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When You Owe Money

About These Materials

If you owe money to a creditor, the following articles will tell you what the creditor can do lawfully to collect from you. It will tell you some of the common methods and tactics which creditors use to collect debts. It will give you important information to deal with these methods. It will explain your rights with regard to collection agencies and will tell you how to respond to a collector's lawsuit. It will explain what a court judgment means and how to protect your money and property when a creditor tries to collect on a court judgment.

The following information is not meant to be legal advice or to replace the advice you should receive from an attorney. There are times when it would be wise to consult a lawyer and other times when it is essential to do so. Always remember, each individual case is unique. The information applies to general consumer situations and should help you to avoid many problems before they happen. If you have additional questions or want legal advice, follow this link to find the [Prairie State office](#) nearest you.

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A Few Definitions

The following terms are used throughout “When You Owe Money”

- **Consumer of Debtor** – the person who owes money to a creditor. Most frequently, the debt arises from a sale or from a loan.
- **Creditor** – the person or entity to whom you owe money. A creditor may be the seller or it may be a bank or other financial institution which holds your contract or account.
- **Default** – means that you have not kept up on your payments as they have come due.
- **Exemptions** – certain kinds and amounts of your property or money which the law says you can stop creditors from taking. Creditors cannot take exempt property.
- **Security Interest** – certain rights in your property which you give to a creditor. This happens when you put the property up as collateral to get a loan or to get credit for a purchase. Sometimes the property you used for collateral is the item you are borrowing money to buy, and sometimes it is other possessions you already own. By giving a security interest in an item of property, you are giving the creditor the right to repossess it if you default.
- **Plaintiff** - Person or company who sues.
- **Defendant** – Person who is sued.
- **Complaint** – Legal document that says who plaintiff is suing, a legal basis for getting relief, and what plaintiff wants from defendant.

- **Summons** – Document that tells you to come to court or to file an answer to the Complaint by a certain time.
 - **Judgment** - What the judge decides. If the judge decides you owe money, there will be a judgment against you.
 - **Citation to Discover Assets** – The legal document that tells the person who already has a judgment against them to come back to court and answer the creditor’s questions about that person’s income and property.
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Section 1 – Dealing with Several Common Creditors’ Tactics

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Dealing with Several Common Creditors’ Tactics

When it comes to paying bills, many people have to decide which debts to pay first. If the debt is far beyond your ability to pay, however, then you or your family must make choices about which debts to pay and which ones to leave unpaid for a period of time. If the period of time that you have not paid a particular creditor is long enough, it is likely that the creditor will consider stronger methods of collection. Some creditors will resort to certain tactics to collect debts owed to them. These tactics and suggestions for dealing with them are described below.

Three Ways Creditors Try to Push Consumers Around

A creditor may engage in several well-known tactics to try and push consumers around.

- First, a creditor may try to play on a consumer’s feelings of guilt in not paying, which is a form of intimidation. Or, the intimidation may rise to the level of harassment. For example, a creditor might repeatedly call you or call you at inconvenient times. Or, the creditor may threaten you in various ways or use abusive language. What the creditor is really trying to do is put pressure on the consumer so it will become so uncomfortable that the consumer will pay the abusive creditor ahead of others that are not pressing so hard.
- Second, in many cases, the creditor will give you a bad credit rating by reporting your default to a credit reporting agency. A bad credit rating may affect your ability to take out a loan or get credit cards, or even to rent an apartment. Creditors know that the best way for a consumer to clear up a bad credit rating is to pay the debts appearing on credit reports prepared by such agencies.
- Third, a creditor or a finance company may try to convince you to refinance the debt. Refinancing involves replacing one or more current debts with a new one. It is frequently offered as a way of dealing with a delinquent debt or a way to consolidate several debts into “one easy payment,” as some creditors like to say. This may at first seem like a good idea, but, as we will discuss later, it might not always be in your best interest. The new debt may have many hidden disadvantages.

Short of bankruptcy, which may or may not be a good alternative for you, here are some ideas for dealing with these tactics.

Dealing with Intimidation and Harassment

Special rules apply if you are being harassed by a collection agency. If that is the case you should refer to the section of this booklet on Collection Agencies. However, if the creditor is doing its own collection and uses intimidation and harassment tactics, you might consider using one of the following techniques:

- **Be straight with the creditor and try to work out a payment plan.** Call them up and explain the family situation and the other debts you have to pay. Make sure the creditor understands that you cannot afford to pay the whole bill but will pay them when you can. Try to work out a payment plan. Be polite and honest; do not promise what you cannot deliver and do not agree to make payments that you really cannot afford to make. It is much easier to work out payment plans with creditors before they hand the debt over to a collection agency.
- **Write the creditor a letter.** Your letter should request that the creditor stop harassing collection contacts, or stop all contacts whatsoever. In the letter, explain why you cannot pay right now, but you should also explain when you expect things to get better, if that is the case. Describe the harassment you have experienced from the creditor's employees and the distressing effect it has had on you and your family. Be sure to keep a copy of the letter. Collection agencies must honor requests that they stop contact with you, but creditors collecting their own debts do not have to honor such requests. Often creditors will honor such requests anyway.
- **Complain in writing to government agencies.** There are agencies responsible for enforcing laws that prohibit debt collection abuse. However, you should not expect them to investigate immediately unless the agency has received other complaints against the same collector. These agencies include:

Federal Trade Commission
Consumer Response Center
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
1-877-FTC-HELP (877-882-4357)

If you send to the collector a copy of the complaint letter you sent to one of these agencies, they are more likely to stop the harassing tactics and may be more willing to work out a payment plan with you.

- **File or threat suit.** If the harassment is really severe and damaging to you, you can hire a lawyer to threaten or bring suit against the creditor for abusive collection practices. Lawsuits should be considered where the collector's conduct is outrageous or extreme (such as threats to have you thrown in jail or deported or have your children taken away) and where the emotional and psychological injury is severe (such as lost sleep, nausea,

headaches, or where the consumer must seek medical treatment). If suit is brought, you might be able to collect not only your actual damages, but “punitive damages,” as well, meaning an amount to punish the collector and to stop them from doing such things again.

Dealing with Reports to Credit Reporting Agencies

Your credit record is kept by credit reporting agencies such as Equifax, TRW/Experian, and Transunion. If a creditor chooses to report your credit problems so they are on your credit record, there is nothing you can do to avoid it. That might mean that you will have to live with a bad credit rating for a while. For families in real financial trouble, bad credit reports are unavoidable. However, the law does give consumers several rights with regard to these credit reports:

- **The right to obtain certain information.** As a consumer, you have the right to be informed of the content of the files of the credit reporting agency and to see your credit report. In this way, you can find out what is written about you, who reported it, and who has received information about you.
- **The right to dispute information and have it corrected.** If you receive a copy of your credit report and see that it has incorrect information in it, you have the right to tell the agency that you believe the information is incorrect. The agency must look into it and consider any information that you provide. If they see that the report is wrong, they must change the report.
- **The right to have users of the reports told about the dispute.** Even if the agency refuses to remove or correct the disputed information because they believe that it is correct, you can file a statement of dispute which briefly explains your side of the story. The agency must then attach your statement to any report they give out. Also, you can require that they send it to anyone who received the report before you added your statement.

When It’s Good to Refinance and When It Isn’t

When you default on a debt, your creditor or perhaps a finance company might try to convince you to refinance it, or to combine several debts into one new, larger one. When you refinance a debt, you sign a new contract. It has different terms and conditions. And there are times when refinancing is a good idea. However, refinancing can be a disaster, and may just be a scam to get more money out of you or to steal your house or other property. Here are some factors to consider about refinancing.

Don’t convert an unsecured debt into a secured one. A “secured” debt is where the creditor takes a security interest in your home, car or other property as collateral for the loan. Secured debt is always a concern because the creditor can seize the property if you get behind on the loan. So, if your original loan is unsecured, watch out if the company offering refinancing wants security. For example, don’t turn credit card debt into a new debt that takes a second mortgage in your home, or that makes you put up your car as collateral.

Similarly, it is bad for the new loan to add new security that was not part of the original loan.

For example, don't turn a car loan into a second mortgage on your home.

Don't convert a low cost loan into a high cost loan. Finance companies are notorious for doing this (banks are better). On many refinanced loans, the interest rate will be higher and there may be additional or even hidden charges and fees. Request a "disclosure statement" in advance so you can walk away and shop around for another loan that may be better. Request a disclosure statement in advance so you can walk away and shop around for another loan that may be better. There are certain things to look for on the disclosure statement. These include the:

- Annual Percentage Rate (the interest rate);
- Finance Charge (the total interest payments over the life of the loan);
- Amount Financed (the amount of money coming to you or going to pay off your obligations).
- Always ask for an itemized breakdown of the Amount Financed, so you can see what amounts are really going to pay for insurance or various fees and charges. That money is not going towards paying off your loan.
- Always look at how long the loan is for and whether there is a balloon payment at the end. Decide whether you want to make fewer but larger monthly payments or a greater number of smaller monthly payments. Don't be fooled into an agreement which requires a substantially larger payment at the end of the loan which you may not be able to afford.
- Watch out for overpriced "extras." Things like credit life insurance or credit accident and health insurance rarely are worth the cost.
- Is there a penalty for prepaying the loan? Some contracts make you pay a lot of extra money as a penalty if you pay off a loan before the loan period is supposed to end. You may have to pay again if there is a prepayment penalty in the new contract and you pay it off early.
- Do you have a defense to the creditor's claim? Do not refinance if you have a valid legal reason for not paying the particular debt.

Section 2 – Creditors' Formal Methods of Collecting Debts

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Creditors' Formal Methods of Collecting Debts

Generally, a person who owes a debt cannot be put in jail for failing to pay it. No one goes to jail for owing a debt except in the rare circumstance where a court has directed payment and has found. However, there are different ways creditors legally can collect money from you when you do not pay a debt for a long period of time. They include:

Using Collection Agencies

A collection agency is a company or an individual (it could be an attorney) who regularly collects debts of others. A creditor which tries to collect its own debt (such as a hospital or

department store's own credit department) is not a collection agency. However, a hospital or any other creditor might hire a collection agency to collect a consumer's unpaid bill. The creditor usually allows the collection agency to keep as its fee a percentage of whatever the collection agency can get from the consumer. Since the collection agency's fee depends on how much it recovers for the creditor, it may be tempted to use harsh tactics with consumers to get them to pay a bill. (See the section of this booklet about [Collection Agencies](#)).

Lawsuits in Court for Money

If you have not paid a debt, there is always the possibility you might get sued. The first notice you will have that you are being sued in court may be when you receive two legal documents called a **Summons** and a **Complaint**. The Complaint is a document prepared by the creditor (the plaintiff) that tells you why you are being sued and how much money the plaintiff claims you (the defendant) owe. The Summons will direct you to appear in court at a particular date and time or will tell you how many days you have to file a written appearance with the clerk's office. If the creditor wins in court, a court order known as a Judgment will be entered against you.

Methods to Collect on Court Judgments

Once a creditor gets a Judgment against you, and you still do not pay, there are ways the creditor can use to enforce the judgment and get money from you. Those methods include:

- **a supplementary proceeding** in court, in which the creditor can find out how much money or property there is that could be used to pay the judgment amount and can seek a court order for that money. This proceeding starts when the creditor serves you or someone who owes you money or has your property with a document known as a "Citation to Discover Assets."
 - **a wage deduction proceeding** which is to force your employer to withhold part of your wages to pay off the debt.
 - **a garnishment proceeding**, which is to force the bank that holds the money in your account [or some other person who owes you money], to turn over that money to the creditor.
 - **a judgment lien or other enforcement against your real estate**, which could result in a forced sale of your real estate or make it difficult for you to sell it later.
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Repossession of Vehicles or Other Goods

When you buy a car on credit, the contract you sign likely will give the creditor the right to repossess your car if you fail to keep up your payments. This right is called a **security interest**. Your failure to keep up on payments is called a **default**. Although this type of arrangement is not as common with types of goods other than vehicles, it is possible that your contract for purchase may give a creditor a security interest in the goods and the right to repossess if you default.

Wage Assignments

Although these are no longer very common, some creditors may still require that consumers sign a paper called a **wage assignment** when they make a purchase. This paper gives the creditor the right, *without having to bring a lawsuit*, to request that your employer turn over a part of your wages if you fail to pay for that purchase. You can stop a wage assignment very easily by sending the creditor a letter in which you say you are revoking the wage assignment. Keep a copy of the letter. Wage assignments are not to be confused with **wage deductions**, which are discussed later in this booklet.

Other Remedies for Creditors to Recover Your Property

Instead of suing you for money, a creditor may decide to bring a lawsuit against you to recover an item or items of your property. Creditors may also seek enforcement of statutory liens such as labor or storage liens or mechanic's liens.

Section 3 – Collection Agencies

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Collection agencies have often used unfair and abusive measures to collect debts. For that reason, the federal and many state governments have passed strong laws to help consumers who are victimized by collection agencies. The federal Fair Debt Collection Practices Act and the Illinois Collection Agencies Act give you certain rights to stop the unlawful actions by collection agencies. These laws also allow you to sue collection agencies for damages if they engage in unfair practices against you. This part of the booklet tells you about your rights and what you should do if you are being harassed or abused by a collection agency. Remember that the definition of collection agency includes attorneys who regularly collect or attempt collect consumer debts for clients. It also includes businesses that operate to collect debts of other businesses.

What Collection Agencies *Cannot* Do

Prohibited Contacts with You, the Consumer

Unless you or a court has given permission, a collection agency cannot contact or communicate with you (or your spouse, parent or guardian) as follows:

- at unusual or inconvenient places or times (before 8:00 a.m. or after 9:00 p.m.);
- if they know that you are represented by a lawyer;
- at work, if you tell the agency or it has reason to know that your employer prohibits such calls;
- if you notify them in writing that you refuse to pay or that you want them to stop communication with you. (Note: if you write such a letter, the creditor can use other

methods to collect the debt, such as filing a lawsuit against you. Also, the collection agency can tell you what the creditor intends to do to collect).

Prohibited Contacts with Other Persons

Unless you or a court say it's okay, a collection agency cannot contact or communicate with anyone else (such as an employer or a neighbor) about you or your debt, as follows:

- the collector can contact others to locate where you are or to enforce a court judgment against you, but not for any other reason;
- a collector cannot tell anyone – including your employer - that you owe any debt;
- a collector cannot contact other persons without identifying him or herself, and, if requested, identifying his or her employer;
- a collector cannot send to any other person a postcard or use any language or symbol on an envelope that shows they are engaged in debt collection;
- a collector cannot contact another person more than once, unless requested to do so by that person or unless the collector reasonably believes what the person said earlier is wrong or incomplete and that the person now knows where you are located;
- a collector cannot contact anyone to try to find you after learning that you are represented by an attorney.

Prohibited Harassment or Abuse

A collection agency cannot harass or abuse you. Some examples harassment or abuse that are forbidden include the following:

- using or threatening to use violence or other criminal means to harm you or your reputation or property;
- using obscene, profane or abusive language;
- publishing a list of consumers who refuse to pay debts, or advertising your debt in any way;
- causing the phone to ring repeatedly or other annoying, abusive or harassing behavior over the telephone, or calling you without identifying him or herself.

Prohibited False or Misleading Statements

Collection agencies are forbidden to make false or misleading statements in any letter or other paper they send to you or in any conversation. Examples of statements which may be false or misleading include:

- saying that they are associated with the government in some way, or in any other way misrepresenting who they are. It is illegal to make their documents look like court papers or look like any other official documents in order to scare you;
- giving false or misleading information about the nature of your debt, or its amount, or its legal status. For example, they cannot tell you that they have a court judgment against

- you when they do not;
- telling you that you will owe the collection agency money for their collection services. “Service charges” or other such fees are illegal;
- stating or implying that any of their communications are from an attorney, when they are not;
- falsely stating that you can be arrested or put in jail. **You cannot be jailed for failing to pay a debt, unless you are found in contempt of court for willfully failing to pay when you are financially able to do so;**
- threatening to take any action that legally cannot be done or that is not intended to be done. For example, they cannot say that your property or wages can be taken or seized unless the seizure would be lawful and the creditor actually intends to do that;
- falsely stating or implying that you have committed a crime.

Prohibited Unfair Practices

Certain types of practices by collection agencies are unlawful. These include:

- collecting any amount not authorized by law or by your agreement with the creditor.
- soliciting, accepting or depositing a post-dated check from you.
- making you pay any charges for their contacts, such as collect phone calls or telegram fees.
- communicating with you by postcard or using any language or symbol on an envelope which indicates or implies that it is from a debt collector.
- threatening to contact your neighbors or employer to get personal information about you or to discuss your debt or to make any sort of investigation other than to find out where you are.

What Collection Agencies *Must* Do

Besides avoiding doing the unlawful things discussed above, there are several things every collection agency must do for your benefit in order to stay within the law.

The Validation of Debt Notice

The collection agency must send you a certain notice, in writing, within 5 days of its first contact with you. This notice must tell you:

- the amount of money you owe;
- the name of the creditor to whom the debt is owed;
- that if you do not dispute the debt within 30 days, the debt will be assumed to be valid. (But this does not prevent you from later disputing the debt);
- that if you write back disputing the debt within 30 days, the collection agency has to prove that you owe what they say you owe;
- that if you request it, the collection agency will provide you with the name and address of the original creditor.

If You Dispute the Debt

If, within the 30 day period, you dispute the debt or any part of it, then the collection agency *must* stop collection of the debt, or any disputed portion of it. It cannot resume collection until it obtains verification of the debt or a copy of a court judgment and mails those things to you. If, within the 30 day period, you request the name and address of the original creditor, the collection agency must stop collection activity until they mail that information to you.

The Purpose Statement

In the *first* written communication with the consumer, and first *oral* communication that comes before it, the collection agency must state:

“This is an attempt to collect a debt and any information obtained will be used for that purpose.”

If this statement is not made at those times, the collection agency is breaking the law. In all future communications, the debt collector must indicate that it is from a debt collector. In the first written communication sent to the consumer, the statement usually, but not necessarily, appears at the bottom of the document.

What You Can Do if the Collection Agency is Breaking the Law

If you feel that you are being subjected to unfair or unlawful practices by a collection agency, you should consider doing the following things:

- **Write a Letter.** You can stop all communications from a collection agency simply by writing them a letter telling them to stop contacting you. You should keep a copy of the letter. If a collection agency receives such a letter, they *must* stop all contacts with you, but the creditor then may use other methods to collect the debt. For example, the creditor may decide to sue you.
- **Write Everything Down.** If you are receiving telephone calls from the debt collector, keep a record of each call, including the name of the person who called, the date and time of day they called. Make sure you write down everything that was said!
- **Save All Correspondence.** Save any papers you receive from the debt collector, including letters (as well as the envelopes they came in), postcards, telegrams, etc. These papers will be very important in proving violations of the law.
- **See a Lawyer or Sue the Collection Agency.** A lawyer can force the collection agency to stop contacting you if they didn't do so at your request. You may also be able to sue the collection agency. The law allows you to recover damages for any emotion or other injury you actually suffered, *plus statutory damages* of up to \$1,000 even if you cannot prove any actual injury as a result of the collection agency's conduct. If their conduct is particularly outrageous, you may also be able to collect an amount of **punitive damages** (which a court might impose to punish them and to stop them from doing such things

again). **If you are going to sue for any violation of the law, you must do so within one year of the date of that violation.**

Section 4 - Lawsuits in Court for Money

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Lawsuits in Court for Money

If a creditor decides to sue you on the debt, you will receive a Summons and a Complaint. The Complaint should state how much money the creditor wants the court to order you to pay. If you are being sued for less than \$10,000, the lawsuit should be brought in small claims court. We tell you below whether it is likely or not that a creditor will go to the trouble of a lawsuit. If you are sued, this section tells you how to respond. Finally, we will explain the meaning and effect of a court judgment, in the event one is entered against you.

Will a Creditor Sue on a Debt?

If a debt is not paid for any period of time, the consumer at some point is going to worry about whether or not the creditor is going to go to court. Only a small percentage of all debts wind up being collected through the court system. Nevertheless, it is a common sight in most courthouses in the United States to see creditors and their lawyers bringing lawsuits and using the judicial process to collect debts. So, how are you to know whether that is going to happen to you on any particular debt?

Generally speaking, creditors will not resort to a lawsuit if there is an easier or less expensive way to collect what you owe. The court process is slow and can be expensive. As we will discuss later, even when a court judgment is entered against the consumer, there is no guarantee that the creditor will be able to collect any money on that judgment.

So, although there is no hard and fast rule that creditors use in deciding whether to file suit, it is *less* likely to go to court when the amount of the debt is small; when the consumer disputes the debt or has a good defense; or when the creditor has no history of filing lawsuits. You might consider checking with your local court clerk who can help you determine if a given creditor has filed other lawsuits in that court.

How to Respond to a Collector's Lawsuit

Do Not Ignore the Summons. If you do get served with a Summons (and Complaint), the worst thing you can do is to do nothing. Ignoring it will not make the lawsuit go away and can have serious consequences against you. If you are fortunate enough to have a lawyer to represent you, then advise your lawyer immediately as soon as you receive the Summons. If you have no lawyer, then you must pay attention to what the Summons directs you to do.

If the lawsuit is for \$50,000 or less, the Summons requires that you appear in court on a specified

day (which must be not less than 21 nor more than 40 days after the date the Summons is issued). **It is extremely important for you to make sure that you show up in court at the date and time scheduled for your appearance.** If you don't show up in person or by attorney, the court will order a judgment in favor of the person or company suing you. If the lawsuit is for more than \$50,000, the summons is in a different form and requires that you file a document called an *appearance* within 30 days after you are served.

How the Summons Must Be Delivered. The Summons and Complaint must be delivered to you (called being **served**) according to state procedure. They may be given to you personally by a deputy sheriff or by a process server. It can also be given to any member of your household over the age of 13. A small claims complaint and summons may be served by registered or certified mail.

Try to Work Out a Settlement Agreement. If you have received a Summons and you know that you owe some money, you may contact the other party (or their attorney) and try to work out a settlement agreement. The plaintiff is often willing to take less than what he or she is suing you for so as to avoid a courtroom dispute. In addition, the creditor may be willing to set up a payment plan so you can pay off the debt over a period of time.

If you and the plaintiff reach an agreement that is satisfactory to both of you, you should put the agreement in writing and both you and the plaintiff (or the attorney) should sign it before it is presented to the judge. However, do *not* agree to a payment plan if you are not absolutely sure that you will be able to make all the payments, or if all your income and assets are exempt. (To find out if your income and assets are exempt, see Exemptions Which Prevent Creditors From Taking Your Money or Property in this booklet.) No matter what you agree to, be sure to be present in court at the date and time specified on the Summons, and when the agreement may be presented to the judge. Be sure you get a copy of any court order or any other paper that describes the agreement, so that you know what you have to do to meet your part of the agreement.

Contesting the Case. If you cannot work out an agreement or if you think you should not pay as much money as the plaintiff wants, then you must be prepared to show up in court and contest the case. In court, the judge will ask you whether you believe you owe the plaintiff the amount of money claimed as due. If you admit that you owe the money, a judgment will be entered against you.

If you tell the judge that you do not owe the plaintiff any money, or that you owe less than what is claimed, there will have to be a contested hearing called a **trial**. The judge may set another date for a trial. However, in some counties, particularly in small claims cases, the judge may hold the trial on the first appearance date. Check with the judge's clerk or the court clerk to find out whether you need to be prepared for trial on the first appearance date.

Defenses and Counterclaims. A consumer can tell the court why the creditor should not be able to collect all or some of the money that is being sought. This can be done by presenting a **defense** or a **counterclaim** or both. A defense is either a set of facts or a legal reason why the plaintiff should not get what the plaintiff is asking for. There are many different types of defenses which are possible in consumer cases.

A counterclaim is a claim by the consumer that the creditor owes money to the consumer because of something that the creditor did wrong. A counterclaim can be made whether or not the consumer owes the creditor any money on the debt. Counterclaims are used when creditors or debt collectors violate consumer protection laws.

It is very important for consumers to raise any defenses and counterclaims in debt collection lawsuits. Creditors (or their attorneys) will be more inclined to either drop a case or settle on very favorable terms for you if your defense is going to eat up a lot of their time or substantially increase their costs. If you have had any problem with the creditor, or the product or services, then it is always best to consult an attorney, if you can.

How to Present Your Defenses or Counterclaims to the Court

This will vary a lot depending on what court you are in. If you do not have an attorney to present your defenses and counterclaims, then you might consider checking with the court to see what its procedures are to do this. Some courts require a written statement called an **Answer** to be filed at the beginning of the case. The Answer states the consumer's defenses and counterclaims. Some small claims courts do not require you to file an Answer and allow you to raise your defenses in your statements at the trial. If you have any counterclaims, it is best to file them in writing with the Court Clerk's office early in the case and before the trial, making sure to send a copy to the creditor. In this way, the creditor at trial cannot complain that he never received any notice of your claims. In this way, the judge can decide the claims of both parties at the same time.

Of course, a lawyer can best present your case for you. If you need a delay in the trial date to find an attorney, you should not hesitate to ask the court. Such a delay is called a **continuance**. If you cannot afford to pay a lawyer to handle the trial, you should at least try to consult a lawyer about how to present your case.

The key to any presentation is preparation. Always go to court prepared. This means you should have collected all papers relating to the case, including those that show any payments that you have made. If you have papers that show you do not owe the debt you should bring those to court. In more formal courts, you may need to bring someone who can identify what the papers are and prove they are authentic. Bring witnesses to court, if they are available. The court will not look at written statements of witnesses who aren't there, but will listen to them if they are there in person. Bring a written checklist of the facts you think are important (and a checklist of your documents, too). At trial, you will tell a story through your words and your witnesses' words. Make sure the judge hears all the facts and sees all the documents. It is usually best to start at the beginning and tell your story in a clear and organized way in the order that it happened.

The Judgment

In most lawsuits, the judge will sign an order deciding the rights of the parties. This order is

called a **judgment**. A judgment can be agreed to by the consumer and creditor, or it can be what the judge decides after a contested trial, or after a **default**.

A default happens when you ignore the summons and fail to show up in court. If for some reason you fail to show up in court at the specified date and time, it may not be too late to change the default judgment against you. You should immediately consult an attorney to see if the default judgment can be **vacated**.

If the judgment favors the creditor, it will say how much money the consumer has to pay the creditor. Once a judgment for money is entered in favor of a creditor, you do not have to pay the money immediately. However, the entry of a judgment does give the creditor certain legal rights to force payment. (See Creditor's Methods for Collecting Court Judgments).

On the other hand, a certain amount of a consumer's income and property is protected by state and federal laws. **Protected income and assets cannot be taken by a creditor**. Protected income and property are called **exemptions**. You should read very carefully the section about Creditors' Methods to Collect Court Judgments and the part about Exemptions Which Prevent Creditors from Taking Your Money or Property. These sections will tell you what income and property is protected and how to make sure they stay protected.

A consumer is said to be **judgment proof** when all of his or her income and assets are exempt. That means they cannot be taken by creditors. If a consumer is judgment proof, he or she does not have to worry about the judgment until his or her financial condition improves. A judgment proof consumer may well decide to wait to pay off the judgment in order to save the small amount of income they receive to pay necessary bills and expenses.

How to Appeal

In Illinois, any party to a lawsuit in the state courts has the right to appeal a final judgment to a higher court called the appellate court. An appeal must be started by the filing of a **Notice of Appeal** in a specified form within 30 days after the date of entry of the final judgment. If you lose your appeal in the appellate court, you may ask the Illinois Supreme Court to hear your appeal. To get the Illinois Supreme Court to hear an appeal from an appellate court, a party must file a **Petition For Leave to Appeal**, and the Supreme Court will then decide whether it wants to hear the appeal. If you are considering an appeal, see a lawyer.

Section 5 – Creditors' Methods to Collect Court Judgments

Content Updated: July 2010

Creditors' Methods to Collect Court Judgments

A judgment in favor of a creditor is an order saying the consumer owes a specified amount of money to the creditor. The creditor will not be happy with just getting a judgment unless the

consumer pays the amount of the judgment. If the consumer does not pay, then the creditor can use a number of special legal tools to force the consumer to pay. These legal methods are discussed below. The main thing to keep in mind about all of them is that they cannot be used *unless the creditor first obtains a judgment*. Another thing to think about is that you can stop the creditor from taking any of these steps if you file for bankruptcy.

Citation to Discover Assets (on the Debtor)

After obtaining a judgment, the creditor can ask the court to direct the consumer to appear back in court for an additional (supplementary) proceeding. The purpose of this new hearing is to let the creditor ask questions of the debtor about his or her income and assets. In this way, the creditor can find out about your employer, your salary and your wages. The creditor can also find out where your bank accounts are located and what other income or property you have or will be getting.

With this information, the creditor can start proceedings to garnish your wages or bank account. (Information follows about *Wage Deductions and Non-Wage Garnishment*). Or, the creditor can ask the judge to enter a **turnover order**. A turnover order directs the consumer to turn over to the creditor some of your income or property. Remember, though, that some income and property is exempt. If non-exempt assets other than cash or real estate are discovered, the court may order that they be turned over to the Sheriff to conduct a public sale. The sale proceeds are then given to the creditor to pay off the judgment.

In Illinois, the document which directs the consumer to come back to court for this hearing is called a **Citation To Discover Assets**. There are rules about how the Citation must be given to you. Also, it must include a **special notice**. Among other things, this notice must advise you about your exemption rights and how you can assert your exemption rights at the citation hearing or some earlier date. This notice to you must be in a particular form. By law, no turnover order can be entered unless there is proof in the court record that the consumer properly received the Citation and a copy of the special notice about exemption rights. The Citation might direct the consumer to bring certain documents to court.

There are four important things to remember about the Citation proceeding:

1. **This is a court ordered appearance.** Failure to show up and answer the questions can result in arrest, a finding of contempt of court against you, and a jail sentence. **A Citation to Discover Assets should never be ignored!** If you are jailed for failure to appear, you may be ordered to pay a large bond in order to be released. This money may then be applied to your debt, even if the bond money came from exempt income or property.
2. **You are under oath when answering questions.** You have to be truthful when answering questions about your income and assets. Lying under oath is perjury.
3. **Turnover orders should not affect exempt income or property.** Any court order entered at the supplementary proceeding should turnover only such assets or income not protected by law. You should know your exemption rights and should tell the judge what

property of yours is exempt, to make sure that exempt income or property is not included in any turnover order. At any Citation hearing, you have the right to ask the judge to declare whether certain income or assets are exempt. (See Exemptions Which Prevent Creditors From Taking Your Money or Property).

4. **Be careful about agreeing to a court-ordered payment plan.** The creditor or his attorney may try to get the consumer to agree to a payment or installment plan, and may try to have that agreement formalized by court order. A consumer should be very careful about making such an agreement, and should not do so unless absolutely certain that he or she can keep up with the payments. *If you fail to make good on a court-ordered payment plan which you agreed to, you may possibly be held in contempt of court and jailed.*

Citation to Discover Assets (on Third Parties)

Citations to Discover Assets can also be served on other persons or institutions that may be holding some of your assets. For example, this might be a bank where you have an account or an insurance company which owes you on a claim. Any third party served with a Citation also must come in for an examination and be subject to a turn-over order.

If the creditor serves a Citation on any third party, you (the consumer) must be given a special notice that tells you when to come to court for this proceeding, tells you your exemption rights and tells you how to assert your exemption rights at the hearing. (See Exemptions Which Prevent Creditors from Taking Your Money or Property). No turnover order can be entered directing a third party to turn over your assets unless there is proof in the court record that you were properly served with the Citation and with a copy of the special notice about your exemption rights.

When a third party receives the Citation, it must **freeze** all of your assets which are not exempt under the law. The third party should not send any money to the creditor until it receives a court order or turnover order to do so.

You should go to court to assert your exemption rights whenever a third party has frozen exempt assets or there is a possibility that exempt assets might get turned over at a citation hearing.

Wage Deductions

Another legal tool for creditors, available only if you fail to pay a judgment, is called a wage deduction proceeding. It is sometimes called a wage garnishment. It is properly called a wage deduction because the creditor is trying to get your employer to deduct a certain percentage of your wages from your paycheck and to have that amount sent to the creditor.

The Wage Deduction Procedure: A wage deduction procedure cannot start before the creditor gets a court judgment. Then a creditor can file a document with the court clerk called a **Wage Deduction Affidavit**. This is a signed statement in which the creditor states his or her belief that

your employer owes you wages. In that affidavit, the creditor must certify that, before filing the affidavit, he mailed a **wage deduction notice** (explained below) to you at your last known address. That address must also be stated in the affidavit.

At the same time the affidavit is filed, the creditor also sends a set of written questions (called interrogatories) to your employer and files them with the court. These questions help the creditor determine how much wages the employer owes you over a period of time, and to figure out how much of your non-exempt wages can be deducted. The employer must answer these interrogatories, file them with the court, and to mail or deliver *a copy of its answers* to the creditor and to *you*.

When the court clerk receives the affidavit and interrogatories from the creditor, the clerk issues a summons to the employer. The summons gives employer an amount of time to file its answer to the interrogatories and tells the employer the date the matter will be heard in court.

The employer is required to pay the consumer the amount of his or her exempt wages. However, the employer must hold, subject to orders from the court, the amount of non-exempt wages due or which may later come due during the period of the wage deduction (12 weeks). (See the following topic *How Much Money Can Be Taken From Your Wages*). The employer cannot withhold more than the amount due on the judgment.

On the court date (stated on the summons), which takes place after the 12 week period, the court will decide whether the employer should turn the money being held over to the creditor. The law says this should not be done unless the Wage Deduction Affidavit certifies that a copy of the Wage Deduction Notice (see next topic) has been mailed to the consumer and the employer's answer to the interrogatories provides a summary of the computation used to determine the amount of non-exempt wages.

The Wage Deduction Notice: The notice which is mailed to you must be in a particular form. Among other things, the notice must identify the court case and inform you that the creditor has started a proceeding in court to force your employer to deduct your wages. The notice will tell you the date and time the matter is to be heard in court. The notice must also tell you that the amount of wages that may be deducted is limited by federal and Illinois law. It explains the mathematical formula for determining the amount of wages that lawfully can be deducted and the amount of your wages that are protected (i.e., exempt). The notice tells you that you have the right to request a hearing to dispute the wage deduction because your wages are exempt, and tells you how to obtain that hearing.

How Much Money Can Be Taken From Your Wages? When the employer receives the summons, only part of your wages can be deducted and withheld from you. The employer cannot deduct from any of your weekly take-home pay (after taxes and Social Security are deducted) that is equal to less than 45 times the state minimum wage. As of July 1, 2010, the state minimum wage is \$8.25 per hour. This means that, until the minimum wage is raised again, you are always entitled to take home at least \$371.25 of your wages per week. If your weekly take-home pay is this amount or less, no wages may be deducted at all. If your take home pay is more than this amount per week, the employer can deduct the *smaller* of the following two amounts: (1) 15% of your weekly gross wages, or (2) the amount of your take-home pay over and above \$371.25. The employer may withhold an additional small amount as a fee for their services in responding to the wage deduction process.

What You Should Do If Your Employer is Deducting Wages: Determine how much money your employer is deducting from your paycheck. Figure out if they are taking more than they are allowed to take. If so, inform your employer and insist they take out only the lawful amount. When you get a copy of the employer's answers to the interrogatories, look to see how much non-exempt wages the employer says it has withheld. If the employer continues to withhold too much from your check, follow the instructions on the Wage Deduction Notice that tells you how to request a hearing to ask the court to declare the proper amount of your wages exempt.

Your Employer Cannot Fire or Suspend You: No employer may discharge or suspend any employee because his or her earnings have been the subject of a wage deduction proceeding. This protection for the consumer is only for a single debt. If an employer has to deal with a wage deduction from a second creditor on a different debt, then this protection is no longer available.

Non-Wage Garnishment

Not only can a creditor garnish (take) wages, but also can garnish money owed to or belonging to the consumer that is in the hands of others. Most often, a nonwage type of garnishment takes money from a consumer's bank account, although it can also be taken from an insurance company or anyone else who owes money to the consumer.

The Garnishment Procedure: The procedure for a non-wage garnishment is very similar to the wage deduction process. It cannot start before the creditor obtains a court judgment. Afterwards, the creditor files an affidavit with the Clerk of the Circuit Court in which the creditor states his belief that your bank (or some other person) has your money or other property in their control or otherwise owes money to you. The bank or other person is known as the **garnishee**. The creditor also files a copy of a **Garnishment Notice** which must be mailed to you, the consumer. The creditor must also file a set of written questions (called **interrogatories**) to be answered by the garnishee. The interrogatories help the creditor determine how much non-exempt money or property is being held by the garnishee. The bank or other garnishee must answer these interrogatories, file them with the court, and mail or deliver a copy of its answers to the creditor and to you.

When the court clerk receives the affidavit, the Garnishment Notice and the interrogatories from the creditor, the clerk issues a **garnishment summons**. The summons tells the garnishee (for

example, the bank) the time it has to file its answer to the interrogatories and the date the matter will be heard in court. The garnishee is required to hold, subject to orders from the court, the amount of nonexempt money or property it is holding, up to the amount due on the judgment.

On the court date stated on the summons (which is between 21 and 30 days after the summons is issued), the judge will decide whether the garnishee should turn the money being held over to the creditor. No deduction order can be entered unless the court record shows that a copy of the garnishment summons and the Garnishment Notice were mailed to you, by first class mail, within 2 business days of service of summons on the bank or other garnishee.

The Garnishment Notice: The notice which is mailed to you must be in a particular form. The notice must identify the court case and inform you that the creditor has started a proceeding in court to force your bank or other garnishee to turn over monies in your account to pay off the judgment. The notice will tell you the date and time the matter is to be heard in court. The notice must also tell you that the amount of money or property (other than wages) that may be garnished is limited by federal and Illinois law. It must explain what amount of money or property is protected from garnishment (called **exemptions**). (See the part of this booklet on Exemptions Which Prevent Creditors From Taking Your Money or Property). The notice also tells you that you have the right to request a hearing to dispute the garnishment or to ask the court to declare certain of your money or property exempt. Finally, the notice tells you how to obtain that hearing.

How Much Money Can Be Garnished From Your Bank Account? When the bank or other garnishee receives the summons, they are required to freeze any nonexempt funds in your account, up to the amount of the judgment. A freeze means that you cannot withdraw that money nor can it be used to pay any checks you write. **Be careful that you do not bounce checks in this situation!** The court can later order that frozen funds be turned over to the creditor. (*You can prevent this from happening by withdrawing the funds **before** the bank is served with the summons*). In addition, many banks receiving a garnishment summons will charge the account holder a small fee for its services in processing the garnishment.

What You Should Do If Your Bank (or Other Garnishee) Has Frozen Your Account: Remember, the bank is permitted to freeze only non-exempt funds. However, the bank may not know what amount of your funds are exempt. If the bank does freeze your account (or part of it), then you should inform the bank and the creditor if any of the money it has frozen is exempt. For example, every consumer has a **wild card exemption** of \$4,000 in any property of his choice. You can choose to have up to \$4,000 in the frozen account declared exempt under this “wild card” exemption. In addition, most forms of government benefits, including Public Aid and Social Security, are exempt. If your account consists entirely of these exempt government funds, then the entire account is exempt. If the bank refuses to release exempt funds, you may have to go to court to exercise this exemption. The Garnishment Notice tells you how to obtain a hearing to get the court to declare the funds in your account exempt.

Judgment Liens and Enforcement of Judgments Against Real Estate

A judgment can become a lien on real estate that is owned by the person the judgment is against. A judgment lien is a claim, like a security interest, belonging to the judgment creditor and giving the creditor the right, under certain circumstances, to have the property sold in order to pay the amount of the judgment. In order to get this lien, the judgment creditor must file certain documents in the county recorder's office. Creditors with a judgment lien can force the sale of the property that the lien is on. Even without filing for the lien, however, a judgment creditor can still ask the judge to have the property sold by the Sheriff so the creditor can collect his or her judgment.

Luckily for the consumer, however, there is something called a **homestead exemption** which makes it very difficult to sell the home of the person who owes the money. Also, if the real estate is sold, there are certain things the consumer can do to get the property back.

The Effect of the Lien: A judgment creditor with a lien may be able to force a sale of your property to pay off your debt. Even if the creditor cannot force a sale, because the real estate is exempt or for other reasons, state law permits the lien to remain in effect for 7 years from the time it is entered or revived (an old judgment can be extended or revived). For that period of time, the lien will "cloud the title" of your real estate because, if you want to sell the real estate, the judgment will have to be paid first.

The Homestead Exemption: In Illinois, an individual who occupies the real estate as a residence is entitled to a homestead exemption. The home cannot be sold to satisfy the lien if the amount of your equity interest in the home is less than the exemption amount.

The exemption is \$15,000 for a single person, and \$30,000 for a married couple who both own the residence. This must be compared to the debtor's *equity* interest in the property. A debtor's equity interest in real estate is figured by subtracting amounts owed on a mortgage (or other lien on the house) from the present value of the property. If the equity interest is less than the exemption, there cannot be a forced sale of the house to satisfy the lien.

For example, if a home is worth \$185,000, but the sum of \$175,000 is owed on the mortgage, the debtor's equity interest is \$10,000. If the debtor is married, and both spouses own and live in the residence, they have a \$30,000 exemption. Since the debtor's equity interest in the real estate is less than the exemption, the home cannot be sold to pay their debt.

However, if the amount of the equity interest is greater than the exemption amount, then the home might possibly be sold. If there is a forced sale, before the creditor could realize any money from the proceeds, the mortgage holder would have to be paid and the debtor would receive the amount of the homestead exemption. This means the creditor actually has to pay \$15,000 (or \$30,000) in cash to a debtor who has avoided payment of the judgment. Many creditors don't like the idea of paying the person who owes them money, so they may not want to force a sale.

There are other reasons why a creditor might not want to try to force a sale. The laws on

homestead make it difficult to sell the residence of the debtor. The creditor will have additional costs he must incur such as advertising costs, a lien search, an appraisal of the property, a title report, recording charges, publication expenses, and the Sheriff's commission for conducting the sale.

It does not make sense for the creditor to force a sale of your home if the fair market value of the real estate is not substantially greater than the creditor's costs. Those costs include all of the above costs, together with the payment of the homestead exemption and all prior mortgages and liens. In addition, the complications arising from the homestead exemption and redemption rights will make this type of sale not very appealing to potential bidders.

For these reasons, creditors don't usually force sales of real estate.

Notice and Sale: The law requires that many things be done in trying to be sure that the debtor knows that the sale of his or her house will occur. The Sheriff must publish notice of the sale once a week for 3 successive weeks in a newspaper in the county where the property is located. A notice is also posted in 3 public places within the county, usually within the Sheriff's office and the courthouse. The notice must reflect the date, place and time of sale and identify both the creditor and the debtor. After the sale and payment of all costs and expenses, the Sheriff will deliver a Certificate of Sale to the purchaser.

Redemption Rights: In most cases, even where the creditor has forced a sale of the real estate, you have the right to redeem the property. **Redeem** means to buy back. This can be done within 6 months from the date of sale by paying the purchaser the amount of money for which the premises were sold, plus interest at 10% annually from the time of the sale.

Section 6 – Exemptions Which Prevent Creditors from Taking Your Money or Property

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Exemptions Which Prevent Creditors From Taking Your Money or Property

In Illinois, the law protects some of your income and property from collection by creditors. No one can force you to pay debts from money or property which is exempt. The idea behind the exemption laws is to allow consumers to keep the basic necessities of life. This section will tell you which money and property can't be taken by creditors. These exemptions give consumers very important rights, particularly after a court judgment where the creditor seeks an order to seize a consumer's property. A creditor cannot make you give up your exemption rights, such as by putting in some small print in a contract. Such clauses are illegal under federal law.

But exemption laws do not protect you when a creditor wants to repossess some item of your property in which the creditor has a security interest, often known as collateral. For example, if the consumer puts up a car as collateral on a loan, the creditor can take the car if the consumer gets behind in payments, even if the car is an exempt asset. [For more information about this,

see Prairie State legal Services' pamphlet on Repossession].

What Are Your Exemption Rights?

Some of your exemption rights have already been discussed in this booklet. The amount of your wages which are exempt are discussed in the section on *Wage Deductions*. The value of your homestead exemption is discussed in the earlier section of this booklet called *Judgment Liens and Enforcement of the Judgment Against Real Estate*. This section will focus on your rights to exemption of personal property other than wages. When we say **exemption**, we are referring to property which the law says you stop creditors from taking. As a consumer, your following personal property is exempt from collection or attachment:

1. **Your or your family's clothing, bible, school books and family pictures.**
2. **Up to \$4,000 in value of any other property of your choice.** This is informally known as the WILD CARD exemption because you can identify one or more items of property for which you want the exemption applied. For example, if a creditor tries to garnish your bank account which has \$500 in it, you can claim the entire account as coming within your wild card exemption. That means you are left with another \$3,500 to exempt other personal property. Also, only your equity interest in the property is counted towards the \$4,000 limit. Let's say you want to apply the wild card exemption to one of your cars that's worth \$5,000. If you still owe the bank \$4,000 on the car, your equity interest is only \$1,000. Since your equity interest is less than the amount of the wild card exemption, you can use the wild card to totally exempt your car. You can use the \$4,000 wild card to add exemption value to other exemptions shown below.
3. **Your interest in any one motor vehicle, up to \$2,400.** Let's say you want to use your exemption rights to protect your car from being taken by a judgment creditor, but your equity interest in the car is \$3,000. You can claim up to \$2,400 of it under this exemption. Is the car totally exempt? Yes, if the \$600 difference is claimed as an exemption under your wild card.
4. **Any implements, professional books or tools of your trade, up to \$1,500 in value.** Again, only your equity interest in this property is counted towards the \$1,500 limit.
5. **Your right to receive certain types of government benefits or assistance.** This exemption covers government benefits such as Social Security, unemployment compensation, public aid, veteran's benefits, and other forms of public assistance. Your right to receive circuit breaker property tax relief benefits is also exempt.
6. **Any disability, illness or unemployment benefit** from an employer, an insurance company or any other source, including workmen's compensation benefits.
7. **Your right to receive alimony, maintenance or support payments.** This includes payments for your support or the support of any dependent.
8. **Your right and interest in a retirement plan, such as a pension or annuity.**
9. **Various other forms of property are exempt under the law, including:**
 - Life insurance benefits payable to you as a result of someone's death;
 - Payments of money for the wrongful death of a person who supported you;
 - Payments of money due to a personal bodily injury which you sustained (up to \$15,000);

- An award under the crime victim's compensation law;
- Money due you from the sale of any of your property which was exempt at time of sale.

In addition to the above list of exemptions, there may be other exemptions to which you are entitled under the law.

Putting Money From an Exempt Source in the Bank

If money from an exempt source (such as Social Security) is deposited into a bank account, it remains exempt. However, to protect the money in the account, you must be able to show that the funds in the account are all exempt. If both exempt and non-exempt funds are in the account, it becomes very difficult to protect the account from garnishment. **Therefore, if you keep your money in a bank, keep your money from the exempt source in a separate account.** Do not deposit nonexempt funds into that account. If a creditor attempts to garnish money from that account, follow the instructions in the section about What You Should Do If Your Bank (Or Other Garnishee) Has Frozen Your Account.

How to Claim Your Exemption Rights

As discussed above, the creditor may try to enforce a judgment using collection procedures such as the Citation To Discover Assets or the garnishment process. When that happens, you should talk to a lawyer. However, if you see that the creditor is trying to collect exempt money or property from you, it may be up to you to go to court to assert your exemption rights. As we discussed in the section about Creditors' Methods to Collect Court Judgments, the notices you receive will tell you your exemption rights and how you can get a court hearing. If you do not get the notices from the creditor, you should try to obtain them from the creditor's attorney or from the court.

In general, to obtain a hearing on your exemption rights, you should notify the Clerk of the Circuit Court in writing before the court date shown on the citation or the garnishment. The Clerk will give you a date and time to appear before a particular judge. The Clerk will also give you the necessary forms which you must prepare and send to the creditor and to any garnishee, regarding the time and location of the hearing. (The garnishee is the person, bank or employer holding the property which the creditor is trying to get). If you prefer, you can also get a hearing by appearing in court on the return date. Sometimes it is to your advantage to get the hearing sooner, particularly if your bank account is frozen or your wages are being deducted.

When you appear at the hearing, you should be prepared to tell the judge the particular property you believe is exempt. You should also be prepared to tell the judge the reason why you believe the property is exempt. In the case of a wage deduction, use the formula discussed above in the section on Wage Deductions to determine the maximum amount of your wages that can be deducted. You should put your calculations in writing in a way the judge can understand. In the case of a non-wage garnishment, identify which funds held by the garnishee are exempt and the reason.

If you have disclosed certain income or assets to the creditor on a Citation to Discover Assets, you should tell the creditor (or his or her lawyer) which of those items are exempt and which of those items you select under your wild card exemption. Do not allow the creditor or the creditor's attorney to present a turnover order to the judge before you have had an opportunity to review that order. Tell the judge if it appears that the order seems to turnover property which you have identified as exempt.
