



OBTAINING & COLLECTING JUDGEMENTS IN DEBT COLLECTION ACTIONS:

REPRESENTING PLAINTIFFS & DEFENDANTS

QUIZ



What is the amount of consumer debt in the United States?

- \$150 Billion
- \$795.5 Billion
- \$1.5 Trillion
- 14.3 Trillion

ANSWER

14.3 Trillion according to CNBC



THE BASICS

- Lawsuits for money damages are classified by amount of damages sought by Plaintiff.
- Small Claims suits are for damages of up to \$10,000.
- Arbitration cases are suits for damages of more than \$10,000 and not more than \$50,000.
- Law cases are suits for damages in excess of \$50,000.
- The majority of collection suits are filed as Small Claims cases.

SMALL CLAIMS

- Small Claims suits are governed by **SCR 281-288** and provisions of the CCP that do not conflict with the SCR.
- **SCR 281** Sets the limit of damages for small claims at \$10,000.
- **SCR 282** Action is commenced by filing a short and simple complaint. If a claim is based on a written instrument, a copy of the instrument must be attached to the complaint. (The same rule applies to civil actions that are not small claims cases pursuant to 735 ILCS 5/2-606). Corporations who are Plaintiffs must be represented by an attorney. Corporations may defend a small claims suit through an officer, director, manager, or supervisor of the corporation.

SMALL CLAIMS CONTINUED

- **SCR 283** Provides for a day certain summons with an appearance date of not less than 14 or more than 40 days after issuance of the summons.
- **SCR 284** Provides for either personal service of the complaint and summons, or service by certified mail with restricted delivery with delivery to be made at least 3 days before the appearance date.
- **SCR 285** Jury demand by plaintiff must be made at the time the complaint is filed. Defendant must demand a jury by the initial appearance date.

SMALL CLAIMS CONTINUED

- **SCR 286** Defendant is not required to file an answer to a small claims complaint unless ordered by the court. Court may conduct an informal trial, relax the rules of evidence, and call and examine witnesses.
- **SCR 287** No discovery is allowed without leave of the court and no motions may be filed without leave of the court except for 2-619 Motion and Motion for SOJ.
- **SCR 288** If judgment is entered for Plaintiff, court can order Defendant to pay the judgment on a certain date or enter an installment payment order. Installment orders may not extend over a period of more than 3 years.



SERVICE OF COMPLAINT AND SUMMONS

- **Small Claims:** Day certain summons with a return date (initial appearance) of not less than 14 or more than 40 days after the clerk issues the summons. SCR 283
- **Arbitration Cases:** Day certain summons with a return date of not less than 21 and not more than 40 days after issuance of the summons. SCR 101(b).
- **Law Cases:** Thirty day summons. Defendant to answer or otherwise file his appearance within 30 days after being served. SCR 101 (d).

SERVICE OF SUMMONS

- **1. Personal service** by leaving a copy with the defendant personally. 735 ILCS 2-203(a)(1).
- **2. Substitute service** by leaving a copy at the Defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons and mailing a copy to the Defendant at his usual place of abode. 735 ILCS 5/203(a)(2).

SERVICE OF SUMMONS CONTINUED

- **3. Service by special order of the court** upon motion alleging that personal or substitute service on Defendant is not practical, supported by affidavit stating the nature and extent of the investigation made to determine the whereabouts of the Defendant and why personal or substitute service is impractical. 735 ILCS 5/202.1.
- A judgment entered without service of process or waiver of process is void. State Bank of Lake Zurich v. Thill, 113 Ill 2d 294. 308 (1986).

RETURN OF SERVICE-PERSONAL SERVICE

The return (certificate) of service filed by the process server must:

1. Identify the sex, race, and approximate age of the person served;
and
2. State the place where (street address if possible) and the date and time when the summons was left with defendant. 735 ILCS 5/203(b).

This requirement becomes an issue if the Defendant denies having been served.

RETURN OF SERVICE-SUBSTITUTE (ABODE) SERVICE



Where personal jurisdiction is based on substituted service, the return of service must state:

1. that a copy was left at the usual place of abode of the defendant with some person of the family of age 13 or upwards,
2. that such family member was informed of the contents of the summons, and
3. that the officer or other authorized person making service sent a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his usual place of abode. 735 ILCS 5/2-203(b).

RETURN OF SERVICE-SERVICE BY SPECIAL ORDER OF COURT

- This type of service is usually service by posting or by publication (Constructive Service). The order will specify the acceptable method of service and the return must show that service was made in conformity with the order.

PREREQUISITE FOR CONSTRUCTIVE SERVICE

- The court in Urban Partnership Bank v. Ragsdale, 2017 Il App (1st) 160773, in ruling on the sufficiency of an affidavit filed pursuant to 735 ILCS 5/2-203.1 for service by special order of the court stated that the affidavit must set forth facts that demonstrate a diligent inquiry as to the location of defendant.
- The affidavit must indicate the extent and methods of investigation plaintiff employed to locate defendant.

WAIVER OF OBJECTION TO SERVICE:

- If the defendant appears in court **and** submits to the court's jurisdiction, the defendant waives any objection to improper service of process, but appearance alone does not waive the right to challenge personal jurisdiction

OBJECTIONS TO JURISDICTION OVER THE PERSON 735 ILCS 5/2-301

- Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person...735 ILCS 5/2-301(a).

- The court in KSAC Corp. v. Recycle Free Inc., 364 Ill App 3rd 593 (2nd Dist. 2006) observed that this statute eliminated the need for a party to file a special and limited appearance in order to challenge personal jurisdiction over them. See also Cordenas Marketing Network, Inc. v. Pabon, 972 Ill App 3rd 680 (1st Dist. 2012).
- Defendants in Small Claims and Eviction cases are not required to file an answer to the complaint.

- Unless defendant indicated to the court that he/she was submitting to the court's jurisdiction over them, or participated in a motion hearing or trial, defendant could raise the issue of personal jurisdiction even after appearing at the initial appearance hearing.



DEFAULT JUDGMENTS

- If the defendant fails to appear at the initial appearance or subsequent pre-trial hearing or trial, a default judgment can be entered against them.
- **735 ILCS 5/1301(d)** Judgment by default may be entered for want of appearance, or for failure to plead, but the court may in either case, require proof of the allegations of the pleadings upon which relief is sought.
- The amount of the default judgment is limited to the amount sought in the complaint unless plaintiff notifies defendant of a hearing for judgment of an additional amount

DEFAULT JUDGMENTS CONTINUED

- **735 ILCS 5/2-604** In case of default, if relief is sought, whether by amendment, counterclaim, or otherwise, beyond that prayed for in the pleading to which the party is in default, notice shall be given to the defaulted party as provided by rule.
- **735 ILCS 5/2-1302(a). Notice of entry of default order.** Upon entry of an order of default, the attorney for the moving party shall immediately give notice thereof to each party who **has appeared**, against whom the order was entered, or such party's attorney of record.

DEFAULT JUDGMENTS: SETTING ASIDE AN ORDER FOR DEFAULT JUDGMENT

- **735 ILCS 5/2-1301(e)**. The court may in its discretion, before final order set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable.
- More than 30 days, but not more than 2 years after the entry of a default judgment, the defaulted party may petition to set aside the judgment pursuant to **735 ILCS 5/2-1401**.

COURT ANNEXED MANDATORY ARBITRATION

- Counties may choose to require arbitration (McLean and Ford Counties in 11th Circuit)



ARBITRATION CASES: SCR 286-295

- **SCR 86** Eligible actions are civil suits for money damages only, of more than \$10,000 and not more than \$50,000.
- **SCR 87** Arbitration hearings shall be heard before a panel of 3 arbitrators who must be attorneys or retired judges.
- **SCR 88** Hearing must be held within one year of the date the complaint was filed, with at least 60 days written notice to the parties (usually by arbitration order).
- **SCR 89** Discovery may be conducted pursuant to SCR 222. No discovery may be conducted after the arbitration hearing except upon leave of the court and good cause shown.

ARBITRATION CASES: SCR 286-295 CONTINUED

- **SCR 90** Establishes the rules for conducting an arbitration hearing and certain named documents are presumptively admissible if disclosed to opposing party at least 30 days before the hearing. (Rule 90 (c) documents).
- **SCR 91** If a party fails to appear the hearing will be conducted in that party's absence and the party failing to appear is barred from rejecting the award. If the arbitrators unanimously find that a party who did appear did not participate in good faith, that party can be barred from rejecting the arbitrators' award.

ARBITRATION CASES: SCR 286-295 CONTINUED

- **SCR 92** If neither party rejects the arbitrators' award within 30 days, the court will enter a judgment on the award.
- **SCR 93** Parties can reject the arbitrators' award within 30 days of the filing of the award upon paying the applicable rejection fee and filing a notice of rejection.
- **SCR 94 and 95** Provide required forms for the oath, award of arbitrators, notice of award, and notice of rejection of award.

ARBITRATION CASES: SCR 286-295 CONTINUED



- These forms are posted on the McLean County Circuit Clerk's website along with an 80-page booklet explaining the arbitration process.
- If the arbitrators' award is rejected, the case proceeds in court for resolution.

INITIAL APPEARANCE

- The return date and time on the day certain summons for small claims and arbitration cases is the Initial Appearance.



THE INITIAL APPEARANCE HAS SEVERAL POSSIBLE OUTCOMES

1. Defendant has not been served with process. An Alias summons will issue with a new return date to be served by plaintiff.
2. Defendant has been served and appears in court. The case could be settled and a judgment order entered; continued for a pre-trial hearing; or set for trial or motion hearing.
3. Defendant has been properly served and does not appear. A default judgment will be entered.

CREDIT CARDS

ONE OF THE MOST COMMON FORMS OF COLLECTION SUITS IS FOR CREDIT CARD DEBT.

- Consumer debt in the U.S. is about 14 trillion dollars.
- U.S. credit card debt is about 1 trillion dollars.
- Average credit card balances for married couples or adults is about \$8,400.
- Average Illinois credit balance is approximately \$6,400.



QUIZ



What is the average interest rate on credit cards in the U.S.?

- 7%
- 10.5%
- 17.83%
- 20.75%

ANSWER

17.83% according to CNBC



CREDIT CARDS CONTINUED

- CNBC reports that the average interest charged on credit cards is 17.73%.
- Three different bases for a cause of action to collect delinquent credit card debt have developed.
 - 1. Breach of written contract (written credit card agreement).
 - 2. Breach of unwritten contract (based on each use of the credit card).
 - 3. Account Stated.

CREDIT CARDS CONTINUED

CREDIT CARD SUIT AS A BREACH OF WRITTEN CONTRACT

- Plaintiffs attempting to collect delinquent credit card debt encounter the problem of producing a written credit card agreement.
- Credit card issuers frequently either did not have a written agreement with the cardholder, or did not keep it.
- Credit buyers rarely receive the underlying written evidence of a credit card agreement from the issuer of the card.

CREDIT CARDS CONTINUED

CREDIT CARD SUIT AS A BREACH OF WRITTEN CONTRACT

- Because **SCR 282** (small claims) and **735 ILCS 5/2-606** (arbitration and law cases) require that a written instrument upon which the claim is based must be attached to the Complaint, plaintiffs often cannot state a cause of action in their pleadings (or prove the existence of a written contract at trial).
- See Velocity Investments, LLC v. Alston, 397 Ill. App. 3d 296 (2nd Dist. 2010).

CREDIT CARDS CONTINUED

CREDIT CARD DEBT AS AN UNWRITTEN CONTRACT

- If no written contract, or documents that could form all the terms of a written contract, are attached to the Complaint, the claim is based on an unwritten contract.
- If plaintiff proceeds on an unwritten contract, the statute of limitations is 5 years (**735 ILCS 5/13-205**), not 10 years as it is for written contracts, **735 ILCS 5/13-206**.
- Each time the credit card is used by the holder, a new contract is formed based on the terms sent to the cardholder by the issuer prior to the holder's last use of the card. Garber v. Harris Trust & Savings Bank, 104 Ill. App. 3d 675 (1st Dist. 1982).
- The formation of a contract is predicated on the use of the credit card, not the issuance of the card.

CREDIT CARDS CONTINUED

CREDIT CARD DEBT AS AN UNWRITTEN CONTRACT



- The difficulty is that plaintiff must plead the terms of the unwritten contract and identify which terms apply to each separate contract. Several transactions may be based on the same terms. The plaintiff must allege and prove that the issuer sent those terms to the cardholder
- Plaintiff must also allege performance by plaintiff, breach of the agreement by defendant, and damages incurred by plaintiff.
- Because of the difficulty pleading and proving successive oral contracts, plaintiffs' attempting to collect credit card debt have begun using the cause of action of **account stated**.

CREDIT CARDS CONTINUED

ACCOUNT STATED AS A CAUSE OF ACTION TO COLLECT CREDIT CARD DEBT

- The terms of most written contracts are contained in one instrument, eg. loan agreement, lease, contract for goods or services.
- The proof of a credit card agreement may come in component parts: credit card application, terms and conditions sent to the holder at various times. Pleading and proving an unwritten credit card agreement can be equally difficult. New terms are accepted by using the card again after receiving the terms.
- Account stated is a cause of action based on a breach of contract in which the creditor does not have to plead or prove the contract or breach of the underlying contract.

CREDIT CARDS CONTINUED

ACCOUNT STATED AS A CAUSE OF ACTION TO COLLECT CREDIT CARD DEBT

- An account stated is an agreement between parties who have previously conducted monetary transactions that the account representing the transactions between them is true, and that the balance is accurate, together with a promise to pay such balance. Toth v. Mansell, 207 Ill. App. 3d 665 (1st Dist. 1990).
- When a party who receives a statement of account retains it without objection for longer than is reasonable, the account stated is established. The agreement to pay the amount indicated is established by the silence of the debtor.

CREDIT CARDS CONTINUED

ACCOUNT STATED AS A CAUSE OF ACTION TO COLLECT CREDIT CARD DEBT



- An account stated is “merely a final determination of the amount of an existing debt,” and an action for account stated is founded upon a promise to pay that debt, not the original promise to pay under the contract. Motive Parts Co. of America, Inc. v. Robinson, 53 Ill. App. 3d 941 (1st Dist. 1977).
- If established, account stated avoids litigation about performance of the plaintiff under the contract.
- An **account** is created when defendant makes the first purchase and the **account stated** is established by the first invoice sent to defendant after the purchase. Toth v. Mansell.

CREDIT CARDS CONTINUED

ACCOUNT STATED AS A CAUSE OF ACTION TO COLLECT CREDIT CARD DEBT

- If the defendant objects in a timely manner to the invoice, or statement of account, the account stated is not established and plaintiff will have to proceed on an action for breach of the original contract.
- The invoices have to be mailed to defendant's correct address. See Motive Parts Co. of America v. Robinson.
- Even if the account stated is established, defendant can defend on the grounds of fraud, mistake or that no liability exists. See Conley v. National House Furnishing Co. (1937) 292 Ill. App. 558.

CREDIT CARDS CONTINUED

ACCOUNT STATED AS A CAUSE OF ACTION TO COLLECT CREDIT CARD DEBT

- If defendant does not object to the amount billed, defendant can still contest the amount at trial. Establishment of an account stated merely shifts the burden of proof to the defendant. Account stated when established, is similar to a prima facie case.
- Because the cause of action of account stated dates back over two hundred years, there is a multitude of appellate opinions on this cause of action.

ILLINOIS SUPREME COURT RULE 280

CREDIT CARD OR DEBT BUYER COLLECTION ACTIONS

- Effective October 1, 2018, the Illinois Supreme Court created SCR 280-280.5
- These rules apply to claims to collect credit card debt or collection actions filed by credit buyers to collect consumer debt SCR 280.
- **SCR 280.1** Provides definitions for credit card or debt buyer collection actions.

ILLINOIS SUPREME COURT RULE 280

CREDIT CARD OR DEBT BUYER COLLECTION ACTIONS

- **SCR 280.2** Provides that the complaint in a credit card or debt buyer collection action shall:
 - Print the name of the person who signs the complaint under the signature line.
 - Attach a completed Credit Card or Debt Buyer Collection Affidavit on a form provided by the Ill. Sup. Ct.
 - Attach:
 - 1. The written contract giving rise to the debt that is the subject of the complaint; or
 - 2. If the case is based on an unwritten contract, a copy of a document provided to the consumer while the account was active demonstrating that the consumer debt was incurred by the consumer. For revolving credit accounts, a statement showing the charge-off balance is sufficient.
- (d) Include a statement that the suit is filed within a relevant statute of limitations.

- **SCR 280.3** Restricts continuances on the day of trial absent good cause unless the parties consent or the court is unable to proceed on the trial date.
- **SCR 280.4** If a plaintiff fails to comply with the requirements of SCR 280-280.5, the court may not enter a default judgment and the court on motion or on its own initiative, may dismiss the complaint.
- **SCR 280.5** Requires a plaintiff who asserts that they are the victim of identity theft to file two affidavits on prescribed forms within a specified time.



ASSIGNMENTS

- It is common for creditors to sell consumer and credit card debt to debt buyers. This gives the buyer of the debt standing to bring a claim based on an assignment from the creditor or previous debt buyer.
- When a plaintiff asserts standing to pursue the collection of a debt pursuant to assignment, the complaint must allege the assignment of the chose in action to plaintiff. **735 ILCS 5/2-403 (a)**.
- The plaintiff assignee does not have to attach the written assignment to the complaint pursuant to **735 ILCS 5/2-606**, because the claim is not based on the assignment.

ATTORNEYS FEES

- The prevailing party in civil litigation is not entitled to be awarded attorneys fees from the other party unless there is a statute or agreement that provides for the payment of one party's fees by the other.

- *Examples:*

Dissolution of Marriage Act

Consumer Fraud and Deceptive Practices Act

Stalking No Contact Order Act

SCR 137

SCR 219 (c)

FDCPA

- Fees provided for by statute, or by contract, must be reasonable. If there is a dispute between the parties as to the amount of fees due, the court will decide.

ATTORNEYS SUING FOR THEIR OWN FEES

- Submit an affidavit of fees
- Testify as to the amount and reasonableness
- Risks
 - A) Claims of malpractice
 - B) ARDC claims
 - C) Spending additional time to collect the fee
- Attorney fee liens

ABUSIVE COLLECTION PRACTICES

- The process of consumer debt collection has given rise to abusive debt collection practices, particularly by, but not exclusively, debt buyers and collection agencies.
- There are both state and federal statutes enacted to prevent abusive debt collection practices.



QUIZ

What is the most common complaint made to government agencies about debt collectors?

- Attempts to collect debt consumer does not owe
- Threat to contact others about the debt
- Abusive or threatening communications to consumer
- The consumer has better things to do with their money than pay debts



ANSWER



- Attempts to collect debt consumer does not owe

FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 A-P

- This is the best known statute to redress abusive debt collection practices.
- **15 U.S.C. § 1692**

Congressional findings and declaration of purpose.

a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

- The FDCPA applies to **debt collectors** who collect **consumer debt**. Those terms are defined by the statute.
- The Act regulates and prohibits certain practices by debt collectors in acquiring information and communicating with the debtor and others concerning the debt.
- The Act prohibits certain named practices such as making misleading statements to the debtor, harassment, unfair practices, and communications as defined by the statute

- The best known provision of the Act is the requirement that the debt collector, in all communications with the debtor, inform the debtor that the communication is an attempt to collect a debt and information obtained will be used for that purpose. 15 U.S.C. § 1692 d (11).
- The FDCPA provides for a civil cause of action for the debtor against the debt collector. Damages of up to \$1,000 plus costs and attorneys fees can be obtained. There is a 1 year statute of limitations on FDCPA claims.
- A suit under the FDCPA can be filed in either state or Federal court.

ILLINOIS COLLECTION AGENCY ACT 225 ILCS 425/1 ET. SEQ.



- This act prohibits the same abusive practices as the FDCPA.
- The Act is enforced by the Illinois Attorney General as a violation of the Consumer Fraud and Deceptive Practices Act.
- The Act provides for licensing of collection agencies.
- The Illinois Department of Financial and Professional Regulation licenses collection agencies. To determine if a collection agency is licensed to collect debt, citizens can go to the Professional License Look-up link on the Department's website.

COLLECTING JUDGMENTS

- There are 4 basic methods for collecting a judgment.
 1. Wage Deduction
 2. Installment Payment Order
 3. Non-Wage Garnishment
 4. Citation To Discover Assets

WAGE DEDUCTION - 735 ILCS 5/12-801 TO 819

- A creditor can collect a judgment entered against a debtor by obtaining a wage deduction order from the circuit court that entered the judgment.
- Under Illinois law, the amount of wages that are subject to withholding is the lesser of (1) 15% of the defendant's gross weekly wages, or (2) the amount by which disposable earnings for a week exceed 45 times the Federal minimum wage or the Illinois minimum wage, whichever is greater. **735 ILCS 5/12-803.**



- Currently, the Illinois minimum wage of \$9.25 per-hour is greater than the Federal minimum wage. The Illinois minimum wage increases to \$10 an hour on July 1, 2020.
- Applying the formula in Section 803, a creditor will not be able to garnish defendant's wages until defendant's disposable weekly income exceeds \$416.25, and \$450 as of July 1, 2020 and \$495 as of January 1, 2021.
- The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of an amount required by law to be withheld.

SPECIAL NOTE AS TO ORDER OF WITHHOLDING FOR CHILD SUPPORT OR SPOUSAL MAINTENANCE.

- Since an order of withholding of child support or spousal maintenance are earnings required by law to be withheld, the amount of the debtor's income subject to a wage deduction order is reduced by the amount of the child support or maintenance withheld.
- Liens for the support of a spouse or dependent children shall have priority over all other liens obtained under the wage garnishment statute. **735 ILCS 5/12-808 (c)**, including wage garnishment orders that were entered before the support order.

- The process of seeking a wage garnishment involves the preparation and serving of three (3) forms required by the wage garnishment statute and a Wage Deduction Order:

- **Wage Deduction Notice.**

Mailed to defendant by plaintiff, advises defendant, (1) that a wage deduction summons may issue; (2) the formula for how much wages can be garnished; (3) the exemptions defendant can claim.

Wage Deduction Affidavit.

- States that plaintiff believes the employer owes the defendant wages;
- Indicates defendant's last known address;
- Certificate of how much of the judgment is unpaid;
- Interrogatories to be completed by employer to determine how much of defendant's wages are subject to withholding;
- Filed with clerk to be served on employer.

Wage Deduction Summons.

- Issued by the Circuit Clerk;
- Served on employer by Sheriff, process server, person over 18 not a party, or by certified mail. **735 ILCS 5/12-805(c), SCR 105(b)**, along with Wage Deduction Notice. **735 ILCS 5/12-801.**

- **Wage Deduction Order.**
- Submitted to the court on or after the return date on summons (date employer must file Answers To Interrogatories).
- The wage deduction forms and order can be downloaded from the McLean Count Circuit Clerk's website.
- **Exempt Income:** Income that is exempt from wage garnishment is pension and retirement benefits and refunds.



Conditional Judgment

- If employer fails to answer and file the wage deduction interrogatories, a conditional judgment in the amount of the plaintiff's unsatisfied judgment can be entered against the employer.
- Summons then can be served on the employer to confirm the judgment.

State and Federal Employees

- Special rules apply. Government employers will honor the wage deduction order, but a conditional judgment cannot be enforced against a government employer who does not comply.

Revival of Judgment

- A wage deduction order will remain in effect even if the creditor does not revive the judgment within 7 years of its entry.

Discharge or suspension of employee prohibited.

- No employer may discharge or suspend any employee by reason of the fact that his or her earnings have been subjected to a deduction order for any one indebtedness. **735 ILCS 5/12-818.**

INSTALLMENT PAYMENT ORDER – SCR 288

- The court may order that the amount of a small claim judgment shall be paid to the prevailing party on a certain date or in specified installments, and may stay enforcement of judgment and other supplementary process during compliance with such order.
- The stay may be modified or vacated by the court, but the installment payments of small claims judgments shall not extend over a period in excess of three years. **SCR 281.**
- One advantage of obtaining an installment payment order is that it is enforceable by the court's contempt power.
- The existence of other withholding orders on defendant would not prevent the entry of an installment payment order for a different debt, but the court can consider other garnishments in setting the amount of the payment.



NON-WAGE GARNISHMENT - 735 ILCS 5/12-701 TO 719.

- The non-wage garnishment statute allows a judgment creditor to serve a garnishment summons on a party who is in possession of property that belongs to the judgment debtor, requiring the party to hold the property until order of the court.
- The process is similar to a wage garnishment in that the plaintiff must file a garnishment affidavit, summons and interrogatories to the garnishee along with a garnishment notice. The notice must be mailed to the defendant within 2 days of service of the summons on the garnishee.

- If the garnishee answers the interrogatories regarding property belonging to the debtor by the return date on the summons showing that the garnishee does have non-exempt property of defendant, the plaintiff can seek an order for turn over of the property to the plaintiff.
- If the garnishee fails to answer and file the interrogatories, a conditional judgment can be entered against the garnishee. **735 ILCS 5/12-706.**
- Under the Illinois exemption statute, the defendant can claim a certain amount of property as exempt from garnishment or levy. Defendant is given notice of possible exemptions to claim in the Garnishment Notice. See **735 ILCS 5/12-705** and **735 ILCS 5/12-1001.**
- The only funds or property that may be garnished are those in possession of the garnishee at the time garnishee was served with the garnishment summons.

CITATION TO DISCOVER ASSETS (SUPPLEMENTARY PROCEEDINGS) 735 ILCS 5/12-1402 AND SCR 277.

- A Citation To Discover Assets is the most effective and most often used legal process for collecting a judgment.
- A citation can be served on the defendant and on third parties and employers.
- The citation creates a continuing lien on the party served to retain property belonging to the defendant.
- The statute authorizing the service of Citations To Discover Assets refers to this process as Supplementary Proceedings. **735 ILCS 5/12-1402.**



A CITATION HAS SEVERAL PURPOSES:

- 1. To be used like a discovery deposition to inquire of the debtor or third parties as to non-exempt property of the debtor.
- 2. To create a lien on debtor's property whether in debtor's or a third party's possession.
- 3. The lien is continuing for 6 months from respondent's appearance on the citation.
SCR 277(f)
- 4. The court can order the turnover of debtor's property to the plaintiff subject to the Illinois exemption statute.

- Subsequent citations can issue only upon leave of court on a showing by affidavit that the party to be served with the citation has new or additional assets of the defendant. **SCR 277(a)**.
- The citation process requires the filing of a Citation Notice and a Citation To Discover Assets and Income And Asset Form (defendant only) to be served on the defendant or third party.
- These forms are available on the *McLean County Circuit Clerk's* website.
- The party served with the citation is required to appear in court on the date and time stated in the citation to be examined by the judgment creditor.

- Upon determination that the defendant or third party has non-exempt property belonging to defendant, that party can be ordered to turn over the property to the judgment creditor.
- The most common third party on whom creditors serve citations is the debtor's bank, savings and loan, or credit union.
- The non-exempt portion of a debtor's checking and savings accounts may be ordered to be turned over to the judgment creditor.
- At the hearing on the citation, the debtor can claim certain property, in certain amounts, to be exempt and not subject to turnover.

EXEMPTION OF PERSONAL PROPERTY

735 ILCS 5/12-1001 PERSONAL PROPERTY EXEMPT.

- The statute creates a lengthy list of personal property of the debtor that is exempt from attachment or payment order.
- Some of the more commonly asserted exemptions are:
 - A) The debtor's equity interest, not to exceed \$4,000 in any other property (known as the wild card exemption)
 - B) Up to \$2,400 in a motor vehicle
 - C) Tools of the trade up to \$1,500

- The list also includes the debtor's right in life insurance policies, social security, unemployment and public assistance; veteran's benefits, spousal maintenance and child support.
- Both creditors and debtors should review the statute to be aware of all exemptions created by statute.
- The most commonly asserted exemption claimed by debtors to protect tangible personal property and bank accounts is the wild card exemption of \$4,000.
- The wild card exemption is a one-time exemption, but can be used on several occasions and on different debts up to a total of \$4,000. See In Re Meyer, 616 F. 636 (2020 7th Cir.) and Golden Eagle Distributing Corporation v. Wise Equipment & Rentals, Inc., 2017 U.S. Dist. LEXIS 169796, 2017 WL 4574967. These are Federal cases interpreting the Illinois exemption statute.

REVIVAL OF JUDGMENTS 735 ILCS 5/2-1602.



In order to continue proceedings to collect a judgment, the plaintiff must revive the judgment every 7 years.



Judgments can be revived for up to 20 years. This gives the creditor up to 27 years to enforce the judgment. **735 ILCS 5/2-1602 (a), 735 ILCS 5/13-218** (statute of limitations).

CONSUMER FAIRNESS ACT

- The Illinois Consumer Fairness Act, signed by Governor Pritzker on July 19, 2019, and effective 1-1-20, amends the Revival of Judgment statute by adding para. (a-5) **735 ILCS 5/2-1602**.
- (a-5) A consumer debt judgment as defined in subsection (b) of Section 2-1303 (735 ILCS 5/2-1303) may be revived by filing a petition to revive the consumer debt judgment no later than 10 years after its entry and by serving the petition and entering a court order for revival as provided in this section **735 ILCS 5/2-1602 (a-5)**.



- This statute shortens the period in which the judgment creditor can collect a consumer debt judgment from 27 years to 17 years.
- A Petition to Revive Judgment must be filed and served on the judgment debtor. A hearing will be scheduled by the court on the petition.
- **Child support** judgments do not have to be revived. **735 ILCS 5/12-1602 (g).**

INTEREST ON JUDGMENTS - 735 ILCS 5/2-1303.

- Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, school or community college district, or other governmental entity.
- **Consumer Fairness Act**
- The interest on judgments statute was amended by the Consumer Fairness Act effective 1-1-20 to provide that **consumer debt judgments** of \$25,000 or less shall draw interest from the date of the judgment until satisfied at the rate of 5% per annum. **735 ILCS 5/2-1303 (b).**

COLLECTION RELATED STATUTES & SUPREME COURT RULES



- Wage Deductions **735 ILCS 5/12-801 to 819**
- Small Claims **SCR 281-289**
- Court Annexed Mandatory Arbitration **SCR 86-95**
- Garnishment **735 ILCS 5/12-701 to 719**
- Personal Property Exemptions **735 ILCS 5/12-1001**
- Revival Of Judgment **735 ILCS 5/2-1601, 5/13-218 & SCR 106-105**

COLLECTION RELATED STATUTES & SUPREME COURT RULES

- Collection Agency Act **225 ILCS 425/1 et. seq.**
- Supreme Court Rule 280
- Family Expense Statute **750 ILCS 65/15**
- Homestead Exemption **735 ILCS 5/12-901**

COLLECTION RELATED STATUTES & SUPREME COURT RULES

- Consumer Fairness Act effective 1-1-20, Amends **735 ILCS 5/2-1303** (Interest on Judgments) and **735 ILCS 5/1602 (a)** (Revival of Judgments)
- Fair Patient Billing Act **210 ILCS 88/ et. seq.**
- Supplementary Proceedings (**735 ILCS 5/12-1402**) & **SCR 277** Citation To Discover Assets

COLLECTION RELATED STATUTES & SUPREME COURT RULES

- Parental Responsibility Act 750 ILCS 115
- Payday Loan Reform Act 815 ILCS 122/1-4
- Consumer Fraud and Deceptive Practices Act 815 ILCS 505/
- Consumer Installment Loan Act 205 ILCS 670/1 et. seq.

