

AFTER COURT: GETTING YOUR MONEY AND APPEALS

Getting Your Money

If you win the case, **you are responsible for collecting the money the judge decided you are owed. The judge and the clerk will not do it for you.**

Appeals

Both parties have the right to appeal the judge's decision and to have a completely new trial before a new judge or before a jury. You must pay another fee and file a form called "Application for Trial de Novo" within ten (10) days of the day the judge decided your case. The fee is likely to be significantly greater than the small claims court fee. The clerk can assist you with this process.

The new trial will be heard in the circuit division. Because the rules of the circuit division are more complicated and the judge and the clerk are not permitted to help you, it is advisable to seek the assistance of an attorney.

Even if the losing party appeals the case, the winning party can still try to collect the money. To prevent this while the case is being appealed, the losing party may post a bond with the court. Posting a bond is not necessary in order to appeal the decision. The clerk can assist you with this process.

Collecting On Your Claim

After the judge has decided in your favor, and you have waited ten (10) days from the date the judge decided the case (losing party may not file an appeal after ten days), you may start trying to collect your money, if the losing party has not filed an appeal and posted a bond. Remember, **you are solely responsible for collecting your money. The judge and the clerk will not do it for you.** There are several ways to collect your money:

Losing Party Voluntarily Pays

Whether the loser agrees to pay you in a lump sum or in installments over a period of time, an agreement between you and the losing party is the best and most efficient way to collect your money. You should attempt to arrange such an agreement, because collection procedures through the court cost money and will probably take longer. However, if you cannot agree on a method of payment or the losing party stops paying as originally agreed, you may start collection proceedings through the court on forms provided by the clerk. The clerk can assist you with this process.

Garnishment

- Garnishing Wages
- Garnishing a Bank Account
- Executing Your Garnishment Action (Wages or Bank Account)

Garnishment is the most frequently used legal procedure to collect money in a small claims case. Under this procedure, an employer or other person holding money belonging to the losing party pays to the court the money owed to the winning party. (This employer or other person is called the "garnishee". The court then pays the winning party.

To collect money this way, you must request the court to issue a garnishment, and you must pay a fee. Ask the clerk to assistance. You may file as many garnishment actions as you need in order to collect the entire amount you are owed. Be aware that the loser, a judgment debtor, has the right to certain legal exemptions from garnishment that may limit your ability to collect the debtor's money.

In order to garnish, you must first locate some cash assets of the losing party in the State of Missouri. These are most easily found in the form of paychecks (wages) or bank accounts.

Garnishing Wages

Garnishing wages is the surest form of collection. To do this, you must find out the name and address of the losing party's employer. The following may be helpful in discovering this information: Talk to businesses or other persons who might know about the losing party but be careful not to harass the losing party; examine court records for more details of the losing party's background. Under this procedure, the employer, usually for a period of 90 days, collects a portion of the losing party's wages and sends the money to the court. Law sets the amount an employer can collect. If the losing party makes less than a certain amount of money, you may not be able to garnish his or her wages at all.

Garnishing a Bank Account

As with garnishing wages, to do this you must find out the name and address of the losing party's bank. The following may be helpful in discovering this information: A check or other record the losing party gave you might indicate where the party banks; a cancelled check you wrote to the losing party may reveal the name of the bank on the back of the check. Be aware that if the bank account has another name on it, such as the losing party's spouse, you may not garnish it unless the judgment is against the spouse as well. Under this procedure, the bank, usually for a period of 30 days, collects from the losing party's account an amount of money up to the total of the judgment, court costs and garnishment filing fee. The bank then sends the money to the court.

Executing Your Garnishment Action (Wages or Bank Account)

When you have located assets of the losing party (the judgment debtor), either wages from an employer or a bank account, the following instructions will assist you in collecting the money owed to you:

Request for Execution: Obtain from the clerk (bookkeeping) and complete the form called "Request for Execution, Garnishment, or Sequestration". Provide the name and address of the "garnishee", i.e., the bank or employer. Second, specify how long the execution is to "run", i.e., how long the bank or employer will withhold money owed the judgment debtor. The execution may run for not less than 30 days or more than 90 days (a garnishment against a

bank account usually should be no longer than 30 days while a garnishment against wages should probably run at least 90 days). Ask the clerk if you have questions.

Return Date: The last day the Garnishee may withhold money from the judgment debtor is called the “return date”. For instance, if you requested that your execution be returnable in 60 days, the 60th day from the date the garnishment is issued is the return date. You should call the bookkeeping clerk one week after requesting your garnishment to find out the return date.

Interrogatories: Before the garnishment will be issued, you must complete a portion of the “interrogatories” (questions) that are to be served on the garnishee. This set of questions asks the garnishee exactly how much money has been withheld from the judgment debtor. The garnishee must answer these interrogatories and return one copy to you and one copy to the court within ten (10) days of the return date. If you do not receive the completed interrogatories from the garnishee by ten days after the return date, it is suggested you call the garnishee and see if there is a problem. If the garnishee refuses to comply, you may have to retain an attorney. At this point, the clerk can no longer help you.

Other Collection Methods

There are other court methods you can use to collect the money that is owed you. These methods are much more complicated than garnishment proceedings and will usually require the assistance of an attorney. Be advised that no judgment of a small claims court may be a lien on real estate.

Satisfaction of Judgment

If you lose a small claims case and are ordered to pay a money judgment to the winner, once you pay the judgment in full, you may demand that the winning party file a “Satisfaction of Judgment” form with the court to verify that you have paid the winner in full satisfaction of the judgment. You may do this whether you paid the entire judgment voluntarily, through garnishment, or some other procedure. This is a good idea so as to prevent the plaintiff from attempting to sue you again or collecting again on the same claim.