

**SMALL CLAIMS
AND
LAW MAGISTRATE
MANUAL

LASALLE COUNTY**

This manual has been published by Joseph M. Carey for the use in the LaSalle County Court System

PART ONE: INTRODUCTION

1. IN GENERAL

This booklet is designed to provide information regarding the legal process in small claims, law magistrate and forcible entry and detainer actions. **Note that all fees collected by the Circuit Clerk are subject to change.**

A small claims case is a suit for money damages of \$10,000.00 or less. A Small Claims case will have the letters "SC" included in the case number.

An action in forcible entry and detainer is a type of law magistrate case. This action is brought by a landlord against a tenant. The only issues before the Court in a forcible entry and detainer action are possession of the property, damages and past due rent and or damages. A Law Magistrate case will have the letters "LM" included in the case number. Another form of Law Magistrate case is a suit for money damages greater than \$10,000 but less than \$50,000. It will also have the letters "LM" included in the case number.

A person who sues or defends without employing or being represented by an attorney is called a pro se party. Pro se is a Latin term meaning "by yourself". Pro se parties are expected to know what the law requires and how to proceed in accordance with applicable Statutes and Court Rules and will be held to the same standards as an attorney. **The law prohibits court personnel, including the judge, from giving legal advice or counseling to any party.** If you have questions that you are unable to answer by reference to this booklet or research in the law library, it is recommended that you consult an attorney.

In Illinois, each party has the right to be represented by an attorney. Do not assume, merely because you filed the case Pro Se, that your opponent will not be represented by an attorney. Additionally, since Small Claims and Law Magistrate actions are civil in nature, the Court cannot appoint an attorney to represent parties who cannot afford attorneys. If a party believes an attorney is needed, the party should either retain an attorney or check with social service agencies to determine whether an attorney can be provided by them. The party who speaks only a foreign language (other than English) must provide his/her own interpreter.

2. THE LAWSUIT

The person initiating the lawsuit is called the plaintiff. The person who is sued is called the defendant. Generally, plaintiffs file lawsuits where they believe a person owes them money or is in possession of property belonging to them.

A lawsuit is brought for the purpose of getting a legal determination of whether the plaintiff is entitled to obtain money or property from the defendant. Many plaintiffs believe that the extent of the lawsuit is to appear in court and advise the Judge that they are entitled to money from the defendant, and that they will then walk away from the courthouse with the money in their pocket. If the plaintiff proves to the Judge that they money is owed, the plaintiff is given a judgment in that amount of money plus the court costs. A judgment means that the plaintiff must then enforce the legal right to collect money from the defendant by the use of legal collection methods.

The role of the Judge is to rule on the issues that are presented to the Court. The Judge cannot act as the attorney or protect the rights of either the plaintiff or the defendant. The plaintiff, in order to recover, must prove a case and the defendant may raise one or more defenses and may file a counterclaim against the plaintiff.

PART TWO: OBTAINING THE JUDGMENT

3. NAMING THE DEFENDANT

Before going to the Office of the Circuit Clerk to file the case, the plaintiff must determine who to sue along with an address, and in what capacity the defendant should be sued. The address of the defendant is also needed. This is not difficult where the plaintiff has a claim against an individual person; however, plaintiff's suing businesses should pay particular attention to this section.

A. Individuals

A plaintiff suing an individual person should merely set forth the individual's full name. For example: David D. Donalds. Do not use initials or marital designations such as, Mr. Donalds or Mrs. David Donalds as they are not sufficient to designate a defendant.

B. Two or more individuals

If the plaintiff has a cause of action arising out of the same set of facts against two or more individuals, all defendants should be named as parties in the same lawsuit. For example: David D. Donalds and Debbie Donalds.

C. Individuals with more than one name

Occasionally individuals are known by more than one name; in this case both of the names should be listed. This may be accomplished by using the abbreviations a/k/a (also known as) and f/k/a (formerly known as). For example: where David Donalds regularly uses the name Joe Jones, the plaintiff would name the defendant as "David Donalds a/k/a Joe Jones." Where Debbie Smith was unmarried at the time of the incident, but is now married to David Donalds, the plaintiff would name the defendant as "Debbie Donalds f/k/a Debbie Smith."

D. Business

A plaintiff wishing to sue a business should first determine whether the business is incorporated. This may be done by contacting the Business Services Division of the Secretary of State.

If the business is incorporated, the plaintiff would name the defendant as a corporation. If incorporated, the plaintiff would also need to serve the Registered Agent of the corporation. For example: Plaza Shop, Inc., a corporation.

Where the business is not incorporated, the plaintiff should name the individuals running the business as the defendants, but also include the name of the business. This may be accomplished by using the abbreviation d/b/a (doing business as). For example: Where David and Debbie Donalds are operating as an unincorporated business called Plaza Shop, the plaintiff should name the defendants as a partnership and not as a corporation as "David Donalds and Debbie Donalds d/b/a Plaza Shop." If the business is not incorporated and the names of the owners of the business are not apparent from the business cards, invoices, or other correspondence, the plaintiff may be able to learn the names of the owners by contacting the local Chamber of Commerce or County Clerk's Office for a list of individuals doing business in the county under an assumed name.

4. FILING THE LAWSUIT

A lawsuit is filed at the Office of the Circuit Clerk located at 119 W. Madison Street, Room 201, Ottawa, Illinois 61350. Filing a Small Claims lawsuit consists of three steps: payment of the filing fee, completing a complaint and, one or more summons depending on how many defendants are named. Filing of a Law Magistrate case may require the filing of additional documents. In the event that a plaintiff files a jury demand in a small claims case, the case will proceed to trial.

A. **The Filing Fee**

A filing fee must be paid to the Office of the Circuit Clerk. The amount of the fee depends on the type of case and the amount of the money claimed. Fees are subject to change without notice.

TYPE OF CASE	AMOUNT CLAIMED	FILING FEE
Small Claims *	\$1 – \$250	\$83.00
	\$250 – \$500	\$93.00
	\$500 – \$2,500	\$113.00
	\$2,500 – \$10,000	\$148.00
Law Magistrate **	\$10,000 - \$15,000	\$148.00
	\$15,000 - \$50,000	\$233.00
Law Magistrate Forcible Entry & Detainer Possess Only or Possession plus rent	\$1 - \$15,000	\$123.00
	over\$15,000	\$233.00

* In the event a plaintiff requests a jury trial in a Small Claims case there is an additional charge of:

12 man jury - \$ 25.00

6 man jury - \$ 12.50

** In the event a plaintiff request a jury trial in a Law Magistrate case there is an additional charge of:

\$10,000 - \$15,000 \$106.25

over \$15,000 \$212.50

B. **The Complaint**

The Small Claims complaint and in general the Forcible Entry and Detainer Complaint must briefly set forth the nature and amount of the plaintiff's claim. THE PLAINTIFF SHOULD INCLUDE DATES AND ANY OTHER RELEVANT INFORMATION. IF THE CLAIM IS BASED ON A WRITTEN CONTRACT, A PHOTOCOPY OF THE CONTRACT SHOULD BE ATTACHED TO EACH COPY OF THE COMPLAINT. IF THE ACTION IS IN FORCIBLE ENTRY AND DETAINER, PHOCOPIES OF THE LEASE AND ANY NOTICES USED TO TERMINATE TENANCY (5, 10, 30-day, etc. notices) SHOULD BE ATTACHED TO EACH COPY OF THE COMPLAINT. If the claim is based on an automobile accident, include date and place of accident and a short explanation of what happened.

C. **The Summons**

The summons is the notice which is served upon the defendant to provide notice of the time and place of the court appearance. For assistance on completion of the summons, please refer to Appendix D. An original summons and two copies should be completed for each defendant to be served. The summons will be issued and executed by the clerk and handed to the plaintiff. The clerk will also stamp the extra summons copies. The plaintiff should attach a copy of the complaint, including all supporting documents, to

each of the summons copies which are to be served on the defendants. The plaintiff is then responsible for having a summons copy properly served on the defendant.

5. SERVICE OF SUMMONS

A. Placement for Service

A summons may be served by the Sheriff of the county in which the defendant is to be served, by a licensed private detective, or a court appointed private process server. The summons may not be served by the plaintiff or the plaintiff's agent. It is the plaintiff's responsibility to take the summons to whomever is to be employed for the service of the summons. The Clerk will forward summons to the Sheriff at your request if the summons is to be served in LaSalle County. You may also take the summons to the LaSalle County Sheriff's Office which is located at 707 E. Etna Road, Ottawa, Illinois 61350.

If the plaintiff chooses to have a private process server serve the summons, a Motion for Special Process Server must be brought before the Court before the Private Process Server can serve the summons and an order appointing the server must be entered by the Court before service can be carried out. The motion and order is to be presented at the time the case is filed with the clerk. You must supply a self-addressed, stamped envelope in order for the Motion and Order to be returned to you after it has been signed by a Judge or you may pick it up in Room 201 of the Circuit Clerk's Office.

In a Small Claims case where the defendant is to be served within the State of Illinois, the plaintiff may also elect to have the Office of the Circuit Clerk serve the summons by certified mail. The plaintiff should, however, be aware that if the summons is refused or is signed by a person other than the named defendant, service has not been accomplished and the plaintiff will be required to serve the defendant with another summons. The fees for service by mailing can be obtained from the Office of the Circuit Clerk.

The plaintiff should serve all named defendants separately. For example, if the plaintiff wishes to sue a husband and wife, the plaintiff would file one lawsuit, but prepare a summons for the husband and a summons for the wife. The plaintiff would then instruct the sheriff or other process server to serve both the husband and the wife. In the case of a corporation, the plaintiff must serve the summons on the registered agent or any officer of the corporation. The plaintiff may find out the name and address of the registered agent or corporate officer by contacting the Business Services Division of the Secretary of State.

B. Proof of Service

Proof of service is the signed statement of the person who served the summons, which states that service was accomplished and sets forth the pertinent information of the service.

If the summons is served by the sheriff or a licensed private detective, the signed return on the reverse side of the summons is sufficient to constitute proof of service. The return must set forth the name of the person served, the date and time of service, the relationship to the defendant and date of mailing (if someone other than the named defendant was served), and the license number of the private detective (if a private detective is employed to serve the summons).

If the summons is served by a private process server, the private process server must complete a signed and notarized affidavit and attach it to the original of the summons. The affidavit must set forth the name of the person served, the time and date of the service, the physical description (age, race, height, weight, hair color, and eye color) of the person served, the relationship for the defendant and the date of the service (if someone other than he named defendant was served).

If the summons is served by certified mail by the Clerk of the Circuit Court, the certified mail return receipt, signed by the defendant, constitutes proof of service. The receipt must have a legible signature of the defendant to constitute proof of service.

If proper service has not been accomplished prior to the return date, the plaintiff must come to court on the date and time specified in the summons. The plaintiff should inform the Court that the defendant was not served and request that an alias summons be issued. The Court will assign the plaintiff a new return date. The plaintiff must return to the Office of the Circuit Clerk to complete an alias summons which sets forth the new return date. The Clerk will issue the alias summons upon payment of a fee of \$5.00. The plaintiff must then place the alias summons with whomever is to serve the alias summons (i.e., whether the sheriff, private detective or special process server), and appear in court on the next return date.

It is the plaintiff's responsibility to provide the Court with proof of service. A few days before the return date, the plaintiff should call the person employed to make sure whether the summons has been successfully served. If the summons has been successfully served, the plaintiff must also make sure the proof of service has been forwarded to the court file. If the server of the summons has not forwarded the proof of service to the court file, the plaintiff should pick up the proof of service from the server and bring it to court with the original or copy of the summons.

The Judge cannot hear the merits of the case until the Court has proof that the defendant has been properly served with summons.

6. THE RETURN DATE

The return date is the date of the court appearance set forth in the summons or alias summons. **THE PLAINTIFF MUST APPEAR ON THE RETURN DATE: IF THE PLAINTIFF DOES NOT APPEAR, THE CASE WILL BE DISMISSED.** If the plaintiff appears and the summons has not been properly served, the plaintiff may ask for leave to have an alias summons issued (see section on Service of Summons above). If the summons has been properly served, the first step in the hearing process will occur.

The hearing on the return date is merely an opportunity for the Court to determine whether a dispute between the parties exists. If the defendants appear and acknowledge liability, i.e., admit owing the money, etc., the Court will enter a judgment in favor of the plaintiff for the amount claimed plus court costs, if requested by the plaintiff. If the defendant, having been properly served, fails to appear and the plaintiff is able to prove the case to the Court by way of verified complaint, by affidavit, or by sworn testimony, a default judgment will enter in favor of the plaintiff in the amount of the damages proven, plus court costs. If the defendant appears on the return date and contests the claim, the Court will set the matter for trial on another date, for status.

Due to the high volume of cases in the SC/LM court, trials are not held on the return date. Witnesses should be requested or subpoenaed to appear only on the trial date; do not bring witnesses on the return date. Trials for money damages are generally set within one month from the return date. Trials of forcible entry and detainer actions where the defendant is still in possession of the premises are usually expedited and set within 7 to 14 days from the return date.

7. THE TRIAL

A. In General

The plaintiff must appear on the trial date. **IF THE PLAINTIFF FAILS TO APPEAR ON THE TRIAL DATE, THE CASE WILL BE DISMISSED.** If the defendant fails to appear on the trial date and the plaintiff is able to prove the case to the Court, a judgment will be entered in favor of the plaintiff in the amount of damages proved plus court costs.

At trial, the plaintiff will ordinarily be allowed to call witnesses and present evidence first to establish a right to a judgment. Once the plaintiff has finished, the defendant will be permitted to call witnesses and present evidence. A party is entitled to question or cross-examine the witnesses produced by the opposing party. The Court, however, has the power to limit or prevent questioning or cross-examination if it tends to harass the witnesses or unnecessarily delay the proceedings.

If either party believes witnesses will not appear voluntarily, either party has the right to subpoena witnesses to appear at trial. Subpoena forms are available at the Office of the Circuit Clerk. A subpoenaed witness must be paid in advance. Anyone over 18 years of age may serve the subpoena.

B. Required Proof at Trial

The plaintiff has the burden of proving his/her/its claim by a preponderance of the evidence. Essentially, this means that the plaintiff must present enough evidence to convince the Judge (or jury) that the allegations in the complaint are more probably true than not true, and that the amount claimed is the correct amount. If the plaintiff is successful, a Judgment will be entered in favor of the plaintiff in the amount of damages proved, plus court costs, if requested by the plaintiff.

The following should be carefully noted with regard to the use of certain types of evidence. Estimates of repair costs or estimates of the value of damaged property are not admissible at trial unless the person who made the estimate is in court to testify. The person who testifies must be an expert in that area. An itemized receipt marked "paid" and signed by the person who made the repairs is admissible. Police reports, letters or affidavits of witnesses, or other written statements prepared by persons who are not parties, and are not present are inadmissible. Written documents signed by one or both parties may be admissible. Exhibits such as photographs are permitted; however, the party offering such exhibits will ordinarily be required to establish their identity and authenticity. Parties may wish to consult with an attorney and/or the Illinois Rules of Evidence as to admission of evidence.

PART THREE: ENFORCING THE JUDGMENT

8. ENFORCING THE JUDGMENT FOR POSSESSION IN A FORCIBLE ENTRY AND DETAINER ACTION

A judgment in a forcible entry and detainer action usually has two parts, a judgment for possession of the premises and a money judgment. This section deals with the enforcement of the judgment for possession.

If the plaintiff prevails in a forcible entry and detainer action, the Judge will enter an order granting the plaintiff possession of the premises. If the Judge grants possession instanter, the plaintiff is entitled to immediate possession of the premises; however, as a practical matter it may take a few days to enforce the judgment because the plaintiff must have the sheriff enforce the order if the defendant has not voluntarily vacated the premises. If the Judge stays the execution of the judgment of possession until a certain date, the plaintiff is not entitled to possession of the premises until that date. If the defendant does not vacate the premises on or before the date specified in the court order, the plaintiff will need to contact the sheriff to schedule an eviction. The sheriff will not schedule an eviction unless the order of possession has been certified by the Office of the Circuit Clerk. The plaintiff may add the reasonable costs of the eviction to the amount of the judgment. The plaintiff may take the order immediately to the sheriff for eviction. The sheriff will not evict the tenant until the stay of execution expires.

A judgment for possession must be enforced within 90 days of the date of entry of judgment, unless the plaintiff brings a motion to extend the period of enforcement of the judgment which is granted by the Court. The procedures for the actual eviction will be provided by the Sheriff. If the plaintiff wishes to extend the period of enforcement of the judgment, the plaintiff must file a motion and notice of motion with the Circuit Clerk and send copies to the defendants (See section on Motions.) The notice of motion must contain the following language: "Your landlord, (insert name) obtained an eviction judgment against you on 9inset date), but the sheriff did not evict you within the 90 days the landlord has to evict after a judgment in court. On the date stated in this notice, your landlord will be asking for the court to allow the sheriff to evict you based on that judgment. You must attend the court hearing if you want the court to stop the landlord from having you evicted. To prevent the eviction, you must be able to prove that (1) the landlord and you made an agreement after the judgment (for instance, to pay up back rent or comply with the lease) and you have lived up to the agreement; or (2) the reason the landlord brought the original eviction case has been resolved or forgiven, and the eviction the landlord now wants the court to grant is based on a new or different reason; or (3) that you have another legal or equitable reason why the court should not grant the landlord's request for your eviction."

9. ENFORCING A MONEY JUDGMENT

If the plaintiff obtains a money judgment against the defendant in either a Small Claims or Law Magistrate case, the plaintiff is known as the Judgment Creditor. The defendant is then referred to as the Judgment Debtor. Commencing on the date of judgment and continuing until full payment of the judgment, the plaintiff is entitled to statutory interest of 9% per year on the outstanding amount of the judgment. The plaintiff may computer this interest and add it to the amount of the judgment.

The Judgment Creditor may collect the judgment in several ways. The following is a list of the most common: entry of an agreed installment order; wage deduction; garnishment of bank accounts; placement of a lien on real estate; requesting the court to turn over something of value; and conducting citation procedures.

A. Agreed Installment Orders

Often the Judgment Creditor and Judgment Debtor will find it to be in their mutual best interests to enter into an agreed installment order. The reason for this is that the other methods of collection involve supplementary legal proceedings requiring additional court

appearances and court costs. An agreed installment order is an agreement between the Judgment Creditor and Judgment Debtor as to how the judgment is to be paid. The agreement usually provides for the judgment to be paid in weekly, biweekly or monthly installments.

If the parties make an agreement at the time of the entry of judgment, the agreement may be incorporated into the judgment order. If the parties make an out of court agreement, they should draft an Agreed Installment Order. This agreement should be presented to the Court on a Motion for entry of an Agreed Installment Order (see Section on Motions).

As long as the Judgment Debtor complies with the terms of the agreement, no further court appearances will be required. If the Judgment Debtor defaults on the agreement, the Judgment Creditor may appear before the Court on a Motion for a Rule to Show Cause and/or Motion to Vacate the Agree Installment Order (see Section on Motions).

B. Wage Deductions and Non Wage Garnishments

1. Filing a Wage Deduction – If the Judgment Creditor knows the Judgment Debtor’s place of employment, the Judgment Creditor may file and serve documents which instruct the employer to deduct monies from the Judgment Debtor’s wages.

A Wage Deduction proceeding is filed at the Office of the Circuit Clerk. A fee of \$15.00 to \$60.00, based on the amount of the original judgment, must be paid to the Circuit Clerk. There are four forms which must be completed to file a Wage Deduction: the Wage Deduction Notice, the Affidavit For Wage Deduction Order, and the Wage Deduction Summons and the Wage Deduction Order.

- **The Wage Deduction Notice.** Four copies of the Wage Deduction Notice must be completed. One copy must be personally delivered or mailed to the Judgment Debtor at the last address known to the Judgment Creditor before the Wage Deduction is filed, one copy must be placed in the court file, one copy must be attached to the Wage Deduction Summons served on the employer, and the Judgment Creditor should retain one copy.

- **The Affidavit For Wage Deduction Order.** An original and three copies must be completed. The original must be placed in the court file, two copies must be attached to the Wage Deduction Summons served on the employer and the Judgment Creditor should retain one copy.

- **The Wage Deduction Summons.** This must be completed in triplicate. The original and one copy must be given to the Sheriff, detective or process server, and the Judgment Creditor should retain one copy. For assistance in completing the forms required for a Wage Deduction, please refer to Appendix E.

- **The Wage Deduction Order.** An original and three copies must be completed. One copy must be personally delivered or mailed to the Judgment Debtor at the last address known to the Judgment Creditor, one copy must be placed in the court file, one copy must be served on the employer, and the Judgment Creditor should retain one copy.

To assist the employer in the process, the Judgment Creditor should serve a copy of **Employer's Instruction For Deducting Employees' Wages** on the employer. This should be given to the Sheriff, detective or process server for service on the employer at the time that the Wage Deduction Summons is served. For Employers Instructions, please refer to Appendix E.

2. Filing a Non Wage Garnishment or 3rd Party Citation – If the Judgment Creditor knows where the Judgment Debtor has a checking, savings or other account, the Judgment Creditor may file and serve documents which instruct the financial institution to withhold monies from the Judgment Debtor's accounts. Bank accounts are garnished by filing a Non-Wage Garnishment at the Office of the Circuit Clerk, and then having the Garnishment Summons served on the financial institutions.

A Garnishment is filed at the Office of the Circuit Clerk. A fee of \$15.00 to \$60.00, based on the amount of the original judgment, must be paid to the Circuit Clerk. An Affidavit for Non-Wage Deduction and a Deduction Summons must be completed.

- **The Affidavit for Non-Wage Deduction.** This must be completed by the Judgment Creditor in triplicate. The original must be filed with the Office of the Circuit Clerk, one copy is to be attached to the Summons, and the Judgment Creditor should retain one copy.

- **Garnishment Summons.** The Garnishment Summons must be completed in triplicate. The white and yellow copies are to be given to the server, and the pink copy is retained by the Judgment Creditor.

- **Non-Wage Garnishment Notice.** The notice must be completed by the Judgment Creditor in triplicate. The original must be filed with the Office of the Circuit Clerk. In addition, within two business days after serving the Non-Wage Garnishment, the person serving said garnishment shall also mail a copy of the garnishment notice and the summons to the Judgment Debtor by first class mail to his/her/its last known address and within four (4) business days of the service upon the garnishee file with the Circuit Clerk a certificate of mailing.

3. Service and Answer to Interrogatories (for both wage deductions and garnishments). After having the Wage Deduction Summons or Garnishment Summons issued by the Circuit Clerk, the Judgment Creditor must take it to the Sheriff, private detective, or private process server to be served. It is the Judgment Creditor's responsibility to place the Summons for service and to make sure that proof of service is returned to the court file, i.e., filed with the LaSalle County Circuit Clerk. The procedures for serving the Non-Wage Garnishment Summons are similar to the service of the Wage Deduction Summons.

Do not appear in Court on the Return or Answer date of the Wage Deduction Summons. An employer answers the Wage Deduction Summons by preparing and filing with the Circuit Court an Answer to Wage Deduction Proceedings on the Return Date by indicating whether the Judgment Debtor is employed by the employer, and if employed, the amount of the Judgment Debtors' gross wages; whether the employer is honoring previously served Wage Deduction Orders, Child Support Orders, Maintenance Orders, etc. After the Return Date, the Judgment Creditor should receive a copy of the Interrogatories/Answers to Wage Deduction Proceedings from the employer. The Judgment Creditor must then have the Court enter a Wage Deduction Order. This order can be mailed to the Circuit Clerk's office or dropped off in Room 201 of the Downtown Courthouse for signature by a Judge. The signed

order will be returned to you only if a self-addressed stamped envelope is provided at the time the order is presented. You may also

pick up the signed order in Room 201. In order to enter a Wage Deduction Order, the Court must see the Wage Deduction Summons showing service on the employer and the Interrogatories/Answer to Wage Deduction Proceedings signed by the employer. The Judgment Creditor should send a copy of the Wage Deduction Order to the employer and the Judgment Debtor. In the event that the employer is served with the Wage Deduction Summons, but does not file the Interrogatories/Answer to Wage Deduction Proceedings, the Court will enter a conditional judgment against the employer or will continue the case to a new date. If a conditional judgment is entered, the Judgment Creditor can have the Court authorize the issuance of a Summons to Confirm Conditional Judgment which must be served on the employer. If the Judgment Debtor is not employed by the employer, an order will be entered dismissing the Wage Deduction Proceedings.

Do not appear in Court on the return date of the Garnishment Summons (Non Wage). The Garnishee answers the Garnishment Summons by preparing and filing Answers to Interrogatories by indicating whether the Garnishee has accounts or other property of the Judgment Debtor in its possession, the amount of the accounts; a description of the property, and whether the Garnishee is indebted to the Judgment Debtor. Within a week after the return date, the Judgment Creditor should receive a copy of the Answers to Interrogatories. If, after a week, the Answers to Interrogatories have not been received, the Judgment Creditor should contact the Office of the Circuit Clerk to determine whether the Garnishee has filed the Answers to Interrogatories.

Once the Judgment Creditor or Circuit Clerk has received the Answers to Interrogatories from the Garnishee, the Judgment Creditor should file a **Motion for a Turnover Order**. (See Section on Motions). The office of the Circuit Clerk will assign a date for the motion to be heard.

The Judgment Creditor must send a Notice of the Motion (as to the garnishment proceeding) to the Judgment Debtor and Garnishee. The Judgment Creditor must appear in Court on the Motion date and ask the Judge to sign a Turnover Order. In order to grant the Motion For a Turnover Order, the Court must see the Answers of Interrogatories from the Garnishee, the Notice of Motion, and the Motion. The Judgment Creditor must make sure these documents are either in the Court file or brought to Court. The Judgment Creditor should send a copy of the Turnover Order, which has been signed by the Judge, to the Garnishee. The Garnishee will then send a check in the amount of the funds withheld to the Judgment Creditor.

C. Placing a Lien on Realty

A Judgment Creditor may place a lien on any realty owned by the Judgment Debtor. The property is liened by obtaining a Memorandum of Judgment and recording it at the Recorder's Office of the County in which the real estate is located.

A Judgment Creditor may obtain a Memorandum of Judgment by completing the Memorandum of Judgment form (available at the Office of the Circuit Clerk), and leaving it with the Circuit Clerk in Room 201 for a judge's signature. The form will be returned to you only if you provide a self-addressed stamped envelope. For assistance in completing a Memorandum of Judgment form.

After the Memorandum of Judgment form has been signed by the Judge, the Judgment Creditor should take it to the Recorder's Office in the County where the real estate is located. If unsure in what county the real estate is located, check with the Tax Assessor. The LaSalle County Recorder's office is located at 707 E. Etna Road, Ottawa, Illinois 61350. The Recorder will charge a fee to record the judgment.

D. Requesting the Court to Order the Debtor to Turn Over Something of Value

If the Judgment Creditor is aware that the Judgment Debtor owns something of value which could be sold to pay off the judgment, the Judgment Creditor may request that the Court order the Judgment Debtor to turn it over to the Judgment Creditor or Sheriff for sale. The Judgment Creditor may schedule a hearing on whether something should be turned over at the end of the citation proceeding, or by bringing a Motion in front of the Court, on Notice to the Judgment Debtor (see Section on Motions).

The Judgment Creditor should be aware that there are some statutory exemptions that the Judgment Debtor or other persons having an interest in the property may claim. If these exemptions are claimed, the Court may refuse to order the Judgment Debtor to turn over the property for sale.

E. The Citation Procedure

If the Judgment Creditor is unaware of the Judgment Debtor's place of employment, the location of the Debtor's assets or how to collect the judgment, the Code of Civil Procedure, at 735 ILCS 5/2-1402, permits the Judgment Creditor to obtain the issuance of a Citation to Discover the Assets of the Debtor or a Third Party Citation directed at persons other than the Debtor. Both of these citations are prepared by the Judgment Creditor and then thereafter issued by the Clerk of the Circuit Court for the County in which the judgment was entered.

1. Citation to Discover Assets. If, following the judgment, the Judgment Creditor is unaware of the location of the Judgment Debtor's assets or his/her place of employment, the Judgment Creditor may file a Citation to Discover Assets. The Citation allows the Judgment Creditor to bring the Judgment Debtor back into court and to examine or ask questions about his/her employment, wages, bank accounts, any other assets owned by the Judgment Debtor and the expenses, if any, of the Judgment Debtor. Once this information has been provided by the Judgment Debtor under oath, the Judgment Creditor has several options, including, but not limited to: entering into an agreed money installment payment plan, requesting a hearing date for the Court to determine whether the Judgment Debtor shall turn over specific property of value to be applied towards the satisfaction of the judgment, continue the Citation so that additional or other documentation of assets may be provided by the Judgment Debtor, or dismiss the Citation and elect to garnish the Judgment Debtor's wages or bank account(s).

i) Filing the Citation. The forms for the Citation to Discover the Judgment Debtor's Assets are available through the Circuit Clerk's Office. Once the forms are completed, the Citation is filed with the Office of the Circuit Clerk. A fee of \$15.00 to \$60.00, based on the amount of the original judgment, must be paid to the Circuit Clerk. Citation to Discover Assets and a Citation Notice must be completed. Fees are subject to change.

ii) Service of the Citation. After the Circuit Clerk issues the Citation, it is the responsibility of the Judgment Creditor to have the Sheriff, licensed private

detective, or private process server, serve the Citation on the Judgment Debtor. If the Judgment Creditor wishes to employ a private process server who has previously been appointed to serve process in the same lawsuit, no additional order appointing the process server is required. The proof of service requirements are the same as those for the service of a summons. It is the Judgment Creditor's responsibility to provide the Court with proof of service.

iii) The Return Date of the Citation. Technically, the Judgment Creditor is only required to appear on the return date of the Citation if the Citation has been served; however, it is prudent to appear unless the Judgment Creditor is absolutely certain that the Judgment Debtor has not been served (as in the case of a return of the Citation by the server indicating that the Judgment Debtor could not be found). This is because the Court will dismiss the Citation if the Judgment Debtor is served with the Citation and appears on its return date and the Judgment Creditor does not. This will occur even if the Judgment Creditor was not aware that the Citation was served. If the Judgment Debtor has not been properly served, the Judgment Creditor may file an Alias Citation at the Office of the Circuit Clerk. If the Judgment Debtor has been properly served with the Citation and does not appear on the return date a Rule to Show Cause will issue (See Section on Rule to Show Cause). If the Judgment Debtor has been served with the Citation and appears on the return date, the Citation proceeding will go forward. The Judge will require the Judgment Debtor to swear or affirm to tell the truth, and the parties will be sent out into the hallway. The Judgment Creditor may conduct the Citation by viewing the documents brought to court by the Judgment Debtor pursuant to the Citation, and may ask the Judgment Debtor questions as to the Judgment Debtor's ability to satisfy the judgment. The Judgment Creditor may find it helpful to prepare a list of questions in advance and to bring paper and pen to the courthouse in order to write down the response of the Judgment Debtor. After the Judgment Creditor has conducted the Citation, the parties should return to the courtroom. The Judge will recall the case and the Judgment Creditor may inform the Court of the result of the Citation. The Judgment Creditor may request that the case be continued for further Citation proceedings or a hearing, dismiss the Citation, or present an Agreed Installment Order to the Court. The Judgment Creditor should be prepared to tell the Court which options are to be used to dispose of the Citation hearing.

2. Third Party Citations. If the Judgment Creditor is aware that some other person or entity may be indebted to or has knowledge of nonexempt assets of the Judgment Debtor, the Judgment Creditor may bring that third party into court pursuant to a Third Party Citation in order to examine and learn information from the third party concerning the location and whereabouts of the Judgment Debtor's assets which may thereafter be applied to satisfy the judgment entered against the debtor. The procedures for preparing, filing, serving and appearing on the Third Party Citation are very similar to those previously discussed concerning the examination of the individual Judgment Debtor pursuant to a Citation to Discover his/her Assets.

In addition to the procedures outlined for the Citation to Discover Assets, whenever a Third Party Citation is served upon a person or party other than the Judgment Debtor, the person serving the Third Party Citation shall send to the Judgment Debtor, within three (3) business days of the service upon the cited third party, a copy of the Third Party

Citation and a Third Party Citation Notice, which may be sent by regular first class mail to the Judgment Debtor's last known address.

F. The Rule to Show Cause

A Rule to Show Cause is a notice to a person, usually the Judgment Debtor, to appear in court and offer an explanation in Court. If the Court is not satisfied with the Judgment Debtor's failure to comply with court orders or to appear in court, the Judge may find that the Judgment Debtor is in Contempt of Court. If the Judgment Debtor is found to be in contempt of Court, the Court may issue a fine or sentence the Judgment Debtor to the LaSalle County Jail. Whether or not the Judgment Debtor is found to be in Contempt of Court, the Court may order payments to the Judgment Creditor.

A Rule to Show Cause is issued in two circumstances: on Motion of the Judgment Creditor where the Judgment Debtor fails to comply with an Installment Order approved by the Court or other court order, and where Judgment Debtor fails to appear on a properly served Citation to Discover Assets.

1. Petition for a Rule to Show Cause. Where a Judgment Debtor fails to comply with the terms of an installment order, or other order of the Court, the Judgment Creditor may bring a Petition for a Rule to Show Cause. The Petition must be filed with the Office of the Circuit Clerk, and an Order and a copy of the Petition must be sent to the Judgment Debtor (See Section on Motions).

On the date assigned for the Petition, the Judgment Creditor must appear and explain to the Judge the reasons why a Rule to Show Cause should be issued. If the Judgment Debtor appears, the Court may allow the Judgment Creditor to conduct a Citation or determine a which in which the judgment will be paid. The Court may also set the matter over for a hearing on whether the Judgment Debtor should be held in Contempt of Court. If the Judgment Debtor does not appear and the Court grants the Order for a Rule to Show Cause, the Judgment Creditor will be given a Rule to Show Cause form, signed by the Judge, which must be taken to the Circuit Clerk to have issued and to a server to have served.

2. Failure to Appear on a Citation. If the cited person fails to appear on a properly served Citation, a Rule to Show Cause will be signed by the Judge without any need for a motion.

After the Judge has signed the Rule to Show Cause, the Judgment Creditor must take the Rule to Show Cause to be served. It is the Judgment Creditor's responsibility to have the Rule to Show Cause personally served on the Judgment Debtor by the Sheriff, licensed private detective, or process server. Personally served means that the Rule to Show Cause must be served on the Judgment Debtor, it may not be served on a household member. If the Judgment Creditor wishes to employ a private process server who has previously been appointed to serve process in the same lawsuit, no additional order appointing the process server is required. The proof of service requirements are the same as those for the service of a summons.

The Judgment Creditor must appear on the return date of the Rule to Show Cause; if the Judgment Creditor does not appear, there is a risk that the Rule to Show Cause will be dismissed. If the Rule to Show Cause has not been served, an Alias or Re-issued Rule to

Show Cause will be signed by the Judge. The Judgment Creditor must have the Rule to Show Cause issued and served. If the Rule to Show Cause has been properly served and the Judgment Debtor fails to appear, a Body Attachment will issue. If the Rule to Show Cause is properly served and the Judgment Debtor appears in court, the Court will determine whether to allow the Judgment Creditor to conduct the Citation, order the Judgment Debtor to take some action to pay the judgment, hold the Judgment Debtor in Contempt of Court, or set the matter over a hearing on whether the Judgment Debtor should be held in Contempt of Court.

G. The Body Attachment

A Body Attachment is signed by the Judge when a person, usually the Judgment Debtor, fails to appear after having been served with a Rule to Show Cause. A Body Attachment directs the Sheriff to take the Judgment Debtor into custody, and hold the Judgment Debtor until a bond is posted. The Court will set the amount of bond.

After the Judge signs a Body Attachment, the Judgment Creditor must take it to the Office of the Circuit Clerk who will certify it. The Body Attachment is then forwarded to the Sheriff by the Clerk's office. Since the Body Attachment requires that the Judgment Debtor be taken into custody, it may only be served by the Sheriff.

The Judgment Creditor must appear on the return date of the Body Attachment. If the Judgment Debtor has not been served with the Body Attachment, an Alias Body Attachment will be signed by the Judge. The Judgment Debtor must then have the Alias Body Attachment certified by the Circuit Clerk, and placed with the Sheriff. If the Judgment Debtor has been served with the Body Attachment, the Judge will generally order the Circuit Clerk to turn over any and all bond money which was posted by the Judgment Debtor, to the Judgment Creditor. In addition, if the Judgment Debtor fails to appear after having been picked up by the Sheriff, a Body Attachment with a higher bond will issue. If the Judgment Debtor appears in court, in addition to turning over the bond money to the Judgment Creditor, the Court will determine whether to allow the Judgment Creditor to conduct the Citation, order the Judgment Debtor to take some action to pay the judgment, hold the Judgment Debtor in Contempt of Court, or set the matter over for a hearing on whether the Judgment Debtor should be held in Contempt of Court.

10. POST JUDGMENT INTEREST AND COURT COSTS

Pursuant to Illinois law, a Judgment Creditor is entitled to post judgment interest of 9% computed annually, from the date of the judgment, on all sums outstanding on the judgment. For example, if a judgment is rendered by the Court on February 1, 2002 in the amount of \$1,000.00, the Judgment Creditor may add 9% interest per year, or \$90.00 per year to the judgment. This works out to \$7.50 per month. Therefore, on July 1, 2002, the amount of the judgment would be \$1,045.00 (the original judgment plus \$45.00 interest). If on July 1, 2002, the Judgment Debtor pays \$545.00, interest would therefore only be computed on the balance of the judgment which would be \$500.00. The interest would then be reduced to \$45.00 per year, or \$3.75 per month.

In addition to interest, the Judgment Creditor is entitled to add the cost of the supplementary proceedings to the judgment. The costs which may be added to the judgment are fees paid to the Circuit Clerk for the issuance of documents, reasonable service fees paid to the Sheriff, licensed private detective, or private process server (skip tracing fees are not recoverable) for the service of those documents, and the reasonable costs of evicting the defendant in a forcible entry and detainer action.

The Judgment Creditor does not have to request the Court's permission to add the interest and costs to the judgment; however, the Judgment Creditor may find it prudent to keep records of how interest was computed, and receipts for fees paid to the Circuit Clerk and servers, the Sheriff, locksmiths and movers.

11. RELEASE AND SATISFACTION OF JUDGMENT

Where a Judgment Creditor has collected the entire amount of the judgment, costs, and interest, the law regards the judgment as having been satisfied. Once a judgment has been satisfied, the Judgment Creditor should give the Judgment Debtor a signed Release and Satisfaction of Judgment. Release and Satisfaction of Judgment forms are available at the Office of the Circuit Clerk. Once the Release and Satisfaction of Judgment has been signed by the Judgment Creditor, either party may send the Release and Satisfaction of Judgment to the Judge for signature. The Judge will not sign a Release and Satisfaction of Judgment unless it has been signed by the Judgment Creditor or the attorney for the Judgment Creditor. The Release and Satisfaction of Judgment should be sent to the Circuit Clerk, at the LaSalle County Courthouse, 119 W. Madison Street, Room 201, Ottawa, Illinois 61350, or brought into the Circuit Clerk's office. A copy of the filed Release and Satisfaction of Judgment will be sent to any party providing a self-addressed stamped envelope.

PART FOUR: MISCELLANEOUS INFORMATION

12. MOTIONS

Often a party to a lawsuit will need to ask the Judge for a ruling on an issue. Since the Judge is an impartial arbitrator, and since there are two sides to every story, the Judge cannot speak to one party unless the other parties are notified that the Judge is being asked to rule on the issue. Accordingly, a party wishing to ask the Judge to rule on an issue must follow an established procedure.

The procedure is called filing a Motion with Notice to the other party. Both the plaintiff and defendant may file Motions. A motion is filed at the Office of the Circuit Clerk. There are two forms which must be completed; a Motion form and a Notice of Motion form. A copy of both forms must be given to the Circuit Clerk, a copy of both forms should be kept by the party filing the Motion, and a copy of both forms must be mailed, first class mail, to all parties to the case (including Employers and Garnishees in the case of a Wage Deduction or Garnishment). Generally, there is no fee for filing a Motion. The person filing the Motion is however responsible for the postage required to mail copies to the parties. For assistance in completing the Motion forms, please refer to Appendix J.

The most common motions are as follows:

- Motion to Vacate a Judgment
- Motion to Dismiss a Case
- Motion to Dismiss a Party
- Motion to Continue a Court Date
- Motion to Vacate an Installment Order
- Motion for a Rule to Show Cause
- Motion for a Turn Over Order

This is not an exclusive list, a party may file a Motion any time it wishes to request that the Judge rule on an issue or wishes to request the Court's permission to do a given thing.

As with any action in the legal system, the party filing the Motion should make sure there is a legal and factual basis for filing the Motion. A party who files frivolous Motions may be subject to sanctions if the Court determines that the Motions were filed merely to delay proceedings, inconvenience other parties, or for other improper purposes.

When the Motion is filed, the Circuit Clerk will assign a date on which the Motion will be heard by the Court. The person filing the Motion must appear on the Motion date and be prepared to explain to the Judge why the Court should grant the Motion. If the other parties appear, they may tell the Judge why they think the Motion should or should not be granted.

13. FILING A JURY DEMAND

Unless a jury demand is filed, the case will be tried by a Judge. Either the plaintiff or defendant may file a jury demand. A plaintiff wishing to file a jury demand must do so at the time of filing the case and pay the required fee. A defendant wishing to file a jury demand must do so before the first scheduled court appearance in a Small Claims action, or before or at the time of filing the Answer in a Law Magistrate action. If a party does not file a jury demand at the appropriate time and later determines that a jury trial is desired, the party must request the permission of the Court to file the jury demand. In a Small Claims case a fee of \$12.50 must be paid for a 6 person jury, and a fee of \$25.00 must be paid for a 12 person jury. In a Law Magistrate case, a fee of \$106.25 must be paid for a 6 person jury (up to \$15,000 only) and a fee of \$212.50 must be paid for a 12 person jury.

14. COUNTERCLAIMS AND THIRD PARTY COMPLAINTS

A defendant may file a Counterclaim against a plaintiff or against a co-defendant. It should be noted, however, that a Counterclaim should arise out of the same set of facts as those in the complaint. For example, where Pat sues Dave for damages arising out of a car crash between Pat and Dave, it would be proper for Dave to file a Counterclaim against Pat if he believed she did damage to his car; however, it would not be appropriate for Dave to file a Counterclaim against Pat alleging that in an unrelated transaction, he lent Pat a television which she never returned. In the latter example, Dave would have to file a separate case.

The fee for filing a Counterclaim is the same as the filing fee for a new case. The original of the Counterclaim must be filed with the Office of the Circuit Clerk. The party filing the Counterclaim must either present a copy of the Counterclaim to every party in the case on the return date of the Summons or send a copy of the Counterclaim to every party in the case by first class mail.

A Third Party Complaint is filed by a defendant when it is believed that someone else is liable in whole or part to the plaintiff. For example, where Pat sues Dave for damages arising out of a car accident between Dave and Pat's cars, if Dave's friend Tom was driving Dave's car, Dave may wish to bring Tom into the lawsuit. In order to bring a third party into the lawsuit the defendant must file a Third Party Complaint and Summons. The defendant would follow the same procedure for filing the Complaint and having the third party defendant served as in a new case. The defendant must send a copy of the Third Party Complaint and Summons to the plaintiff, and have the third party defendant (Tom in the example above) served by the Sheriff, licensed private detective, or private process server. A defendant desiring to file a Third Party Complaint must file a Motion with the Court requesting leave to file the Third Party Complaint. Notice and a copy of the Motion must be mailed to the parties of record along with a copy of the Third Party Complaint.

15. APPEARING AND ANSWERING A COMPLAINT

An Appearance and Answer to a complaint may be filed by a defendant in a case where the amount claimed exceeds \$10,000. A DEFENDANT IN A SMALL CLAIMS OR FORCIBLE ENTRY AND

DETAINDER ACTION WHERE THE AMOUNT CLAIMED IS \$10,000 OR LESS IS NOT REQUIRED TO FILE AN APPEARANCE OR ANSWER. HOWEVER, THE DEFENDANT MUST PERSONALLY APPEAR IN COURT ON THE RETURN DATE.

A defendant in a case where an Appearance and Answer must be filed will be told by the Court how much time will be allowed to file the Appearance and Answer, usually the defendant is given 14 to 28 days from the return date. There are not pre-designed forms for an Answer. The Answer should set forth the case number, the names of the plaintiffs and defendants, and an admission or denial of each paragraph of the complaint. Additionally, the defendant must set forth any affirmative defenses that are planned to be asserted at trial. The defendant must file an Answer with the Circuit Clerk, and send a copy to each party or attorney for the party to the case. An Appearance form is available at the Office of the Circuit Clerk and may be filled out and filed at the time of filing the Answer. IT IS VERY IMPORTANT TO FILE THIS ANSWER AND A TIME APPEARANCE REQUIRED. FAILURE TO FILE AN ANSWER AND APPEARANCE COULD RESULT IN A DEFAULT JUDGMENT BEING TAKEN AGAINST THE DEFENDANT.

A defendant in a Law Magistrate case may wish to retain an attorney for representation or assistance in the preparation of an Answer. If a defendant chooses to draft the Answer, the defendant may find Nichols Civil Practice with Forms to be helpful. This form book is located in the LaSalle County Law Library, located in the Downtown Courthouse, 119 W. Madison Street, 3rd Floor, Ottawa, Illinois.

A fee of \$103.00 to \$133.00 (depending on the amount claimed in the case) must be paid by the defendant to the Circuit Clerk if an Answer and Appearance is filed.

16. CORPORATION

Illinois Supreme Court Rule 282(b) provides that a corporation may not appear as a plaintiff without an attorney but may appear as a defendant through an officer, director, manager or supervisor if the amount claimed does not exceed \$10,000. Corporate officers should consult with their lawyers regarding interpretation of this rule.

17. CONTACTING THE OFFICE OF THE CIRCUIT CLERK

On certain occasions, a party may find it necessary to contact the Office of the Circuit Clerk. For example, a plaintiff may wish to check whether the Clerk's Office has received a return of service on a Summons, or the Answers to Interrogatories on a Wage Deduction or Garnishment. The telephone number of the Office of the Circuit Clerk is 815-434-8671. Inquiries should be directed to the Circuit Clerk.

The Clerks who answer the telephones must answer the questions of many people each day. It is therefore important for you to ask your questions clearly and briefly. When calling the Office of the Circuit Clerk, it is very important to know the case number of the case on which you wish information, and to formulate the question you wish to ask prior to calling. For example, a plaintiff wishing to know whether the Summons on a case has been served should state "I would like to know whether the Summons has been returned served on case number 2000-SC-9999, Pat Peters v. Dave Donalds."

REMEMBER THE CLERKS WHO ANSWER THE TELEPHONE CAN GIVE INFORMATION ABOUT WHAT IS IN THE COURT FILE, HOWEVER, THEY CANNOT GIVE LEGAL ADVICE OR ASSIST IN PLANNING A CASE.

CONTINUANCES CAN ONLY BE GRANTED BY A JUDGE AND CANNOT BE GRANTED BY THE OFFICE OF THE CIRCUIT CLERK. PLEASE DO NOT TELEPHONE THE CIRCUIT CLERK, SHERIFF, JUDGE, COURT ASSISTANT, OR ANY OTHER COURT PERSONNEL TO REQUEST A CONTINUANCE.