

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 91-96

November 5, 1991

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: William G. Stack, Deputy Associate General Counsel

SUBJECT: Registration of Backpay Judgments
Under 28 U.S.C. 1963

We advised you in OM 91-66 dated August 12, 1991 of a change in the U.S. Code that allows "foreign" court judgments to be immediately registered. The purpose of this memorandum is to encourage routine registration of backpay judgments whenever the Region doubts a respondent's willingness or ability to comply fully.

1. 28 U.S.C. 1963 provides that a "judgment in an action for the recovery of money . . . entered in any district court . . . may be registered by filing a certified copy of such judgment in any other district . . . when the judgment has become final by appeal or expiration of the time for appeal" As you know, the Board utilizes this provision to register court of appeals judgments enforcing Board orders that require the payment of a fixed or "liquidated" amount of backpay. See CHM 10509.6(c)1., 10510.8 and 10643.3(c).

There are three occasions on which it is necessary or advantageous for the Agency to register a judgment under 28 U.S.C. 1963. First are cases in which a respondent refuses to comply promptly with a backpay judgment and a decision is made to levy on assets belonging to respondent. Before a writ of execution can be obtained under Rule 69, F.R.C.P., the judgment must be registered in the district where the assets are located. Second are cases in which the Region knows of assets belonging to respondent, but rather than levy execution immediately, a decision is made to encumber the property with a judgment lien. Registration of the judgment in the local district may be necessary to perfect a judgment lien. See CHM 10643.3. Third are cases in which the Board needs to engage in discovery "in aid of the judgment" (see Rule 69)--for example, to determine the existence or location of assets, to discover possible fraudulent conveyances of assets, or to uncover evidence that would warrant piercing the corporate veil or establish that another entity is derivatively liable for backpay. Judgment creditors are entitled to engage in such discovery as a matter of right under Rule 69; however, a district court (other than the one that entered the judgment) does not have jurisdiction of the case, for Rule 69 purposes, until the judgment has been registered. See CHM 10509.6(c) and fn. 6.

2. Because of the requirement that a judgment be final by appeal or expiration of the appeal time, we have not been able to routinely register judgments entered in contested backpay cases until after the expiration of the 90-day certiorari period or the denial of a petition for certiorari. Effective May 29, 1991, however, Congress amended 28 U.S.C. 1963 to provide that a money judgment "entered in favor of the United States may be . . . registered any time after judgment is entered." Consequently, we are now free to register backpay judgments immediately after entry of judgment, in any case where registration would serve our compliance objectives.

3. Since registration can now be effected immediately and with minimal effort, judgments liquidating backpay (or other monetary obligations) should routinely be registered in the appropriate district court (or courts) whenever prompt compliance is not forthcoming. Immediate registration will definitely enhance our efforts to achieve compliance more quickly and efficiently under Rule 69, and may also facilitate the Region's efforts to perfect a judgment lien. 1/

If necessary to expedite registration, the Region should contact the Contempt Litigation Branch for assistance in obtaining certified copies of the judgment and for other materials or information that may be helpful in effecting registration. A determination can be made by the Region at a later date whether to recommend that contempt proceedings be brought in addition to (or possibly in lieu of) proceedings under Rule 69.

Questions about this memorandum can be addressed to your Assistant General Counsel or to the Contempt Litigation Branch.


W. G. S.

1/ CHM 10502.6 and 10643.3 provide that unless the respondent has made "prompt arrangements for the full satisfaction of its [backpay] liability . . . , the [backpay] judgment should, in the absence of circumstances convincing the Region that payment in full is assured, be recorded against the respondent's . . . [property] . . . in order to create a lien on that property." Because foreclosure proceedings against real property are time consuming and often raise difficult policy issues for the Board as creditor, the preferable course of action, at least in the initial period after entry of judgment, is to record a judgment lien against any real estate owned by respondents. On the other hand, only in unusual circumstances would the Region record a lien against personal property; in most jurisdictions judgment liens cannot be created against personal property, and even in states where it is permitted, the better course ordinarily is to initiate execution proceedings against personal property rather than simply record a judgment lien.