

## What happens once you have the trial? Some basic information about **Stipulated Dismissals and Post-Judgment Actions**

### **STIPULATED DISMISSALS:**

#### **What is a stipulated dismissal?**

A stipulated (agreed) dismissal (see s. 799.24(3) of the Wisconsin Statutes) happens when the plaintiff and the defendant agree to have the judge dismiss the action and not enter a judgment against the defendant **only** if the defendant pays the plaintiff an agreed upon amount by a certain date. Once that amount is paid (this can be accomplished through a payment plan) the case is dismissed.

#### **Why would I want a stipulated dismissal?**

A stipulated dismissal means that the defendant doesn't have a judgment against them, a real problem when trying to obtain credit in the future. For the plaintiff, a stipulated dismissal might mean a better chance at actually getting the money owed to them, especially if the defendant will need to get a loan to make the payment.

#### **How do you get a stipulated dismissal?**

A stipulated dismissal is always a voluntary agreement between the parties. After the court makes a determination of how much the defendant should pay, the parties can enter into the agreement and have it entered as an order by the judge.

#### **What happens if the defendant doesn't pay by the date in the agreement?**

The plaintiff can file a sworn statement with the court and a judgment for the original amount will be entered against the defendant without returning to court.

**NOTE: CASES ENDING IN A STIPULATED DISMISSAL ARE STILL LISTED ON CCAP!!!**

### **POST-JUDGMENT:**

#### **Costs:**

##### **Can my court costs be reimbursed if I win my case?**

Yes, but only some costs. You will not receive reimbursement for lost wages or transportation but you can receive reimbursement for the cost to file the case, the cost to serve the summons and petition, to subpoena witnesses, and for garnishment costs. You can also receive **limited** attorney fees. Please see the "Guide to Small Claims Court" for the amount of reimbursement allowed for attorney fees.

#### **Executing the Judgment:**

##### **What happens if there is a judgment entered?**

Once a judgment is entered the plaintiff must take some steps to execute the judgment to get the court's help in actually receiving the payment from the defendant.

The first step is getting a **financial disclosure** from the defendant (now called the judgment debtor). Note: In Dane County the financial disclosure is automatically sent to the debtor by the court at the time of judgment.

The court will order the defendant to complete the form within 15 days of the judgment and send it directly to the plaintiff. The form does not need to be sent if the defendant satisfies the judgment (pays the amount owed to the plaintiff) by the end of the 15 days.

**What happens if the form isn't returned?** If the form is not returned and the judgment isn't satisfied, the plaintiff can ask that the defendant be held in contempt. The plaintiff should request form [SC-507, Motion and Order for Hearing on Contempt](#), and file it with the court. After this, an order-to-cause hearing will be held and usually the defendant will have to fill out the financial disclosure form while at the hearing. If the defendant does not appear, an arrest warrant can be issued for the defendant and he or she could be placed in jail or fined for failing to appear in court. One reason the defendant must fill out a financial disclosure statement is that the Plaintiff needs to know whether and where to have the judgment "docketed".

### **Docketing the Judgment:**

#### **How and why do you docket the judgment?**

The plaintiff can have the judgment "docketed" by paying a fee to the clerk. The clerk will put the judgment on an official, public list. Docketing a judgment will automatically place a lien on any real estate the defendant owns for 10 years. Usually the defendant will not be able to sell the property or get a loan on the property until the lien is removed by paying the plaintiff the amount of the judgment. A transcript of the judgment can also be docketed in other counties where the defendant owns property.

If the defendant doesn't own any property the plaintiff may want to use the garnishment process described in the next section to enforce the judgment.

### **Appeals:**

Small claims actions can be appealed to the court of appeals. There are no special small claims rules for appeal. It is a complicated legal process and should probably only be done with the help of an attorney.

### **Reopening a Default Judgment (form [SC-511, Petition to Answer or to Reopen Small Claims Judgment and Order](#)):**

Default judgments are very common in small claims court. They often occur when the defendant never appear in court. There are some circumstances when a default judgment can be reopened, allowing the defendant to appear in court and defend the action.

#### **When can I file a motion to reopen?**

A defendant can file to reopen a default judgment within 6 months of the judgment being entered for any reason or one year after the judgment if the case was filed in the wrong county. (see § 799.29(1)(c) of the Wisconsin Statutes). There may be another reason you can reopen the case under § 806.07 of the Wisconsin Statutes. You may want to discuss this with an attorney.

#### **Will there automatically be a new trial?**

No, there will only be a new trial if the judge finds that "good cause" for one exists. You must file a notice of motion with the motion and list the reasons for reopening the case in the notice. Both the motion and the notice of motion must be served on the other party and filed with the court. If you do get a new trial you might have to pay court cost. Be sure to ask those to be waived if you think you have a good reason for reopening the case.

#### **Can the plaintiff have the case reopened?**

Yes, if the case is dismissed because the plaintiff doesn't appear he or she file for it to be reopened, but its probably easier to start over and file the case again.

# GARNISHMENT

## **What is earnings garnishment? Who may garnish my earnings?**

A **creditor** who is trying to collect an unsatisfied civil court judgment against a **debtor** may start a **garnishment** action to recover the money owed. This may include interest and other costs, which are deducted from earnings payable to the debtor. (Wis. Stat. § 812.32) The employer, who makes payment directly to the creditor, is called the **garnishee**.

**EXAMPLE:** If a court finds that you (debtor) owe a former landlord (creditor) back rent, the landlord can ask the court to order your employer (garnishee) to pay part of the rent you owe directly to the landlord. There are limits to the amount that can be taken out of each paycheck (see below).

## **How does the garnishment process work?**

Once the creditor has obtained a judgment against the debtor, the creditor can begin garnishment proceedings by paying a fee and filing a garnishment notice with the court. The creditor must then serve papers to the debtor and to the debtor's employer (the garnishee). (§ 812.35)

The papers served to the garnishee require that the garnishment begin in the pay period following receipt of the notice of garnishment. Unless the debtor takes action, the garnishment will begin.

The papers served to the debtor explain the possible defenses against the garnishment. The debtor is given a worksheet to help determine whether his or her household income is under the federal poverty guidelines. If, after completing the worksheet, the debtor believes that some or all of his/her wages may be protected from garnishment (see below), the debtor must file an *answer* with the garnishee (employer). The *answer* form is included in the papers served to the debtor. (§ 812.37(1))

The garnishee is required to accept as true any defense to the garnishment offered by the debtor in the answer. (§ 812.37(3))

## **Are my wages exempt from garnishment?**

Normally, 80% of your earnings are protected from garnishment. (§ 812.34(2)(a))

Your earnings may be completely exempt from garnishment if your household income is under the federal poverty guidelines, or if the garnishment would put your household income under that level. (§ 812.34(2)(b)1)

## **If someone has a judgment against me, can they garnish my SSI or W-2 check?**

Any needs-based public assistance, such as SSI or W-2, is exempt from garnishment. If you received any needs-based public assistance, including food stamps and/or veterans' benefits, within 6 months prior to the garnishment action, or if you are eligible for but do not receive such benefits, you may also be exempt. (§ 812.34(2)(b)2; 812.30(9))

## **How much can be taken out of my wages each pay period?**

No more than 20% of your net (take-home) wages may be garnished per pay period. If you are also paying court-ordered child support, this amount may be increased to 25%. (§ 812.39(2))

## **What if child support payments are also being deducted from my paycheck?**

Child support payments will always take priority over other garnishments.

(§ 812.39(2)) If your wages are exempt from further garnishment because child support payments are already being deducted from your earnings, the garnishment may begin once your child support payments are no longer being withheld.

**How long will wages be garnished?**

The garnishment may continue for each pay period beginning within 13 weeks of the commencement of the garnishment action. If the creditor and debtor agree, it may be extended for additional 13-week periods. This is a good idea if the debtor wishes to avoid paying additional court costs related to the filing of another garnishment action. (§ 812.35(5); 812.40)

**Can my employer take action against me if my wages are garnished?**

It is illegal for an employer to retaliate against you for an earnings garnishment. If the employer does, you may bring an action for reinstatement, back wages and benefits, restoration of seniority, or other relief allowed under the statute.

(§ 812.43)