

## **CURRICULUM VITAE**

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Patrick Edgerton is a trial lawyer and partner with the law firm of Edgerton & Edgerton, West Chicago, Illinois. He received his B.S. in Business Management from Northern Illinois University. He graduated 5th in his Law School Class as a *magna cum laude* graduate of Northern Illinois University College of Law where he served as Managing Editor of Law Review and was published in its law review journal.

As a partner with Edgerton & Edgerton, Mr. Edgerton concentrates his practice in mechanics' liens, evictions, commercial collections and other forms of commercial litigation. In addition to his extensive trial experience, he serves as an Arbitrator for DuPage, Kane and McHenry County and at one point was the youngest chair qualified arbitrator in his youth. Likewise, he has lectured extensively in commercial collections and commercial litigation, including but not limited to: Small Claims Court, Arbitration Court, Post Judgment Collections, Home Repair and Remodeling Act, Moorman Doctrine, Certificate of Release Act, and the Mechanics Lien Act.

Mr. Edgerton is a member of the Illinois State Bar Association, Kane County Bar Association and DuPage County Bar Association. With the DuPage County Bar Association, Mr. Edgerton has served as a member of its Board of Directors, Chaired the Membership Committee (which at the time was combined with the New Lawyer's Committee), co-authored an article for its journal, and has been a long time participator of Judge's Night.

Patrick has also been the recipient of many awards including:

- Who's Who Top Attorneys of North America, 2020
- 2020 Pro Bono Service Award from the Eighteenth Judicial Circuit Pro Bono Committee
- American Institute of Trial Lawyers, "Litigator of the Year 2020 [and 2021] for Civil Litigation" (Less than .03% of Attorneys are even nominated)
- Lawyers of Distinction, Top Rated Lawyers in Illinois for Civil Litigation, 2020 and 2021
- Lawyers of Distinction, Recognizing Excellence in Civil Litigation, 2019.

Edgerton & Edgerton was recognized as Best Law Firm 2021 by the American Institute of Trial Lawyers (Less than 2000 Law Firms in the Nation are Selected to receive this Award Every Year).

## ***"SMALL CLAIMS COURT, ARBITRATION COURT AND POST JUDGMENT COLLECTIONS"***

**(Emphasis on Levies Below)**

### **SMALL CLAIMS COURT**

- I. Small Claims Court - Specifically designed to hear civil cases based in either tort or contract for money damages not in excess of \$10,000.00, exclusive of Costs and Interest. S. CT. RULE 281.

- A. DUPAGE County - Two (2) Courtrooms:

1. 2000 - Judge Else
2. 2006 - Judge Cody

➔ Note: NO LONGER Split SC in Courtroom 2000 for cases up to \$5,000.00 and SR in Courtroom 2000 for cases over \$5,000.00 to \$10,000.00. All cases SC and randomly assigned.

- B. KANE County - One (1) Courtroom: 120 - Judge Tarter.

II. Complaint.

- A. Illinois Supreme Court Rules provide:

An action in a small claim may be commenced by paying to the clerk of the court the required filing fee and a short and simple complaint, setting forth (1) plaintiff's name, residence, address, and telephone number, (2) defendant's name and place or residence, or place of business or regular employment, and (3) the nature and amount of plaintiff's claim, giving dates and other relevant information. . . .

S. CT. RULE 282(a).

- B. If based on written instrument, you must attach copy or affidavit in lieu thereof. 735 ILCS 5/2-605. *See also* S. Ct. Rule 282(a), which makes it clear written instruments must be attached or provide affidavit even in Small Claims Cases.

- C. Illinois Courts have consistently held that "If a complaint in a small claims action clearly notifies the defendant of the nature of the plaintiff's claim, it states a cause of action." *E.g. Miner v. Bray*, 160 Ill. App. 3d 241, 243, 112 Ill. Dec. 166, 167, 513 N.E.2d 580, 581 (3d Dist. 1987) (emphasis added).

- III. No Corporation [And LLC] can file as plaintiff in small claims proceeding, unless represented by attorney. However, a corporation [And LLC] may defend without an attorney with any officer,

director, manager, department manager or supervisor. S. CT. RULE 282(b).

IV. Form of Summons -

A. BEFORE COVID:

1. If In state Defendant, Return date of not less than 14 or more than 40 days after issuance. S. CT. RULE 283.
2. However, if out of state defendant, no default shall enter until at least 30 days after service. 735 ILCS 5/2-208©. Moreover, return day not less than 40 days nor more than 60 days after the date of issuance. S. CT. RULE 101(b). Use Different form.

B. POST COVID: Now requires "not less than 40 or more than 61 days after issuance of the summons for all cases not in excess of \$50,000.00" for All cases (regardless of defendants status as in-state or out-of-state.

→ Note: States "*Temporarily amended 5/28/202 eff. immediately*".

C. Rule 284 Still permits Service via certified mail or registered mail, return receipt requested by the Circuit Clerk for service "made within the state". S. CT. RULE 284.

V. Jury Permitted. S. CT. RULE 285.

A. If Jury Demand filed in DuPage County in a small claims case, it "shall be subject to Mandatory Arbitration under Article 13 of [the local] Rules." DuPage County Local Rule 16.04.

→ Note: Kane County Treats Jury Demands similarly.?????

1. Panel of Three Lawyers Decides Case at Arbitration Center.
2. Either party can reject so long as written rejection filed within 30 days of the Arbitration award and \$200.00 Rejection Fee Paid.

B. Under DuPage County Local Rule Article 13.04(a) "Discovery shall proceed as in all other civil actions." However, despite this language, Judges still require Leave of court to conduct any discovery in Small Claims Cases Pursuant to S. CT. RULE 287(a), that provides: "No depositions, interrogatories, request to produce or request to admit [(i.e. Discovery)] without leave of court." Notwithstanding, if one party files a Jury Demand and the other party wants to conduct discovery, Judges are more liberal about permitting discovery than cases without a Jury Demand.

C. Likewise, if there is a Jury Demand, All parties shall comply with S. CT. RULE 222,

requiring a Disclosure Statement as more fully set forth in the Arbitration Court outline Below. S. CT. RULE 222(d).

- D. WARNING: Failure to Comply with S. CT. RULE 222(d) has major consequences as likewise set forth in Arbitration Court outline blow.
- VI. Need not file Answer, general denial allowed. S. CT. RULE 286(a). However, if Jury Demand Made, Court many times requires Answers and Affirmative Defenses to be filed to assist in preparing Jury Instructions.
- VII. Informal Hearings permitted on court's own motion permitting all relevant evidence and *relaxing* rules of procedure and rules of evidence. Court may call any person present to testify and participate in direct and cross-examination. S. CT. RULE 286(b).
- VIII. Only two types of substantive Motions can be filed without prior leave of court: 2-1001 Motions for Summary Judgment and 2-619 Motions to Dismiss. No 2-615 Motions for Failure to State a cause of action permitted without Leave of Court. S. CT. RULE 287(b).
- IX. Court may order installment payments of judgment so long as provides payoff within 3 years. Stays enforcement so long as payments made. S. CT. RULE 288.

#### **ARBITRATION COURT**

- X. Arbitration Court - Specifically designed to hear civil cases based in either tort or contract for money damages in excess of \$10,000 but not in excess of \$50,000.00. Counties are not required to have Mandatory Arbitration. The County may elect to have a Mandatory Arbitration Program. 735 ILCS 5/2-1001A. S. CT. RULE 86(a). However, once the County elects, then it is Mandatory for cases filed in that County for cases not exceeding \$50,000.00 or any lesser amount authorized by that County. S. CT. RULE 86(b). DuPage and Kane are both at \$50,000.00. However, Monetary Limitation applies only to arbitration awards, NOT the Trial Court. *Timothy Whelan Law Associates, Ltd. v. Frank Kruppe, Jr.* 2-09-1234 (2d Dist. 2011).
  - A. DUPAGE County - Courtroom 2018 - Judge Douglas
  - B. KANE COUNTY - Courtroom 250 - Judge Dalton
- Note: Effective 7/9/2021, 735 ILCS 5/2-1001A was amended to permit Arbitration Court “not exceeding \$75,000 ~~\$50,000~~ or any lesser amount as authorized by the Supreme Court for a particular Circuit, or a judge of the circuit court, at a pretrial conference, determines that no greater amount than authorized for the Circuit appears to be genuinely in

controversy.

XI. How it Works:

- A. File Complaint - Fact Pleading Requirement for Arbitration.
- B. File Affidavit of Damages - Indicating the amount Claimed is less than \$50,000.00.
- C. No Corporation or Entity can file as Plaintiff or Defendant unless represented by attorney.

Illinois law is clear:

[N]o person shall be permitted to practice law in this State without a license from the Illinois Supreme Court. When one appears in court representing one of the parties, counsels and advises with such party and drafts pleadings, . . . , and assumes the general control of an action, [s]he is practicing law.

....

We conclude, therefore, that 'a party to an action may appear in his own proper person, *unless the party is a corporation, in which case it may appear only by attorney.*

*Tom Edwards Chevrolet, Inc. v. Air-Cel, Inc.*, 13 Ill. App. 3d 378, 300 N.E.2d 312, 313 (2d Dist. 1973) (citations omitted). *See also Johnson v. Pistakee Highlands Community Assoc.*, 72 Ill. App. 3d 402, 403, 390 N.E.2d 640, 642, 28 Ill. Dec. 473, 475 (2d Dist. 1979) (stating "[i]t is clear that a corporation may not engage in the practice of law on behalf of others nor may it appear in court except through a duly licensed attorney"). *See also Midwest Homes Savings & Loan Assoc. v. Ridgewood Inc.*, 123 Ill. App. 3d 1001, 463 N.E.2d 909, 79 Ill. Dec. 355 (5th Dist. 1984) (holding that a corporate defendant could not file a valid notice of appeal on its own behalf without an attorney because, otherwise, they condone the unauthorized practice of law).

- D. Form of Summons - Similar to Small Claims Cases up to \$50,000.00. (Not Yet Amended for Cases up to \$75,000.00 (Probably oversight).
- E. Circuit Clerk NOT allowed to serve summons and complaint in Arbitration Cases.
- F. Panel of Three Attorneys or Lesser Number if stipulated by parties. 735 ILCS 5/2-1003A. S. CT. RULE 87(a). Middle Arbitrator acts as a Chair Person making rulings on Motions and Evidentiary Objections. S. CT. RULE 90(a). However, final decision by Majority Rule. Only the Arbitrator can recuse himself or herself. Litigant cannot object or move for Arbitrator substitution. S. CT. RULE 87(c).
- G. Generally limited to two Hours (However, Cook 1 1/2 Hours). If you need more time (Up

to 4 Hours), move for leave before the Arbitration Court, Schedule Arbitration for 9:00a.m. and make clear in the Arbitration order that "4 Hours are Allotted for This Arbitration". You may want to send a copy to the Arbitration Center so they know it is 4 Hours to avoid scheduling issues.

H. Following arbitration, Award is given. Award may not exceed monetary limit authorized "exclusive of interest and costs". S. CT. RULE 92(b). Award shall be signed by arbitrators. A dissent vote may be made.

I. Use to be if you failed to requests Court Costs at Arbitration and no Award for Costs made, Judgment on Arbitration Award could not include costs. However, effective January 1, 2017, S. CT. RULE 92(e) was added:

Costs shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall no constitute a waiver of a party's right to recover costs upon entry of Judgment.

J. Code of Civil Procedure, Supreme Court Rules and rules of evidence apply except as otherwise provided. S. CT. RULE 86(e). S. CT. RULE 90(b).

K. S. CT. RULE 90(c) - Powerful Tool, provides:

**90© Documents Presumptively Admissible.** All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following document sin evidence is given toe very other party, accompanied by a copy of the document, a party may offer in evidence, *without foundation or other proof*:

1. bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;
2. bills for drugs, medical appliances and prostheses (specified as paid or unpaid);
3. property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;
4. a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

5. the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure [(i.e. Verification)].
6. any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package.

→ A police report is not included in the list of documents above to be offered. This is not an oversight. The “police accident report” is not listed in the itemization of Ill. S. Ct. R. 90(c)(1) to (5), and is not “otherwise admissible” as provided for in Ill. S. Ct. R. 90(c)(6). 1B ILL. CIV. PRAC. FORMS § 49:30, Notice of Intent to Produce Evidence At Arbitration (Citing Ill. S. Ct. R. 236(b)(stating that although police reports may otherwise be admissible in evidence under the law, subsection Rule 236(a) regarding Admission of Business Records does *not* allow such writings to be admitted as a record or memorandum made in the regular course of business); *Horace Mann Ins. Co. v. Brown*, 236 Ill. Ap. 3d 456, 603 N.E.2d 760 (1<sup>st</sup> Dist. 1992)).

L. However, as to Expert Opinions, S. CT. RULE 90(d) provides:

A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 90 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

- M. Reason for 30 Days under S. CT. RULE 90© & (d): So other party may subpoena author or maker, at that party's expense to cross-examine. S. CT. RULE 90(e).
- N. Until Arbitration award issued, become final and either accepted or rejected, Arbitrator cannot be contacted. S. CT. RULE 90(h).

XII. Likewise, In all Arbitration Cases (Jury and Bench), All parties shall comply with S. CT. RULE 222,

requiring a Disclosure Statement, in writing setting forth:

1. The Factual basis of claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.
2. The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.
3. The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.
4. The names, addresses, telephone numbers of any persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.
5. The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
6. The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213 (f).
  - a. Rule 213 (f)(1) requires: Lay Witnesses. A "lay witness" is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. . .  
  
NOTE: 213(f)(1) generally requires the same information and No. 3 Above.
  - b. Rule 213 (f)(2) requires: Independent Expert Witnesses. An "independent expert witness" is a person giving expert testimony who is not the party, the party's current employee, or the party's retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. . . .
  - c. Rule 213 (f)(3) requires: Controlled Expert Witnesses. A "controlled expert witness" is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.
7. A computation and measure of damages alleged by the disclosing party and document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.
8. The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.
9. A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian



of the document shall be indicated. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces Documents for inspection shall produce them as they are kept in the usual course of business.

S. CT. RULE 222(d).

B. WARNING: Failure to Comply with S. CT. RULE 222(d) has major consequences:

1. **"Exclusion of Undisclosed Evidence.** In addition to any other sanction the court may impose, the court shall exclude at trial any evidence offered by a party that was not timely disclosed as required by the rule, except by leave of court for good cause shown." S. CT. RULE 222(g). Moreover, the Committee Comments pursuant to Rule 222, state: "[v]iolations of the mandatory disclosure requirements should ordinarily result in sanctions, including the exclusion of evidence."

2. "No discovery shall be permitted after the [arbitration] hearing, except upon leave of court and good cause shown" S. CT. RULE 89. Furthermore, the Committee comments pursuant to Rule 89, state:

An early and timely disposition of arbitrable matters must be doomed by courts that are tolerant of late attention to discovery. Firmness of the courts in the implementation of this rule will help to insure the successful results that are available from this procedure.

Prohibiting discovery after award places a premium on as early, and as thorough, a degree of preparation as is necessary to achieve a full hearing on the merits of the controversy. Neither side should be encouraged to use this proceeding, i.e., the hearing itself, merely as an opportunity to discover the adversary's case in route to an eventual trial.

XIII. Failure to be Present at Hearing or Failing to Participate in Good Faith - S. CT. RULE 91(a) and (b).

A. S. CT. RULE 91(a): Failure to be Present at Hearing. If someone fails to appear, hearing still proceeds. Failure to appear in person or by counsel shall constitute waiver of right to reject award and a Judgment on award may enter. However, if court in it's discretion, allows judgment to be vacated, it may order rehearing and impose sanction of costs and fees. In *State Farm Mutual Auto. Ins. Co. V. Trujillo*, 2018 IL App (1<sup>st</sup>) 172927 (2018), Court barred Defendant from rejecting when Defendant failed to appear at Arbitration Hearing despite 237 Notice to Produce, even though Defendant's Attorney Appeared. Defendant presented no affidavits or evidence his noncompliance was reasonable or result of extenuating circumstances.

- B. S. CT. RULE 91(b): Good-Faith Participation. You must participate "in good faith and in a meaningful manner". If panel unanimously finds party has failed to do so, it may make a finding and factual basis therefor in its Award. That award shall be *prima facie* evidence of party's bad faith. Court may order sanctions as provided in Rule 219©, including but not limited to order debarring that party from rejecting the award, costs and attorney fees incurred for hearing and prosecution of petition for sanctions.
- XIV. Likewise, albeit it is Mandatory, it is Non-Binding. Any party can pay a fee and file a signed written rejection with the circuit clerk within 30 Days after Award to obtain a Trial.
- A. Awards of \$30,000.00 or less - Fee = \$200.00.
- B. Awards of greater than \$30,000.00 - Fee = \$500.00.
- C. Single rejection enough.
- D. However, rejection not effective to party who is debarred from rejecting award.
- S. CT. RULE 93(a).
- XV. Arbitrator cannot be called to testify. S. CT. RULE 93(b).
- XVI. NOTE: Cases filed in excess of \$50,000.00 [NOW \$75,000.00 IF ADOPTED] may be ordered to Arbitration when it appears to a Court that no claim in the action has a value in excess of the monetary limits. S. CT. RULE 86.

### **POST JUDGMENT COLLECTIONS**

- XVII. Judgments--Enforcement - Code of Civil Procedure 735 ILCS 5/12-101, et seq.
- A. Not Order to Pay, merely right to Enforce.
- B. Prior to 12/31/2019, Interest 9%, unless against government, then 6%. 735 ILCS 5/2-1303. HOWEVER, Starting 1/1/2020, for "Consumer Debt" Judgments of \$25,000.00 or less, Interest shall be 5% per annum. "Consumer Debt" means:
- money or property, or equivalent, due or owing, or alleged to be due or owing, from a *natural person* by reason of a transaction in which property, services, or money is acquired by that natural person *primarily for personal, family, or household purposes*.
- . . . . "Consumer Debt Judgment" does not include any compensation for bodily injury or death, nor any judgment entered where the debt

is guaranteed by or contains a joint and several liability provision between a natural person and a business, whether or not that business is legally constituted under the laws of this State or any other state.

735 ILCS 2-1303(b)(1)

- C. Good for 20 years plus 7 years under 735 ILCS 5/13-218 if Petition for Revival is filed within 20 years under 735 ILCS 5/2-1601 which sends you to 735 ILCS 5/2-1602(a).
- D. No Judgment shall be enforced after the expiration of 7 years from time entered, except upon Revival provided by Section 2-1602. 735 ILCS 5/12-108.

1. EXCEPTIONS:

- a. Real Estate already levied upon within 7 years, may be sold to enforce at any time within one year after the expiration of the 7 years.
- b. Actions for damages involving criminal acts for injuries arising out of first degree murder or the commission of a Class X felony.

2. Prior to 1/1/2020, ALL Judgments may be Revived:

[ ] in the [7<sup>th</sup>] year after its entry, or in the [7<sup>th</sup>] year after its last revival, or in the [29<sup>th</sup>] year after is entry, or at any other time within 20 years after its entry if the judgment becomes dormant . . . .

735 ILCS 5/12-1602(a).

- ➔ However, effective 1/1/2020, All Judgments EXCEPT for “Consumer Debt Judgment” Defined Above, may be revived as stated above. NOW Consumer Debt Judgment may be revived:

[ ] by filing a petition to revive the consumer debt judgment no later than 10 years after its entry and entering a court order for revival . . . .”

735 ILCS 5/2-1602(a-5).

3. Petition to Revive Procedure. 735 ILCS 5/2-1602.

- a. Filed in Original Case. 5/2-1602(b).
- b. Shall Include: Statement as to original Date and amount of the judgment, court costs expended, accrued interest, and credits to the

judgment, if any. 5/2-1602(b)

- c. Service of Notice of Petition to Revive a Judgment and Petition shall be made in accordance with Supreme Court Rule 106. 5/2-1602©. Ironically S. Ct. Rule 106, sends you to S. Ct. Rule 105. Thus, you can serve by any method provided by law for service of summons, such as personal or abode service. S. Ct. Rule 105(b)(1). Certified or registered mail, return receipt requested sent “restricted delivery”. S. Ct. Rule 105(b)(2). By Publication. S. Ct. Rule 105(b)(3). RECOMMEND SERVING AS YOU WOULD A SUMMONS & COMPLAINT.
- d. Order reviving judgment shall be for the original amount of the complaint. Plaintiff may recover interest and court costs from date of original judgment. 5/2-1602(d).
- e. If Judgment Debtor files for bankruptcy and does not successfully adjudicate and remove lien filed by judgment creditor, judgment may be revived only as to the property to which lien attached before filing bankruptcy. 5/2-1602(e).
- f. This Section does not apply to child support or actions for damages involving criminal acts listed in 735 ILCS 5/13-214.1 (Class X Felonies). 5/2-1602(f).
- g. If a judgment becomes dormant during the pendency of a wage deduction, the enforcement may continue to conclusion without revival so long as enforcement done under court supervision and includes wage deduction order or turn over order and is against an employer, garnishee, or other third party respondent. 2-1602(e). However, in *Golden v. Puccinelli*, 2016 IL App (1<sup>st</sup>) 150921, the court held that this section did not toll the 20-year limitations period governing judgment revival. Thus, if not revived within 7 years and

20 years lapsed, wage deduction terminates.

4. Other Importance Consideration: *In re Contreras*, 2017 WL 3503363 (Bkrtcy. N.D.Ill.) Until Revived, Dormant Judgment Did not Support Allowable Proof of Claim. However, reviving judgment during judgment debtors' Chapter 13 Case did not violate automatic stay.

#### XVIII. Execution and Levy Generally.

- A. A Levy is defined as the process whereby a sheriff or other empowered officer seizes or brings within his or her control the judgment debtor's property for purposes of satisfying a Judgment by selling same. Judgment creditor does not acquire title to the property merely because of the levy and the interest in the property cannot exceed that which the debtor had. 18 ILL. LAW AND PRAC., Executions, §15, Levy Process Defined.
- B. Sheriff Procedures & Costs. Call Sheriff's Office. For DUPAGE COUNTY, from the DuPage County Sheriff's Website, See "Personal Levy Research" and "Real Estate Property Levy Instructions", attached hereto and made a part hereof. For references to specific sections of the Code, generally See Article XII. Judgments-Enforcement. However, as to the Highlights, See the following:
- C. Must Record Memorandum or Certified Copy of Judgment in County where Property is located to establish a Lien. 735 ILCS 5/12-101.
- D. Also, If Judgment originally entered in County/State Other than location of subject Real Estate, must Register Judgment in County of Real Estate.
  1. 735 ILCS 5/12-106 (State Judgments) - Certified Copy.
  2. 735 ILCS 5/12-618, et seq. (Foreign Judgments) - Exemplified/Authenticated/Triple Sealed. Copy with Petition/Affidavit to accompany Foreign Judgment.
- E. 735 ILCS 5/12-110. Certified Copy Returnable:

Certified copies of judgments which are delivered to an appropriate officer [ i.e. Sheriff] for enforcement shall be returnable within 90 days after the issuance of the certified copy by the clerk of court.

F. 735 ILCS 5/12-110. When binding on personalty:

No judgment shall bind the goods and chattels of the person against whom it is entered, until a certified copy thereof is delivered to the sheriff or other proper officer to be served; and for the better manifestation of the time, the sheriff or other officer shall, on receipt of such certified copy, endorse upon the back thereof the day of the month and year and our when he or she received the same.

G. 735 ILCS 5/112. What liable to enforce:

All the *lands, tenements, real estate, goods and chattels* (except such as is by law declared to be exempt) of every person against whom a judgment has been or shall be hereafter entered in any court, for any debt, . . . shall be liable to be sold upon such judgment. Any *real property*, any *beneficial interest in a land trust*, or any interest in real property held in a revocable intervivos trust or revocable intervivos trust created for estate planning purposes, held in *tenancy by the entirety* shall *not be liable* to be sold upon judgment entered on or after October 1, 1990 against only one of the tenants, except if the property was transferred into tenancy by the entirety with the *sole intent* to avoid the payment of debts existing at the time of the transfer beyond the transferor's ability to pay those debts as they become due. However, income from such property shall be subject to garnishment . . . whether judgment has been entered against one or both of the tenants.

If the court authorizes the piercing of the ownership veil pursuant to Section of 505 of the Illinois Marriage and Dissolution of Marriage Act or Section 805 of the Illinois Parentage Act of 2015, any assets determined to be those of the non-custodial parent, although not held in the name of the non-custodial parent, shall be subject to attachment or other provisional remedy in accordance with the procedure prescribed by this Code. The court may not authorize attachment of property or any other provisional remedy under this paragraph unless it obtained jurisdiction over the entity holding title to the property by proper service on that entity. With respect to assets which are real property, no order entered as described in this paragraph shall affect the rights of bona fide purchasers, mortgagees, judgment creditors, or other lien holders who acquire their interests in the property prior to the time a notice of *lis pendens* pursuant to this Code or a copy of the order is placed of record in the office of the recorder of deeds for the county in which the real property is located.

H. 735 ILCS 5/12-113. Election fo Property.

Except as to any sale had by virtue of a judgment of foreclosure entered in accordance with Article XV, the judgment creditor may elect on what property not exempt from enforcement of a judgment he or she will have the same levied, provided personal property shall be last taken, except that a judgment in favor of any city, village or incorporated town . . . may levy against either person or real with no restriction as to priority.

I. 735 ILCS 5/12-161. Security:

If there is reasonable doubt as to the ownership of the goods, or as to their liability to be levied upon to satisfy the judgment, the officer may require sufficient security to indemnify him or her for levying upon them.

J. 735 ILCS 5/12-162. Delivery of Bond:

When personal property is levied upon, or about to be levied upon, if the *judgment debtor gives bond* with sufficient security, to be approved by the officer, payable to the creditor, in *double the amount of the judgment*, conditioned to deliver the property levied upon undamaged at the time and place where the same is to be sold, which shall be named in the condition, the sheriff may allow the property to remain with the judgment debtor.

K. 735 ILCS 5/12-115. Notice of Sale of Real Estate:

Except . . . judgment of foreclosure entered in accordance with Article XV, no real estate shall be sold . . . , except at public sale, between the hours in the morning and the setting of sun of the same day, nor unless the time (specifying the particular hour of day at which the sale shall commence) and the place of holding such sale shall have been previously advertised 3 successive weeks, once each week, in a newspaper published in the county where the sale is made (if there is any newspaper published in such county), and by placing written or printed notices thereof in at least 3 of the most public places in the county where the real estate is situated, specifying the name of the judgment creditor and judgment debtor in the judgment in all of which notices the real estate to be sold shall be described with reasonable certainty . . . .

L. 735 ILCS 5/12-119. Certificate:

When any real estate is sold by virtue of a judgment, or enforcement of mechanic's lien, or vendor's lien, or for the payment of money, the sheriff or other officer, except as otherwise provided in Part 1 of Article XII . . . , *instead of executing a deed* for the premises sold, *shall give* to the purchaser a *certificate* describing the premises purchased . . . , *showing* the amount paid therefor, or if purchased by the judgment creditor, the amount of his or her bid, and the time when the purchaser will be entitled to a deed *unless* the premises are *redeemed*, as provided in Part 1 of Article Xii of this Act.

M. 735 ILCS 5/12-121. Certificate Recorded: Purchaser shall record the Certificate within 10 days from sale in the recorder's office.

N. 735 ILCS 5/12-122. Redemption:

Defendant or heirs, executors . . . or any person interested in the premises, may, except to any sale had by virtue of a judgment of foreclosure in accordance with Article XV of the Act, within 6 months from the sale, redeem the real estate so sold by paying to the purchaser thereof, his or her heirs, . . . or to the sheriff or other officer who sold the same . . . for the benefit of such purchaser or his or her heirs . . . , the sum of money for which the premises were sold or bid off, with interest thereon at the rate of 10% per annum from the time of such sale, where upon the sale and certificate shall be null and void. . . .

➔ For Many Other Redemption Options, Issues or Requirements, *See* 735 ILCS 5/12-132 (By Creditors), 12-133 (Redemption Money Bid), 12-134 (Bid At

More Than Redemption Money, 12-135 (Further Redemptions), 12-136 (Preference in Redemptions), 12-137 (Subsequent Redemptions), 12-138 (Redemptions of Parts as Sold, 12-139 (Redemption by Joint Owner), 12-140 (Redemption on Claims Allowed in Probate).

O. Report of Sale and Confirmation of Sale. 735 ILCS 512-144.5. When the Certificate are not redeemed, after expiration of the 6 Month Redemption Period, the Legal holder of the Certificate (Successful Bidder), shall make report to court that issued the underlying judgment:

1. 12-144.5(a):

- a. Copy of the Certificate of Sale;
- b. Affidavit, under oath, containing a good faith appraisal of the fair market value of the property; and
- c. List of all liens and mortgages including the value thereof.

2. 12-144.5(b):

- a. Upon notice and motion, court issuing the underlying judgment shall conduct a hearing to confirm the sale. Unless the Court finds that (i) notice as required by law was not given, (ii) terms of the sale were unconscionable (iii) sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale.
- b. Court shall take into consideration the purchase price as the sale in relation to the fair market value less the value of any mortgages and liens.

→ Note: If a judgment or consumer debt judgment becomes *dormant* during the pendency of an enforcement proceeding against wages (Part 14/Article II) or Part 8 of Article XII), the enforcement may continue to conclusion if the enforcement is done under court supervision and includes a wage deduction order or turnover order and is against an employer, garnishee, or other third party respondent. 735 ILCS



**XIX. Foreclosure of Judgment Lien verses Execution and Levy against Real Property.**

**A. Foreclosure of Judgment Lien - 735 ILCS 5/12-101, et seq.**

1. The Lien may also be foreclosed by an action brought in the name of the judgment creditor or its assignee under Article XV (i.e. "Illinois Mortgage Foreclosure Law"). Redemption Period still 6 months from the date of sale and the homestead exemption per 12-901 Below shall apply.
2. Essentially File Complaint to Foreclose Judgment Lien.
3. Why Foreclose Judgment Lien verses Execution and Levy?

**XX. Homestead Exemption. 735 ILCS 5/12-901**

- A. \$15,000.00 Each.
- B. TRACEABLE PROCEEDS: If sell/convey Real Property and Seller/Debtor exercises his/her Homestead Exemption, that same exemption shall be exempt from judgment or other process, for *one year* after the receipt and if reinvested in anew homestead the same shall be entitled to the same exemption as the original homestead. 735 ILCS 5/12-906.
- C. Insurance Proceeds in favor of person entitled to exemption is entitled to claim homestead exemption to the same extent as the building would have been if not destroyed. 735 ILCS 5/12-907.
- D. No forced sale can be made for less than exemption amount. 735 ILCS 5/12-909.

**XXI. Personal Property Exemptions. 735 ILCS 5/12-1001.**

- A. Necessary wearing apparel, bible, school books, family pictures of debtor and dependents.
- B. \$4,000.00 generally (regularly referred to as the "Wild Card Exemption").
- C. Vehicle \$2,400.00.
- D. Tools, Books, etc. \$1,500.00.
- E. Professional prescribed health aids for debtor or dependents.
- F. Insurance proceeds, annuity contracts, etc. payable to wife or husband of insured, or

to child, parent or other person dependent on insured.

G. Debtor's right to receive:

1. Social Security Benefits, unemployment, public assistance.
2. veteran's benefit.
3. disability, illness, or unemployment benefit (*See* NOTE below regarding this exemption)
4. Alimony or other support reasonably necessary for support of debtor and dependent.

H. Right to receive, or property traceable to:

1. crime victim's reparation award.
2. payment due to wrongful death who debtor was a dependent to extent reasonably necessary for support.
3. payment under life insurance contract where debtor was a dependent, to extent reasonably necessary for support of debtor or dependent.
4. payment, not to exceed \$15,000 in value, on account of personal bodily injury of debtor or an individual of whom debtor was a dependent.
5. Restitution payments made pursuant to federal Civil Liberties Act and Aleutian and Pribilof Island Restitution Act.

→ For purposes of this subsection (h), a debtor's right to receive shall be exempt for maximum of 2 years right accrues; property traceable shall be exempt for a maximum of 5 years after the award or payment accrues; and award or payment traceable shall be exempt only to extent of amount awarded or paid, without interest or appreciation from the date of award or payment.

6. Moneys held in Illinois College Savings Pool, with some exceptions. See 735 ILCS 5/12-1002(j)

NOTE: *TRACEABLE ASSETS*: Money due debtor from sale of exempt property is exempt from attachment and garnishment to the same extent exempt had not been sold.

NOTE: If exempt property purchased with intent of converting nonexempt property into exempt property or in fraud of creditors, property not exempt.

NOTE: Personal Property exemptions applies only to individuals and only to personal property used for personal rather than business purposes.

NOTE: Personal Property exemptions do not apply to money, salary, or wages due or to become due to debtor regarding Wage Deduction.

I. Exemption for Retirement Plans 12-1006.

1. “Retirement Plans” include: Pensions, annuities, IRAs, stock bonus, profit sharing, etc.

- When head of household dies, deserts or does not reside with same, family shall be entitled to receive exemptions. 735 ILCS 5/12-1003. However, if original owner of IRA dies (but is not head of household), the account changes from retirement plan to a discretionary fund, and non-retirement funds are not exempt. Thus, IRA inherited from deceased mother (who was original owner of account) was not exempt. *In re Marriage of Branit*, 2015 IL App (1<sup>st</sup>) 141297. However, if Debtor him/herself already receives pension, annuity, etc. money, Court held exemption statute broad enough to permit debtor to exempt account funds *traceable* to pension benefits, even though word “traceable” appeared nowhere in statute. *In re Nothdurft*, 2015 WL 1209144 (C.D. Ill. 2015)
- NOTE: If officer or other person seizes exempted property from levy and sale, such officer or person shall be liable in a civil action to the party damaged for double the value of the property illegally taken or seized and costs of the action. 735 ILCS 5/12-1005.
- NOTE: An Illinois *exemption* for a “debtor’s right to receive a disability, illness, or unemployment benefit” applied to future benefits and did not extend to money already received. *In re Sullivan*, 2017 WL 1437065 (Bkrcty. N.D. Ill.)
- NOTE: Assets/Property (Real or Personal) held in *TRUST* for the benefit of Judgment Debtor are **ONLY** shielded from a creditor if the trust has been created, in

good faith, by a person OTHER than the judgment debtor. 735 ILCS 5/2-1403.

*Preservation Holdings, LLC v. Norberg*, 2019 IL App (1<sup>st</sup>) 181136, 139 N.E.3d 62.

XXII. Garnishment - 735 ILCS 5/12-701 et seq.

- A. Third Parties holding property/money of Judgment Debtor AT TIME OF SERVICE.
- B. Simpler than Citation. No in-county requirement.
- C. Conditional Judgment.
  - 1. Summons to Confirm.
- D. Great for Banks.

XXIII. Wage Deductions - 735 ILCS 5/12-801 et seq.

- A. Use to have to do every 12 weeks - Now continuing until paid or terminated/leave.
- B. PROBLEM: Child Support Orders take priority. 735 ILCS 5/12-808©.
- C. Conditional Judgment.
- D. Works if “Real” Job.
- E. Wage Deduction Order Cannot be Denied Based on Hardship. Court held that Code of Civil Procedure leaves trial court NO Discretion to deny request for wage deduction on grounds of hardship. *National College Collegiate Student Loan Trust 2004-1 v. Ogumbiyi*, 2018 IL App (1<sup>st</sup>) 170861, 123 N.E.3d 563 (Interpreting 12-803 revised in 2007 eliminated the word “maximum” from 15% language).

XXIV. Until 12/31/2019, called “Supplementary Proceedings”. Effective 1/1/2020, now called “Citations to Discovery Assets” - 735 ILCS 5/2-1402/S. Ct. Rule 277.

- A. Citation to Discover Assets
  - 1. Judgment Debtor or Third Party
    - a. If Judgment Debtor, commence in underlying case.
    - b. If Third Party, commence where Third-Party resides, or if individual, where third-party is employed or transacts business in person. S. CT. RULE 277(b). Unlike Garnishment - Continuous.
  - 2. Turn over personal property to sheriff for sale.
  - 3. If Judgment lien attaches before security interest perfected, judgment lien

creditor prevails. 735 ILCS 5/2-1402(a) (Once judgment debtor served with citation, judgment lien perfected on assets not otherwise exempt) v. 810 ILCS 5/9-317(a) (Secured Creditor Perfection). *Sign Builders, Inc. V. SVI Themed Construction Solutions, Inc.*, 2015 IL App (1<sup>st</sup>) 142212, 30 N.E.3d 475)

4. Order to Pay.

B. New Citation - Ex-parte with Affidavit or Notice. S. CT. RULE 277(a).

C. Pursuant to S. CT. RULE 277(g), Supplementary Proceedings against debtor and third parties may be conducted concurrently or consecutively. Termination of one proceeding does not affect other pending proceeding not concluded.

D. Misc Interesting Cases regarding Citations:

1. *Bank of America v. Freed*, 2012 IL App (1st) 113178 (2012). Affirmed civil contempt finding against Defendants for transferring \$ in violation of *Citation* stay even if transfers were made in course of business and to adhere to other obligations, transfers violated Section 2-1402(f)(1) of the code of Civil Procedure, which does not provide exception for transfers made in ordinary course of business. Thus, finding of contempt for dissipating assets was not against manifest weight of evidence. Defendants had taken no steps to ensure employees were abiding by terms of citation and allowed transfers in violation of citation.

2. *Sign Builders, Inc. V. SVI Themed Construction Solutions, Inc.*, 2015 IL App (1<sup>st</sup>) 142212, 30 N.E.3d 475). Judgment creditor issued *Third Party Citation* against bank where Judgment debtor had account. Secured creditor of debtor intervened and objected claiming secured, perfected interest in all property owned by debtor. Appellate court held so-called secured creditor did not have secured, perfected interest in account at time judgment lien attached because security agreement made no mention of account. If Judgment lien attaches before security interest perfected, judgment lien creditor prevails.

735 ILCS 5/2-1402(a) (Once judgment debtor served with citation, judgment lien perfected on assets not otherwise exempt) v. 810 ILCS 5/9-317(a) (Secured Creditor Perfection).

3. *National Life Real Estate Holdings, LLC v. Scarlato*, 2017 IL App (1<sup>st</sup>) 161943. Judgment against Defendant for \$3.5 Million. Plaintiff served *Third Party Citation* against bank and conducted business with Defendant. Appellate Court found Bank violated restraining provision of Citation (which prohibited transfer of any property belonging to defendant) when Bank entered into new loan with Defendant and advanced and disbursed proceeds in violation of citation because Proceeds of a loan are to be considered property.
4. *Margules v. Beckstedt*, 2019 IL App (1<sup>st</sup>) 190012. After service of Third-Party Citation on Lawyer whose client was suspected of holding assets of the judgment debtor, Court rejected Lawyer's contention that attorney-client privilege shielded identity of his third-party client upholding lower court's grant of plaintiffs' motion to compel disclosure of third-party client's identity. Holding debtors' lawyer in contempt for his failure to comply with order to disclose third-party client was proper
5. *FirstMerit Bank v. McEnery*, 2020 IL App (3d) 180287) - Two Cases Consolidated.
  - a. Kiddyland Defendant Served with Citation, then transferred Kiddyland Train to Third-Party. Per Third-Party Citation, Creditor sought Turnover Order of Train free and clear of Third-Party claim for storage Fees/Lien. After hearing re Turnover v. Third-Party Lien, Court Granted and permitted Creditor to sell train in "commercially reasonable manner" via Auction per 2-1402(e) that permits Court to appoint agent, in lieu of sheriff, to sell debtor's property, "upon such terms as are just and equitable" (Size and Difficulty of Train

justified).

- b. Did not permit Bid of “\$3,500 over bid” because invalid. Required Specific Bid.

- 6. *Kalmin v. Varan*, 2021 IL App (1st) 200755. Enforcing a Default Judgment entered more than 10 years prior, Plaintiff served Third-Party Citation against Bank, seeking funds in an account in the name of an LLC (Not Judgment Debtor) for which individual Judgment Debtor was the sole signatory. Court Denied LLC's Motion to Quash the Citation. Court did not abuse its discretion in finding Judgment Debtor was not a credible witness, and finding that the funds held belonged to the Judgment Debtor. Additionally, a creditor need not formally seek an extension for citation proceedings to extend and pursuant to Rule 277, court, by continuing to entertain the proceedings, may extend the proceedings as justice may require.

XXV. Sequestration - THE SEQUESTRATOR - THE COURT'S ENFORCER, by Judge John Deonald O'Shea, Illinois Bar Journal, April, 1982, at P. 494.

- A. *In rem* method of enforcing Orders/Judgments that runs against the property of the defendant.
- B. Similar to Receiver, but Post Judgment.
- C. Property Taken possession of via court order to enforce, among other things, Judgment.
- D. Sequestration can be used against real and personal property.
- E. Court can appoint whoever is best able to perform the job. For example, sheriff, real estate broker, employer, contract buyer, stock broker, etc.
- F. Since writs are abolished, certified order appointing a sequestrator will do the job. 735 ILCS 5/2-1501 (listing "sequestration"). See also (735 ILCS 5/2-1402(j) recognizing "sequestration" as a judgment collection power subject to exemptions).
- G. Sequestration can prevent constant return to the courthouse for repeated rules against debtor to show cause for contempt.

XXVI. If nothing else, try a Payment Plan pursuant to Court Order:

- A. As to Small Claims Cases, a court may order (even over objection of Plaintiff) a payment plan so long as the installment payments shall not extend over three years in duration. S. CT. RULE 288. Likewise, a Court may stay enforcement of the judgment by other supplementary process during compliance with the payment order. S. CT. RULE 288.

→ NOTE: Rule 288 only applied to small claims cases. The trial court cannot use Rule 288 to order installments over Plaintiff's Objections in cases other than small claims. *Silver Cross Hospital v. Campbell*, 140 Ill. App. 3d 746, 489 N.E.2d 405 (3d Dist. 1986).

- B. Generally, pursuant to 735 ILCS 5/2-1402©, when nonexempt assets or income of the judgment debtor are discovered, the Court may, by order, require judgment debtor to make payments to judgment creditor. However, it is generally easier to negotiate with the judgment debtor during the citation hearing to obtain an agreed upon payment plan and enter an agreed order accordingly.

XXVII. Summary:

- A. No One Right Way.
- B. Key - Constant Pressure.

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# Real Estate Property Levy Instructions

[← Back to Home](#)

## Requirements to Initiate Levy Process

Two (2) certified copies of the judgment order. If it is an out of county judgment, it must be enrolled in DuPage County.

Letter of direction from attorney requesting the Sheriff to levy on real estate owned by the defendant(s). The letter of direction must include the following information:

1. Legal description of property
2. Common address
3. P.I.N. (Tax number)
4. Advise if the property is a homestead

\$400.00 cash or check made payable to the Sheriff of DuPage County for advanced fees account. This fee usually covers:

1. Recording of Levy
2. Service of execution
3. Appraisal (if a homestead)
4. One (1) publication for three consecutive weeks in local newspaper

The plaintiff is responsible for the Sheriff's fee, which is set by DuPage County Ordinance and is not usually covered by the advanced fees account.

Sheriff's fee:

If the levy is released prior to the Sheriff appraising the property, the fee is \$150.00.

If the levy is released after the appraisal but prior to the Sheriff publishing and setting a sale date, the fee is \$300.00.

If the levy is released after publishing and setting a sale date but prior to the sale, the fee is \$500.00.

If the property goes to sale the Sheriff's fee is \$1,000.00.

**ANY FURTHER QUESTIONS PLEASE CALL (630) 407-2054..**



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# Personal Levy Research

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## Required Forms & Information

1. Two (2) writ-stamped orders and one copy for each defendant being served. Order expires 90 days after the writ stamped date. One (1) original plaintiff's levy bond indemnifying the Sheriff of DuPage County in an amount that is twice the value of the judgment. Bond must be signed by surety agent and bear the corporate seal. Property to be levied on must be listed on the bond.

Check for the appropriate town service fee.

Judgments entered in other counties of this state must be filed in the office of the Clerk of the Circuit Court of DuPage County. (735 ILCS 5/12-106)

Judgments entered in other states must be filed in the office of the Clerk of the Circuit Court of DuPage County.

Federal judgments must be filed in the office of the Clerk of the Circuit Court of DuPage County.

1. Cover Letter:

- The specific location where the property to be levied is located; business/residence
- Any credits against the judgment and court-ordered costs
- There are three (3) specific actions the Sheriff may take:
  - Inventory the property and leave property under the control of the defendant, pending sale or settlement.
  - Remove the seized property to a secure warehouse or storage facility pending sale or settlement. The plaintiff must provide movers and a secure facility for the property. A new lock in an unopened package is required. The Sheriff will retain the keys pending sale or settlement.
  - Seize and lock the business until sale or settlement. The plaintiff must provide a locksmith to change the locks. The Sheriff will retain the key.
- Plaintiff shall provide a copy of the Commercial Code (UCC) filing with the letter of direction, if applicable.

2. The sale of the property may be set as soon as 10 working days after the property has been levied upon.
3. The Sheriff is permitted to collect in addition to the judgment and court-ordered costs a Sheriff's commission, interest on the judgment, Sheriff's service fees, and any other costs incurred by the Sheriff in the enforcement of the judgment. The Sheriff may not collect attorney's fees nor the cost of the plaintiff's bond unless so ordered by the court.

***Any further questions may be directed to the Levy/Replevin office at (630) 407-2054.***



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