



# STATE OF RHODE ISLAND DISTRICT COURT

## R.I. CONSTABLE'S TRAINING MANUAL

**Albert E. DeRobbio, Chief Judge**  
**Joseph P. Ippolito, Esq., Administrator**

# TABLE OF CONTENTS

<b>PREFACE</b> .....	3
<b>INTRODUCTION</b>	
Licensing Authority .....	4
Powers – Geographical Limits .....	5
Liability .....	5-6
<b>COMMENCEMENT OF THE SUIT</b>	
Service of the Summons & Complaint .....	7-8
Writs of Attachment .....	9
<b>COLLECTION PROCESS</b>	
Writ of Execution	
• Form .....	10
• When Issued .....	10
• Duration of Life .....	10
• Manner of Execution: In General .....	10
• Manner of Execution: Real Estate .....	11
• Manner of Execution: Personal Property .....	11
• Manner of Execution: Stock .....	12
• Trustee Process .....	12-14
• Exemption From Attachment .....	14-15
Supplementary Proceedings	
• Citation .....	15
• Service of the Citation .....	16
• Citation to Show Cause for Noncompliance .....	16
• Service of the Citation to Show Cause .....	16
• Body Attachment .....	16
<b>LANDLORD-TENANT</b>	
Residential	
• Actions for Non-payment of Rent .....	17
• Actions for Reasons Other than Non-payment of Rent .....	17
• Suing an Out-Of-State Landlord .....	17-18
• The Execution: Forcible Eviction .....	18
• Geographical Limitations on Service .....	18-19
Non-Residential	
• Non-payment of Rent .....	19
• Other Reasons .....	19
<b>SMALL CLAIMS</b> .....	20
<b>DOMESTIC ASSAULT</b> .....	21
<b>SERVICE OF SUBPOENAS</b>	
Introduction .....	22
Service in Civil Cases .....	22
Service in Criminal Cases .....	22
<b>APPENDIX: FORMS</b> .....	23

## PREFACE: A PERSONAL WORD

Historically, all writs and process issued under Rhode Island General Law have been directed to the sheriffs and the deputy sheriffs of the several counties within the state. Since 1967, the office of Constable has been established to provide an alternative for those requiring the service of process.

It is the responsibility of the Chief Judge of the District Court to license constables and regulate the constables so licensed. See *R.I. Gen. Laws §§ 8-8-12(10), 9-5-10, 45-16-4.1, and 45-16-4.3*. This manual is an attempt to meet that responsibility and should be of assistance to all District Court constables.

Remember that constables perform an important service to the people of the state. While the job of a constable can be difficult, it is expected that you will always keep in mind that you act under the authority of the Chief Judge. The highest standards of conduct and professionalism shall be observed.

A handwritten signature in black ink, reading "Albert E. DePalma". The signature is written in a cursive, flowing style with large, connected letters.

# INTRODUCTION: LICENSING AUTHORITY, POWERS & LIABILITY

## A. LICENSING AUTHORITY

The Chief Judge of the District Court has the sole authority to license constables to serve District Court writs and process. Constables are licensed by the Chief Judge with two levels of power, limited and full.

### 1. LIMITED POWER LICENSES

The statutory authority of the Chief Judge to issue a limited constable's license is found in *R.I. Gen. Laws § 45-16-4.1*:

All constables, except police and special constables provided for in this chapter shall be licensed by the chief judge of the Rhode Island district court to serve civil process as provided in § 9-5-10. Every constable shall at the time of being sworn into office give bond with sufficient sureties to the clerk of the district court in the sum of five thousand dollars (\$5,000) for the faithful performance of the duties of his or her office.

This section gives the Chief Judge the power to license constables to serve civil process. i.e. summonses and complaints. The bond for such license is \$5,000.

### 2. FULL POWERS LICENSES

The following section grants the Chief Judge the authority to license constables to serve and execute District Court writs to the same extent as a deputy sheriff; *R.I. Gen. Laws § 45-16-4.3 states*:

The chief justice of the supreme court, and the chief judge of the family and district courts, upon application being made by a constable authorized or licensed to serve civil process under this chapter, may authorize the constable to serve or execute any process or writs issued by or returnable to the court. Upon being so authorized or licensed, the constable shall have the power and authority to serve or execute all writs and process that may issue from the court in like manner and at fees authorized to sheriffs and deputy sheriffs. Each constable shall at the time of licensing or authorization give additional bond with the clerk of the district court in the sum of five thousand dollars (\$5,000) for the faithful performance of the duties of the office. Any appointee serves at the pleasure of the appointing authority

The foregoing section thus creates a class of constables with full powers, which requires an additional \$5,000 bond.

The powers and duties of a constable (with basic or full powers) will be described in the chronological order they are exercised within a civil court, i.e. from the beginning of the suit to supplementary proceedings.

### 3. TERMINATION OF LICENSE

As indicated in *R.I. Gen. Laws § 45-16-4.3*, a constable serves at the pleasure of the Chief Judge.

N.B.! This unlike the situation of constables elected by cities or towns, who have a right to a hearing before a town council or the District Court. See *R.I. Gen. Laws § 45-16-11 and 45-16-13*. Constables appointed by the Chief Judge have no right to such a hearing.

## B. POWERS – GEOGRAPHICAL LIMITS

May a constable exercise his/her powers everywhere in the State? No. A constable's authority is limited to the area for which he or she was appointed. The powers of a constable are explained in *R.I. Gen. Laws § 9-5-10*, which states in pertinent part:

Writs and summonses issued by a district court..... shall, except as otherwise specifically provided, be directed to the sheriff, the sheriff 's deputies, or to either of the town sergeants or constables licensed pursuant to § 45-16-4.1 of the county in which the action shall be brought, or pursuant to § 45-16-4.3 for statewide service;... In case any person upon whom it is necessary to make service of any writ, summons, or execution issued by a district court is, or has estate, in any other county than the one in which the action is brought, the writ, summons, or execution may also be directed to and served by the like officer of such other county.

## C. LIABILITY

### 1. ACTIONS ON THE BOND

The bond is required to insure that the constable faithfully performs his or her duties; if a constable breaches, the bond can be sued upon to provide some measure of redress to the injured party.

**§ 45-16-4.2 Action on bond of constables.** – Any person injured by the breach of the bond of any constable, may commence an action in the name of the clerk of the district court, for his or her own use, under like circumstances and in the same manner and subject to the same provisions as that person might do in the name of the general treasurer upon a bond given by the sheriff, if the person were injured by the breach of the bond.

### 2. LIABILITY

The issue of the constable's liability is governed by *R.I. Gen. Laws § 45-16-4.5*:

**§ 45-16-4.5 Immunity.** – No constable, while serving or executing any process or writ issued by or returnable to the supreme, superior, family, or district court, is liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising directly out of his or her negligent serving or executing the process or writ. In the event a civil action is brought against a constable as the result of the performance of his or her duties, the constable is entitled to recover all costs and attorney's fees incurred by the constable incidental to the civil action.

It would appear that negligent service is protected, not acts of intentional tort, such as battery.

#### D. A NOTE ON REFERENCES TO MONETARY AMOUNTS

It should be noted that whenever in the following texts, there are references to amounts of money for filing fees or other costs, they are correct as of the date of this printing. Such amounts may change from time to time through legislative amendment.

## I. COMMENCEMENT OF THE SUIT

In Rhode Island, a lawsuit is commenced either by the filing of a copy of the Complaint in court, by mailing it to the court, or by delivering it with a summons to an officer for service. See *District Court Civil Rule [hereinafter D.C.R.] 3*.

The **Complaint** is a pleading that sets forth a claim for relief, i.e. the allegation of the case and the remedy that is demanded. The Complaint will be drafted by the plaintiff or the plaintiff's attorney. The **Summons** is a notice from the clerk of the court that tells the defendant where and when he can defend against the suit. The Summons is a form available in blank from the clerk's office that will be filled in by the plaintiff or the plaintiff's attorney. See *D.C.R. 4(a) & 4(b)*.

### A. SERVICE OF THE SUMMONS & COMPLAINT

Service is the legal method by which the defendant is given a copy of the Complaint and Summons. It can be made either before or after the filing in court.

#### 1. WHO CAN SERVE

Service can be made by a sheriff, deputy sheriff, constable, town sergeant, or by some other person specially appointed by the court. *D.C.R. 4 (c)*.

#### 2. METHOD OF SERVICE

The first rule is that the Summons and the Complaint must be served together. *D.C.R. 4 (d)*. *D.C.R. 4 (d)* describes the proper method of service in several situations.

As to individuals:

Upon an individual .. by delivering a copy of the Summons and Complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the Summons and Complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. *D.C.R. 4(d)(1)*.

As to incompetent persons:

Upon a person for whom a guardian or conservator has been appointed by serving copies of the Summons and Complaint upon such guardian and conservator and upon the incompetent person in the manner provided ... [for individuals]. *D.C.R. 4(d)(2)*.

As to private corporations:

Upon a private corporation, domestic or foreign, by delivering a copy of the Summons and Complaint to an officer, a managing or general agent, or by leaving a copy of the Summons and Complaint at the office of the corporation with a person employed therein, or by delivering a copy of the Summons and Complaint to an agent authorized by appointment or by law to receive service of

process provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. *D.C.R. 4(d)(3)*.

As to the State of Rhode Island:

Upon the State by delivering a copy of the Summons and Complaint to the Attorney General or an Assistant Attorney General. *D.C.R. 4(d)(4)*.

As to a public corporation:

Upon a public corporation, body, or authority by delivering a copy of the Summons and Complaint to any officer, director, or manager thereof. *D.C.R. 4(d)(5)*.

Services outside the State:

In some cases, service is allowed to be made outside the state. This is where there is personal jurisdiction over the foreign defendant. It can be made on any individual by mail or by delivery to the defendant personally by a disinterested person. It can be made on a corporation by mail or by delivery of the Complaint and Summons to the president, secretary or treasurer of such corporation or to an agent or attorney for service of process as designated in its state of incorporation by a disinterested person. A constable has no power to act as a constable outside of Rhode Island, but may be retained to serve process as a disinterested person. *D.C.R. 4(e)*.

In certain cases, involving an interest in property, service can be made outside the state if, by exercise of due diligence, service cannot be made within the state. Obviously, in such situations, it is important that the constable document his or her efforts to serve within the state. *D.C.R. 4(f)*.

### 3. IN ALL CASES – PROOF OF SERVICE:

The fundamental purpose of having professional process servers, whether they are constables or sheriffs, is so that the court may be assured that the defendant has been given notice of the proceedings before the court. Therefore, it is vitally important that in all cases the constable must document his service.

Service is made by delivering a *copy* of the Summons and the Complaint. The original is returned to the plaintiff's attorney. On the bottom of the Summons is the proof of service. It must be filled in by the sheriff or constable indicating the name of the person left with and the date and the place. A person other than sheriff or constable has to make affidavit as to service. If the constable obtained a receipt as to delivery, it must be attached and returned with the Summons. The plaintiff's attorney must then file it in court. *D.C.R. 1(h)*. **N.B.! Constables must write legibly!**

## B. WRITS OF ATTACHMENT

Formerly, it was the frequent practice at the beginning of a suit to attach the goods of the defendant. Supreme Court case law has made it more difficult to obtain a pre-judgment writ of attachment. See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1968); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Dionne v. Bouley*, 583 F. Supp. 307 (D.R.I. 1984).

Today, no constable may attach the goods or property of a person to judgment without a court order that has been issued after a hearing with notice to the defendant!. *R.I. Gen Laws § 10-5-2 (a)*.

Accordingly, the procedure for executing a Writ of Attachment will be considered below, with other post-judgment collection procedures.

## II. COLLECTION PROCESS

In a civil case, the decision by the court as to who wins (and who loses) is called *the judgment*. See *D.C.R. 54(a)* (“*formal disposition of a claim by the court.*”) If the plaintiff has obtained a money judgment, he must follow a set of procedures to collect that money. The role of the constable is critical in these matters.

### A. WRIT OF EXECUTION

Unless the court directs otherwise, a money judgment is enforced by a Writ of Execution. *D.C.R. 69(a)*.

DEFINITION: *Writ of Execution*. Formal process issued by court generally evidencing the debt of the defendant to the plaintiff and commanding the officer to take the property of the defendant in satisfaction of the debt – BLACK’S LAW DICTIONARY, 510 (5<sup>th</sup> ed. 1979).

#### 1. FORM

The form of the writ is set out in *R.I. Gen. Laws § 9-25-8* and can be seen in the Appendix.

#### 2. WHEN ISSUED

A writ may be issued at the request of the moving party, but not before 24 hours after the entry of judgment. *R.I. Gen. Laws § 9-25-2*. No hearing is required for a post-judgment attachment. *R.I. Gen. Laws § 10-5-2(c)*.

#### 3. DURATION OF LIFE

Unless otherwise ordered, an execution is returnable to court one year after its date of issuance. *R.I. Gen. Laws § 9-25-21*.

#### 4. MANNER OF EXECUTION: IN GENERAL

A writ is served by following its mandates. *R.I. Gen. Laws § 9-26-2*. The basic order in *R.I. Gen. Laws § 9-25-8* is to levy the sum of the judgment and to pay it over to the winning party.

DEFINITION: *Levy*. To levy an execution; i.e. to levy or collect a sum of money on an execution. – BLACK’S LAW DICTIONARY, 816 (5<sup>th</sup> ed. 1979).

In essence, the constable goes out and makes a demand; the constable can also seize the assets of the defendant to satisfy the judgment. The last order command of the execution is that the constable “makes true return of this writ and of [the constable’s] doings thereon.” The office must state whether or not he collected. *R.I. Gen. Laws § 9-26-2*.

#### 5. MANNER OF EXECUTION: REAL ESTATE

## **Levy**

Levy on real estate is made by filing a copy of the execution with the recorder of deeds in the city or town where the real estate is located. *R.I. Gen Laws § 9-26-14 and 9-26-15*. The property must be described either in the execution or in a description annexed thereto. *Id.* The levy can either be on a whole interest in real estate or any interest therein. *Id.* The officer must pay a .50 cents filing fee for each execution. *R.I. Gen Laws § 9-26-14*.

## **Sale**

If the levy by filing does not result in the satisfaction of the judgment, the constable can hold a sale. *R.I. Gen Laws § 9-26-16*. It cannot be held until three months after the date of the levy; notice must be given at least once a week during the three weeks prior to the sale. The advertisement must be published in a public newspaper in a county where the real estate lies. If there are none then it can be published in a Providence daily newspaper. If no person redeems the real estate, it (or as much of the real estate as is necessary) can then be sold at auction. *R.I. Gen Laws § 9-26-16*.

The constable can, for good cause, adjourn the sale – but notice must then be given at least one week before the new sale date. *R.I. Gen Laws § 9-26-17*. The sale can be held even after the return date on the execution (usually, one year after issuance) has passed. *R.I. Gen Laws § 9-26-18*.

The constable shall give a deed, which will convey all the estate, right and interest, which the debtor held at the time of the levy. *R.I. Gen Laws § 9-26-16*. The deed will follow a form contained in *R.I. Gen Laws § 9-26-19*, Surplus proceeds, after satisfying the judgment, costs and charges, shall be deposited with the General Treasurer for the owner thereof. *R.I. Gen Laws § 9-26-16*.

## **6. MANNER OF EXECUTION: PERSONAL PROPERTY**

If the constable levies upon goods or chattels and seizes them, they must be kept in the officer's possession. An advertisement must be placed for ten days before any sale. *R.I. Gen Laws § 9-26-12*. Before such sale, the owner may pay the money due together with any costs accrued and regain his goods. *R.I. Gen Laws § 9-26-12*.

However, if the goods seized are perishable in nature, the defendant must be immediately notified by the constable. The constable may then get an order from the court, which issued the Execution to sell the goods (in a manner which the court shall specify.) The party can also obtain such an order. *R.I. Gen Laws § 9-26-12*.

If the goods are not redeemed by the owner and not subject to a special sale order, they must be sold at public auction to the highest bidder. Any surplus shall be delivered to the owner. *R.I. Gen Laws § 9-26-13*.

## **7. MANNER OF EXECUTION: STOCK**

Shares of stock can also be levied upon. *R.I. Gen Laws § 9-26-22 and 24*. The corporate official who must be served depends on the type of corporation. If the corporation is a bank, the levy is by serving a copy of the execution on the cashier. If the corporation is an insurance company, by serving a copy of the execution on the president or secretary. Any other corporation by serving the treasurer or any person performing the function of treasurer. If it is a foreign corporation, by serving the clerk or agent or attorney authorized to accept service. *R.I. Gen Laws § 9-26-22*. The constable may advertise for sale and give deeds of sale. *See also R.I. Gen Laws § 9-26-23 and 6A-8-317*.

## 8. TRUSTEE PROCESS

**DEFINITION:** *Trustee Process:* The name given, in certain New England states, to the process of garnishment or foreign attachment. – BLACKS LAW DICTIONARY, 1357 (5<sup>th</sup> ed. 1979) (NOTE: Foreign attachment is the seizure of the goods of the debtor which are in the hands of the third person).

### 1. Trustee Process – Non-wages

The procedure is laid out in Rule 69(b)(2):

On the day of service of a post-judgment writ of trustee process upon a garnishee, other than a writ attaching wages, or a writ against a corporate business entity judgment debtor, the plaintiff shall mail to the court and to the defendant, at the last known address, a copy of the writ of trustee process and a notice thereof (substantially in the form as set forth in the appendix) containing a date for hearing before the court of any claim for exemption which the defendant may have under Federal or State law. The date for the hearing shall not be less than five (5) nor more than nine (9) days after the day of mailing of the notice.

Trustee process is served in the following manner:

Whenever a writ shall command the attachment of ... the defendant's ... personal estate in the hands of any person, co-partnership or corporation, as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and time of day of the service, with the person or some member of the co-partnership named in the writ as trustee, or at the usual place of business of such person or co-partnership with some person there employed; or if the trustee ... shall be a bank, with the cashier, or secretary thereof; if an insurance company, with the president or secretary thereof; and if any other corporation, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and time of such service, with the treasurer thereof, or the person executing the duties of treasurer thereof, or with the attorney of the corporation, appointed with the authority to accept service of process against the corporation in this state, or with any other officer thereof, or with the agent or superintendent thereof, or at the office of such corporation with some person there employed, and shall tender to the person whom service is made the sum of two dollars (\$2.00) and his traveling fee as witness in the Superior Court, and the sum of one dollar (\$1.00) and like traveling fee if the writ is returnable in any

other court; and the officer shall also serve the defendant in accordance with applicable procedure rules. *R.I. Gen Laws § 10-15-19.*

## 2. Garnishment

Garnishment is a form of attachment used to secure the wages or salary of a defendant. It is a kind of trustee process, since the object is a third party, the employer. The procedure is laid out in Rule 69 (c):

3. Attachment of Wages After Judgment. A writ of attachment to be served as a writ of garnishment of wages after the plaintiff's claim has been reduced to judgment in any civil or small claims action shall be issued, in the same action, only upon motion and notice to the defendant and an opportunity to be heard thereon. The notice shall be substantially in the form set forth in the appendix (Notice and Motion to Attach Wages) and shall contain the date of the hearing, which shall be not less than ten (10) nor more than twenty-five (25) days after the date of the mailing of the notice. No wage attachment shall be served upon an employer until after the date of the hearing. Said motion shall be deemed to be granted without prejudice as a matter of course and shall not be placed upon the motion calendar unless objection thereto is served and filed at least two (2) days before the time specified for its hearing. However, a debtor's failure to object to said motion shall not be deemed as a waiver of any statutory exemptions available to said debtor, and a debtor may move at any time to amend or vacate an order of attachment. The granting of said motion shall relate only to current and identified wages and recovery in post-judgment process shall be limited to the amount of the judgment plus actual costs expended and post-judgment statutory interest. If, after the time set for the hearing, the motion is granted, then a writ of attachment may be served upon the employer, along with a complete copy of a notice to an employer (substantially as in the form as set forth in the appendix). A writ of attachment so issued shall expire without prejudice unless served upon the employer within forty-five (45) days of its issuance, and no subsequent writ of attachment shall be issued in the same action without notice to the defendant and an opportunity for a hearing as provided herein.

The notice to the defendant can be served by mail.

The notice and the writ to the employer must be served by a constable

There are limitations on garnishment, as set forth in *R.I. Gen Laws § 10-15-8:*

**§ 10-5-8 Garnishment of wages restricted to amounts not exempt – Child support to have priority.** – (a) Any writ of attachment, served as a writ of garnishment for the attachment of the personal estate of the defendant in the hand and possession of any employer of the defendant, shall be effective to attach so much only of such personal estate consisting of the salary or wages due and payable to the defendant, or to become in the future due and payable to the defendant, as is in excess of the amount of the defendant's salary or wages exempt by law from attachment. And the garnishee, being the defendant's employer, shall be

required to make affidavit and shall be held liable for the defendant's personal estate consisting of the salary or wages due and payable to the defendant or to become in the future due and payable to the defendant only in respect of the excess amount exempt from attachment. Any writ of garnishment served under the provisions of this section shall state the judgment amount, and the employer shall withhold sums not exempt by law until the amount of withholding equals the amount of the judgment. The employer shall be entitled to the sum of five dollars (\$5.00), payable directly from the employee to the employer, for each writ of garnishment served upon the employer regarding any employee.

The federal limitation is \$100.50 for take-home amounts not greater than \$134.00. For amounts of take-home greater than \$134.00, the employer shall withhold 25%.

Once the notice and writ are served, the employer has to render an account in writing. *R.I. Gen Laws § 10-5-8 and 10-7-13 require it to be by affidavit, sworn under oath*). A copy must be sent to the court and to plaintiff's attorney. *R.I. Gen Laws § 10-17-3*. The first account must be filed within twenty (20) days. *R.I. Gen Laws § 10-17-4(a)*. Accounts will be made monthly until, the full amount has been collected, the defendant is no longer employed by the garnishee, or plaintiff has relieved garnishee from the burden. *R.I. Gen Laws § 10-17-4(b)*. The person who files the answer is subject to call and cross-examination. *R.I. Gen Laws § 1017-6(a)*. The witness is entitled to a fee of three dollars (\$3.00) and lawful mileage. *R.I. Gen Laws § 10-17-6(b)*.

The court can order the transfer of funds to plaintiff, this is called the charge to the garnishee. *R.I. Gen Laws § 10-17-7*. This cannot be done more than once in a three-month period. *R.I. Gen Laws § 10-17-7*.

## 9. EXEMPTION FROM ATTACHMENT

The following are exempt from attachment:

1. The necessary wearing apparel of a debtor or of his family, if he has a family.
2. The working tools of a debtor necessary in his usual occupation, not exceeding in value the sum of five hundred dollars (\$500), and the professional library of any professional man in actual practice.
3. The household furniture and family stores of a housekeeper in the whole, including beds and bedding, not exceeding in value the sum of one thousand dollars (\$1000).
4. The bibles, schoolbooks, and other books in use in the family, not exceeding in value the sum of three hundred dollars (\$300).
5. The debtor's interest in one (1) lot or right of burial, as the case may be, in any cemetery.
6. Wages due or accruing to any seaman.
7. Debts secured by bills of exchange or negotiable promissory notes.
8. (A). The entire salary or wages of any debtor due or payable from any director of social welfare or from any charitable corporation, or from any person or corporation engaged in the disbursement or administration of any public charitable fund or money, whenever such salaries or wages are to be

paid or supplied, directly or indirectly, from any fund or money appropriated or contributed for the relief or in aid of unemployment, and the debtor is the object of such relief or aid.

(B) The entire wages or salary of any debtor due or payable from any employer, where the debtor has been the object of relief from any state, federal, or municipal corporation or agency, for a period of one (1) year from and after the time when said debtor ceases to be the object of such relief.

(C) The salary or wages due or payable to any other debtor, not exceeding the sum of fifty dollars (\$50.00).

9. The salary and wages of the wife and of the minor children of any debtor.
10. Such other property, real, personal, or mixed, in possession or auctions as is or shall be exempted from attachment and execution, either permanently or temporarily, by general or special acts, charters or incorporation, or by the policy of the law. *R.I. Gen Laws § 9-26-4*

The omnibus clause, clause ten (10) makes it clear that other exceptions are recognized. For example:

1. The minimum amount necessary to hold membership in a consumer's co-operative, but not to exceed fifty dollars (\$50.00). *R.I. Gen Laws § 7-8-25.*
2. The assets of a delinquent insurer. *R.I. Gen Laws § 27-14-16.*
3. Worker's compensation benefits (unless the attachment is in favor of the Department of Employment Security or the Department of Human Services). *R.I. Gen Laws § 28-33-27*
4. Temporary disability benefits. *R.I. Gen Laws § 28-41-32.*
5. Pay for service in the militia. *R.I. Gen Laws § 30-7-9.*
6. The property of the redevelopment and housing authority.
7. Police and fire pensions. *R.I. Gen Laws § 42-6-5.*

## **B. SUPPLEMENTARY PROCEEDINGS**

### **1. CITATION**

#### **DEFINITION**

Citation. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. --- BLACK'S LAW DICTIONARY, 221 (5<sup>th</sup> ed. 1979).

If an execution has been unsatisfied, and there were no assets to seize, the plaintiff can proceed by way of supplementary proceedings. Upon application by a judgment creditor (whose judgment is unsatisfied in whole or in part), a clerk or a judge will issue a citation to the judgment creditor to appear at a certain time before the court to show cause why an examination into his circumstances should not be made and a decree entered ordering payments on an installment basis. *R.I. Gen Laws § 9-28-3.*

### **2. SERVICE OF THE CITATION**

A citation is served by a constable by delivering a copy to the debtor or by leaving a copy at the debtor's last and usual place of abode with some person living there at least six (6) days

before the return day. *Id.* If the debtor fails to appear, then a body attachment may be issued. *R.I. Gen Laws § 9-28-4*

### 3. CITATION TO SHOW CAUSE FOR NONCOMPLIANCE

If the defendant appears for the hearing and an installment payment schedule is ordered, but it is not met, the judgment creditor may bring the defendant in again to determine if he should be deemed in contempt. The procedure is another kind of citation, *a citation to show just cause for noncompliance with court decree*, *R.I. Gen Laws § 9-28-6*.

### 4. SERVICE OF THE CITATION TO SHOW CAUSE

There is no provision in *R.I. Gen Laws § 9-28-6* concerning the proper manner of delivery. Therefore, the procedure for the service of other citations may be followed.

### 5. BODY ATTACHMENT

If the defendant does not appear pursuant to either form of citation, a body attachment may issue pursuant to *R.I. Gen Laws § 9-17-7*.

There are exemptions from a body attachment.

- a. Election day, the day before, the day after. *R.I. Gen Laws § 10-10-5*.
- b. Those in military service. *R.I. Gen Laws § 30-7-2*.
- c. Someone who has already been arrested and released on the same attachment. *R.I. Gen Laws § 9-25-22*.

### III. LANDLORD-TENANT

SPECIAL NOTE: ALL CONSTABLES SHOULD BE AWARE THAT IN THE LANDLORD-TENANT AREA OF THE LAW, IT IS CRITICAL THAT THE STATUTORY MANDATES BE FOLLOWED PRECISELY.

#### 1. RESIDENTIAL

Landlord-Tenant matters are specially placed within the jurisdiction of the District Court. *R.I. Gen Laws § 8-8-3 (a)(2)*. A comprehensive procedure for the handling of such cases has been set out in Chapter 19 of Title 34 of the General Laws. The procedure to be followed is different depending on the reason for the action.

##### 1) ACTIONS FOR NON-PAYMENT OF RENT

A special summons is mandated by law for such actions. At the time of the filing, the clerk must mail a copy of the summons, a copy of the complaint, and a blank answer to the defendant by first class mail. *R.I. Gen Laws § 34-18-10(a)*.

Additionally, the original and a copy of the summons and a copy of the complaint and a blank answer shall be delivered to a constable for the county in which the tenancy is located. Service shall be made by:

- a) Handing a copy to the defendant;
- b) Serving at the dwelling upon a person of suitable age and discretion;
- c) Posting

The original summons (with proof of service made thereupon) shall be returned to the court. Service must be made no less than five (5) days before the hearing. *R.I. Gen Laws § 34-18-10(a)*.

##### 2) ACTIONS FOR REASONS OTHER THAN NON-PAYMENT OF RENT

IF the action is one for a reason other than non-payment of rent, the service of the summons is made pursuant to Rule 4 of the District Court Rules of Civil Procedure. *R.I. Gen Laws § 34-18-10(b)(2)*.

##### 3) SUING AN OUT-OF-STATE LANDLORD

If the tenant is suing the landlord, and the landlord is:

- a) Not a resident of Rhode Island; or,
- b) A corporation not authorized to do business in this state.....

... then the landlord may be served in the following ways:

- a) By serving an agent for process if one has been designated. Such designation will be on file in the office of the Secretary of State.
- b) If no designation has been made, process may be made on the Secretary of State. However, such service is not effective until a copy of the process has

been mailed to the defendant at his last reasonable ascertainable address by certified or registered mail. *R.I. Gen Laws § 34-18-10(c)*.

#### 4) THE EXECUTION – (FORCIBLE EVICTION)

The execution in landlord-tenant cases is the eviction. *The following procedure must be followed with caution!* An execution may be issued (if no appeal is taken) on the sixth (6<sup>th</sup>) day following judgment. It must be executed with five (5) days. If not, the constable shall appear before the court on the next session to show cause why the execution has not been made. Reasonable costs incurred by the constable in carrying out the execution may be added to the execution by the clerk on approval of the court (upon presentment of evidence of such costs). *R.I. Gen Laws § 34-18-48*.

If it is necessary for the constable to remove the belongings of the tenant, the costs are charged to the tenant. *R.I. Gen Laws § 34-18-50* provides:

Whenever the personal property of any tenant is removed from the premises the tenant occupies by mandate of an execution from the court of competent jurisdiction, the tenant shall pay the entire amount of the cost of moving the personal property and any prepaid storage charges to the sheriff, constable, or other person who lawfully caused the personal property to be so moved before the personal property can be released to the tenant by the person, firm, partnership, company, association, or corporation having lawful possession of the property. Further, the sheriff, constable, or other person who lawfully caused the personal property to be so moved shall prepare and deliver a release in writing stating that the costs of moving and any prepaid storage charges have been paid in full and authorizing the release of the personal property to the tenant. This amount shall be paid to the landlord as reimbursement for the costs of removing the personal property.

#### 5) GEOGRAPHICAL LIMITATIONS ON SERVICE

R.I..Gen. Laws § 9-5-10 provides:

...provided, that writs of arrest and writs, summonses, and executions issued by a district court in actions for possession of tenements or estates let or held at will or by sufferance shall be directed to the sheriff or the sheriff 's deputies in the county in which the action shall be brought and service thereof shall be made by the sheriff or the sheriff 's deputies;

See Also R.I..Gen. Laws § 34-18-10:

...The plaintiff shall deliver the original summons and a copy thereof, together with a copy of the complaint and a blank answer form to the sheriff or any constable of the county in which the appropriate court is located.

See Also R.I.Gen. Laws § 34-18-48:

...Executions shall be issued only to the sheriff or constable of the county where the premises are situated.

## 2. NON-RESIDENTIAL

### 6) NON-PAYMENT OF RENT

If the rent is in arrears, a landlord of non-residential premises may institute an action for trespass and ejectment in the division of the court where the premises are situated. *R.I. Gen Laws § 34-18.1-9(b)(1)*, Unless otherwise indicated, actions for non-payment of rent in non-residential cases follow the normal procedure for civil matters. *R.I. Gen Laws § 34-18.1-9(a)*. However,

For cause shown, the justice of the district may issue a special order providing for the method of service of process upon the defendant. *R.I. Gen Laws § 34-18.1-9(b)(2)*.

An answer must be filed with seven (7) days of service. *R.I. Gen Laws § 34-18.1-9(b)(3)*. The hearing is on the next day following the seventh day. *Id.*

Executions are issued to a constable of the county where the premises are situated. *R.I. Gen Laws § 34-18.1-9(b)(6)*. The manner dates of the execution must be performed within twenty (20) days. *Id.* Costs of the execution may be added to the execution by the clerk upon approval of the court upon presentation of evidence. *R.I. Gen Laws § 34-18.1-9(b)(7)*.

### 2). OTHER REASONS

There is no specific statutory procedure for eviction for reasons other than non-payment of rent.

#### IV. SMALL CLAIMS

Small claims is a type of civil procedure. As of this writing, the amount in controversy is limited to twenty five hundred dollars (\$2,500). See *R.I. Gen Laws § 10-16-1*.

For the most part, notice in small claims is given by certified mail. *R.I. Gen Laws § 10-16-5*. A refusal by the defendant of certified mail is valid service. See *Dist. Ct. Small Claims Proc. 5.01 (a)*.

If the small claims notice is unclaimed, the notice to the defendant is made by a process server (including a constable). See *Dist. Ct. R. Small Claims Proc. 5.01(b)*. Service is made by:

1. serving the defendant
2. by leaving the summons at the usual place of abode (with a person of suitable age and discretion), or
3. with an agent authorized by appointment or law to receive service.

## V. DOMESTIC ASSAULT

Rhode Island law provides a means by which a victim of domestic assault may obtain a restraining order against the attacker. *See Chapter 8.1 of Title 8 of the General Laws.* Service is required to be personally made by a sheriff without fee. *R.I. Gen Laws § 8-8.1-4.2(A).* A constable may also make service, and charge the usual fee for the service of a summons.

If the sheriff or constable is unable to make personal service despite diligent efforts, the court may order alternate service:

1. by certified mail to dwelling or place of employment,
2. by leaving copies at the dwelling with a person of suitable age and discretion, or
3. publication in a newspaper.

*R.I. Gen Laws § 8-8.1-4.2(D).*

## VI. SERVICE OF SUBPOENAS

### 1. INTRODUCTION

A subpoena is an order for a person to appear and give testimony at a trial, hearing or deposition. It may be issued by a clerk of the court, a notary public or other authorized officer. *D.C.R. 45 (a) & Dist. R. Crim. P. 17 (a)*. A subpoena may also command the addressee to produce books, documents, records or other tangible things. *D.C.R. 45 (b) & Dist. R. Crim. P. 17 (c)*. (Historically, this has been known as *subpoena duces tecum*).

### 2. SERVICE IN CIVIL CASES

While a subpoena may be served by any disinterested party, a constable will often be called upon to serve them. D.C.R. 45 (c) states as follows:

*Service.* A subpoena may be served by the sheriff, by his deputies, by a constable, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for on (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may be served at any place within the state.

### 3. SERVICE IN CRIMINAL CASES

*Service.* A subpoena may be served by the sheriff, by his deputies, by a constable or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for on (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered.

*Place of Service. IN RHODE ISLAND.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Rhode Island.

# APPENDIX: FORMS

## I. DISTRICT COURT

- a. Summons
- b. Summons to Third-Party Defendant
- c. Summons: Seven (7) day Trespass & Ejection Summons (eviction for nonpayment of rent)
- d. Summons: Nine (9) day Landlord-Tenant (eviction for non-payment of rent)
  - i. Complaint for Eviction of nonpayment of rent
  - ii. Five Day Demand Notice for Nonpayment of Rent
  - iii. Answer – Defendant/Tenant
- e. Summons: Twenty (20) day Landlord-Tenant (eviction for other than nonpayment of rent)
  - i. Complaint for eviction for reason other than nonpayment of rent
- f. Summons: Twenty (20) day Landlord-Tenant (not for eviction)
  - i. Complaint for Landlord-Tenant (not for use in evictions)
- g. Small Claims Notice of Suit
- h. Writ of Attachment
- i. Execution – Goods: Chattels & Real Estate (Levy)
- j. Execution & Citation in Supplementary Proceedings
- k. Execution, Trespass and Eviction Notice
- l. Writ of Body Attachment

## II. FAMILY COURT

- a. Summons: Complaint for Divorce
- b. Summons: Relief after Final Judgment; Other Relief
- c. Subpoena
- d. Writ of NE EXEAT

## III. PROBATE COURT

- a. Notice (Petition for Limited Guardianship/Guardianship)
- b. Subpoena

## IV. SUPERIOR COURT

- a. Summons
- b. Omnibus Calendar Assignment Form
- c. Summons to Third-Party Defendant
- d. Subpoena
- e. Execution – Goods, Chattels & Real Estate
- f. Citation
- g. Citation in Supplementary Proceedings
- h. Contempt Citation
- i. Writ of Body Attachment
- j. Rule 45