	<b>Winchester City Sheriff's Office</b> <b>Manual of General Orders</b>  <b>Operations</b> <b>305</b>	<b>Effective Date:</b> May 1, 2014 Accreditation Standards: OPR .12.01 OPR .12.05 OPR .12.02 OPR .12.03 OPR .12.04
		<b>Original Policy:</b> May 1, 2014 <b>Last Review Date:</b> October 31, 2023 <b>Next Review Date:</b> October 31, 2024
<b>Subject: Legal Process</b>		<b>By Authority of:</b> <hr/> William E Sales, Sheriff

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
05-18-16	III A 6	Changed, "Upon receipt of all types of legal process (Civil and Criminal), to " Upon receipt of all types of legal process (Civil).	EAS	LRT
05-18-16	III A 6	Added, "Legal process, (Criminal) will be handed over to the Winchester Police Department to maintain. A copy of served legal process, (criminal) will handed over to the Major for recording purposes. In all cases, the following information will be kept."	EAS	LRT
10-24-16	III J	Added Section J.	EAS	LRT
11-22-16	III A-6	Changed, "a. Type of Service b. Date received c. Nature of Document d. Source of document e. Name of plaintiff/complainant and defendant/respondent f. Method of Service g. Date and time of Service h. Reason for non-service i. Deputy name who served the process j. Agency tracking number k. Address of service " to "a. Date Received b. Agency Tracking method c. Nature of Document d. Source of document. e. Name of plaintiff/complainant and defendant/respondent. f. Officer Assigned or serving officer g. Date of assignment h. Method of service i. Date of service or return j. Location of service or attempted service k. Reason for non-service	EAS	LRT
11-22-16	III J-2	Changed, "19.2-74 to 19.2-74	EAS	LRT

### I. PURPOSE

The purpose of this section is to provide the deputies who serve legal process and execute court orders with the essential information on how to perform those functions so that all legal requirements are carried out.

The format of this section is designed to familiarize the deputy with the types of legal process most frequently used in Winchester City, with legal background kept to a minimum. Emphasis is on the practical requirements, with specific instructions on the proper service of each kind of process or execution covered.

It is intended that deputies use this section as a reference for serving legal process.

## II. POLICY

It is the policy of the Winchester City Sheriff's Office to process all civil/criminal legal documents, and court matters as soon as practicably possible and to follow all legal guidelines, and rules and procedures set aside in the Virginia State Code.

## III. PROCEDURES

### A. Service and Return of Legal Process – General

1. The purpose of the service of process is to obtain jurisdiction over a defendant in a suit by notifying the defendant of the case in which they are a party and thereby bring the defendant into court. The primary purpose of the RETURN is to give the Court evidence of the jurisdictional facts of service. The return, by its content, must show that the legal requirements have been met and is therefore valid. All deputies may service civil process and criminal process.

The validity of the service is dependent upon the mode of service used and upon the return made by the deputy. Civil processes may not be serviced on Sunday, except in cases of persons escaping from custody. Writs of attachment may not be executed on Sunday except upon sworn oath that the defendant is actually moving goods on that day or is about to leave the state in order to change domicile. Service of execution of a process on any legal holiday or at any time on Saturday is legal. The deputy making the service is required to make a true return upon the process. The return must show the Sheriff's name as well, since the deputy is acting for him; otherwise, the trial court can quash the return.

2. The return is evidence only of the performance of acts within the official duty and power of the Sheriff and, therefore, the return should include only such acts as are required by law.
3. Three kinds of service to resident;
  - a. In person;
  - b. Delivery to a member of the person's family;
  - c. Posting.

The law is concerned with, the residence of defendants rather than their domicile. Thus a defendant residing in, or physically present in, Virginia is subject to service even though the defendant's legal domicile is in another state. The terms "residence" and "usual place of abode" are considered to be synonymous in any reference made thereto in this section.

4. The latter two kinds of service are called "substitute services." The deputy does not have a choice as to the order of service. The deputy may deliver the process to a member of the family only if the deputy is unable to make personal service. The deputy may post a copy of the process only if the deputy has been unable to make personal service or deliver a copy to a member of the family. All services of any nature, if posted, will be posted on the main entry door of the usual place of abode or residence. It is especially important in the case of substituted service to show that the legal requirements have been met. For example, if service is made upon a member of the defendant's family, the return must show:
  - a. That the service was made at the defendant's usual place of abode;
  - b. That the defendant was not found at the defendant's usual place of abode;

- c. The relationship of the person served to the defendant;
  - d. That the purpose of the paper was explained to the person served;
  - e. That the person served was over sixteen years of age; and
  - f. The date on which service was made.
5. The stamps used for proof of service and the printed statements on certain court processes, when properly completed, provide for all legal requirements mentioned above. Additional information, if available, such as new or forwarding address, etc., can be noted on the return.
  6. Upon receipt of all types of legal process (Civil), the Sheriff's Office applies a date/time stamp and creates a record in the computer system. Legal process, (Criminal) will be handed over to the Winchester Police Department to maintain. A copy of served legal process, (criminal) will handed over to the Major for recording purposes. In all cases, the following information will be kept.
    - a. Date Received
    - b. Agency Tracking method
    - c. Nature of Document
    - d. Source of document.
    - e. Name of plaintiff/complainant and defendant/respondent.
    - f. Officer Assigned or serving officer
    - g. Date of assignment
    - h. Method of service
    - i. Date of service or return
    - j. Location of service or attempted service
    - k. Reason for non-service
  7. Civil process may be placed in the "Paper's Served" box. A completed copy of criminal process will be given to the Major.

#### B. Processes Requiring Personal Service

1. Out-of-State Processes. These papers frequently consist of divorce actions, but may apply to any type of lawsuit. They should be served in person to the individual named unless it is specifically stated by the out of state service.
2. Capias. Meaning "that you take" (Latin) is the general name of several species of writs, the common characteristic of which is that they require the deputy to take the body of the defendant into custody. They are writs of attachment of arrest.
3. Show Cause Rule (signed by a judge). All Criminal Show Cause and Show Cause Rules that are issued in Winchester City Courts shall be served in person. Substitute service may be used in specific instances depending on the judge's instructions.
4. Peace Bond A process requiring a person to give a recognizance to keep the peace for a period not to exceed one year as determined by the court (Virginia Code § 19.2-19).
5. Bench Warrant. A process issued by the court itself, or "from the bench" for the attachment or arrest of a person, either in cases of contempt or where an indictment has been found, or to bring in a witness who did not obey a subpoena; so called to distinguish it from a warrant issued by a magistrate or commissioner.

6. Injunctions. A prohibitive writ issued by a court of equity forbidding a defendant in an action to do some act which the defendant is threatening or attempting to do; and, which if committed would be unjust or injurious to the plaintiff and which cannot as such be adequately redressed by an action at law.

In addition to personal service on the above-mentioned processes, injunctions and restraining orders should be read by the deputy to the defendant. In the case of a bench warrant, the judge signing the order forwards it to the Sheriff for execution. One copy is given to the defendant at the time of the arrest and the other is executed and returned to court.

7. Personal service. This should always be attempted, but is not legally necessary, on Levies, Distress Warrants, and Detinue Seizure Warrants. These actions will be covered in more detail under their respective headings elsewhere in this manual.

8. Garnishments and Attachments on Co-Defendants. (The co-defendant is the individual or corporation in possession of funds due or owing to the defendant.) The service to the co-defendant should be served in person to an officer of the corporation or the individual who pays the defendant or controls payment of the defendant. This is usually the payroll, comptroller, or the treasurer, but service to any officer or manager employee of the business or corporation is valid. The co-defendant named should always be served regardless of information offered that the co-defendant does not employ the defendant or that no monies are due. It is up to the co-defendant to include such information in the notarized statement as is required to make to the court by the trial date. On garnishments there are certain wages and property, which are exempt. These exemptions are set forth in a schedule, which is attached to the process being served upon the co-defendant. An attachment, however, is applicable to all the wages, funds, or personal property of the defendant, which are under the control of the co-defendant at the time of service. Always serve the co-defendant first.

Once having served the co-defendant in a garnishment or attachment action, the defendant, if within the Sheriff's jurisdiction, can be served in person or by substituted service at the defendants' usual place of abode. There may be situations where the defendant can be found easily at his or her place of employment and served in person, but such service should be the exception rather than the rule. It also should be noted that service may be accomplished anywhere the defendant is found in the city.

9. Corporations, Companies, Partnerships, and Registered Agent. A corporation is an artificial entity created by the state. It cannot be served with a process in any other way than by making an actual service on a natural person who is an officer or agent of the corporation. Service on the spouse, as such, of an agent or officer of the corporation is not valid unless the spouse is an officer of the corporation. The persons upon whom service may be made in order to serve a corporation or partnership are set forth below:

- a. Municipal Corporations: Service may be made on the mayor, recorder, attorney, manager, or any alderman, councilman, or trustee of the city or town.
- b. Private Corporations: On the president or chief officer, vice-president, cashier, treasurer, secretary, general superintendent, general agent, or registered agent.

- c. Foreign Corporations: A foreign corporation is one, which has been granted a charter by a state other than Virginia. Service of process is made on the registered agent of the corporation. In making the return, the registered agent's name should be followed by "Registered Agent for (name of corporation)." The service should be made to the individual named as the registered agent, even if the individual advises he or she is no longer the registered agent for the corporation involved. If service cannot be made to a registered agent in a reasonable period of time, alternate procedure of service through the Clerk of the State Corporation Commission is valid. The only exception is if the registered agent has a letter from the State Corporation Commission stating the registered agent is no longer the "Registered Agent" for that particular Corporation.
- d. Partnership: On any partner, provided that the suit is a partnership matter.
- e. Unincorporated Associations, Orders, or Common Carriers: On any of its officers or trustees. Service on an agent of an unincorporated association is not sufficient. However, when the unincorporated association is a common carrier, service may be made to any agent of the carrier or a driver, captain, or conductor of any vehicle of such carrier. If none of these can be found, service may be made by publication.

10. Protective Orders (Also refer to OPR-300)

a. Processing of Orders

The Winchester Police Department will enter all Protective Orders into the computer system.

b. Service

- (1) The personal service of the orders will receive priority attention by deputies. Whenever possible, an attempt at personal service shall be made on the same date the order is received.
- (2) The deputy serving the order will serve it on the respondent personally. No arrest paperwork shall be completed in reference to the service. The deputy will show the execution of the order by signing it in the appropriate place. The deputy shall also indicate the date and time the order was executed. Deputies will write legibly as the execution of service information is very important.
- (3) Deputies will provide the respondent with a copy of the order.
- (4) The original order will be returned to the records section where the date and time of service, etc., will be entered into the computer system. The original order will then be returned to the Juvenile and Domestic Relations Court.
- (5) The serving deputy will ensure the proper VCIN/NCIC entries have been made.

c. Service of Orders Which Grant Possession of the Residence to the Petitioner.

- (1) When deputies serve an order at the residence shared by the petitioner and respondent and the order requires the respondent to grant the petitioner possession of the residence (to the exclusion of the respondent), the deputies shall escort the respondent off the resident property.

(2) Deputies may, at their discretion and if there is no immediate threat of violence, allow the respondent to gather personal belongings prior to being escorted off the resident property. However, in no case shall the respondent be allowed to remain at the resident property after service of the order. When the deputies leave, the respondent shall also be required to leave.

d. Deputies will use caution when serving Protective Orders. Particular caution is emphasized in those cases where deputies allow the respondent an opportunity to gather personal belongings.

e. Violation of Order Directing the Respondent to Grant Possession of the Residence to the Petitioner.

(1) A respondent who violates such a provision may be charged under Virginia Code § 16.1-253.2. (The respondent must have been served with the order to be charged under that code section)

(2) It is the policy of this office that deputies, absent extenuating circumstances, shall affect the arrest of a respondent who has violated provisions of a protective order. Any such arrest must be based upon - probable cause and other legal mandates.

### C. Summons

1. General: By definition, a summons is a writ, which calls a defendant into court. If, however, the writ calls a witness into court, it is technically a subpoena rather than a summons.

2. Jury Summons: Summonses to individuals for jury service fall in a special category since the individual called is neither a defendant nor a witness. Failure to comply with this summons, however, is treated in a manner similar to a subpoena in that a fine can be assessed. Instructions on Service of Grand Jury: Personal service is preferred; however, in the absence of the individual named, substituted service may be made to a member of the family (over the age of sixteen years); posted service is not acceptable.

3. Witness Summons: A summons for a witness as mentioned above, is technically a subpoena. If not obeyed the person summonsed can be held in contempt of court.

4. Juvenile and Domestic Relations Summons: There are normally six (6) kinds of summonses used in the Juvenile and Domestic Relations Court. They are:

a. The juvenile summons, which summonses the juvenile involved and the parents or guardians of the juvenile.

b. The non-support type, which summonses the defendant.

c. The out-of-state or foreign process for non-support.

d. A "Show Cause Rule".

e. Protective Order.

f. The witness type summons.

5. **Civil Court Summons:** At the city court level, civil actions may be commenced by warrant or motion for judgment. The warrant must be served not less than five (5) calendar days before the return date (date of court trial). In the Circuit Courts, however, cases are tried either as “law” cases or as “chancery” cases and are initiated as one or the other at the time of filing with the Clerk of Court.
6. **Interrogatory Summons:** The interrogatory summons, as the name implies, is a summons issued to bring a defendant into court for the purpose of finding out from the defendant under oath, what property or estate he or she owns (and which presumably can be levied upon and sold to satisfy a money judgment). A fieri fascias, or 'fi fa' as it is called, is a writ of execution in which the Sheriff is commanded to levy and make the amount of judgment from the goods and chattels of the judgment debtor.
7. **Garnishment Summons:** The garnishment summons is also a means, as part of the fieri fascias process, whereby a creditor can reach the property of a debtor. Both serve as the basis for making levies and sales. The garnishment summons, as received in the Sheriff's Office from the Clerk of Court, consists of the original copy, accompanied by a Fi Fa form; a copy of the summons for the co-defendant to which is attached a schedule of exempt wages; and a copy of the summons for service on the defendant. The Virginia Code requires the attachment of the Fi Fa form to the garnishment summons, but no action is taken on the Fi Fa form except to attach it to the original copy of the garnishment summons. This Fi Fa form can be used, however, if the judge so desires, as authority to make a levy against the defendant when he or she appears in court in answer to the summons and is used later by the Sheriff's Office as a single piece of paper and has a notation of "Levy" or "Actual Levy" on it.
8. **Detinue Summons/Warrant:** By definition, detinue is a form of action which seeks the receivers of specific personal property from one who has acquired the property legally, but who retains it without right. It is an action taken by the plaintiff before the merits of the case have been heard in court and for that reason, the process must be initiated and accomplished with strict adherence to the statutory requirements. The warrant to seize property in detinue is not issued by the Clerk of Court unless a bond of at least double the estimated value of the property has been executed payable to the court.  
Accompanying the seizure warrant as a separate piece of paper is the summons to the defendant to appear in court on a certain day. At that time, the judge will listen to all the evidence and decide if seizure of the property by the plaintiff was warranted. If not, the judge could order the plaintiff to return the property to the defendant or, alternatively, to pay the defendant in money. Sometimes only the summons will be issued and the case tried without actual seizure and return of the property to the plaintiff, but usually both the summons and the seizure warrant are to be executed together.
9. **Subpoena Duces Tecum:** In many court cases, documentary evidence is needed as well as the testimony of an individual witness. When such evidence is needed, a subpoena is issued to summons the person holding the documents, records, or books into court to present the documents for court examination and to testify with respect thereto. This type of summons is called a "Subpoena Duces Tecum." It is served in accordance with the rules, which apply, to service to a witness and, since it is usually served at a place of business, it is served there either to the individual named or his or her supervisor.

10. Unlawful Detainer Summons: (SEE: RENT ACTIONS)

D. Circuit Court Actions

1. General

The types of cases heard in Circuit Court fall into three principal categories: law, chancery, and criminal. All three can be cases, which either originate in Circuit Court or have been appealed in a city court. Under the heading of law cases are motions for judgment, negligence suits, and money suits. Under the heading of chancery, fall adoptions, divorces, separations, specific performance suits, and mechanic's liens on real property and personal property. Criminal actions consist of cases referred by the Grand Jury from city court preliminary hearings, indictments presented to the Grand Jury by the Commonwealth's Attorney, and other criminal cases, either misdemeanors or felonies where the defendant has appealed the city court decision or requests a trial by jury. All jury cases, whether law or criminal, are heard in Circuit Court. Chancery cases are decided by a judge, never a jury, unless a specific issue or performance is involved.

a. The two most commonly used processes for Circuit Court actions are:

(1) Notice of Motion for Judgment; and

(2) Subpoena in Chancery

Affixed to each action, as a separate piece of paper, will be a "Proof of Service" form on which the return is made by the deputy making the service.

2. Petitions

A Petition is an application in writing to the court stating the circumstances upon which it is founded and requesting an order of the court or such other relief as is desired by the petitioner.

E. Rent Actions

1. Eviction (Five-Day Notice, summons for Unlawful Detainer, Writ of Possession)

A large percentage of the papers served by the deputy in urban and suburban areas involve legal actions stemming from lease and rental situations usually due to default in rental payments, but sometimes based on the tenant being destructive, obnoxious or otherwise in violation of the terms of the lease or rental agreement, or simply that the owner desires the property for his or her own use.

The first action in the process is the serving of a Five-Day Notice to the tenant (if tenant is in arrears in rent) or a Thirty-Day Notice (if tenant rents on a monthly basis and the landlord desires to evict the tenant for reasons other than delinquency). The Five-Day Notice consists of a statement to the effect that if the rent is not paid within five days from the date of service, action will be taken for possession of the apartment or residence occupied by the tenant. The Five or Thirty-Day Notice is received directly in the Sheriff's Office from the property owner or owner's agent or attorney (it does not go through the Clerk of Court); nevertheless, it is a legal requirement that the five (or thirty) day notice be served before the next step leading to eviction can be taken.

The next step taken after an elapse of the five-day (or thirty-day) notice time is the securing of a Summons for Unlawful Detainer by the plaintiff. The plaintiff obtains this detainer from the Clerk of Court. The summons for unlawful detainer is then sent to the Sheriff for service to the defendant. This warrant summons the defendant to appear in General District Court on a certain date to answer the complaint that said defendant (tenant) is, in effect, in unlawful possession of the specified apartment or



premises and detains the owner from possession thereof. Judgment in favor of the plaintiff leads to the third and final step; i.e., the eviction. A Writ of Possession secured by the plaintiff from the Clerk of Court ten (10) days after judgment of the unlawful detainer brings this about. The court holds these papers in order to give the defendant ten (10) days in which to perfect an appeal. When the writ is received in the Sheriff's Office, the original is retained by the deputy as authority for the action and upon which to make a return when the eviction is completed. Service of the writ, along with the Sheriff's Office Eviction Form, served to the defendant in person, or by substituted service or by posting. This notice is made out by the deputy to show the name and address of the defendant, the Docket Number and the date and time the premises must be vacated (minimum of seventy-two (72) hours as required by law.)

The deputy's action on the Writ of Possession is as follows: Fill out the eviction notice to the tenant after coordinating with owner or manager of premises. Make sure owner/manager understands it is their responsibility--not that of the Sheriff--to move the defendant's furniture and personal property out of and off the premises (if the defendant has not done so voluntarily by the time set for eviction.) The furniture and personal property of the defendant have to be moved to the nearest public right-of-way or stored according to law. (The residence may have the lock changed so that the dwelling may be used as the storage area.) The defendant will be given a minimum of seventy-two (72) hours' notice prior to the eviction in order to make arrangements to move voluntarily. If the defendants move out before being physically evicted, the eviction action is considered completed and the Writ of Possession noted accordingly. In the event of inclement weather at the scheduled time for the eviction, it is the practice of the Sheriff's Office to postpone the eviction until such time as the eviction can be carried out.

## 2. Mobile Home Evictions

Upon receipt of a court-ordered Writ of Possession involving a mobile home, the deputy shall:

### a. Give Notice:

- (1) Serve a copy of the Writ of Possession and give written notice of eviction (not less than seventy-two (72) hours) to the mobile home occupants (eviction form).
- (2) Notify the landlord/lot owner of the date and time of the scheduled eviction.
- (3) Notify the lien holder (if known) of the impending eviction status.
- (4) Notify the landlord/lot owner of available options:
  - (a) The mobile home can be stored on the mobile home property and then disposed of according to law.
  - (b) The homeowner can move mobile home at his expense unless the landlord has a lien on the mobile home.

### b. Eviction Execution:

- (1) If the mobile home has been removed or is in the process of being removed by the owner, the deputy may extend the allotted time necessary to complete the removal and then give possession of the lot to the lot owner. The executed Writ of Possession is then returned to court.
- (2) If the mobile home has not been removed by its owner at the end of seventy-two (72) hours, the deputy shall evict any occupant(s) and possession of the lot is then given to the landlord/lot owner. The executed Writ of Possession is then returned to the court.

NOTE: Also see Unlawful Detainer Summons in the Order.

### 3. Warrant of Distress

In addition to the Writ of Possession (eviction) action, the plaintiff has another remedy when rent is past due and that is to obtain a Warrant of Distress. This kind of warrant provides authority for the Sheriff to levy on the goods and chattels of the delinquent tenant and subsequently to sell the property levied upon in an effort to collect the amount of money, plus costs, set forth in the warrant. It is an action which is taken only when rent is past due under a contract and is in the nature of an attachment (before judgment) on the personal property of the lessee, his or her assignee, or subtenant, found on the premises under lease, or any other location if the property has not been removed from the said premises for more than thirty (30) days.

The first part of the warrant is the affidavit, which establishes the basis for the action to be taken by the Sheriff. The language used requires the Sheriff to **DISTRAIN**, etc. Distrain, by definition, means to "levy a distress," and distress means to "seize or detain." Winchester City does not seize under Warrant of Distress. The action is initiated, under statutory authority, at the City Court level but is returnable in the Circuit Court. The plaintiff cannot ask for a sale of the goods levied upon until ten (10) days after the levy is made during which period the defendant or debtor can contest the action in the Circuit Court. Also, prior to the sale taking the place, the plaintiff has to post a surety bond in an amount equal to the value of the property; such bond to be provided to the Sheriff. The distress levy is usually uncontested but does serve to pressure the defendant into paying the back rent, thereby making a sale unnecessary. If a sale is directed, however, it is made under a Writ of Venditioni Exponas (expose to sale) and, as indicated, must be accompanied by the indemnifying bond. After the Writ of Venditioni Exponas is issued by the Clerk of the Circuit Court (and the sale notice is posted), another ten (10) days must elapse before a sale can be held.

#### F. Levies, Seizures and Sales

Two basic kinds of levies/seizures and sales are customarily acted upon in the Sheriff's Office. One kind of levy and sale has been covered above under rent actions; namely, the action taken under a distress warrant and the venditioni exponas type of sale made as a result of the distress levy. Both the distress warrant levy and a levy made as directed in an attachment before judgment (see Section A above) are actions taken initially without a judge hearing a case. A seizure of the property, however, made under a distress levy is effected only after the prescribed time of appeal of the distress levy has elapsed.

The other main category of levy, seizure, and sale is that which results from judgment and which is referred to generally as an execution. An execution is the judicial process, which enforces or carries out a judgment or decree. The two main types of executions are: (1) a writ of fieri fascias (fi-fa), which is the means to enforce a money judgment by levy and sale of the property of the defendant; and (2) the writ of possession, which enables the plaintiff to obtain possession of specific property, such as an apartment or residence, by evicting the occupant thereof (covered under Rental Actions), or a writ of possession action (detinue) taken after judgment under a conditional sales contract to recover specific articles of personal property in possession of the judgment debtor. In this case, the defendant has the option of retaining the specific property or paying the amount of the judgment. The type of levy, seizure, and sale covered in the balance of this section will be restricted to executions carried out under a fi-fa. In considering the relationship between a fi-fa and a levy carried out under a fi-fa, the following points are relevant:

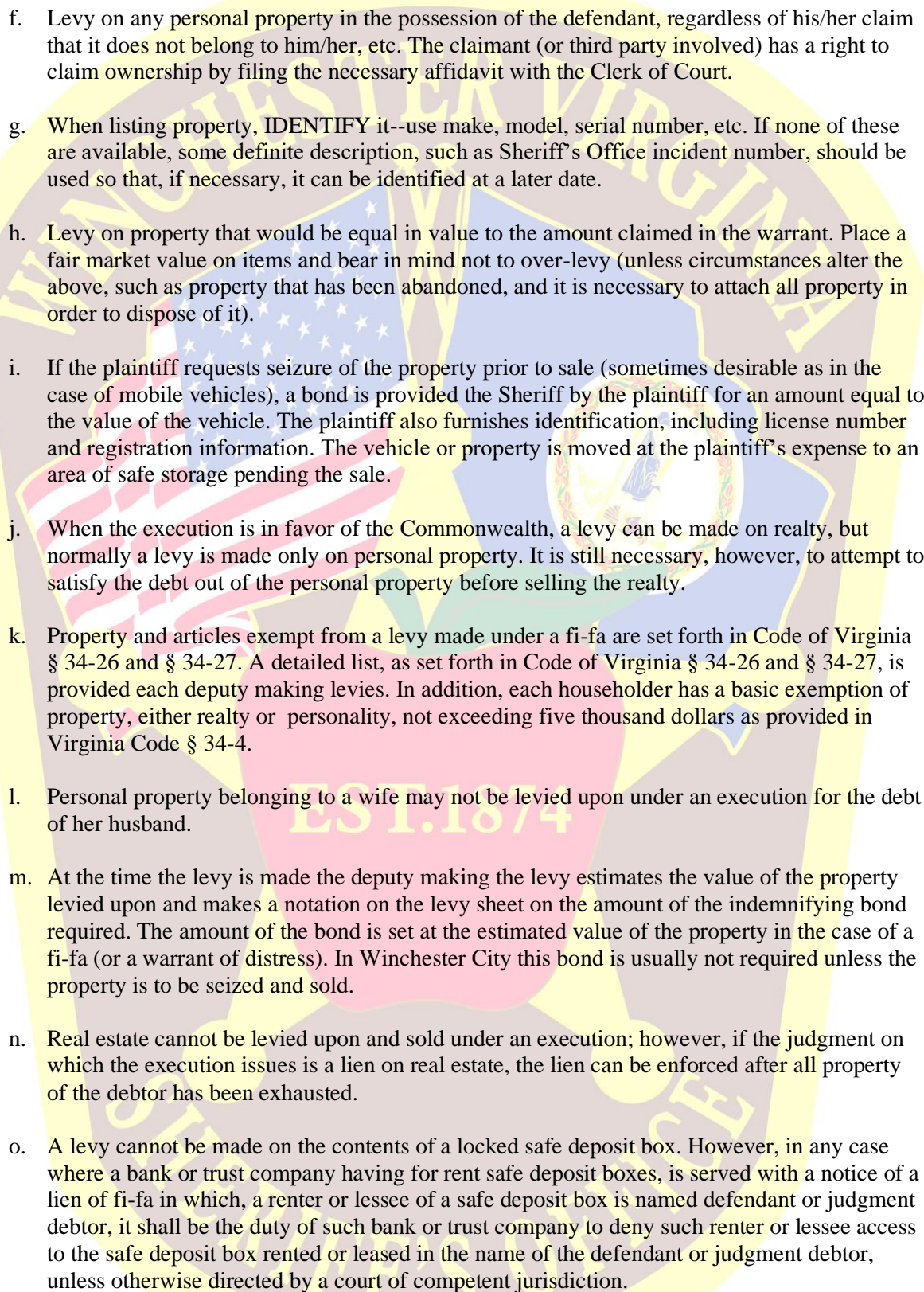
1. A lien on the personal estate of the judgment debtor is established dating from the exact time that the writ of fi-fa is received in the Sheriff's Office for execution and is endorsed with year, month,

day, and time of day the writ is received. This procedure is followed so that the Sheriff's Office can control the priority on levies when more than one is received for execution against the same individual.

2. This lien covers leviable property as well as non-leviable property, such as bonds, notes, stocks, etc., which the judgment debtor has or may acquire "on or before the return date of such writ," except such property as is exempt under provisions of Title 34. The lien extends only to non-leviable property located within the Commonwealth and leviable property within the Sheriff's bailiwick (see Paragraph 12 below).
3. In Virginia the fi-fa is returnable within (90) ninety days after its issuance to the court from which it was issued. A lien on tangible property automatically ceases if an actual levy has not been made on or before the return date.
4. The lien acquired by placing a writ of fi-fa in the hands of the Sheriff is so imperfect in nature and unspecific as to the goods of the debtor that establishment of a solid lien and security for the debt is unknown until exemption requirements are met and a levy can be effected. The levy, in effect, specifies the goods and chattels levied upon and is necessary as a basis for advertising the property and selling it (within six (6) months after execution).
5. A levy can be made only upon specific tangible property. Actual seizure of the property recovered is not necessary if the deputy has the property in his/her view and power to seize it if he/she so chooses, and notes on his/her writ the facts of the levy.

Specific points to keep in mind in effecting a levy under a fi-fa are as follows:

- a. After receipt and endorsement of the fi-fa in the Sheriff's Office, the actual levy is the next step necessary before a sale can be made.
- b. Although the fi-fa authorizes seizure of property, the practice in Virginia has been to permit it to remain on the premises of the debtor until the day of sale in order to save expenses.
- c. A valid levy can be made on household goods in the owner's absence; no formal notice is necessary. It is the practice in Winchester City, however, to leave a copy of the levy sheet with or on (one of) the items levied upon.
- d. In making a levy, the Sheriff is acting as agent for the plaintiff. The plaintiff or his/her attorney has authority to control the execution and to say whether the levy should be modified or canceled. (The plaintiff retains the right to sue out a new execution)
- e. A deputy making the levy may, if need be, break open (or cause to be opened by a locksmith) the outer doors of a dwelling house in the daytime after first having demanded admittance of the occupant and may also levy on property in the personal possession of the debtor if the same be open to observation. The practice in Winchester City is to first check to insure that the defendant does live at the address. The deputy will leave notice on the door that access to premises is needed to execute the writ. If the deputy has not received response by the next day, he/she should then check with neighbors, mail carrier, paper carrier, etc., to determine whether defendant is: (1) on vacation; (2) in the hospital; or (3) in jail. Only as a last resort should entry be forced to complete a levy, and then only after the deputy's supervisor has been notified and briefed.

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- f. Levy on any personal property in the possession of the defendant, regardless of his/her claim that it does not belong to him/her, etc. The claimant (or third party involved) has a right to claim ownership by filing the necessary affidavit with the Clerk of Court.
  - g. When listing property, IDENTIFY it--use make, model, serial number, etc. If none of these are available, some definite description, such as Sheriff's Office incident number, should be used so that, if necessary, it can be identified at a later date.
  - h. Levy on property that would be equal in value to the amount claimed in the warrant. Place a fair market value on items and bear in mind not to over-levy (unless circumstances alter the above, such as property that has been abandoned, and it is necessary to attach all property in order to dispose of it).
  - i. If the plaintiff requests seizure of the property prior to sale (sometimes desirable as in the case of mobile vehicles), a bond is provided the Sheriff by the plaintiff for an amount equal to the value of the vehicle. The plaintiff also furnishes identification, including license number and registration information. The vehicle or property is moved at the plaintiff's expense to an area of safe storage pending the sale.
  - j. When the execution is in favor of the Commonwealth, a levy can be made on realty, but normally a levy is made only on personal property. It is still necessary, however, to attempt to satisfy the debt out of the personal property before selling the realty.
  - k. Property and articles exempt from a levy made under a fi-fa are set forth in Code of Virginia § 34-26 and § 34-27. A detailed list, as set forth in Code of Virginia § 34-26 and § 34-27, is provided each deputy making levies. In addition, each householder has a basic exemption of property, either realty or personality, not exceeding five thousand dollars as provided in Virginia Code § 34-4.
  - l. Personal property belonging to a wife may not be levied upon under an execution for the debt of her husband.
  - m. At the time the levy is made the deputy making the levy estimates the value of the property levied upon and makes a notation on the levy sheet on the amount of the indemnifying bond required. The amount of the bond is set at the estimated value of the property in the case of a fi-fa (or a warrant of distress). In Winchester City this bond is usually not required unless the property is to be seized and sold.
  - n. Real estate cannot be levied upon and sold under an execution; however, if the judgment on which the execution issues is a lien on real estate, the lien can be enforced after all property of the debtor has been exhausted.
  - o. A levy cannot be made on the contents of a locked safe deposit box. However, in any case where a bank or trust company having for rent safe deposit boxes, is served with a notice of a lien of fi-fa in which, a renter or lessee of a safe deposit box is named defendant or judgment debtor, it shall be the duty of such bank or trust company to deny such renter or lessee access to the safe deposit box rented or leased in the name of the defendant or judgment debtor, unless otherwise directed by a court of competent jurisdiction.

#### G. Sales

The sale is the final action taken under a writ of fi-fa. The following considerations apply to such actions:

1. Only property subject to levy and which has been levied upon can be sold.
2. It is required that notices of the time and place of the sale be posted at least ten (10) days prior to the day of the sale.
3. The notice of sale is posted at some place near the residence of the owner, if he or she resides in the city, and at two other public places in the city.
4. Optional: Advertise sale in local newspaper.
5. If the property is expensive to keep or perishable, the court or authority issuing the fi-fa can order that the sale is made without waiting for the ten-day period to elapse.
6. At the time and place so established, the property shall be sold to the highest bidder, for cash, as may be necessary to make the amount of the fi-fa. When property remains unsold because of no bidders or because of an insufficient bid, the sale may be postponed and the property again advertised, stating the fact of no bidders or of insufficient bid, and that the property will be sold peremptory under a writ of venditioni exponas (8.01-485).
7. No Sheriff, Sergeant, City or Town Constable or High Constable, or any deputy of such office, or city employee shall directly or indirectly purchase effects sold under a writ by such officer or deputy.
8. No officer of the city or employee of the city, shall directly or indirectly, bid on or purchase, property sold under a writ by an officer. (8.01-498)
9. The deputy must collect for each item sold even if the plaintiff buys it and wants to pay only costs.
10. As each item is sold, list the buyer, amount and item number on the copy of sale notice. If the number of items for sale is extensive, it is advisable for the deputy making the sale to have clerical assistance in marking the items for identification, keeping track of the cash and giving receipts for same to the buyers.
11. The day before the sale it is wise to check with the plaintiff to make sure there has been no settlement and that the plaintiff or his or her attorney will be present at the sale.
12. It is the practice of the Winchester City Sheriff's Office that prior to the sale, the plaintiff or his/her attorney takes the following actions:
  - a. Obtain a Sheriff's Indemnifying Bond (unless sale is ordered by the court.)
  - b. Provide the Sheriff with a written statement advising whether or not liens exist on items to be sold, a letter or teletype from the Department of Motor Vehicles regarding any liens on the vehicles. The plaintiff also submits an itemized list of court costs, bond premium, and total amount required to settle the claim.

13. When there is not time on the date appointed for the sale to complete same, the sale may be adjourned from day to day until completed.
14. Each sale is made on an "as is" basis with no warranties implied as to the quality or soundness of the goods sold. If an item has a lien on it, however, it is sold subject to the lien as advised the auctioneer (based on information supplied by plaintiff. If the sale price is not in excess of the lien (plus costs), no sale should be made.
15. In each sale scheduled, a sale folder is prepared in which background papers are kept. A sale checklist is maintained in this folder to insure that the required steps are taken prior to the sale. In addition, copies of the levy and the sale notice are filed in the folder. The procedure as described above is at the actual sale. The sale is started by reading the sale notice, which, subsequent to the levy, will have been adjusted or noted, if necessary, to reflect liens or other information supplied by the plaintiff.
16. If property which has been levied upon is also to be seized preceding the sale thereof, the owner may retain possession of such property until the date of sale provided he or she gives the Sheriff a bond with sufficient surety payable to the plaintiff which states the property shall be forthcoming at the day and place of sale. The bond would specifically state the amount due, including the officer's fee for taking the bond, commissions, and other lawful charges, if any, and that service of the writ has been made. The law relating to forthcoming bonds was passed for the benefit of the owner of the goods taken, to enable him or her at his or her own risk to retain possession and use of the goods and to avoid the expense of their safekeeping until the day of sale (8.01-526).

#### H. Miscellaneous

##### 1. Tax Notices and Levies

The most frequent type of tax notices handled in the Sheriff's Office are those issued by the Department of Taxation of the Commonwealth of Virginia for delinquent payment of payroll taxes and the Commissioner of Revenue for local taxes. This notice takes the form of a Notice of Motion for Judgment. Assuming a judgment is granted by the appropriate court, the Commonwealth can proceed to command the Sheriff to make a levy upon both real and personal property of the defendant. The levy in this event is made against the personal assets unless it is otherwise indicated by the Commonwealth. Another frequent form of action taken by the Commonwealth concerns failure to pay unemployment compensation taxes assessed by the Virginia Employment Commission. These actions, which are received by mail directly from Richmond, take the form of a command to levy upon and sell the real and personal property of the subject. They are returnable to the Virginia Employment Commission in Richmond through the Clerk of the Circuit Court.

##### I. Non Service

Anytime any legal document cannot be served, the reason will be listed on the legal document and the document returned to the records section for processing.

##### J. Criminal Process:

1. Criminal Process such as Felony Warrants, Misdemeanor Warrants, and Capias', which are obtained by Sheriff's Office Deputies shall be served immediately. If the obtaining deputy is unable to do so, the paper must be given to the Winchester Police Department to be entered and maintained.

2. A summons may be issued in lieu of a warrant in accordance with VA Code 19.2-74.
3. Sheriff's Deputies may serve process in accordance with VA Code 8.01-295.

