

CIVIL COURT OF THE CITY OF NEW YORK

CHIEF CLERK'S MEMORANDUM

Subject: Procedure to Determine Adverse Claims
CPLR§ 5239

Class: CCM-179
Category: GP10, LT10 & SC10
Eff. Date: April 21, 2009

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BACKGROUND

Recently there has been some confusion and inconsistent practice in how we proceed when a person comes into court to release a restraint on a bank account in which he/she is a joint account holder but not a party to the action. CPLR§ 5239 sets forth the procedure to determine adverse claims. A special proceeding may be commenced in Civil Court by any interested party against the judgment creditor or other person(s) with whom a dispute exists to determine rights in the property. To clarify the procedure and ensure consistent practices citywide we are establishing the following procedure.

PROCEDURE

When a non-party joint account holder requests information on how his/her bank account can be released from a restraint, the clerk will advise the person that he/she may commence a special proceeding in the Civil Part to determine his/her rights to the property. The special proceeding may be commenced only prior to the time that the money in the joint bank account has been applied to the satisfaction of the judgment. This procedure is available for restraints based on judgments issued in Civil, Landlord and Tenant and Small Claims actions.

When the clerk is preparing the papers for a self represented user, the clerk is to use the order to show cause and petition forms to commence the special proceeding. Please see the newly created Verified Petition form, CIV-GP-126, attached.

4/21/09

Date

/s/

Jack Baer
Chief Clerk