

HOW TO DO A CITATION TO DISCOVER ASSETS TO DEBTOR'S EMPLOYER ("WAGE DEDUCTION/GARNISHMENT")

What is a *Citation to Discover Assets to Debtor's Employer*?

A *Citation to Discover Assets to Debtor's Employer* is commonly known as a wage deduction or garnishment. It is a court document that tells the employer to answer questions about the debtor's wages.

Who can file a *Citation to Discover Assets to Debtor's Employer*?

Anyone who has won a judgment for money against another person can file a *Citation to Discover Assets to Debtor's Employer* to try to collect the money.

- The person who won the judgment is called the "creditor."
- The person who owes the money is called the "debtor."
- The debtor's employer is called the "respondent."

Using the *Citation*, the creditor can try to get those wages to pay the judgment, if they are not protected by law.

What if my judgment is over 7 years old?

- If your judgment is over 7 years old, you will need to renew ("revive") your judgment before you can do a *Citation to Discover Assets to Debtor Employer*. To start the process, file and serve a Petition for Revival.
- You can renew ("revive") a judgment only up to the 20th year from the date of your judgment.
- If your judgment is over 27 years old, you cannot enforce your judgment.

Who do I serve the *Citation* on?

- You must use the employer's correct legal name. Using a name like "Joe's Auto Repair" or "McDonalds" is not legally sufficient and may lead to problems if the employer does not file an answer.
- If the employer is a person, you serve that person.
- If the employer is a company, you serve an officer or registered agent.
 - You can use the Secretary of State's website to find the officer or registered agent: <http://www.ilsos.gov/corporatellc/>
- **NOTE:** you cannot use this form if the employer is not doing business in Illinois.

What form do I need for the *Citation to Discover Assets to Debtor's Employer*?

- ***Citation to Discover Assets to Debtor's Employer*:** This form tells the employer to answer questions about the debtor's wages.
- ***Letter to the Sheriff (optional)*:** is a letter that tells the sheriff the addresses of the employers to serve.

Where can I find the form I need?

You can find the form at:

<http://www.illinoiscourts.gov/Forms/approved/>.

Does it cost to file a *Citation to Discover Assets to Debtor's Employer*?

- Yes, there is a fee for filing a *Citation to Discover Assets to Debtor's Employer* with the Circuit Clerk.
- There will also be a fee for the sheriff or private process server.
- If you cannot afford to pay the cost, you can ask the court to file for free. Fill out the *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find at: <http://www.illinoiscourts.gov/Forms/approved/>.

Fill out the *Citation to Discover Assets to Debtor's Employer* following the instructions on the form.

You will need the address where the employer can be served and the address where you will send the debtor notice. See **Steps 2** and **3**.

What do I do after I fill out the *Citation to Discover Assets to Debtor's Employer*?

Step 1: File your forms with the Circuit Clerk in the county where the court case is filed.

- Ask the Circuit Clerk for a court date, time, and courtroom number for your *Citation to Discover Assets to Debtor's Employer*. The employer is required to respond by this time.
- Write the courthouse address, court date, time, and courtroom number on the *Citation to Discover Assets to Debtor's Employer*.
- Ask the Circuit Clerk how much it will cost to file your form, and what types of payment (cash, check, credit, online) they take.
- You must electronically file (e-file) court documents unless you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer, (2) you have a disability that keeps you from e-filing, or (3) you have trouble reading or speaking English.
 - Fill out a *Certification for Exemption from E-Filing* found here: www.illinoiscourts.gov/Forms/approved/default.asp.
 - File the original and 1 copy of your *Citation* form, and the *Certification*, with the Circuit Clerk's office in person or by mail.
- To e-file, create an account with an e-filing service provider.

- Visit <http://efile.illinoiscourts.gov/service-providers.htm> to select a service provider. Some service providers are free while others charge a processing fee.
- For instructions on how to e-file for free with Odyssey eFileLL, see the self-help user guides here: http://www.illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp
- If you do not have access to a computer, or if you need help e-filing, take your form to the Circuit Clerk's office where you can use a public computer terminal to e-file your form.
 - You can bring your form on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your form.

Step 2: Serve the employer a copy of your form.

- The *Citation to Discover Assets to Debtor's Employer* must be served on the employer. The judge will have no power to order the employer to do anything if the *Citation to Discover Assets to Debtor's Employer* is not served.
- You can use the sheriff, a private process server, or Certified Mail to serve the employer with the *Citation*. You cannot give the *Citation* to the employer yourself.
- The sheriff or the private process server will require the original *Citation* and 2 file-stamped copies.
- If by sheriff
 - Contact the sheriff's office in the county where the employer is located for more information about how to serve the *Citation* on the employer.
 - If the sheriff wants it in person:
 - Bring the file-stamped copies of your *Citation* to the sheriff's office.
 - Pay the sheriff's fees for the debtor OR give the sheriff a copy of your *Order for Waiver of Court Fees* (if you have one) to not be charged a fee.
 - If the sheriff wants you to mail it to the sheriff's office:
 - Mail copies of your *Citation* to the sheriff's office.
 - Include the *Letter to the Sheriff* found at: <http://www.illinoiscourts.gov/Forms/approved/>
 - Pay the sheriff's fees for each party OR mail the sheriff a copy of your *Order for Waiver of Court Fees* (if you have one) to not be charged a fee.
- If by private process server
 - You may also have the forms served by a private process server. A private process server is anyone 18 or older and not a party to the lawsuit. Private process servers do not accept fee waivers.

- If by Certified Mail
 - The *Citation* may also be served by Certified Mail, restricted delivery, return receipt requested.
- **NOTE:** If you e-filed your *Citation* and you want to use the sheriff to serve the *Citation*, contact your sheriff's office to ask if the sheriff will file the Return/Affidavit of Service or if you will have to e-file it. If you use a private process server, you or the process server will have to file the Return/Affidavit of Service when you receive it back.

Step 3: Mail a copy of the *Citation to Discover Assets to Debtor's Employer* to the debtor.

- The person serving the *Citation* must send a copy of the *Citation* to the debtor by regular first-class mail within three days after the service on the employer. If you use certified mail, you may mail it to the debtor at the same time.

Step 4: If you served by sheriff or private process server and you have not received the *Answer* from the employer, contact the sheriff or private process server to confirm they served your forms on the employer.

- Before court, you should check on whether the employer was served. This is called the Return/Affidavit of Service. You may be able to check this online. Find your local Circuit Clerk's website at: <http://www.ilcourtclerks.org/illinois-court-clerks/>.
- If the employer was served, make sure the Return/Affidavit of Service is filed with the Circuit Clerk. The judge has no power to do anything if the *Citation* is not served.
- If you sent the *Citation* by certified mail, you must have the green receipt card to prove that the employer was served. Attach the green card to the original *Citation* and bring it to court. The clerk will put it into the court file.
- If the Return/Affidavit of Service says "no service," this means that the sheriff's deputy tried to find the employer, but could not serve them. If this happens, you must start over. The fee is less on the second attempt.
- **NOTE:** You should review the Return/Affidavit of Service. If it says the employer moved, or is not located at the address you wrote down, you should find a new address for the employer before starting again.

Step 5: Go to your court date.

- Your court date, time and room number are listed on your *Citation*.
- Bring these items with you to court:
 - A copy of the *Citation to Discover Assets to Debtor's Employer*;
 - A copy of the written judgment (if you have one);

- Any receipts you have of your court costs, including any costs for the sheriff or private process server;
 - The Return/Affidavit of Service showing that the *Citation to Discover Assets to Debtor's Employer* was served on the employer; AND
 - Any *Answer* you have received from the employer.
- Get to the courthouse at least 30 minutes early.
 - Go to the courtroom number listed on your court form.
 - Check in with the courtroom staff and wait for your name and case number to be called.
 - **If the employer was served, but does not show up for the hearing or file an *Answer*:**
 - The judge may enter a conditional judgment against the employer for failure to answer. A conditional judgment requires the employer to file an answer on or before the next court date. The creditor must issue a Summons after Conditional Judgment and serve it on the employer by sheriff or private process server. If the employer does not answer, the court may enter a final judgment against the bank for the balance due.
 - The judge may issue a Rule to Show Cause requiring the employer to appear and explain why they did not answer. If the employer fails to file an answer or appear for the Rule, the court may find them in contempt and may order their arrest.
 - **If the employer files an *Answer*:**
 - If the employer's *Answer* says that they do not employ the debtor then the *Citation to Discover Assets to Debtor's Employer* will be dismissed.
 - If the employer's *Answer* says that it employs the debtor, you can ask the judge for a Wage Deduction Order.
 - There are limits on wage garnishments. The debtor must be allowed to take home a certain amount each pay period. If the debtor's wages are above that amount, the garnishment cannot be more than 15% of the debtor's wages. It is also possible that there are other garnishments that must be paid before yours. If the employer answers the *Citation* in writing, you will see how much can be garnished at that time.

Step 7: Certify balance owed to employer.

- If the court enters a Wage Deduction Order, you must mail the employer a Certification of Judgment Balance every 3 months. This is simply a letter showing the employer the balance due after calculating additional judgment interest and deducting payments.

Step 6: After court, send a copy of any order entered to the employer's representative.

- If there are funds to be turned over, make sure you have your current address on the order.
- Send a copy of the court's order with the clerk's filing stamp on it to the employer at the address shown on their answer. If the court directs the money to be turned over to you, you should send the employer a letter telling them where to send the money and include the order.