

A CITIZEN'S GUIDE: YOUR RIGHTS AFTER A SMALL CLAIMS JUDGMENT

AFTER SMALL CLAIMS JUDGMENT

This Guide explains the procedures for collecting on a Small Claims judgment.

Getting a judgment in a Small Claims case is just half the battle for a plaintiff.

Many people get judgments but then cannot collect anything from the defendant. Since getting paid is the plaintiff's goal, a plaintiff should pay careful attention to the collection procedures as outlined below, and this pamphlet also contains important information for defendants against whom a

judgment has been entered. This Guide also outlines what assets are exempt from collection. The collection procedures may result in additional costs. The Circuit Clerk keeps a record of the court costs paid. A defendant may be required to pay all court costs.

After a judgment is entered, the plaintiff may wish to send a letter to the defendant stating the amount of the judgment and the amount of the court costs. The costs are limited to the fees paid by the plaintiff to file the Small Claims Complaint and the cost of the service of the summons on the defendant by the Sheriff or private process server. (The costs do not include the plaintiff's lost time from work, phone expenses or the mileage for coming to court.) The plaintiff's letter should tell the defendant that Illinois law currently provides for 9% interest on all judgments. The interest starts from the date of the judgment. The defendant can be ordered to pay this interest too. The letter from the plaintiff to the defendant should also tell the defendant that if payments are not voluntarily made on the judgment, the plaintiff can pursue citation proceedings and wage garnishment. There are three different statutory proceedings which the plaintiff (Judgment Creditor) may use to try to collect his/her judgment. They are: Citations, Wage Deduction and Garnishment. A defendant (debtor) has a right to a court hearing to claim exemptions.

If the defendant does not pay, or make arrangements to pay, the plaintiff can file a Citation to Discover Assets. A Citation requires the defendant to appear in court and provide information about his or her income and assets. To file a Citation, the plaintiff should have the defendant's current address and phone number, if possible. The Citation form is available in the Office of the Circuit Clerk.

The Citation is served by the Sheriff, a licensed private detective, or by certified or registered mail. It is best to have the Sheriff or a licensed private detective serve the Citation, in case the defendant does not accept certified or registered mail. The plaintiff pays a fee for serving the Citation before the hearing date, so that the court record will show that the citation was served. The Plaintiff can get this fee back from the served defendant as part of the court costs.

Provided by the
ILLINOIS STATE BAR ASSOCIATION
and the
CHAMPAIGN COUNTY BAR
ASSOCIATION

This guide is intended to provide you with the information you may need if you are trying to collect a judgment, or a creditor is trying to collect a judgment from you. If you need legal advice or help, you should consult a lawyer.

A Citation is a court order that requires the defendant to appear in court. If the defendant has been served, but does not appear in court, the plaintiff can ask the judge to issue a “body attachment.” A body attachment is a type of arrest warrant. The judge sets a bond if a body attachment is issued. Bonds are usually at least \$1,000. The defendant must pay the required bond, or obtain a recognizance bond, to be released after being arrested on a body attachment. The defendant can post 10% of the bond set by the Court (**Example \$1000 = \$100 to be posted**).



Usually, the defendant does appear in court. The parties or their lawyers may wish to speak with one another before the hearing to see if they can agree on a payment arrangement. If a payment agreement is made, explain that agreement to the judge when the case is called. If the judge approves the agreement, it will become a Payment Order, and the defendant will be required to make the agreed-upon payments.

If the plaintiff and defendant cannot agree on payments, a hearing will be held on the Citation. This hearing is to determine, or “discover,” how the defendant can pay the judgment. The defendant may be sworn as a witness, and questions can be asked to find out what funds or property the defendant has which can be used to pay the judgment. The following information might be covered in the citation proceedings:

- The defendant’s income and place of employment;
- The defendant’s assets, including house, real estate, bank accounts, cars, boats, stocks and bonds, or any other assets or property the plaintiff suspects the defendant has (including lawsuits the defendant may have pending against others); and
- The defendant’s necessary living expenses, including rent/mortgage, food, utilities, state and federal taxes.

Income that exceeds basic living expenses should be available to pay on the judgment. If the Citation hearing reveals sufficient income or assets for payment, the judge can order the defendant to make appropriate payments. Usually, Payment Orders require regular periodic payments that are made until the judgment is paid in full.

PETITION FOR RULE TO SHOW CAUSE

If the defendant is ordered to make payments by a judge and does not make those payments, the plaintiff can ask that the defendant be held in contempt of court. The plaintiff does this by filing a Petition requesting a Rule to Show Cause be directed to the defendant. That Petition should set out the terms of the Order the defendant did not obey. It should also state how the defendant did not obey that Order. A judge reviews the Petition, and if it is proper, issues a Rule to Show Cause that requires the defendant to appear in court to explain his/her failure to pay as ordered. The Rule can be served by mail by the Clerk who will charge a \$2 fee at the time the Petition is filed. The Rule can also be served by the Sheriff or a licensed private detective.

At the hearing on the Rule to Show Cause, a defendant has a chance to explain why he did not pay, Loss of job, or reduction in income, may be a defense. The judge decides whether the defendant had the financial ability to make the required payments, and if the defendant

willfully failed to make those payments. If the defendant had the ability to pay and willfully failed to pay, the judge can hold the defendant in contempt of court. A defendant who is held in contempt of court can be, among other things, ordered to look for work, or can be sent to jail until proper payments are made.

If a defendant fails to appear for this Rule to Show Cause hearing and he/she has been properly served with notice of the hearing, a body attachment (warrant for arrest) can be issued for the defendant, and the defendant will be required to post 10% of the warrant amount (**Example:** A \$2,500 body attachment bond requires the defendant to actually post \$250.) The money posted on a warrant may or may not be applied to the prior judgment.

WAGE GARNISHMENT (DEDUCTION)

The plaintiff can seek to garnish up to 15% of the defendant's wages if the defendant is employed and earning at least \$231.75 per week as of October, 2001. Please note that the defendant's wages cannot be garnished unless he/she has take-home pay of at least \$231.75 per week. The plaintiff has the responsibility of preparing all forms necessary for a garnishment.

The plaintiff can get the following forms from the Circuit Clerk's Office:

- a) Wage Deduction Summons;
- b) Wage Deduction Notice;
- c) Affidavit for Wage Deduction Order;
- d) Wage Deduction Order;
- e) Certificate of Judgment Balance.

These forms are served on the defendant's employer by the sheriff or a licensed private detective. The Wage Garnishment Summons may also be sent by Certified or Registered Mail (Return Receipt Requested). For enforcing a Wage Garnishment, the employer is entitled to a statutory fee of \$12.00 or 2% of the sums withheld, whichever is greater.

The Wage Garnishment Summons requires the employer to deduct part of the defendant's pay. The employer must fill out the interrogatories the employer receives. The plaintiff is responsible for filling out and sending out the Wage Garnishment Order once it is signed by the judge. The Wage Garnishment Order lasts until the judgment is paid. If there is more than one order, the employer pays them in the order that they were filed - first filed : first paid. The plaintiff must file a certification of the amount remaining on the judgment each quarter (every 3 months).

The lesser of the following income may be garnished as of October 2001: The amount of defendant's net pay in excess of \$231.75, or, 15% of defendant's gross weekly income.

JUDGMENT BASED ON DEFENDANT'S OPERATION OF MOTOR VEHICLE

If the judgment resulted from the defendant's operation of a motor vehicle, the plaintiff can inform the Illinois Secretary of State of the judgment after 30 days have elapsed. The Secretary of State determines whether to suspend or revoke the defendant's driving privileges until the judgment is paid. This procedure is a potent tool to force payment but can only be used

in a traffic accident situation. The Small Claims Clerk has a supply of “Record of Unsatisfied Judgment” forms from the Secretary of State for this purpose. The plaintiff must know the defendant’s full name and either the defendant’s date of birth or driver’s license number in order to complete the form. (This information is on the police report of the accident. The plaintiff can obtain a copy for a small fee. The plaintiff can also get this information at a citation hearing.) The plaintiff should read and complete the form carefully and send it to the Driver Responsibility Section of the Secretary Office, Springfield, Illinois. This law can be found at 625 ILCS 5/7-3 13.

EXEMPTIONS

The following assets and income are exempt. If the defendant’s only assets fall under these exemptions, the defendant cannot be ordered to pay. However, the defendant can voluntarily agree to make payments from exempt income, but cannot be required to agree to do so. (If a defendant voluntarily agrees to make payments from exempt income, the court will usually enforce that Agreement.)

The following income is not exempt from garnishment: the lesser amount of 15% of gross weekly pay or defendant’s weekly net pay income in excess of \$231.75 (The October 2001, minimum wage is \$5.15. $5.15 \times 45 = \$231.75$. Your wages can not be garnished unless your weekly net pay is more than \$231.75. The actual statutory language refers to 45 times the federal minimum wage, and if the minimum wage changes, the appropriate adjustment must be made to the \$231.75 figure.)

Other exempt property includes:

1. Social Security and SSI benefits;
2. Welfare benefits (including TANF, AABD, and General Assistance);
3. Certain life insurance proceeds;
4. Workers Compensation awards;
5. Unemployment Compensation awards;
6. Veterans benefits;
7. Circuit Breaker Property Tax Relief benefits;
8. Certain alimony, support, and maintenance payments;
9. Certain pension and retirement benefits;
10. Certain payments on account of bodily injury or wrongful death;
11. \$2,000 (equity value) of personal property, as chosen by you, which includes money and bank accounts;
12. \$1,200 (equity value) of any one motor vehicle;
13. \$7,500 of the equity value in your home called the Homestead Exemption; it must be the residence of the debtor. Married couples can combine their homestead exemption; the exemption does not apply if the residence is being sold for nonpayment of taxes; if it is a debt incurred to improve the homestead; or if the suit is a lien under the Condominium Property Act;
14. \$750 (equity interest) in debtor’s tools of the trade, professional books or implements;
15. Award to widow from decedent’s estate to child of decedent not living with surviving spouse;

16. All proceeds payable because of the death of an insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a spouse or a child, parent or other dependent of the insured;
17. Debtor's right to receive or property which is traceable to an award under the Illinois Crime Victims Compensation Act;
18. Debtor's right to receive or property that is traceable to payment on account of a wrongful death of an individual upon whom the debtor was a dependent;
19. Uniforms, arms and equipment of every member of the National Guard;
20. A partner's right in partnership property is not subject to attachment or execution, except where the claim is against the partnership.

CONCLUSION

Each of the above procedures require the ACCURATE completion of various forms which are available in the Circuit Clerk's Office. Court personnel (Circuit Clerk, Court Clerk, Court Security Officer or even the Judge) are PROHIBITED BY LAW from giving individuals any legal advice or suggestions as to what to do with your case. You have the right to consult with an attorney at any time during the proceedings.

Every effort has been made to have correct information in this pamphlet. However, this guide is not a substitute for legal advice. Neither the Champaign County Judiciary, the Champaign County Bar Association, the Champaign County Circuit Clerk nor the Illinois State Bar Association assume any liability arising out of the use of this Guide.