

# **GUIDE TO SMALL CLAIMS COURT**

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## I. INTRODUCTION

### A. Is Small Claims Court Right For You?

Does someone owe you money? Has your landlord unjustifiably failed to return your security deposit? Did you order merchandise that the retailer has failed to deliver? Has a merchant failed to comply with the terms of a guarantee?

If so, you should consider the possibility of bringing a lawsuit in small claims court. You may not need an attorney, and the rules are simpler than in most court proceedings. Any individual and any corporation doing business in Wisconsin can sue or be sued in small claims court.

### B. Have You Been Sued in Small Claims Court?

Perhaps you are reading this because you received a summons informing you that someone is suing you in small claims court. That person is called the “plaintiff” on the summons, and you are the defendant.

The summons tells you when and where you should go if you want to contest the case. It also tells you the type of case it is and what the plaintiff claims you owe him or her. If the plaintiff has an attorney, the summons tells you the attorney’s name and address.

Included with the summons is a “complaint” telling why the plaintiff thinks you owe him or her money, your property should be repossessed, or you should be evicted, as the case may be. Is everything stated in the complaint true? If not, and you do not agree that the plaintiff should get what he or she claims in the last paragraph of the complaint, you may wish to appear and contest the case. Even if the complaint is true, you may still want to contest the case if you think there are other facts the court should know about. If there is any reason why the plaintiff should not get what he or she claims, you may wish to contest the case.

If you decide not to contest the case, it is not necessary to go to court. If you do not appear in court, the plaintiff will probably obtain a judgment against you. If you do want to contest the case, make sure you show up in court at the time shown by the summons.

In some counties, you can contest the case without going to court until later. The summons will tell you if that is allowed in the county where you are being sued. Usually, you must send the court an “answer” to the complaint, showing the plaintiff’s name and your name, as they appear on the summons, and the case number. Your answer should state all the things in the complaint which you deny are true, and all the things the judge should know before deciding whether the plaintiff should get what he or she is asking for. After your answer is received, the court will schedule the case for a hearing and notify you of its time and place.

### C. Try To Settle First

To avoid the time and expense of going to court, try to settle the matter first. Contact the other party, discuss the situation, and try to solve the problem by an agreement you can both accept. Even after your small claims suit is filed, you may still engage in settlement negotiations with the opposing party. Don’t be reluctant to compromise; even in large civil lawsuits, more than 90% are settled prior to trial.

If you are unsure of your legal rights, you may wish to contact an attorney for advice, even though you do not intend to pay him or her to represent you at trial. For a minimal fee, an attorney may be able to advise you whether you have a valid claim or defense, and of the types of evidence you will need to prove it. Sometimes asking your attorney to mail a letter to the other party requesting settlement will be effective in avoiding the need to go to court.

#### **D. Is A Lawyer Necessary?**

In small claims court, you can handle your personal or business legal matters without an attorney. The court may require the appointment of a guardian if you are under 18 years of age. However, any party may hire an attorney to represent him or her in small claims court. If the other party has an attorney, your chances of winning may be better if you have one, too.

If you cannot afford an attorney, there are organizations listed in Appendix A that may be able to assist you. You might also read Chapter 799 of the Wisconsin Statutes, available in most libraries, which outlines the small claims court procedure.

#### **E. Types Of Small Claims Cases**

Small claims court may be used only for certain types of cases. These are as follows:

- \* Lawsuits (such as breach of contract, property damage or personal injury) when the amount claimed is \$5,000 or less;
- \* All evictions, regardless of the amount of rent claimed;
- \* Actions for the return of earnest money tendered pursuant to a contract for purchase of real property, regardless of the amount claimed;
- \* Replevins (repossessions of property) if the value of the property does not exceed \$5,000 or if the property is consumer goods leased or purchased on credit from a dealer;
- \* Actions for the confirmation, vacation, modification or correction of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of real property, regardless of the amount of that award;
- \* Garnishments (to enforce judgments from funds owed to the debtor) when the amount owed is \$5,000 or less;
- \* Property Taxes (suits by municipalities to recover delinquent personal property taxes).

## **II. STARTING YOUR LAWSUIT**

### **A. Where To File Your Lawsuit**

For most claims, the proper county to file your lawsuit is:

- (1) Where the claim arose;
- (2) Where the property which is the subject of the claim, or part of it, is located; or
- (3) Where the defendant resides or does substantial business.

A consumer transaction is a purchase or lease of goods, property or services, or loan of money or credit, for personal, family, household or agricultural purposes. If your claim arises out of a consumer transaction, the lawsuit may be filed in the county:

- (1) Where the consumer resides;
- (2) Where the consumer made the purchase; or
- (3) If it was a credit transaction, where the collateral (property securing the transaction) is located.

## **B. The Summons And Complaint**

If you have decided to use small claims court, go to the courthouse of the proper county and tell the clerk of court that you wish to file a small claims lawsuit. The clerk has the summons and complaint form (see SC-500 in Appendix D) you will need and perhaps an information sheet. The summons part tells the defendant (the party you are suing) when to be in court to answer your claim, while the complaint part states what you are suing for and why.

The clerk of the small claims court cannot give you legal advice, or answer questions requiring a knowledge of the law. The clerk must refer you to your own common sense or suggest you see an attorney if you have legal questions.

Unless you are indigent, you will have to pay the clerk a fee to file the summons and complaint. This small claims filing fee (see Appendix B) is set by state law. In some counties, the fee is paid when you pick up your forms. This and certain other fees may be charged against the other party if you win your case.

## **C. Filling In The Forms**

As the person starting the lawsuit, you are the plaintiff. Print or type your name and address in the space marked PLAINTIFF. Next, type or print the name and address of the person or company you are suing in the space marked DEFENDANT. It is important that the name and address of the party you are suing is correct. If the papers can't be delivered to the defendant, you might have to start over and pay additional fees.

The next part of the summons and complaint you fill in is the PLAINTIFF'S DEMAND. Check one or more of the four boxes labeled MONEY, EVICTION, RETURN OF PROPERTY and CONFIRMATION, VACATION, MODIFICATION OR CORRECTION OF ARBITRATION AWARD. On the line next to MONEY, insert the amount you request as damages. Simple interest may normally be charged at 5% from the date the amount was due until the date the court awards judgment and 12% thereafter until the amount is paid, unless there is a contract which specifically states a different rate of interest. In estimating your damages from an automobile accident, remember that the legal measure of damages is not always the same as the cost of repair. Your legal damages are determined by taking the value of your vehicle before the collision and subtracting its value immediately after.

In the next section of the plaintiff's demand, labeled "Brief statement of dates and facts," simply write down in your own words what happened. Explain why you are suing the defendant. For example, if you are suing to make the defendant pay you money because of an auto accident, write the facts surrounding the accident, and why it was the defendant's fault. If the defendant was violating a traffic law, or not exercising reasonable care, write that he or she caused the accident "negligently." If there is not enough room in this space, check the box and add as many additional pages as you need.

After you have completed your brief statement of dates and facts, sign the complaint and fill in the date.

After you return your summons and complaint to the clerk, your case will be filed and given a number which you should always use in asking about it. If you ask the clerk for information about your case without giving the correct case number, you may be required to pay a search fee (see Appendix B) to get the information you want.

#### **D. Serving The Papers**

Once the summons and complaint have been filled out, they must be “served on” (delivered to) the defendant. Many counties allow service by regular or certified mail upon defendants who live in that county. The mailed service fee (see Appendix B) must be paid to the clerk when the lawsuit is filed.

Ask the clerk whether mailed service is allowed. If not, or if any defendant lives outside the county, the defendant must be “personally” served. In these cases, or if you are suing a corporation and want to be sure that the papers are delivered to the correct person, you should have the sheriff or a private process server serve the papers. You cannot serve the papers yourself.

Give the papers to the sheriff or process server and pay the sheriff's fee listed in Appendix B. Save your receipt and bring it to court at your first hearing.

The sheriff or process server will go to the defendant’s address as stated on the summons to serve the papers (or send them to the sheriff of the county where the defendant lives, who will do so). The sheriff or process server then signs a certificate telling when the summons and complaint were served and sends the originals back to the court to be placed in your case file.

If the sheriff or process server can’t find the defendant, he or she may call you for information as to where the defendant works or other places he or she might be found. If the defendant can’t be found after several tries, the sheriff or process server can serve a family member over 14 years old at the defendant’s address. If that can’t be done at least eight days (excluding weekends and holidays) before the initial court date, your return date must be changed. The clerk will send you a notice stating the date of service and the changed date for your first court hearing.

Although the sheriff is usually the best person to serve your papers personally, they can be served by any adult who isn’t a party to the lawsuit. You cannot serve your own papers. Service must be made at least eight days prior to the initial appearance (five days for an eviction), excluding weekends and holidays. The person who serves the papers must:

- (1) Sign the summons and write on it the time, place and manner of service, along with the name of the person served;
- (2) Complete an “affidavit of service,” a form which can be purchased at a legal stationery store;
- (3) Give a copy to the plaintiff, and file the original affidavit, summons and complaint with the court immediately after service.

#### **E. Published Service**

If, after several tries, it is impossible to make personal service, or if the mailed papers are returned unopened to the clerk, service may be made by publishing a notice one time in a local newspaper and by mailing the summons and complaint to the defendant’s last-known address. The notice should be published in the legal notice section of any newspaper likely to give notice to the person affected. Publication of this notice must be at least eight days prior to the initial appearance

date. Appendix D shows a form notice which may be somewhat less expensive to publish than the actual summons itself, but either may be published.

### **III. FIRST HEARING**

#### **A. The Return Date**

When you filed your lawsuit, it was scheduled for hearing at a certain date and hour (sometimes known as the “return date”). In most counties, plaintiff and defendant must both appear in court then and the defendant will be asked to answer the complaint. In some counties, neither party is required to appear. Instead, a defendant wishing to contest the case must answer the complaint in writing (or by telephoning the clerk’s office) before the return date. In these counties, if the defendant answers on time, the plaintiff will be sent a copy of the defendant’s answer and notice of the time of the first court hearing.

#### **B. Attending The First Hearing**

In those counties which require both parties to appear on the return date, you will go before a judge, court commissioner or clerk. Although the summons states that it is not necessary to bring witnesses at this time, it may help to bring along any evidence, including papers and documents, that may prove your claim. It is a good idea to arrive early. If you are not in court on time, you may lose the case and have to start over. In counties with many courtrooms, you may need to check a calendar of that day’s court proceedings to determine in which courtroom your case will be called.

The clerk will call out the name of the cases one by one as they are listed on the calendar. When you hear your case called, go to the front of the courtroom and identify yourself. If the other party is present, he or she will also approach at the same time. The judge, court commissioner or clerk will ask the defendant if he or she admits to the plaintiff’s claim. If the defendant admits that he or she owes the money and does not have any other defense, the plaintiff is entitled to judgment. If the defendant does not admit the claim, the plaintiff will be allowed to describe the facts stated in the complaint and to show details on the damages he or she wants the court to award.

The judge, court commissioner or clerk will check the legal papers and decide whether any key facts are in dispute. The judge or commissioner might discuss possible settlement with you. If both parties agree to a settlement in front of the judge or commissioner, it becomes a binding agreement.

If both parties appear but cannot come to an agreement, the judge or commissioner can hold a hearing and make a decision immediately, if there is time available and both parties agree. Often, however, the matter is set for hearing at a future time. Except in evictions, a party who appears at the return date will be allowed to have the hearing postponed at least seven days upon request. In eviction cases, a delay is not permitted unless both parties agree or good cause is shown.

If both parties appear and cannot reach agreement in an eviction, replevin or garnishment case, the matter will be scheduled for a hearing before a judge as soon as possible.

## **C. Default Judgment**

If the defendant fails to come to court on the return date (or to answer on time in courts which allow that instead), the judge or court commissioner will often enter a “default judgment” against the defendant. For some types of cases, the complaint or plaintiff’s sworn testimony at the return date hearing is enough proof for such a judgment. In some counties, for some kinds of cases (especially damage and injury claims such as auto accidents) you might be asked to return to court and offer evidence to prove your claim at a later time. The clerk will help schedule that for your convenience.

In some counties, the clerk will require you to sign an affidavit that to the best of your knowledge the defendant is not in the military service before filing the default judgment. If you know the defendant is presently in the military, your action may not be able to go to judgment.

If the plaintiff fails to appear timely on the return date (in those counties where required to do so), the lawsuit will usually be dismissed by the court.

## **IV. COURT COMMISSIONER HEARINGS**

### **A. Court Commissioner Hearings**

Many counties have hired court commissioners to help hear small claims cases. If the county where your suit is filed does not use court commissioners, skip to Section V of this pamphlet. In counties using court commissioners, you may have a hearing before the commissioner on the return date. If the county does not require both parties to appear on the return date, or the court commissioner did not have time to conduct the hearing, then your court commissioner hearing will be later and you will be notified when. Again, arrive at the courthouse in plenty of time to find the proper courtroom before your case is called.

The court commissioner may ask about possible settlement. Often settlement works to your advantage, but you are not required to settle, even if the commissioner recommends it. If no settlement occurs, the hearing begins. Both parties will take an oath or affirmation to tell the truth. Usually the plaintiff first explains the circumstances of the complaint and presents evidence and witnesses in support of his or her claim. The commissioner and the defendant may question the plaintiff and plaintiff’s witnesses about any part of their story.

The commissioner will then ask the defendant to give his or her side of the case. The plaintiff may cross-examine (explained in Section V- D of this pamphlet) the defendant and defense witnesses and the commissioner may also ask them questions. Both parties should refrain from arguing with each other or the commissioner.

Small claims hearings are not governed by the rules of evidence, except those relating to privilege. Privileges are laws allowing witnesses to refuse to answer questions about confidential communications to spouses, health professionals and the clergy, and the privilege against forced self-incrimination. Any evidence having reasonable value as proof may be offered. However, the court commissioner may refuse to accept irrelevant or repetitious evidence or arguments.

Although the normal rules of procedure and evidence do not apply, the small claims process does not change the laws which decide the outcome of your case.

## **B. How To Prepare Your Case**

Plan to get your proof together so that it is more convincing than the other side's evidence. Arrange to have your witnesses, contracts and receipts in court at the designated time. The plaintiff bears the burden of proof by the greater weight of the credible evidence.

If you are the plaintiff, think about how you are going to prove your case. Collect and preserve any receipts you may have received in dealing with the other party. Canceled checks are very useful. Make a detailed chronological history of the transactions so the facts are clear in your mind. Remember, your testimony may be the most important information you have. Talk to people who may have witnessed important aspects of the dispute. For example, if you are suing your landlord for the return of your security deposit, get together a copy of your lease, the canceled check you gave the landlord for the security deposit and any unbiased persons who can testify concerning the condition of the rental unit when you started renting it and when you left.

If your lawsuit concerns defective merchandise or faulty repairs, it may be very helpful to get an "expert" witness to testify on your behalf. Full-time mechanics and repairers with several years of experience will often qualify as experts. A written statement concerning the nature of the defect and a decrease in value due to the defect is often helpful. An "affidavit" (a sworn and notarized statement) from the witness is better, and it is best to have the witness testify in person. Merely repeating what your expert told you is very weak evidence. It must be corroborated by other written or in-court testimony.

## **C. Court Commissioner's Decision**

After hearing each party's story, the court commissioner may make an immediate decision. If the decision cannot be made at this time, the commissioner has 30 days to prepare a written decision and mail it to the parties. If the parties are satisfied with the decision, the case is over. However, either party that is dissatisfied with the decision may request a trial before a judge. Before you leave the hearing, the commissioner will hand you a paper giving instructions on how to request a trial.

## **D. How To Request A Trial**

If the commissioner made an oral decision at the hearing, either party has 10 days to request a trial. If the decision was made in writing following the hearing, either party must request a trial within 15 days from the date the decision was mailed. A paper called "Demand for Trial" (see Appendix D) must be filled out and filed in the small claims court. The party demanding trial must also mail a copy of the demand for trial to the other parties within the time limit. That party must be able to prove that he or she mailed it, so it may be best to use certified mail.

# **V. THE TRIAL**

## **A. Jury Trial vs. Court Trial**

A trial "to the court" is a trial before a judge. There is no extra fee for a court trial. Any party may file a written demand for a jury trial if a demand for a trial is filed. Any party

requesting a jury trial must pay jury demand fees listed in Appendix B.

If the party demanding the trial does not demand a jury trial, any other party may file such a demand with the court (mailing copies to all other parties) within 15 days from the date of mailing of the demand for trial. If no party timely demands a trial by jury, the right to trial by jury is waived.

Demanding a jury trial brings your case under the formal rules of evidence and procedure. Unless you have an attorney, demanding a jury trial for a small claims case is usually unwise.

## **B. Preparing For Trial**

After a demand for trial has been made, the court will send the parties notice of the date, time, courtroom and judge for the trial. Note the date, for this will be your only notice. On the date of trial be sure to bring any necessary witnesses and documents to court.

Friends and relatives will probably appear on your behalf voluntarily, but businesspeople, police officers and others who have no interest in your matter usually won't. If you need their testimony to prove a key fact which the other party disputes, you can force them to come to court by the use of a "subpoena." A subpoena is a court order compelling a witness to be present at the time a case is tried. Subpoenas can be issued for persons in Wisconsin. Subpoena forms can be obtained without charge from the clerk's office. You will need an original and one copy of the subpoena for each person you want to come to court.

You may also use a subpoena to get documents, books, records or other evidence in someone else's possession brought to court. A court order requiring a witness to bring those documents or records is called a "subpoena duces tecum." It is filled out exactly as a regular subpoena except that you must also describe what items you want the person to bring with him or her.

After obtaining the subpoena forms, you will have to fill them out. Insert your case number, the name and address of the person to be subpoenaed, the date of the trial, the time and courtroom number, the judge who will preside, your name and that of the defendant. The names and addresses of the parties of the case should also be filled in on the reverse side of the subpoena.

After the subpoena is filled out in duplicate, have it signed by the clerk, and take it to the sheriff's office for service on the witness in the same manner as the summons and complaint.

Although a subpoena can be served at any time prior to the trial date, you should take it to the sheriff's office at least one week before the trial. You must pay the sheriff's service fee, witness fee, and witness's mileage fee listed in Appendix B. The sheriff will pay the witness and mileage fees to the witness when the subpoena is served. If these fees are not paid at the time the subpoena is served, the witness does not have to come to court. If the sheriff is able to serve the subpoena, proof of that will automatically be filed with the clerk. If the sheriff is unable to serve it, he or she will return it to you. Sometimes you can find out whether your subpoena has been served by calling the sheriff's office. Keep the receipt you get when paying the sheriff's fee for serving the subpoena; it contains the "transaction number," which you might need if the papers are misplaced.

The judge may conduct a pretrial conference and encourage you to settle before the trial begins. Settle if that is in your best interest.

If no settlement occurs, the trial will begin. The judge will decide the case only on the evidence and arguments presented at this trial, which will be taken down by a court reporter. The decision of the commissioner will not be considered.

You and all your witnesses should be in court promptly at the time assigned by the judge, and you should have any proof you feel is necessary to win your case.

The plaintiff is almost always asked to present his or her case first. After swearing or affirming to testify truthfully, tell your story, giving clear and concise details to support your claim. Keep to the key facts and try not to digress into side issues unless a question requires it. If you have written evidence or documents to support your claim, show them to the judge and the defendant, explain what they are, and from where you obtained them. Bringing several copies of the documents to hand out to the other parties is helpful but not required. If any physical evidence (maps, invoices, letters, canceled checks, etc.) is to be presented, it should be given to the judge or court reporter to be marked as an exhibit and given a number. Remember that while the reporter is marking an exhibit, he or she cannot record words spoken at the same time. Before completing your case, be sure to request the court to receive your exhibits into evidence.

At the conclusion of the plaintiff's testimony, the judge may question him or her. After that, the defendant has the right to cross-examine the plaintiff. When that is completed, the plaintiff steps down from the witness stand and calls any other witnesses he or she has. After each witness is sworn, ask questions clarifying the facts on which your claim is based. The defendant has the right to cross-examine the plaintiff's witnesses. The judge may also question them.

The defendant follows the plaintiff and presents his or her case in the same way. The defendant may call witnesses to support his or her denials of the plaintiff's claims and whatever additional defenses he or she may have. The plaintiff may question the defendant and the defendant's witnesses.

### **C. Conduct Of Witnesses**

Witnesses should speak clearly and loudly enough for all to hear. To speed up the hearing, the witnesses may tell their stories in their own words without the usual question-and-answer procedure of regular court testimony. However, testimony should be concise and to the point, not rambling. If necessary, a witness may use a blackboard or chart to demonstrate or illustrate a point. Try not to speak when another is speaking so that all comments may be heard by the court reporter.

### **D. Cross Examination**

When a party or witness has completed testifying, the opposing party may cross-examine him or her. Cross-examination is not limited to things the witness said in direct testimony. The only limitation on cross-examination is that the questions asked be relevant. The cross examiner must not attempt to put words in the mouth of the witness or make statements at this point, only ask questions. Cross-examination is not an opportunity for debate. The four basic purposes of cross-examination are:

- (1) To clear up what the witness meant;
- (2) To find out whether the witness is biased;
- (3) To test the witness's memory or recall of events; and
- (4) To test the accuracy of the witness's perceptions (that is, how well he or she saw or heard the events he or she described).

### **E. Stipulated Dismissal**

If the judge decides the case in favor of the plaintiff, he or she will be awarded a "judgment,"

i.e., a formal document signed by the judge and “entered” (filed) in court, stating that the defendant owes the plaintiff money, must return property, or vacate the premises. After the judgment is filed in court, there are various ways the plaintiff can enforce it against the defendant.

Some defendants are more likely to abide by the court’s decision if the plaintiff agrees not to have the judgment entered. Often that is because the judgment may make it harder for the defendant to obtain a loan to pay the plaintiff and other creditors. In this situation, the parties sometimes agree to a “stipulated dismissal.” If the parties agree that the defendant will pay the amount determined by the court by a certain date (or in certain installment payments), they can ask the judge for a stipulated (agreed) dismissal. The judge will dismiss the lawsuit without entering a judgment against the defendant. However, if the defendant fails to pay as required by the agreement, the plaintiff can file a sworn statement in the court and have the stipulated dismissal withdrawn and a judgment entered for the amount the defendant still owes without any more hearings. Stipulated dismissals are allowed by s. 799.24(3) of the Wisconsin Statutes. You need not enter into such an agreement. If you are the plaintiff, do so only if you think the defendant will abide by it.

## **VI. POST-TRIAL CONSIDERATIONS**

### **A. Reimbursement Of Costs**

If you win your lawsuit, ask the court to include court costs and fees you incurred in the lawsuit as part of the judgment. Not all of your expenses can be passed on to the losing party. Lost wages, parking and transportation expenses incurred in coming to court are some of the expenses which the court cannot order as costs. However, the court will require reimbursement of fees paid to file the lawsuit, to have the summons and complaint mailed or personally served, to subpoena witnesses, to demand a jury, to compensate the garnishee in garnishment cases, and, if an attorney appeared for you in court, an attorney fee based on the amount of damages the court awarded, as follows:

<u>Amount of Judgment</u>	<u>Attorney Fee</u>
\$1,000 - or over	\$100
\$ 500 - \$ 999	\$ 50
\$ 200 - \$ 499	\$ 25
Under \$ 200	\$ 15

If it is not practical to determine the value of the court’s decision in your favor, the court may order the defendant to pay you an attorney fee between \$15 and \$100. If your judgment was awarded by default (because the defendant failed to appear), the attorney fee is one-half of the amount stated above. Usually, your attorney will charge you more than the attorney fee the defendant must pay you.

### **B. Financial Disclosures By Judgment Debtors**

Even though the court decides in your favor, the losing party still might not pay you the money due or return the property as ordered by the judgment. The court will not force the defendant to do so unless you take further legal action to get what is owed you. This is called “executing” the judgment. In order to do so, you need to know how much money or property the defendant has or earns. For this reason, if the judgment requires the defendant to pay you money damages, the court will also order the judgment debtor to send you a statement disclosing his or her name, address, employers and their addresses, real property he or she owns, financial institutions in which he or she has funds on deposit,

and other information required by form schedules which the court will give or send to the debtor. (See form SC-506, Order for Financial Disclosure and Financial Disclosure Statement, Appendix D.)

The debtor need not file this information in court. He or she must mail it directly to the successful party within 15 days after the judgment is filed in court, unless within that time the judgment is paid.

The debtor must comply with this order and disclose this information even though he or she decides to appeal the court's decision. However, if there is an appeal, the debtor can ask the court for an order delaying the time when this information must be sent to the creditor. If the judgment debtor hasn't paid the debt or sent the creditor this information by the 15th day after the judgment was filed in court, the creditor can start proceedings to have the debtor held in contempt of court. Ask the small claims clerk for form SC-507, Petition and Order for Hearing on Contempt, available free of charge. After you fill it out and file it, the court will order the other party to appear in court to explain why he or she failed to send the proper financial disclosures. Once the party is in court, the court will usually require the party to complete the financial disclosure form at that time. If the debtor fails to appear at the order-to-show-cause hearing, the court will issue a warrant for his or her arrest for being in contempt of court. The defendant can be placed in jail or ordered to pay a fine for each day he or she fails to make the required financial disclosures to you.

### **C. Docketing The Judgment**

If the small claims court has issued a judgment in your favor, you should have that judgment "docketed." When a docketing fee (see Appendix B) is paid to the clerk, the clerk will place the judgment on an official list, open to public inspection, telling interested parties such as creditors that the judgment exists. After a judgment is docketed, it becomes a lien on any real estate owned by the debtor in that county for ten years. If the debtor tries to sell the property, the purchaser will usually require that the lien be removed (by paying the plaintiff the judgment) before taking title.

A transcript of the judgment can be obtained from the clerk and docketed in any other county where the defendant owns real estate, creating a lien on it, too.

Of course, if the debtor doesn't own real property (or the plaintiff doesn't want to wait until he or she tries to sell it), there are other legal methods to enforce the judgment, such as garnishment, described in Section VII of this booklet.

### **D. Appeals**

Any party dissatisfied with the judgment of the small claims court may appeal it to the court of appeals. Since there are no special "small claims" rules for appeals, it is almost impossible to appeal successfully without an attorney's help. Therefore, this booklet will not discuss the steps necessary to bring an appeal. The appeal fee is listed in Appendix B.

### **E. Reopening Default Judgment**

When the defendant fails to appear in court timely on either the initial return date or the date of any further proceedings, the court will probably enter a default judgment. If there was a good reason for the defendant's failure to appear in court, he or she may file a motion to reopen the judgment. The small claims court may reopen a default judgment if the motion to reopen is filed within six months after the default judgment was entered. If the county where the lawsuit was filed was not proper under

the rules outlined in this booklet, a motion to reopen the judgment may be filed up to one year after the judgment was filed. But don't "sleep on your rights"; the longer you wait, the less likely the court is to grant you another hearing.

However, the court will not reopen a judgment unless it finds that "good cause" exists. Your motion must state why you think there is good cause to reopen the judgment. Maybe you missed your court date because you were in the hospital. To reopen the judgment, you must file a notice of motion with the court and serve a copy on the other party in any of the ways allowed for service of the summons and complaint. The notice outlines your reasons, or "good cause" for having the judgment reopened. Contact the clerk or the judge to whom your case was assigned to get a date and time for hearing the motion. The motion must be received by the other party at least five days, not including Saturdays, Sundays or holidays, before the day on which the motion is scheduled for hearing.

A default judgment might be reopened even more than six months after the judgment was filed, but you should see an attorney to find out if your grounds for reopening fit s. 806.07 of the Wisconsin Statutes.

If the court grants your motion and reopens the judgment, you may have to pay court costs to the other party. You should ask the judge not to award costs if you had a good reason for not being in court at the appointed time.

If the plaintiff misses a court date and the case is dismissed, he or she may also file a motion to reopen. However, since there is a chance that court costs may be awarded to the defendant, it might be better to start your small claims lawsuit again. (See form SC-511, Petition to Answer or to Reopen Small Claims Judgment and Order in Appendix D.)

## **VII. GARNISHMENT**

### **A. What Is Garnishment?**

When the court enters a judgment for money damages, whoever must pay the money is considered a "judgment debtor" and whoever is owed the money is considered a "judgment creditor." To save space, this section of the pamphlet will refer to them simply as debtor and creditor. Just remember that garnishment cannot be used to enforce a debt before a court has rendered judgment on it.

If the debtor doesn't pay the judgment voluntarily, there are several ways in which the creditor can use the court system to collect it. (See, for example, "docketing the judgment" in Section VI-C of this pamphlet.) Another example is garnishment, in which the court orders someone who owes money to the debtor to pay it to the creditor instead. That person, called the "garnishee," is often the debtor's employer, or a bank or other financial institution where the debtor maintains an account.

If the creditor doesn't know where the debtor works or maintains accounts, he or she can find out through the financial disclosures described in Section VI-B of this pamphlet. Once this information is known, the creditor can start a new lawsuit called a garnishment, against both the debtor and garnishee. The process of garnishing bank or other accounts is similar to that used to obtain the small claims judgment, while the process of garnishing earnings is different. Both are described below.

### **B. Garnishment Of Accounts**

By law, the first \$1,000 on deposit in any one or more accounts is exempt from garnishment.

Furthermore, any money in an account which is derived from government benefits such as social security, supplemental security income (SSI), veterans benefits, unemployment compensation, or relief funded under public assistance, is also exempt from garnishment. The garnishment of an account attaches only money on deposit at the time the garnishee receives the garnishment papers. Any money the debtor deposits later will not be attached. So, garnishment will not result in any payments to the creditor unless the papers are served on the financial institution at a time when the debtor has more than \$1,000 in non-exempt funds on deposit.

When the amount of the judgment plus interest and costs is \$5,000 or less, the garnishment of accounts is handled very similarly to small claims. The creditor obtains a garnishment summons and complaint (see SC-503 in Appendix D) upon paying to the clerk the garnishment filing fee listed in Appendix B. After filling in the blanks on the summons and complaint, the creditor serves them on both the debtor and the garnishee, using one of the methods described in Section II-D of this pamphlet. The sheriff or process server should serve the garnishee before the debtor, or the debtor might withdraw the funds. However, the garnishment will fail unless the debtor is served within 10 days after the garnishee. The creditor must also pay a garnishee fee (non-earnings) listed in Appendix B, which the process server passes on to the garnishee, or the garnishee is not required to answer the complaint.

The summons in an account garnishment, like that in other small claims, sets a return date when the case will be called in court. At or prior to that time, the garnishee must file in court and serve on the creditor and debtor an answer, stating whether the garnishee holds funds owed to the debtor (see CV-416 in Appendix D). The answer may also include any defenses such as exemptions or procedural defects. Failure of the garnishee to answer may result in liability for the entire judgment debt. The debtor may also file an answer asserting exemptions or other defenses to the garnishment, but the debtor is not required to do so.

If the garnishee answers that money is being withheld and no defense is raised, the creditor files with the court and mails to the other parties a motion for a court order directing payment of the withheld funds. If any answer claims defenses, exemptions, or procedural defects, the creditor must appear in court on the return date. The matter will either be settled at that time, or a hearing will be scheduled like that described in Sections III-A and III-B of this pamphlet.

### **C. Garnishment Of Earnings**

A new law for the garnishment of earnings took effect on April 1, 1994. Under this law, a creditor can attach some of the earnings of the debtor for approximately 3 months after the papers are served on the garnishee employer. If the debtor is an employee of state or local government, the garnishment stays in effect until the entire judgment debt is paid.

The creditor begins an earnings garnishment by filing a notice (see CV-421 in Appendix D) with the court clerk and paying the garnishment filing fee listed in Appendix B. The clerk then gives the creditor two copies of the earnings garnishment (see CV-422 in Appendix D), one to serve on the debtor and one on the garnishee. The copy served on the garnishee is accompanied by the garnishee fee (earnings) listed in Appendix B. The copy served on the debtor is accompanied by two other forms, the exemption notice and the debtor's answer (see CV-423 and CV-424 in Appendix D). Both copies must be served within 60 days after the notice is filed, and the debtor must be served not more than seven "business days," i.e., excluding weekends and holidays, after the garnishee and at least three business days before the first payday affected. Service may be made in any manner described in Section II-D of this pamphlet, or by first class mail, or certified mail with return receipt requested. Or, the

creditor can personally deliver the papers to the garnishee (not the debtor) if the garnishee signs a receipt admitting service.

The garnishment served on the garnishee is a court order directing that 20% of the debtor's aftertax earnings be withheld from the debtor's pay for all payperiods beginning within 13 weeks after the garnishee receives the papers. This happens automatically, without further hearing or order of the court, with three exceptions:

(1) The debtor's earnings are already being garnished by a different creditor. In this case, the garnishee tells the creditor, keeps the papers and puts the garnishment into effect when the first garnishment ends (when the 13 weeks run out or the first judgment debt is fully paid, whichever comes first).

(2) The debtor's earnings are assigned by court order for child or spousal support. In this case, the garnishee must withhold and pay the creditor only the difference between the amount required by the support order and 25% of the debtor's aftertax earnings. If the support order equals or exceeds 25% of the debtor's aftertax earnings, the creditor is paid nothing.

(3) The debtor fills in the answer form and delivers or mails it to the garnishee. In most cases, the debtor's answer will stop the garnishment because the debtor will claim that his or her earnings are completely exempt. However, the answer can also be used to correct the garnishee's failure to consider court-ordered support under (2), above, or arithmetic errors. The debtor can file an answer (or a new answer) at any time before or during the time the garnishment is in effect. An answer prevents payments to the creditor if the garnishee receives it before paying the creditor. The garnishee must wait at least five business days after each payday (but no more than 10) before paying the creditor.

The exemption notice served on the debtor with the garnishment helps the debtor determine whether to mail or deliver an answer to the garnishee. It informs the debtor that his or her earnings are exempt from garnishment if:

(1) The debtor's household income falls below the federal poverty level (see CV-427 in Appendix D), or the garnishment would cause that to happen. A worksheet (see CV-426 in Appendix D) is provided to help the debtor calculate whether that is the case.

(2) The debtor receives, or within 6 months has received, relief funded under public assistance, medical assistance, SSI, food stamps, relief funded under s. 59.07(154) of the Wisconsin Statutes, or veteran's benefits based on need.

(3) At least 25% of the debtor's aftertax earnings are assigned by court order for support.

If the debtor mails or delivers an answer to the garnishee, the garnishee must send a copy of it to the creditor by the end of the third business day after receiving the answer. The creditor may demand a court hearing to challenge the debtor's answer (see CV-425 in Appendix D). If the court orders the garnishment to proceed, the date the court order is served on the garnishee is substituted for the date of original service in calculating which payperiods are affected by the garnishment. The court can order costs and attorney fees if it finds that the debtor's answer, or the creditor's challenge, was asserted in bad faith. Court hearings can also be sought by any party to force other parties to comply with the earnings garnishment law, or by the debtor to seek relief from the garnishment if the exemptions do not permit the debtor and dependents to acquire "the necessities of life."

The debtor and creditor may agree in writing to extend the garnishment for successive 13-week periods, avoiding the need for additional court filing fees and costs for service of papers. The garnishee is bound by any extension agreement delivered or mailed before the end of the last payperiod affected by the original garnishment (or prior extension). An additional garnishee fee must be paid with each extension agreement, however. Also, an extension is void and the fee must be returned if

another creditor attempting to garnish the debtor's earnings serves the papers on the garnishee before the extension begins.

Unless otherwise provided in a labor union contract, garnishees cannot impose fees on debtors or take adverse actions against them because their earnings are subject to garnishment. Regardless of any such contract, employees cannot be discharged on account of garnishment for judgments arising out of consumer transactions, as defined in Section II-A of this pamphlet.

**LEGAL ASSISTANCE**

STATE BAR LAWYER REFERRAL 1-800-362-9082  
Madison 608-257-4666 Milwaukee 414-274-6768

**LOW INCOME LEGAL SERVICES**

(1) LEGAL ACTION OF WISCONSIN, INC.

- a. Milwaukee County - 230 West Wells St., Milwaukee, WI 53203,  
414-278-7722 or 1-888-278-0633
- b. Columbia, Dane, Dodge, Green, Jefferson and Rock Counties -  
31 South Mills St., Madison, WI 53715,  
608-256-3304 or 1-800-362-3904
- c. Kenosha, Racine and Walworth Counties - 56th St., Rm. 508  
Kenosha, WI 53140, 414-654-0114 or 1-800-242-5840

(2) LEGAL SERVICES OF NORTHEASTERN WISCONSIN, INC.

- a. Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties -  
201 W. Walnut, Suite 203, Green Bay, WI 54301, 920-432-4645 or  
1-800-236-1127
- b. Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan,  
Washington, Waushara and Winnebago Counties - 404 North Main St.,  
Suite 702, Oshkosh, WI 54901, 920-233-6521 or 1-800-236-1128

(3) WESTERN WISCONSIN LEGAL SERVICES, INC.

- a. Buffalo, Jackson, Juneau, La Crosse, Monroe, Trempealeau and  
Vernon Counties - 205 5th Ave. S., Suite 300, La Crosse,  
WI 54601, 608-785-2809 or 1-800-873-0927
- b. Crawford, Grant, Iowa, Lafayette, Richland and Sauk Counties - 202  
West Main St., Dodgeville, WI 53533, 608-935-2741 or  
1-800-873-0928

(4) WISCONSIN JUDICARE, INC.

Ashland, Barron, Bayfield, Burnett, Chippewa, Clark, Douglas, Dunn, Eau  
Claire, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Marinette,  
Menominee, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Risk, St. Croix,  
Sawyer, Shawano, Taylor, Vilas, Washburn, Waupaca and Wood Counties -  
300 Third St., Suite 210, P.O. Box 6100, Wausau, WI 54402-6100,  
715-842-1681 or 1-800-472-1638 (Fax 715-848-1885)

**TABLE OF SELECTED COURT FEES**  
**OCTOBER 1, 1997**  
(Fees subject to periodic change)

<u>Fee</u>	<u>Wis. Stats. Reference</u>	<u>Amount</u>
Appeal Fee	809.25(2)	\$150.00
Docketing Fee	814.61(5)	\$ 5.00
Garnishee Fee (Non-Earnings)	812.06	\$ 3.00
Garnishee Fee (Earnings)	812.33 812.42(2)(c)*	\$ 15.00 \$ 15.00 public employer *Plus \$3 per payment after 1st payment
Garnishment Filing Fee (Small Claims)	814.62(1); 814.634 and 814.635	\$ 57.00
Jury Demand Fees plus	814.62(3)(e) 814.61(4)	\$ 53.00 \$ 6.00 per juror
Mailed Service Fee plus cost of certified mail (if used)	814.62(4)	\$ 2.00 per defendant
Search Fee	814.61(11)	\$ 5.00
Sheriff's Service Fees plus (mileage which may vary from county to county)	814.70(1)	\$12.00 per defendant \$ .25 per mile
Small Claims Filing Fee	814.62(3); 814.634 and 814.635	\$ 59.00
Witness Fees plus	814.67(1)	\$16.00 per day \$ .20 per mile

The court will waive these fees for persons unable to pay them. To request a waiver, you must complete and sign an affidavit which is available from the clerk (see CV-410 in Appendix D). Such a request constitutes consent of the affiant and counsel that if judgment is in favor of affiant, the court may order opposing party to pay unpaid fees and costs and the balance to the affiant. If the affiant is a prisoner and judgment is in favor of the opposing party, such a request constitutes consent for the court to order the prison to deduct the unpaid fees and costs from the amount in the prisoner's account at the time the judgment was rendered.

GLOSSARY OF TERMS

**ACTION** - A lawsuit.

**ADJOURN** - To delay a hearing until a future time.

**ADVERSE PARTY** - Party on the other side of the lawsuit.

**AFFIDAVIT OF NON-MILITARY SERVICE** - Statement that, to the best of plaintiff's knowledge, the defendant is not now in the military.

**ANSWER** - A statement by the defendant in response to the plaintiff's complaint.

**APPEAL** - A request that a higher court review and change the final decision in a case.

**CALENDAR** - A schedule of cases to be heard in court.

**CAPTION** - The heading of a court paper, showing the court and county, names of parties and case number.

**CLERK** - An administrative officer of the court.

**COMPLAINT** - The court paper that states why the plaintiff is suing and what plaintiff wants the court to order.

**CONTRACT** - An agreement.

**COURT COMMISSIONER** - An attorney authorized to conduct hearings and initial proceedings.

**CREDITOR** - A person who is owed money.

**DAMAGES** - The amount of money requested in a lawsuit to compensate the plaintiff for injuries to person or property or for the defendant's failure to perform a contract.

**DEBTOR** - A person who owes money.

**DEFAULT** - Failure to answer a complaint or appear for a hearing.

**DEFENDANT** - The person who is sued.

**DEFENSE** - A reason why a claim in a complaint is not valid.

**DISMISSAL** - A court order terminating a case because the plaintiff has failed to appear in court or state or prove a valid claim.

**DOCKET** - An official list of court judgments.

**EVICTION** - An action by a landlord to remove a tenant from the landlord's property.

**EXECUTION** - A legal procedure in which the sheriff seizes a debtor's property to pay a judgment.

**EXEMPTION** - A law allowing a debtor to keep some property free from the claims of creditors.

**EXHIBIT** - A paper or thing shown to a court during a hearing and used as evidence.

**FEE** - A charge fixed by the law for the service of public officers.

**GARNISHEE** - In garnishments, the party who owes money to the debtor and is ordered to pay it to the creditor instead.

**GARNISHMENT** - A proceeding after judgment authorizing the creditor to be paid from the debtor's wages or bank accounts.

**JUDGMENT** - Final decision by the court.

**NOTARY PUBLIC** - An attorney or other official authorized to certify the signing of sworn documents.

**PARTY** - The plaintiff or defendant. In garnishments, the creditor, the debtor or the garnishee.

**PLAINTIFF** - The party who begins the lawsuit.

**PRETRIAL CONFERENCE** - A meeting between the parties and the judge or court commissioner to investigate settlement or narrow the disputed issues.

**PRO SE** - Latin meaning "for oneself," i.e., without the aid of a lawyer.

**REPLEVIN** - A lawsuit seeking return of property.

**RETURN DATE** - The initial appearance in court.

**SERVICE** - The delivery of the complaint, summons or other papers filed by one party to another party.

**STIPULATED DISMISSAL** - A court order dismissing the suit upon agreement of the parties. If the agreement is not kept, the dismissal may be vacated and a judgment entered.

**SUBPOENA** - A court order that a witness appear in court.

**SUMMONS** - A court order that the defendant answer the complaint or appear in court at a stated time.

**TORT** - A claim based on an injury caused by the defendant to the plaintiff or plaintiff's property.

**VENUE** - The county or counties in which a lawsuit may be filed and tried.

## **APPENDIX D**

### **FORMS**



Defendant: (Name and Address)

**PUBLISHED NOTICE**

Case No. \_\_\_\_\_

You are being sued by \_\_\_\_\_ in small claims court.  
Name of Plaintiff

A hearing will be held at the \_\_\_\_\_ County Courthouse,

\_\_\_\_\_, Wisconsin, Room \_\_\_\_\_,  
Address

on \_\_\_\_\_ at \_\_\_\_\_ of thereafter.  
Date Time

If you do not appear, a judgment may be given to the person suing you. A copy of the claim has been mailed to you at the address above.

Plaintiff: (Name and Address)

**DEMAND FOR TRIAL**

vs.

Defendant: (Name and Address)

Case No. \_\_\_\_\_

Please take notice that \_\_\_\_\_,  plaintiff  defendant  
Name

objects to the decision of the Court Commissioner \_\_\_\_\_  
Name

in this matter on \_\_\_\_\_.  
Date

\_\_\_\_\_  
 Name of Party/Attorney (Typed)

\_\_\_\_\_  
 Address

\_\_\_\_\_

\_\_\_\_\_  
 Signature of Party/Attorney

\_\_\_\_\_  
 Date

Creditor(s): \_\_\_\_\_  
(Name and Address)

Debtor(s): \_\_\_\_\_  
-vs-

Garnishee: \_\_\_\_\_  
and

**SMALL CLAIMS  
GARNISHMENT  
SUMMONS AND COMPLAINT  
FOR NON-EARNINGS  
(Garnishment - 31005)**

Case No. \_\_\_\_\_

**TO THE GARNISHEE:**

You are summoned as garnishee of the debtor(s). You are required to answer as described in Chapter 799, Wis. Stats. whether you are indebted to or have in your possession or under your control any property of the debtor(s). You must appear at the time and place stated and/or you may file a written answer on or before that time. You must file the original of your answer with the Clerk of Circuit Court and serve a copy on the creditor's attorney or creditor.

**If you fail to answer, judgment will be entered against you for the amount of the creditor's judgment against the debtor(s) plus the costs of this action.**

If you are indebted to the debtor for the sale of agricultural products grown or produced by a person or his or her minor children, you are required to pay to the debtor the prescribed subsistence allowance under §812.18(2m)(b), Wis. Stats.

From the balance remaining after any subsistence allowance has been paid and for all other garnishments, you must retain the amount of creditor's claim as stated below, plus costs not to exceed \$40.

**You are to retain this property pending the further order of the court. Any excess indebtedness is not subject to the garnishment as provided in §812.18(3), Wis. Stats.**

When to Appear	
Date	Time
Place to Appear	

Signature of Clerk of Circuit Court/Attorney	Date Issued	Date Mailed
--	-------------	-------------

**CREDITOR'S CLAIM**

THE CREDITOR STATES that a judgment, as described below, was entered in circuit court:

Name of Debtor(s)	County (State of Wisconsin)	
Case Number	Date of Entry of Judgment	Amount of Judgment

and that this summary provides the total amount due over and above all offsets.

Creditor's Claim	Costs	Interest	Total Due on Creditor's Claim
\$	\$	\$	\$

The creditor believes that the garnishee is indebted to or has control or possession over property of the debtor which is not exempt from execution.

Subscribed and sworn to before me  
on \_\_\_\_\_  
\_\_\_\_\_  
Notary Public/Clerk of Circuit Court, State of Wisconsin  
My commission expires: \_\_\_\_\_

Signature of Creditor/Attorney	Date
Address	Attorney's Telephone Number
	Attorney's State Bar Number

Creditor:

**ORDER FOR FINANCIAL DISCLOSURE  
AND  
FINANCIAL DISCLOSURE STATEMENT**

Debtor: \_\_\_\_\_ -vs- \_\_\_\_\_

Case No. \_\_\_\_\_

**IT IS ORDERED THAT** the judgment debtor within 15 days of entry of judgment either

- Pay the judgment in full, or
- Accurately complete the following Financial Disclosure Statement and mail or deliver it to the judgment creditor or attorney at the following address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**➤ Failure to comply with this order may be contempt of court and subject you to the following penalties:**

- Imprisonment for up to **6 months**.
- Forfeitures of not more than **\$2000 per day**.
- Any other order necessary to ensure your compliance.
- Punitive (criminal) sanctions under Chapter 785, Wis. Stats.

**BY THE COURT:**

\_\_\_\_\_ Judgment Date

\_\_\_\_\_ Circuit Judge/Court Commissioner

\_\_\_\_\_ Date

**Individuals should complete items 1 - 33 and 35. Corporations should complete items 24 - 32, 34 and 35.**

**FINANCIAL DISCLOSURE OF ASSETS**

1. Your full name		2. Date of Birth	3. Social Security Number
4. Your residence address (not P.O. box)		City	State   Zip Code
5. Spouse's Full Name		6. Social Security Number	7. Do you have a marital property agreement? <input type="checkbox"/> Yes (Attach copy.) <input type="checkbox"/> No
8. Spouse's Residence Address (If different)		City	State   Zip Code
9. Your Employer's Name and Address		10. Gross Wages	11. Paid <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly
12. Spouse's Employer's Name and Address		13. Gross Wages	14. Paid <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly
<b>You must complete this information (15-32) for both you and your spouse.</b>			
15. Other Employers		16. Gross Wages	17. Paid <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly
18. Pension Income (Give name and address of payor.)		19. Amount	20. Paid <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly
21. Social Security/Disability/SSI (Give name and address of payor.)		22. Amount	23. Paid <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly
24. Checking, savings, financial accounts (List name and address of institution, type of account and amount.)			
25. Automobiles (Give year, make and market value.)			
26. Stocks, bonds, life insurance, IRA's and other financial investments (list name, number of shares and value.)		27. Other Income (Specify)	
28. Real estate and other real property interests (List kind of property, location and market value.)			
29. Does anyone owe you money? <input type="checkbox"/> Yes (Attach details.) <input type="checkbox"/> No		30. Is anyone holding any assets or property for you? <input type="checkbox"/> Yes (Attach details.) <input type="checkbox"/> No	
31. Amount of Cash on Hand		32. Other Assets of Value (Give details and values.)	

**Complete both pages and sign page 2.**

**ORDER FOR FINANCIAL DISCLOSURE AND  
FINANCIAL DISCLOSURE STATEMENT**

33. Do you believe your earnings are exempt from garnishment?

- Yes     No

If yes, complete lines A, B, and C as appropriate.

A. I have received the following need-based public assistance within the last six months:

- |   |  |
|---|--|
| <input type="checkbox"/> Medical assistance                                       | <input type="checkbox"/> Relief funded under §59.53(21), Wis. Stats. |
| <input type="checkbox"/> Food stamps  | <input type="checkbox"/> Relief funded under public assistance       |
| <input type="checkbox"/> Supplemental security income                             |  |
| <input type="checkbox"/> Benefits for veterans under §45.351(1) or 38 USC 501-562 |  |

B. I have been determined to be eligible to receive the following need-based public assistance although I have not actually begun to receive those benefits:

- |   |  |
|---|--|
| <input type="checkbox"/> Medical assistance                                       | <input type="checkbox"/> Relief funded under §59.53(21), Wis. Stats. |
| <input type="checkbox"/> Food stamps  | <input type="checkbox"/> Relief funded under public assistance       |
| <input type="checkbox"/> Supplemental security income                             |  |
| <input type="checkbox"/> Benefits for veterans under §45.351(1) or 38 USC 501-562 |  |

C. My household income is below the federal poverty line. (Worksheets and schedules for this determination are available in the Clerk of Court's office.)

D. At least 25% of your disposable earnings are assigned by court order for support.

34. Corporations should complete questions 24 through 32, as well as the following:

Name of Corporation	Address	Taxpayer ID Number
Officers of Corporation and Title	Business Address	Home Address
1.		
2.		
3.		
4.		
Registered Agent	Address	

35. The information provided on this statement is true and correct.

\_\_\_\_\_  
Signature of Judgment Debtor/Corporate Officer

\_\_\_\_\_  
Date

An unpaid money judgment against you can result in the judgment creditor satisfying the judgment by taking or selling your personal property, including income, and your real estate.

**Garnishment** is a separate legal proceeding used to take money in possession of another which is owed you, typically income or deposits in financial institutions, in an amount sufficient to satisfy the judgment. A separate garnishment proceeding must be commenced by a judgment creditor choosing this remedy.

**Execution** is a writ issued by a court directing the sheriff to seize or attach your personal property or real estate so that it may be sold to satisfy the judgment. **A writ of execution** can be issued upon the perfecting and docketing of the original judgment without commencement of a separate legal proceeding.

**Exemptions** are assets protected by statute from garnishment and execution. These assets are determined in part by your marital status, the number of your dependents, whether the transaction leading to the judgment was a consumer credit transaction and whether the judgment creditor had a mortgage or a security interest. Other qualifications and limitations are set forth in §815.18(3) through (13), Wisconsin Statutes.

Because your personal circumstances will determine if an asset is exempt from execution, the Judicial Conference can only inform you about the types of assets and amount of income which **MAY** be exempt and the statutes you can refer to for specific information.

Your exempt assets and income with statutory limitations may include the following:

- Salary up to 10% for purchase of savings bonds [§20.921(1)(e), Wis. Stats.].
- Veteran's benefits [§45.35(8)(b), Wis. Stats.].
- Assistance grants [§49.96, Wis. Stats.].
- Pension funds and benefits from 1st class cities and counties of populations over 500,000 [§66.81, Wis. Stats. and Chapter 201, Laws 1937, s.11].
- Worker's compensation awards [§102.27(1), Wis. Stats.].
- Unemployment compensation benefits [§108.13(2), Wis. Stats.].
- School aid moneys [§121.007, Wis. Stats.].
- Partner's rights in specific partnership property [§178.21(3)(c), Wis. Stats.].
- Tenant's housing corporation lease and stock interests [§182.004(6), Wis. Stats.].
- Income, including wages and earnings [§§425.106(1)(a), 812.34(2), 812.39 and 815.18(3)(h), Wis. Stats.].
- Clothing, jewelry, household furniture and furnishings [§425.106(1)(b), Wis. Stats.].
- Homestead interest in real estate [§425.106(1)(c), 815.20 and 815.21, Wis. Stats.].
- Earnings or assets required to be paid by customers as restitution [§425.106(1)(d), Wis. Stats.].
- Insurance company deposits with the State Treasurer [§601.13(7), Wis. Stats.].
- Fraternal benefits [§614.96, Wis. Stats.].
- Cemetery lots, above ground burial facilities/monuments, tombstones and coffins [§815.18(3)(a), Wis. Stats.].
- Business and farm equipment, inventory, products and professional books not to exceed \$7500 [§815.18(3)(b), Wis. Stats.].
- Child support, family support or maintenance payments [§815.18(3)(c), Wis. Stats.].
- Consumer goods held primarily for personal, family, or household use not to exceed \$5000 [§815.18(3)(d), Wis. Stats.].
- State aid to county fairs and agricultural societies [§815.18(3)(df), Wis. Stats.].
- Federal disability insurance benefits [§815.18(3)(ds), Wis. Stats.].
- Fire and casualty insurance proceeds [§815.18(3)(e), Wis. Stats.].
- Fire and police pension fund benefits [§815.18(3)(ef), Wis. Stats.].
- Fire apparatus and equipment [§815.18(3)(em), Wis. Stats.].
- Life insurance contract and accrued dividends, interest or loan value not to exceed \$4000 [§815.18(3)(f), Wis. Stats.].
- Motor vehicles not to exceed \$1200 plus unused consumer goods value [§815.18(3)(g), Wis. Stats.].
- Life insurance, personal injury and wrongful death claims [§815.18(3)(i), Wis. Stats.].
- Retirement and public employee trust funds [§§40.08(1) and 815.18(3)(j), Wis. Stats.].
- Depository accounts in the aggregate value of \$1000 [§815.18(3)(k), Wis. Stats.].
- Private property to satisfy judgments against municipalities, vocational, technical and adult education and school districts [§815.18(3)(m), Wis. Stats.].
- Federal war pensions [§815.18(3)(n), Wis. Stats.].
- Crime victim award [§949.07, Wis. Stats.].

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Creditor (Names and Addresses):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PETITION AND ORDER  
FOR HEARING ON  
CONTEMPT**

-vs-

Debtor (Names and Addresses)

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case No. \_\_\_\_\_

Under oath, I state that:

1. I was awarded a judgment for money damages under Chapter 799, Wis. Stats., against \_\_\_\_\_  
Name  
as judgment debtor on \_\_\_\_\_, in the amount of \$ \_\_\_\_\_  
Date
2. A copy of the order for Financial Disclosure Statement was mailed or delivered to the judgment debtor.
3. More than 15 days have elapsed from the date of entry of judgment and the judgment debtor has failed to comply with the order of the court and has given no reason for the failure to comply.

I ask that the court schedule a hearing pursuant to Chapter 785, Wis. Stats., to hold the judgment debtor in contempt of court for failure to comply with the order.

Subscribed and sworn to before me

on \_\_\_\_\_

\_\_\_\_\_  
Signature of Judgment Creditor

\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Date

**IT IS ORDERED THAT:**

1. The judgment debtor personally appear as stated below to answer why the judgment debtor should not be held in contempt of court for failure to comply with the Order for Financial Disclosure Statement.

Date	Time	Location (Include Room No.)
Presiding Judge		

2. This petition and order shall be served on the judgment debtor by  
 regular mail.     registered mail.     certified mail.     personal service.
3. **The judgment debtor may avoid appearing at this hearing only by, prior to the hearing date,**  
either (a) paying the judgment in full, or (b) delivering the completed Financial Disclosure Statement to the judgment creditor.

► **A finding of contempt for nonappearance or failure to comply with the court's order may result in any or all of the following penalties:**

- Imprisonment for up to **6 months**.
- Forfeiture of not more than **\$2000 per day**.
- Any other order necessary to ensure your compliance.

**BY THE COURT:**

\_\_\_\_\_  
Signature of Circuit Judge/Court Commissioner

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Date

**If you need help in this matter because of a disability, please call:**

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Plaintiff (Names and Addresses):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PETITION TO ANSWER OR TO  
REOPEN SMALL CLAIMS JUDGMENT  
AND ORDER**

-vs-

Defendant (Names and Addresses)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case No. \_\_\_\_\_

Under oath, I state that:

1. I am the defendant in this action.
2. I believe I have a valid defense.
3. Service of the Summons and Complaint was allegedly made on me by mail, but I did not receive that notice.

4. On \_\_\_\_\_ I received actual notice that:  
Date

- a. Judgment has been entered against me.
  - I am signing this petition within one year after the judgment was entered.
  - I ask that the court stay further proceedings on the judgment, reopen the judgment, and give me an opportunity to be heard.
- b. This action is pending, but a judgment has not yet been entered.
  - I am signing this petition within fifteen days of receiving notice.
  - I ask that the court give me an opportunity to appear in this action and answer the complaint.

Subscribed and sworn to before me

on \_\_\_\_\_

\_\_\_\_\_  
Notary Public, Wisconsin  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Name Printed or Typed

**Based on this petition, the COURT ORDERS THAT:**

1. Further proceedings in this matter are stayed. If judgment was entered, actions to enforce the judgment are also stayed.
2. A hearing on the petition shall be held on \_\_\_\_\_ at \_\_\_\_\_,  
Date Time  
in Courtroom \_\_\_\_\_, Courthouse, \_\_\_\_\_  
Location

**If you need help in this matter because of a disability, please call:**

**BY THE COURT:**

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
Date

Distribution:

1. Original - Court
2. Parties

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Please Print or Type

PETITION FOR WAIVER OF FEES/COSTS AFFIDAVIT OF INDIGENCY AND ORDER

-vs-

Case No. \_\_\_\_\_

Under oath I state that because of poverty, I am unable to pay the costs of this action, proceeding, or appeal, or to give security for those costs, and request waiver of those costs. I am attaching and incorporating into this affidavit a copy of my pleading in this matter.

Complete Section 1 if you receive aid from any of the programs listed. If you do not receive aid, complete Section 2 on reverse side.

Section 1.

- I currently receive: Supplemental security income, Relief funded under §59.53(21), Wis. Stats., Medical assistance, Food stamps, Relief funded under public assistance, Benefits for veterans under §45.351(1) or 38 USC 501-562, Legal representation from a civil legal services program, a public defender program, or a volunteer attorney program based on indigency. Name of program: \_\_\_\_\_, Other means-tested public assistance: \_\_\_\_\_

My financial situation has has not changed since I became eligible for this program.

If you checked the "has" box, and such changes would make you ineligible for the program(s) if you applied today, you must complete Section 2 on the reverse side of this form.

Subscribed and sworn to before me on \_\_\_\_\_

I understand that if my financial situation changes, I must notify the Court immediately.

Notary Public, State of Wisconsin My commission expires: \_\_\_\_\_

Signature

Date

COURT FINDINGS AND ORDER

- 1. This petition is GRANTED because the court finds the petitioner indigent. The action may be commenced and prosecuted or defended without payment of filing fees. The sheriff shall serve all necessary documents without payment of service fees. If costs are recovered, the amount shall be used to pay the filing and service fees waived by this order.
2. This petition is DENIED because the court finds the petitioner not indigent but unable to pay the filing or service fees at this time. This action may be filed by the Clerk and all necessary documents may be served by the sheriff without prepayment of fees. Such fees must be paid no later than \_\_\_\_\_.
3. This petition is DENIED because the court finds the petitioner not indigent. Filing and service fees must be paid.
4. This petition is DENIED because the court finds the allegation of poverty to be untrue. Filing and service fees must be paid.
5. This petition is DENIED because the petitioner has not stated a meritorious claim, defense, or appeal upon which the court may grant relief: (Brief explanation) \_\_\_\_\_

Filing and service fees must be paid.

BY THE COURT:

Original: Clerk of Circuit Court

Circuit Court Judge

Date

**Section 2.**

**Complete this section only if you do not qualify under Section 1, or if the instructions for that section require you to complete it.**

1. I  am  am not married.

2. I  am  am not employed. Name of employer: \_\_\_\_\_.

3. I earn \$\_\_\_\_\_ gross  weekly.  every 2 weeks.  twice monthly.  monthly.  
My take-home pay is \$\_\_\_\_\_ per pay period.

4. I receive monthly income totaling the amount of \$\_\_\_\_\_ from:  
 Pension  Social security  Unemployment compensation  Support/maintenance  
 Disability  Student loans/grants  Other: \_\_\_\_\_

5. I have the following cash assets:  
 Savings accounts: \$\_\_\_\_\_  Cash: \$\_\_\_\_\_  
 Checking accounts: \$\_\_\_\_\_  Money owed me: \$\_\_\_\_\_

6. I have the following other assets:  
 Vehicle-Yr./Make: \_\_\_\_\_ \$\_\_\_\_\_  Household furnishings: \$\_\_\_\_\_  
 Vehicle-Yr./Make: \_\_\_\_\_ \$\_\_\_\_\_  Equity in real estate: \$\_\_\_\_\_  
 Other individual assets valued over \$200 each: \_\_\_\_\_ \$\_\_\_\_\_

7. My household consists of myself and \_\_\_\_\_ others:  
Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No

8. The other members of my household have monthly income totaling the amount of \$\_\_\_\_\_ from:  
 Wages  Social security  Relief funded under public assistance  Food stamps  
 Pension  Student loans/grants  Unemployment compensation  Supplemental security income  
 Disability  Relief funded under §59.53(21), Wisconsin Statutes  Support/maintenance  
 Other: \_\_\_\_\_

9. I have the following debts:

	Amount:	Monthly Payment:
a. Mortgage	_____	_____
b. Auto loan	_____	_____
c. Credit cards	_____	_____
d. Other: _____	_____	_____

10. I have the following unusual expenses, other than ordinary living expenses:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Creditor: \_\_\_\_\_  
- vs -  
Debtor: \_\_\_\_\_  
and  
Garnishee: \_\_\_\_\_

**GARNISHEE ANSWER  
FOR NON-EARNINGS**

Case No. \_\_\_\_\_

The garnishee states:

1. The garnishee  does  does not have control or possession of property belonging to the debtor.

Description: \_\_\_\_\_

Gross value of property ..... \$ \_\_\_\_\_

Less exemption, if any, required by law. .... \$ \_\_\_\_\_

TOTAL AMOUNT SUBJECT TO GARNISHMENT ..... \$ \_\_\_\_\_

2. The garnishee  is  is not indebted to the debtor for agricultural products grown or produced by the debtor or minor children.

Description: \_\_\_\_\_

Gross amount owed ..... \$ \_\_\_\_\_

Less exempt amount per §812.18(2m)(b), Wis. Stat. .... \$ \_\_\_\_\_

TOTAL AMOUNT SUBJECT TO GARNISHMENT ..... \$ \_\_\_\_\_

3. The garnishee  is  is not indebted to the debtor for reasons other than the sale of agricultural products.

Description: \_\_\_\_\_

Gross amount owed ..... \$ \_\_\_\_\_

Less exemption, if any, required by law ..... \$ \_\_\_\_\_

TOTAL AMOUNT SUBJECT TO GARNISHMENT ..... \$ \_\_\_\_\_

4. The total amount of the indebtedness or property retained for the court is ..... \$ \_\_\_\_\_

**> Within the time period given in the summons:**

• File the original with Clerk of Circuit Court at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared By:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name and Title Printed or Typed  
\_\_\_\_\_  
Date

• Serve a copy on creditor's attorney or creditor.

Creditor: \_\_\_\_\_

**EARNINGS GARNISHMENT  
NOTICE**

Debtor: \_\_\_\_\_

and

Garnishee: \_\_\_\_\_

Case No. \_\_\_\_\_

To the Clerk of Court:

The creditor has commenced an earnings garnishment action against the debtor and the garnishee to collect the following unsatisfied civil judgment:

Name of Debtor(s)		County of Original Judgment
Original Case Number	Date of Entry of Judgment	Amount of Original Judgment
Transcript of Judgment Filed in This County on:	Case Number of Transcript	Amount of Judgment Unpaid

The last known names and addresses of the parties are as follows:

Debtor:

Name:
Address:

Garnishee:

Name:
Address:

Creditor:

Name:
Address:

Creditor's  
Attorney:

Name:
Address:

\_\_\_\_\_  
Signature of Creditor or Creditor's Attorney

\_\_\_\_\_  
Date

Please print or type.

**EARNINGS GARNISHMENT**

Creditor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Case No. \_\_\_\_\_

Debtor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

and

Garnishee: \_\_\_\_\_

THE STATE OF WISCONSIN, to the garnishee:

The creditor has been awarded a court judgment that has not been paid. As a result, the creditor claims that the amount owed by the debtor is as follows:

Unpaid balance on judgment	\$
Unpaid postjudgment interest	\$
Estimated costs of this earnings garnishment	\$
<b>Total amount owed by the debtor</b>	<b>\$</b>

The creditor believes that you will owe the debtor for earnings within the next 13 weeks. If the creditor has tendered to you the \$15 fee with these papers, you are directed to complete the activities listed on the back of this form.

**(Court Seal)**

**See back of form for further information.**

## DETERMINE WHETHER YOU WILL OWE THE DEBTOR EARNINGS

1. Determine if you are likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks.
2. If you are not likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms. (Business days do not include Saturdays, Sundays, or legal holidays).

## IF THE DEBTOR SENDS YOU AN ANSWER

3. Whenever you receive a debtor's answer form from the debtor, mail a copy of the answer form to the creditor by the end of the 3rd business day after receipt of that form. Include the date you received the answer form on the copy sent to the creditor.
4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

## MULTIPLE EARNINGS GARNISHMENTS

5. If the debtor's earnings are already being garnished when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

## EARNINGS GARNISHMENTS LAST 13 WEEKS, EXCEPT FOR PUBLIC EMPLOYEES

6. The garnishment of the earnings of employees of the state of Wisconsin and its political subdivisions remain in effect until the judgment is satisfied. The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnished. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.

## PAYING THE CREDITOR

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. Payment is complete upon mailing. "Disposable earnings" are those remaining after deducting Social Security, state and federal income taxes.

## EFFECT OF COURT-ORDERED ASSIGNMENTS FOR SUPPORT

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtors's disposable earnings is assigned for support by the court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned and garnished does not exceed 25% of the debtor's disposable earnings.

## EXTENSIONS

9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Creditor:

**EARNINGS GARNISHMENT  
EXEMPTION NOTICE**

Debtor:

\_\_\_\_\_ and \_\_\_\_\_

Garnishee:

Case No. \_\_\_\_\_

To the debtor:

The creditor has been awarded a judgment against you or your spouse as indicated below. That judgment has not been fully paid. The creditor has now filed a garnishment proceeding against your earnings from the garnishee. This means that the creditor is seeking to take some of your earnings to satisfy part or all of the judgment against you or your spouse.

The total amount of the creditor's claim is as follows:

County of Judgment	Case Number	Date of Judgment
Unpaid balance on judgment		\$
Unpaid postjudgment interest		\$
Estimated costs of this earnings garnishment		\$
<b>Total amount owed by the debtor</b>		<b>\$</b>

By law, you are entitled to an exemption of not less than 80% of your disposable earnings. Your "disposable earnings" are those remaining after social security and federal and state income taxes are withheld.

Your earnings are completely exempt from garnishment if:

1. Your household income is below the federal poverty level, or this garnishment would cause that to happen. See the enclosed schedules and worksheet to determine if you qualify for this exemption.
2. You receive relief funded under public assistance, relief funded under §59.53(21), Wisconsin Statutes, medical assistance, supplemental security income, food stamps, or veterans benefits based on need under USC 501 to 562 or §45.351(1) of the Wisconsin Statutes, or have received these benefits within the past 6 months, or are eligible but have not yet received these benefits.
3. At least 25% of your disposable earnings are assigned by court order for support.

There are no exemptions to this garnishment if the debt arises out of one of the following obligations:

1. A debt amortization under §128.21 or a bankruptcy order under chapter 11.
2. For the support of any person; or,
3. Unpaid taxes.

If you qualify for a complete exemption, you must give or mail a copy of the completed enclosed debtor's answer form to the garnishee.

If your circumstances change while the garnishment is in effect, you may file a new answer at any time.

**Continued on back of this form.**

If you do not qualify for a complete exemption, but will not be able to acquire the necessities of life for yourself and your dependents if your earnings are reduced by this earnings garnishment, you may ask the court in which this earnings garnishment was filed to increase your exemption or grant you other relief.

**IF YOU NEED ASSISTANCE CONSULT AN ATTORNEY**

If you have earnings that are being garnished that are exempt or subject to a defense, the sooner you file your answer or seek relief from the court, the sooner such relief can be provided. This earnings garnishment affects your earnings in pay periods beginning within 13 weeks after it was served on the garnishee. You may agree in writing with the creditor to extend it for additional 13-week periods until the debt is paid.

**PENALTIES**

If you wrongly claim an exemption or defense in bad faith, or if the creditor wrongly objects to your claim in bad faith, the court may order the person who acted in bad faith to pay court costs, actual damages and reasonable attorney fees.

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Creditor:

Debtor:

and

Garnishee:

EARNINGS GARNISHMENT DEBTOR'S ANSWER

Case No. \_\_\_\_\_

To the garnishee:

- 1. My earnings are completely exempt from earnings garnishment because:
a. The judgment has been paid.
b. The judgment has been discharged in bankruptcy.
c. I have filed bankruptcy and enforcement of the judgment has been stayed while the matter is pending.
d. The judgment is void.
e. I receive, am eligible for, or have within 6 months received one or more of the following:
Relief funded under public assistance
Medical assistance
Food stamps
Supplemental security income
Relief funded under §59.53(21), Wisconsin Statutes
Veterans benefits based on need under 38 USC 501-562 or §45.351(1), Wisconsin Statutes
f. At least 25% of my disposable earnings are assigned for support by court order.
g. My household income is less than the poverty line, or this garnishment would cause that to happen.
2. Too much of my earnings are being garnished because:
a. I am paying child support or maintenance in an amount that is less than 25% of my disposable earnings.
b. Other:
3. I have another defense to this earnings garnishment (explain briefly):

I understand that if I claim a complete exemption or defense in bad faith, I may be held liable to the creditor for actual damages, costs and reasonable attorneys fees.

Date Received by Garnishee

Signature of Debtor
Date
Address
Telephone Number

**EARNINGS GARNISHMENT  
OBJECTION TO DEBTOR'S ANSWER  
AND DEMAND FOR HEARING**

Creditor: \_\_\_\_\_

Debtor: \_\_\_\_\_

and

Garnishee: \_\_\_\_\_

Case No. \_\_\_\_\_

To the clerk of court:

- 1. Attached is a copy of the debtor's answer (CV-424).
- 2. I object to the debtor's answer and demand a hearing to resolve the issues in controversy. By statute, this hearing must be held as soon as practicable after this objection and demand are filed. I object to the debtor's answer for the following reasons (explain briefly):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 3. Please schedule this hearing and notify all parties.
- 4. To the best of my knowledge, the debtor's current address:

is the same as that stated in the notice I filed to commence this earnings garnishment.

is now: \_\_\_\_\_

\_\_\_\_\_

I understand that if I object to the debtor's answer in bad faith, I may be held liable to the debtor for actual damages, costs and reasonable attorney fees.

Signature of Creditor/Attorney
Date
Address
Telephone Number

## GARNISHMENT EXEMPTION WORKSHEET

Note: If you wish to calculate how much of your earnings, if any, are subject to garnishment, you may use this worksheet. However, you are not required to complete this worksheet or send it to the garnishee or the creditor.

- Instructions:
- First, calculate your total earnings by using Schedule 1 (Calculation of Income).
  - Then calculate the amount of your earnings subject to garnishment by using Schedule 2 (Calculation of Amount Subject to Garnishment).
  - Finally, to determine how much, if any, of your earnings are exempt from garnishment, use Schedule 3 (Calculation of Poverty Guideline Exemption) and the separate Poverty Guidelines for Earnings (form CV-427).

### Schedule 1. Calculation of Income

List in Column A earnings after Social Security and Income Taxes. <i>For both Columns A and B, calculate amounts on the same basis (weekly, biweekly, semimonthly, monthly) as the debtor's earnings.</i>		List in Column B all income other than earnings.	
	Column A		Column B
1. Debtor	1a.	1b.	
2. Spouse (if living in same household as debtor)	2a.	2b.	
3. Other legal dependents	3a.	3b.	
4. <b>TOTAL EARNINGS</b>	4a.	4b.	

### Schedule 2. Calculation of Amount Subject to Garnishment

5. Debtor's disposable earnings amount from line 1a	5.	
6. 20% of amount on line 5	6.	
7. 25% of amount on line 5	7.	
8. Court ordered assignments of child support and/or maintenance <i>Use same basis as in Schedule 1 (weekly, biweekly, semimonthly, monthly).</i>	8.	
9. Subtract amount on line 8 from line 7	9.	
10. Insert the lesser amount of line 6 or line 9. This is the amount subject to garnishment. If this amount is "0" or less than zero, then you do not have to complete Schedule 3 because all earnings are exempt.	10.	

### Schedule 3. Calculation of Poverty Guideline Exemption

11. Disposable earnings from line 4a	11.		
12. Other income from line 4b	12.		
13. Add line 11 to line 12		13.	
14. Child support and/or maintenance from line 8	14.		
15. Amount subject to garnishment from line 10	15.		
16. Poverty Guideline Amount for pay period of debtor and size of family (See current Poverty Guideline Chart)	16.		
17. Add lines 14, 15, and 16		17.	
18. Compare lines 13 and 17. If line 17 is <b>equal or greater</b> , all earnings are <b>exempt</b> from garnishment. If line 13 is <b>greater</b> , the amount on line 10 is <b>subject</b> to garnishment.			

**POVERTY GUIDELINES FOR EARNINGS**  
**(For earnings from July 1, 1999 through June 30, 2000)**

Size of Family	Weekly	Bi-weekly	Semi-monthly	Monthly
1	158	317	343	687
2	213	425	461	922
3	267	534	578	1,157
4	321	642	696	1,392
5	375	751	813	1,627
6	430	859	931	1,862
7	484	968	1,048	2,097
8	538	1,076	1,166	2,332
Each additional family member	Add \$54 to above amount	Add \$108 to above amount	Add \$118 to above amount	Add \$235 to above amount