

## **RULE 69. EXECUTION**

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. No execution running against the body shall be issued unless, where the law expressly permits such execution, it is so ordered by the court after motion and hearing for good cause shown. In addition to the procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution, as provided by law, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person in the manner provided in these rules; provided that discovery may be obtained against the judgment debtor only in connection with a disclosure proceeding pursuant to 14 M.R.S.A. §§ 3120-3136 and only upon the order, entered on motion for good cause shown, of the District Court in the division in which such proceeding is pending.

### **Advisory Committee's Note September 23, 1971**

This amendment is made necessary by the enactment of 1971 Laws, ch. 408, which makes major changes in the procedure for obtaining satisfaction of a money judgment. That enactment adds a new Chapter 502 to Title 14 M.R.S.A., replacing the present disclosure proceedings of Title 14 with a hearing before a district judge. The Act also repeals provisions of 14 M.R.S.A. §§ 253, 254, 3251-3951, for arrest on execution by writ of capias, leaving only the provision of 14 M.R.S.A. § 3701, as amended, that “In any civil action, except where express provision is by law made to the contrary, an execution shall not run against the body of the judgment debtor.” Capias execution thus remains available in only a few situations where it is expressly authorized. See, e. g., 14 M.R.S.A. § 6852 (proceeding for fees by surveyor retained in real action); 14 M.R.S.A. § 7105 (proceeding against attorney for failure to pay over collection proceeds); 22 M.R.S.A. § 3452 (proceedings for nonsupport of relatives). In all other actions, a capias to bring in to the disclosure hearing and contempt proceedings are the only sanctions that the creditor has against the recalcitrant debtor.

The amendment not only makes the rule consistent with the new statutory procedure, but makes clear that, regardless of present statutory language, the court will permit capias executions even where statutorily authorized only upon a showing of good cause. In view of the availability of the disclosure procedure even in cases where capias may be had, proper occasions for use of the capias will be rare. Also a question of the constitutionality of the remaining statutory

provisions for arrest or *capias* may be raised in light of the 1971 repeal of the provision for release of the judgment debtor upon his taking the poor debtor's oath. 14 M.R.S.A. §§ 3702-3721, repealed by 1971 Laws, ch. 408, § 6.

Consistent with the purpose of the statute to focus all enforcement proceedings in the disclosure hearing before a District Court judge, the amended rule permits discovery against the judgment debtor only in connection with such a hearing and in the court where the hearing is pending. A showing of cause, as, for example, that the books of a corporate debtor are so complex as to require preliminary examination, is required for all forms of discovery against the judgment debtor.

**Advisory Committee's Note  
October 1, 1970**

Existing Rule 69 by its terms makes only depositions available in aid of execution on a judgment. The amendment makes clear that all the discovery devices are available.

**Explanation of Amendment  
(Dec. 1, 1959)**

The second sentence was believed necessary, in view of the single form of action, to avoid confusion as to use of *capias* executions.\*

**Reporter's Notes  
December 1, 1959**

This rule incorporates by reference the existing statutory procedure for execution and levy. It provides, however, that in supplementary proceedings any person, including the judgment debtor, may be examined in the manner provided in these rules for taking depositions.

---

\* See Field, McKusick & Wroth, *Maine Civil Practice* at § 69.1 (2d ed. 1970).