

DARREN LOMBARD
CLERK OF COURT, SECOND CITY COURT

SMALL CLAIMS DIVISION
COLLECTION INSTRUCTIONS

Second City Court of the City of New Orleans
225 Morgan Street, Room 206
New Orleans, LA 70114
504-407-0435

You have been granted a Judgment in Small Claims Division of Second City Court. Unless this Judgment has been stayed to allow installment payments, you may, after seven (7) days from the date of Judgment, proceed to exercise all of your remedies under the Louisiana Code of Civil Procedure. These instructions are intended to help you in your collection attempts. There are a number of different methods of collection you may try. However, some are difficult procedurally and should be done only with the consultation of an attorney; these are noted at the end.* The steps listed below can be followed without consulting an attorney. You will find the Clerk of Court and Constable very helpful if you are confused.

- Step 1:** **Record your Judgment.** This means that you obtain a certified copy of the Judgment from the Clerk of the Small Claims Division and take it to the Office of the Land Records Division of the Clerk of Civil District Court, located at 1340 Poydras Street, 4th Floor, and (504) 407-0005. You will need to pay them a fee. The effect of recording your Judgment is to place a claim against any real estate located in Orleans Parish and owned by the losing party. The losing party will have difficulty selling or mortgaging such real estate without first paying you. If you know the losing party has real estate in another parish, you may record your Judgment there as well. You should contact the Clerk of Court in that parish for more information.
- Step 2:** Contact the losing party and attempt to get his/her agreement to pay even if it is on an installment basis. No matter what other collection steps you take, frequent contact with the losing party is the surest and cheapest way to collect. If there was a trial at which the Judge or Arbitrator had the losing party disclose their assets and place of employment, go to Step 8. Otherwise, go to Step 3.
- Step 3:** If you have received Judgment by Default (the losing party failed to answer or show up at the trial), you will have some difficulty knowing what assets the losing party has to collect against. If you received a Consent Judgment (the Defendant agrees that they owe what the Plaintiff claims) and you know where the losing party lives, you may bring what is known as a **Judgment Debtor Rule**. Under this procedure you can force the losing party to appear in court to be questioned as to what assets they may have for collection purposes. This procedure is set out in the following Steps.
- Step 4:** First you must file a written Judgment Debtor Rule with the Clerk of Small Claims Court. This form may be found in the Clerk's office. The Judgment Debtor Rule asks the Judge to fix a date and order the losing party to appear in court and produce any books, papers or other documents relating to their property. The order will be served on the losing party by the Constable. This will cost a fee made payable to the Constable. (This fee can be recovered from the losing party as a cost.)
- Step 5:** You should determine whether service has been made on the losing party by checking with the Constable at 504-598-5365. If so, appear in court as specified in the Judgment Debtor Rule.
- Step 6:** If the losing party appears, you may question them as to their assets. (While this may be done in open court, it is usually done in the hall or in another room so as not to take the court time.) If you believe, however, that the losing party is not being honest, you may bring them into the courtroom and compel them to testify, under oath before the Judge. The following information is often sought:

- a) Where the losing party works and amount of their wages;
- b) What real estate the losing party owns, its location(s), and, if there is a mortgage on it, the balance of the mortgage;
- c) What large pieces of property (e.g. car or boat) the losing party owns, where these are located, and if financed, how much is still owed; and
- d) What savings accounts, savings certificates, stocks or bonds the losing party owns, what are they worth and where are they located. You are permitted to know the account numbers.

If the losing party fails to appear at the fixed time, go to the next Step. Otherwise go to Step 8.

Step 7: If the losing party has failed to appear at the time ordered and has been served personally, the Judge will generally order the losing party to be arrested and brought to court. This will be at a later date, but it will ensure their appearance. You should make arrangements directly with the Constable to serve the Attachment (arrest warrant) on the morning of the newly fixed appearance date so that the losing party can be brought directly to court. At this appearance, you can find out the information set forth in Step 6.

Step 8: The main collection method that can be handled without a lawyer is a **Garnishment**. A garnishment allows you to get property belonging to the losing party which is being held by a third party. The property that can be reached most easily in this way is the losing party's wages. You must first know the losing party's employer. The losing party's employer should be determined during the Judgment Debtor Rule set forth in Steps 3-7. If the employer is a corporation, you must also be able to tell the Clerk the name and address of the authorized agent of the corporation for the purpose of receiving service of process. Once you know the losing party's employer and the corporate agent, if any, proceed to the next step.

Step 9: First you must obtain a *Writ of Fieri Facis* from the Clerk. This is merely a piece of paper that legally authorizes the Constable to seize property. This writ requires a \$15.00 fee and can be obtained in person at the Small Claims Division of the Second City Court Clerk's office or by letter. This fee can be recovered from the losing party as a cost. This writ is good for one year so you must begin your garnishment within that time, although the garnishment once started, may go for longer than a year.

Step 10: When you receive the writ, you can immediately institute the garnishment proceedings. This is done by completing a form called a **Supplemental Petition** directed to the losing party's employer. The clerk will supply you with that form and complete it for you. You also must send a set of **Interrogatories** to the employer. In answering these interrogatories, the employer states whether or not the losing party is employed there, how much their wages are, how they are paid and whether or not there are any other garnishments. These Interrogatories are also on a form which the Clerk will supply and complete for you. You must pay a \$140.00 garnishment processing fee to the Constable's office; you can recover this fee from the losing party as a cost.

Additionally, you must deposit \$15.00 into the Second City Court garnishment fund. This money can be withdrawn by employers who answer the Interrogatories; however, you can recover the fee from the losing party as a cost. The clerk will have the Petition and Interrogatories served on the employer.

Step 11: **The employer has (15) fifteen days to answer.** If he admits that the losing party is in his employ, the clerk will notify you. At that point, you must return to the Small Claims Division of Second City Court to sign and submit a **Judgment Against Garnishee**. The Clerk can provide you with this form. This form is then submitted to the Judge for his/her signature. This begins the garnishment process.

Step 12: Once the Judgment is signed, the employer is ordered to pay the Constable all non-exempt wages [25% of disposable earnings – the amount left after deduction for taxes and social security – or the amount the disposable earnings exceed 30 times the federal minimum wage (\$217.50 weekly), whichever is less.] The Constable will deduct a commission of 10% and turn over the balance to you. This will continue until the debt and costs are paid.

* The other methods for collecting a Judgment include a garnishment of bank accounts and attachment of property. These should not be attempted without first discussing them with an attorney