4.[68] In the only case discussing this issue, the Second District Court of Appeals disagreed with their position. The court in *Harvey* did not say that a judgment debtor in default would not have to be served with process; in fact, the court indicated that notice of some kind must be given to a judgment debtor.[69] Even if due process does not always require notice and a hearing prior to a garnishment,[70] it would seem only fair and equitable to insist on notice and an opportunity for a hearing in light of today's massive consumer credit transactions and the high number of default judgments.[71]

Should proceedings supplemental be considered a new or an additional[72] claim for relief? An examination of the origin of proceedings supplemental shows that, because the remedy is an equitable one, it is available only where other legal remedies are insufficient.[73] Before Trial Rule 69(E), proceedings supplemental to execution were considered extraordinary remedies.[74] It appears that proceedings

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[66]IND. R. TR. P. 5(A)(6).

[67]4 W. HARVEY & R. TOWNSEND, *supra* note 22, at 473.

[68]*Id.* at 472.

[69]339 N.E.2d at 609; Townsend, *supra* note 51, at 333.

[70]*See* North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975).

[71]For a discussion of default judgments in consumer transactions, *see* Alderman, *Default Judgments and Postjudgment Remedies Meet the Constitution: Effectuating Sniadach and its Progeny*, 65 GEO. L.J. 1 (1976).

[72]This is one interpretation that might come within the meaning of Ind. R. Tr. P. 5(A)(6).

[73]2 R. TOWNSEND, *supra* note 37, at 479.

[74]Baker v. State *ex rel.* Mills, 109 Ind. 47, 9 N.E. 711 (1887).

supplemental are now considered just a continuation of the original cause as shown in the Civil Code Study Commission comment that Trial Rule 69(E) assumes the judgment debtor is under a duty to make assets available or to pay the judgment creditor.[75] The requirement of a second summons specifically for judgment defendants in default seems to go against the spirit of Trial Rule 69(E).[76]

One approach is utilized by the Indianapolis Bar Association which provides a form entitled "Order to Appear in Court."[77] Most Indianapolis attorneys use this form or have one modeled after it. This order is served as a matter of practice on the judgment debtor in proceedings supplemental. The form states generally that the plaintiff judgment creditor has shown the court by a verified motion that he owns a judgment against the defendant, the date the judgment was obtained and its amount, and that the defendant is ordered to appear personally in court on a certain date to answer as to wages, assets and other property. The form also gives the name and address of the plaintiff's attorney.[78] The manner of service is the same as a summons under Trial Rule 4. The usual practice is to have the sheriff serve the order. Thus, even though under Trial Rule 69(E) service may be made under Trial Rule 5, it is usually served in the same manner as a summons. The difference is that the order to appear is signed by the judge of the court and is not a summons issued through the clerk's office. Discussion at this point might seem purely academic except that problems emerge from practice which the rules do not anticipate. If the sheriff cannot locate the defendant, he returns the order unserved. At the same time, the judgment creditor may have served interrogatories on the judgment debtor's employer pursuant to Trial Rule 69(E), and the interrogatories may have been returned showing that the judgment debtor makes a substantial salary. Under these facts, whether the judgment creditor is entitled to a garnishment order is uncertain. If Trial Rule 5 applies and service is required, it may be made by mailing a copy to the last known address.[79] Choice of service would dictate conflicting results. If Trial Rule 5 applies, the judgment creditor need only mail the order to last known address to be able to garnish the wages of the judgment debtor. If Trial Rule 4 applies, the order must be served in the same manner as an original summons. All the methods of service under Trial Rule 4.1 could be used. The practice in Marion

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[75]4 W. HARVEY & R. TOWNSEND, *supra* note 22, at 441.

[76]The first summons is issued to a defendant when the law suit is initiated pursuant to Trial Rule 4.

[77]Indianapolis Bar Association Form 18.

[78]*Id.*

[79]IND. R. TR. P. 5(B).

County today is a mixture of Trial Rule 4 and Trial Rule 5. Under Trial Rule 4, if a copy is left at the usual place of abode, it must be followed by a mailing.[80] There is no such provision in Trial Rule 5.

Given the judgment debtor's duty to come forward with assets to pay the judgment as presumed by Trial Rule 69(E), and given the alternate methods of service as provided, the purpose of the Order to Appear becomes important. The judgment creditor may know the judgment debtor's place of employment. Therefore, a major concern is to give the employer notice, to receive the employer's answers to the interrogatories, and to bring them into court in order to proceed with the garnishment. In this situation it is not important to the creditor that the judgment debtor receive *actual* notice of the garnishment.

On the other hand, the judgment creditor may not know whether the judgment debtor has any assets or is employed. To realize any remedy, he must examine the judgment debtor as to assets or employment. Therefore, to this judgment creditor, *actual* notice to the judgment debtor is important. The court, however, must follow the correct procedure as set out by Trial Rule 69(E). In order to do so, the Rule should be clarified so the policy of satisfying judgments can be carried out in a manner constitutionally permissible.

The problem of notice to the judgment debtor is always important, but then it becomes more acute when notice to the garnishee defendant is also involved. The garnishee defendant, whether an employer, a bank or any third person, is usually brought into proceedings supplemental because it allegedly holds money for the judgment defendant or owes money to him. Consumer transactions have grown rapidly in the United States,[81] and the rapid pace and flow of business have caused cash transactions to give way to credit and checks, causing garnishment of bank accounts to become an important area in Indiana law.

IV. Notice to the Garnishee Defendant

Indiana Code section 34-1-44-5 provides for compulsory filing of an affidavit alleging that a third party has property of the judgment debtor which exceeds the exempt amount.[82] The affidavit is filed by

[80]This Note will not go into the details of service of process under Trial Rule 4. Other issues may be raised under Trial Rule 4, such as whether failure to serve the judgment debtor causes a subsequent garnishment to be void or voidable. *See* Citizen's Nat'l Bank v. Harvey, 339 N.E.2d 604 (Ind. Ct. App. 1976).

[81]*See* Note, *Changing Concepts of Consumer Due Process in the Supreme Court—The New Conservative Majority Bids Farewell to Fuentes*, 60 Iowa L. Rev. 262 (1974).

[82]Ind. Code § 34-1-44-5 (1976) provides in part:

> Third parties; when required to appear—After the issuing or return of an execution against the property of the judgment debtor or any one of the

the judgment creditor after issuance or return of execution.[83] The third-party garnishee defendant can be ordered to appear if the judge so orders. Otherwise, the court may order interrogatories answered and returned to the court. Property in the hands of a third person which belongs to the judgment debtor—including money on deposit in a bank—may be garnished.[84]

The case in Indiana which has had the greatest impact on proceedings supplemental to execution is *Union Bank and Trust Co. v. Vandervoort*.[85] Analysis of the facts of this case is critical to the resolution of the issues of law in this area. The plaintiff, Vandervoort, recovered a judgment against the defendant judgment debtor. Execution was issued pursuant to statute in the county where the defendant resided but remained unsatisfied in the hands of the sheriff. The judgment debtor had held a savings account in the garnishee defendant bank that had contained enough money to satisfy the judgment. The judge of the trial court ordered the bank and judgment debtor to appear before the court in a hearing to answer as to any property available for satisfaction of the judgment. The order of the court, along with a summons, was served on both judgment debtor and the bank on August 6, 1948. On August 7, 1948, the bank honored its depositor's demand to withdraw his money. The judgment debtor then gave the money to his son who lived in Ohio —outside the court's jurisdiction. At the hearing on proceedings supplemental to execution, on August 13, 1948, the judgment creditor discovered that there was no money in the savings account. The trial court ordered the garnishee defendant bank to satisfy the execution. The bank, in effect, paid twice.

The bank appealed and the court of appeals affirmed the judgment of the trial court.[86] The appellate court reasoned that, by commencing the proceedings supplemental and serving the bank with process, the judgment creditor "acquired an equitable lien on the

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several debtors in the same judgment, and upon an affidavit that any person, corporation, municipal or otherwise, the state or any subdivision or agency thereof has property of such judgment debtor, or is or will be from time to time indebted to him in any amount, although the amount shall be determined from time to time as it becomes due and payable, which, together with other property claimed by him as exempt from execution, shall exceed the amount of property so exempt by law, such person, corporation, or any member thereof, or the auditor of state or auditing officer of the municipal corporations, subdivisions or agencies of the state, may be required to appear and answer concerning the same . . . .

[83]*Id.*

[84]D.L. Adams Co. v. Federal Glass Co., 180 Ind. 576, 103 N.E. 414 (1913).

[85]122 Ind. App. 258, 101 N.E.2d 724 (1951).

[86]*Id.* at 266, 101 N.E.2d at 728.

credit and funds due the defendant."[87] In support of its position, the majority cited two cases[88] that require analysis.

Cooke v. Ross[89] held that the judgment creditor has a lien on the property and the judgment debtor has no right to assign the money to other creditors after service of process is issued upon the judgment debtor and garnishee defendant. The court further said that the judgment debtor could not raise a question involving the liability of the garnishee defendant.[90] It should be emphasized that both parties were served with a summons. The case does not mention the liability of a garnishee defendant bank that honors a depositor's demand for withdrawal.

The *Cooke* opinion cited *Graydon v. Barlow*[91] for the principle that a lien is on the property from the time of service of process on the judgment debtor and garnishee defendant. The opinion said nothing about the liability of a garnishee defendant to a judgment creditor. *Cooke* and *Graydon* dealt with the judgment debtor and not the garnishee defendant. In *Graydon* the court noted:

> In *Butler v. Jaffray*, 12 Ind. 504, it is, in effect, decided, that a creditor instituting proceedings under this statute, thereby acquires a lien on the fund intended to be reached. It is not there expressly decided at what precise stage of the proceedings such lien will attach, but merely that such proceedings do create a lien; and that the recovery of a judgment, and taking out execution thereon, does not create a lien upon a fund similar to that here attempted to be made subject to the payment of this debt.
>
> Without deciding at what point of the proceedings a lien will attach, we are of the opinion that it had so far progressed in the case at bar as to create a lien, which the defendants could not divest by making an assignment.[92]

The judgment debtor in *Graydon* had made an assignment to other creditors while proceedings supplemental were pending. The court held that the defendants could not divest the lien by assignment for the benefit of their creditors.[93]

The statute under which *Vandervoort* was decided states *inter alia* that interrogatories may be ordered answered as to property

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[87]*Id.* at 265, 101 N.E.2d at 727.

[88]*Id.*, (citing Cooke v. Ross, 22 Ind. 157 (1864); Graydon v. Barlow, 15 Ind. 197 (1860)).

[89]22 Ind. 157 (1864).

[90]*Id.* at 159.

[91]15 Ind. 197 (1860).

[92]*Id.* at 197-98.

[93]*Id.* at 198.

held for the judgment debtor by the third party or garnishee defendant, that the court shall issue a subpoena requiring the judgment debtor to appear before the court, and "such proceedings may, *thereafter*, be had for the application of the property, or income or profits of the judgment debtors toward the satisfaction of the judgment . . . ."[94] In a dissenting opinion, Judge Bowen pointed out that the judgment creditor could have obtained a restraining order or an injunction to prevent the bank from paying any money until resolution of the proceedings supplemental.[95] This may be true in many cases; however, there are courts which handle a large volume of proceedings supplemental to execution which have limited equitable jurisdiction to issue restraining orders or injunctions.[96] In any event, a bank and its depositor assume the relationship of debtor-creditor[97] and the bank has a duty to honor this relationship.[98]

After *Vandervoort*, the wrongful dishonor statute[99] becomes important. If a bank is served with process, it will become liable to the judgment creditor if funds are paid to its depositor, the judgment debtor. When a check is presented for payment, the bank is placed in an unenviable position. *Vandervoort* implies that the bank must freeze the account and, thus, could possibly be liable to its depositor. Only the dissent in *Vandervoort* recognized this problem:

> It would seem to be elementary justice that the bank in the instant case should not be held liable to the creditor of the defendant debtor until some order or decree is served upon such bank, restraining it from paying the amount of a deposit to one of its depositors, in view of the well established principle of banking law that the obligation of a bank to its depositor is to repay the depositor on a proper demand.[100]

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[94]Act of April 7, 1881, ch. 38, § 593, 1881 Acts (Spec. Sess.) 240, 346 (current version at IND. CODE §§ 34-1-44-1 to 8 (1976)) (emphasis added).

[95]122 Ind. App. at 268, 101 N.E.2d at 728 (Bowen, J., dissenting). The result in *Vandervoort* has the identical effect which an injunction would have.

[96]The Marion County Municipal Court has limited equitable jurisdiction. *See* IND. CODE § 33-6-1-2 (1976). *See also* IND. R. TR. P. 65(B) and its 10-day limitation.

[97]Storen v. Sexton, 209 Ind. 589, 200 N.E. 251 (1936).

[98]IND. CODE § 26-1-4-402 (1976) provides:

> Bank's liability to customer for wrongful dishonor.—A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

[99]*Id.*

[100]122 Ind. App. at 270, 101 N.E.2d at 729 (Bowen, J., dissenting). *Vandervoort* has not been cited as authority by any Indiana court.

Another important facet of acquiring the garnishee defendant's property is the problem of notice. Trial Rule 69(E)(4) provides that the garnishee is entitled to service as provided in Rule 4.[101] Thus, even though proceedings supplemental are considered a continuation of the original cause, garnishee defendants who have not been made parties to the action are to be served by summons. It is necessary under Rule 69(E)(4) to send a copy of the motion of proceedings supplemental with the interrogatories if the judgment creditor is trying to discover any assets in the hands of the garnishee. In addition, Rule 69(E)(4) provides that the judgment creditor may "utilize the discovery provision of these rules in the manner provided in these rules for discovery or as provided under the laws allowing proceedings supplemental."[102] In other words, interrogatories may be sent to employers and banks to locate assets and possible employment of the judgment debtor. If interrogatories are sent to a bank that has an account listed in the judgment debtor's name, should this be considered a lien on the bank account as a matter of policy? Until a recent revision in August, 1977, the Indianapolis Bar Association provided a form for attorneys entitled "Order to Answer Interrogatories, Notice of Hearing, and Interrogatories."[103] This form was sent to employers and stated generally that the plaintiff as judgment creditor submitted interrogatories and that the court ordered the garnishee defendant to answer the interrogatories and return them to court. The form notified the garnishee defendant of a hearing on the matter and stated that the garnishee defendant may attend the hearing. The form was served on the garnishee defendant in the same manner the order to appear[104] is served on the judgment debtor, that is, like a summons.

In August, 1977, Form 19 was changed to conform with the Rules of Practice and Procedure of the Civil Divisions of the Municipal Court of Marion County, Indiana.[105] Rule 26(B) says in part:

> As a minimum, the order to answer interrogatories will contain the following information: that the plaintiff has a judgment against the defendant and the amount of the judgment; that the garnishee defendant may answer the interrogatories in writing on or before _____, or appear in court and answer the interrogatories in person, at his option; the time, date and place of the hearing; that any claim or defense to a proceedings supplemental or garnishment order must be

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[101] IND. R. TR. P. 69(E)(4).

[102] *Id.*

[103] Indianapolis Bar Association Form 19 (rev. March, 1975).

[104] Form 18, *supra* note 77.

[105] These Rules became effective in August, 1976

> presented at the time and place of the hearing specified in the order to appear.[106]

This is now incorporated into Form 19 and the Rule is also applicable to interrogatories sent to banks.[107] Nevertheless, the language may not be sufficient to satisfy due process.

In *Vail v. Quinlan*[108] a portion of a New York statute[109] was held unconstitutional because a notice for an order to show cause why a judgment defendant should not be held in contempt did not tell the judgment defendant what would happen if he failed to obey. The court held that notice appropriate to the nature of the case is concomitant to a fair hearing.[110] The court further stated:

> [N]otice must be complete and clear, given the substantial deprivation of liberty that may result from failure to respond. Fundamental fairness requires that the show cause order contain a clear statement of the purpose of the hearing and a stark warning that failure to appear may result in contempt of court and imprisonment.[111]

Vail was reversed by the Supreme Court on grounds of comity and federalism.[112] The issue of notice, however, is still open.

Pursuant to *Vandervoort*, even if a bank complied fully with an order to answer interrogatories and then honored its depositor's checks, it would still be liable to the judgment creditor for the amount that was previously in the bank account but is no longer available. While a bank's mandatory double payment, may not be so harsh a result as to contravene the due process clause of the fourteenth amendment, according to *Vail* fundamental fairness should require clear notice. Harvey and Townsend suggest the notice to the garnishee defendant state that the order by the court may constitute a lien in favor of the plaintiff-judgment creditor upon any property held by the garnishee for the judgment debtor.[113] They

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[106]MARION COUNTY MUN. CT. CIV. DIV. R. 26.

[107]*See* Indianapolis Bar Association Forms 19 (rev. March, 1975 & Aug., 1977).

[108]406 F. Supp. 951 (S.D.N.Y. 1976), *rev'd sub nom.* Juidice v. Vail, 430 U.S. 327 (1977).

[109]N.Y. JUD. LAW § 757(1) (McKinney 1975). In 1977 New York changed its law so that in both sections 756 and 757, the notice is changed to inform the accused that failure to appear may result in his immediate arrest. N.Y. JUD. LAW §§ 756-57 (McKinney Supp. 1977).

[110]406 F. Supp. at 959 (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)).

[111]406 F. Supp. at 959-60.

[112]Juidice v. Vail, 430 U.S. 327, 338-39 (1977). The Supreme Court found that the judgment debtors had an opportunity to present their federal claims in the state court proceedings. *Id.* at 337.

[113]4 W. HARVEY & R. TOWNSEND, *supra* note 22, at 479.

state: "[A]ny disposition of such assets after receipt of this order and contrary to the ultimate determination of this court as to the existence and amount of such lien will be made at the garnishee's risk."[114]

As yet the trial rules do not require such notice. The bank is still in a predicament as to which choice to make even if it has notice of a *possible* lien. Normally, banks "freeze" accounts, at least up to the amount of judgment, when they receive an order to answer interrogatories. As one would expect, with little precedent to guide them, the practice leaves the banks open to suit.

In *Nelson v. Indiana National Corp.*[115] the plaintiff sued Indiana National Corporation (Indiana National Bank) because it froze his bank account upon receipt of an order to answer interrogatories from the Municipal Court of Marion County. In *Midwest National Bank v. Nelson*[116] a default judgment for $6,695 was entered on July 29, 1975. On September 9, 1975, the plaintiff judgment creditor filed a motion for proceedings supplemental, sending several banks orders to answer interrogatories. In February, 1977, plaintiff, finding no accounts, again filed a motion for proceedings supplemental and orders to answer interrogatories were sent to Indiana National Bank and American Fletcher National Bank. The judgment creditor located a $1,559.07 account at Indiana National Bank as of February 8, 1977. On March 25, 1977, a hearing was held in municipal court and the account was made eligible for garnishment. As a result of the "freeze" put on the account by Indiana National Bank, ten checks drawn by Nelson were allegedly dishonored. The defendant, Indiana National Bank, admitted in an answer to an interrogatory that it had not notified Nelson upon receiving the interrogatories which, by implication, means the bank did not tell him about the freeze.

The bank is, therefore, on the horns of a dilemma—honor the judgment creditor's possible lien and defend lawsuits by disgruntled depositors, or honor the depositor-bank relationship and possibly pay twice. The bank in this position might be afforded the protection of the Indiana Notice of Adverse Claims to Deposit statute.[117]

V. Trial Rule 69(E) and the Adverse Claim Statute

The adverse claim statute provides that notice to any bank of an adverse claim to a deposit standing on its books will not require a

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[114] *Id.* at 480.

[115] No. C77-812 (Ind., Marion County Cir. Ct., filed April 11, 1977).

[116] M875-1426 (Ind., Marion County Mun. Ct., July 29, 1975).

[117] Ind. Code § 28-1-20-1(a) (1976).

bank to recognize a claim unless the adverse claimants follow the statute.[118] If proceedings supplemental to execution come under this statute, the bank will be protected and the judgment creditor will also have his interests protected.

The purpose of such an adverse claim statute is to define the procedure to be followed by an adverse claimant. This procedure affords the depositor and the bank reasonable protection and corrects the situation where a bank "may be vulnerable to the imposition of liability for freezing a deposit upon notice of an adverse claim which is not subsequently sustained."[119]

The first qualification for application of the statute is that the claim must be shown to be adverse.[120] In *St. Lukes Hospital v. Godet*,[121] the court discussed policy reasons behind New York proceedings supplemental statutes. The case dealt with an application by a judgment creditor to punish a bank for contempt because it disobeyed injunctive provisions of a subpoena served on it in supplementary proceedings. At the time of service there was money in an account but the bank later paid the money to the wife of the judgment debtor.[122]

The New York law dealt with service of a subpoena on the judgment debtor or any third party. After being served with the subpoena, the judgment debtor or third party was forbidden to transfer or dispose of any moneys until further order of the court. The law, as amended the previous year, contained an additional provision which said that the prohibition of transfer would not apply to a case where by state law the effectiveness of any notice of adverse claim to any property required certain conditions to be followed, unless the judgment creditor complied with the adverse claim provisions.[123]

The reason for the addition is that under New York law, for a judgment creditor to qualify as an *adverse* claimant, the money sought to be reached in a bank account must be in the name of someone *other* than the judgment debtor.[124] In practice, judgment creditors will try to enjoin payment of funds from a bank account in the name of someone other than the judgment debtor, ostensibly because the other person is holding the judgment debtor's money. In

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[118]*Id.*

[119]There are no Indiana cases on point which construe this statute so recourse must be taken to other states and their adverse claim statutes. *See* 62 A.L.R.2d 1116, 1117 (1958).

[120]*Id.* at 1118.

[121]171 Misc. 7, 11 N.Y.S.2d 900 (Cit. Ct. N.Y. Spec. Term 1939).

[122]*Id.* at 8, 11 N.Y.S.2d at 902. The account was held jointly by the husband and wife.

[123]*Id.* at 13, 11 N.Y.S.2d at 904-05.

[124]*See* 62 A.L.R.2d 1116, 1122 (1958).

such a limited number of cases, the Committee on Law Reform of the New York City Bar felt the additional provision would clarify the law.[125] If *Vandervoort* had been decided in New York, the judgment creditor would not have been considered an adverse claimant and, thus, the bank would not have had protection of the statute. Under New York law, however, the judgment creditor's attorney can issue a subpoena to a bank and forbid transfer of any funds.[126] Thus, banks are bound by statute.

In another New York case, *Barber v. Maritime Suisse S.A.*,[127] the court found the adverse claim statute was not applicable where the judgment creditor sought only an examination of the bank and not an actual claim upon the bank. The New York statute was further construed in *Ginsberg v. Manufacturers' Hanover Trust Co.*[128] There the court completely rejected the idea that a summons alone was ever intended to have the effect of a restraining order and be "other appropriate process"[129] within the meaning of the statute.

Another view of adverse claimants was taken by a Missouri court in *Baden Bank of St. Louis v. Trapp.*[130] The court stated that an adverse claimant is "one who claims that a deposit belongs to him instead of to the one to whose credit it stands on the books of the bank."[131] The claimant was not adverse because she claimed that the money in the account belonged to her divorced husband against whom she had a judgment and did not belong to those in whose name the account was held. The court stated that, if the claimant's former husband had claimed the money as his own, he would have been an adverse claimant.[132] The purpose of the Missouri statute, the court said, was to give a bank immediate and complete protection when a claim regarding the *true ownership* of the money is involved.[133] Thus, proceedings supplemental to execution seemingly would not be an adverse claim and the bank would be afforded no protection by the statute.

In *Staley v. Brown*[134] the Mississippi Supreme Court construed that state's adverse claim statute as applicable to a judgment cred-

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[125]171 Misc. at 13, 11 N.Y.S.2d at 904.

[126]N.Y. CIV. PRAC. LAW § 5222 (McKinney 1978). *Godet* involved Act of April 9, 1938, ch. 605, § 4, 1938 N.Y. Laws 1603 (current version at N.Y. CIV. PROC. LAW § 5222 (McKinney 1978)).

[127]70 N.Y.S. 540 (Sup. Ct. Spec. Term 1947).

[128]55 Misc. 2d 1052, 287 N.Y.S.2d 818 (Sup. Ct. Spec. Term 1968).

[129]*Id.* at 1054, 287 N.Y.S.2d at 821.

[130]180 S.W.2d 755 (Mo. Ct. App. 1944).

[131]*Id.* at 759.

[132]*Id.*

[133]*Id.*

[134]244 Miss. 825, 146 So. 2d 739 (1962).

itor seeking to garnish funds of a judgment debtor in his wife's bank account.[135] The court stated that, in the absence of notice to the contrary, ownership of a deposit in a bank account is presumed to be in the depositor, and the bank is bound to pay him or her on proper demand.[136] *Staley* shows application of an adverse claim statute to supplemental proceedings only where the ownership of a bank account is in question. If a judgment creditor wants to garnish a bank account in a third person's name containing money actually belonging to the judgment debtor, the judgment creditor must follow the adverse claim statute.[137]

Indiana's adverse claim statute has an additional provision which could be easily applied to proceedings supplemental.[138] This provision states that, if the adverse claimant: (1) Notifies the bank in writing of the adverse claim, (2) tells the bank the nature of the claim, and (3) states that proceedings have been instituted or will be instituted within three days, then the bank "may hold the amount of the deposit in controversy without liability for damages to any party by reason of its failure to treat said amount in accordance with its agreement with the depositor . . . ."[139]

Under Rule 69(E) the judgment creditor sends interrogatories to the bank along with a motion for proceedings supplemental. This complies with Indiana Code section 28-1-20-1(a)(3). The courts in Indiana have not determined whether Indiana Code section 28-1-20-1(a)(3) is applicable to a judgment creditor who sends a motion for proceedings supplemental to a bank along with interrogatories. From the New York decisions on this issue, it would be reasonable to assume that Indiana Code section 28-1-20-1(a)(3) applies. If a judgment creditor who follows the procedure under Trial Rule 69(E) and tries to reach a deposit in the name of someone other than the judgment debtor is afforded the protection by Indiana Code section 28-1-20-1(a)(3), protection should be extended to the bank when the account sought to be reached is in the judgment debtor's name. The result in *Vandervoort* would, thus, be avoided.

The *Vandervoort* result, in practice, causes interrogatories to have the effect of restraining orders. Proceedings supplemental to

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[135]*Id.* at 829, 146 So. 2d at 740.

[136]*Id.* at 831, 146 So. 2d at 741.

[137]*See* Phil Grossmayer Co. v. Campbell, 214 Or. 265, 328 P.2d 320 (1958). The court stated: "The application of the statute just cited is not restricted to attachment and garnishment proceedings. It does not even mention proceedings of that kind and its reach is broader. The statute is applicable in all cases when an 'adverse claim to a deposit' is made." *Id.* at 276, 328 P.2d at 325.

[138]IND. CODE § 28-1-20-1(a)(3) (1976).

[139]*Id.*

execution, being merely an extension of the original cause under Trial Rule 69(E) and taking on a larger role as discovery, should not be interpreted as allowing interrogatories sent to banks to have such an effect. Due process may or may not require that notice be complete and clear, but present practice under Trial Rule 69(E) needs to be improved.

VI. Conclusion

Since the purpose of Trial Rule 69(E) is to aid the judgment creditor in satisfying his judgment, it is important that all parties have actual notice. The judgment debtor who has any claims or defenses to proceedings supplemental to execution should be able to assert them. Further, a judgment debtor who is employed may be willing to arrange for payment plans in lieu of a salary garnishment.[140]

Trial Rule 69(E) should be changed so that notice to the judgment debtor is an absolute condition to garnishment. An order to appear should be served on the judgment debtor in the same manner as it is now done in Marion County practice. If the judgment debtor is represented by counsel, service should also be made on the counsel.[141]

Trial Rule 69(E) could also be modified by requiring the judgment creditor to serve copies of all pleadings, including interrogatories sent to banks, on the judgment debtor in the same manner as the order to appear. Such notice to the judgment debtor should also tell him that any removal of funds would be viewed as contempt of court.

Additionally, Trial Rule 69(E) should also be changed in relation to garnishee defendants. Municipal Court Rule 26 could be incorporated, thereby informing the garnishee defendant that claims or defenses must be presented at the hearing. Harvey and Townsend suggest that informing garnishee defendants that there may be a lien on the judgment debtor's property would satisfy the notice requirement.[142]

Finally, two alternative changes would affect Trial Rule 69(E) and its relationship with Indiana Code section 28-1-20-1(a). Indiana Code section 28-1-20-1(a) could be amended to apply to a judgment creditor seeking to garnish a bank account in the name of someone other than the judgment defendant. An amendment to Rule 69(E)

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[140]*See* Civil Code Study Commission Comments in 4 W. Harvey & R. Townsend, *supra* note 22, at 439.

[141]*See* Ind. R. Tr. P. 5.

[142]4 W. Harvey & R. Townsend, *supra* note 22, at 480.

could specify that a summons or subpoena served on a bank or other garnishee defendant forbid the transfer or other disposition of any funds or property until the court hearing.

The last alternative is to amend Indiana Code section 28-1-20-1(a) so that it clearly applies to judgment creditors sending interrogatories to banks pursuant to Trial Rule 69(E).

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