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Attorneys

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To the Illinois Supreme Court Rules Committee:

I write in support of amending Supreme Court Rule 277, Supplementary Proceedings, and encourage its adoption as written along with the proposal for a new rule, 278.

Supplementary proceedings originated as a Creditor's Bill in the Common Law. When a Law Court judgment could not be enforced by a sheriff due to lack of knowledge of a debtor's assets, a creditor could swear out a Creditor's Bill in a Chancery Court. The bill was based upon a claim of no adequate remedy at law and allowed the creditor to bring the debtor before the court to answer questions as to its assets. At the time, it was considered an extraordinary remedy. Upon finding assets, the sheriff was able to levy and sell them to satisfy the judgment. The courts had no part in the sale beyond hearing Trial Rights of Property (Adverse Claims).

Citations to Discover Assets arrived in Illinois Law in the early 1900's from New York. Over the next 50 years, the laws and rules governing citations added features such as liens and turnover of property. The Citation Act is found in the Code of Procedure, Article II, Civil Practice and not in Article XII, Judgments - Enforcement. I believe this is due to its origin as an equitable court remedy rather than a judgment enforcement procedure.

In the last 30 years, the law governing citations, 735 ILCS 5/2-1402, has had major updates. The law, once titled as Supplementary Proceedings, is now titled Citations to Discover Assets. Unfortunately, Supreme Court Rule 277 has not kept pace and has not had a major update in the past 70 years.

Citations have become the primary judgment enforcement proceeding and have subsumed the Wage Deduction and Garnishment Acts. All remedies and process allowed by the Acts may be had by using a Citation to Discover Assets.

The following are several examples of current practice and updated law addressed in the proposed amended rule:

- Although a garnishment summons may be served upon a garnishee in any county in the state, a citation to a bank or employer is restricted to the county in which the judgment was entered. Perhaps this is due to the requirement of a personal appearance by the party. Today, this restriction is rarely enforced.

- A bank or employer filing a written answer is a current common courtroom practice accepted in all courts without question. However, it is not allowed by the current rule. The rule requires all defendants and respondents to personally appear in court.

- A creditor may issue a bank garnishment to the same bank multiple times without leave of court. This may not be done with a citation unless the court grants permission. The current creditor's workaround: issue a citation and then follow it up with a garnishment if the creditor suspects more money in the bank. Filing a motion for a second citation to the bank with notice to the debtor defeats the purpose of a second citation.

- A major change in the Citation Act specifically allows a court to set terms of sales for property and supervise the sale process. This eliminates the need for sheriff sales that bring "pennies on the dollar." In effect, we may now follow bankruptcy court practice to maximize proceeds to everyone's benefit.

The overall effect of the proposed amended rule will benefit consumer debtors by clarifying and confirming the court's supervision of the enforcement process. It may also reduce dilatory tactics and litigation by sophisticated judgment debtors.

I also support the proposal for a new Supreme Court Rule 278. Claims to Exempt Income or Assets From Enforcement of Judgment

There is a lack of uniformity in courtrooms throughout the state dealing with exemption hearings. Exemptions, by case law, are to be liberally construed in favor of debtors. Frequently, hearings vary according to the enforcement used, citation, wage deduction, or garnishment. The law already allows automatic exemptions in wages, social security, bank accounts and more. Confusing hearings work to the detriment of the consumer debtor. While it may be aspirational to think all courts will follow the same procedures, this proposed rule sets some guidelines.

Another important aspect of the proposed rule is that a Personal Property Exemption (Wildcard), may be used more than once during the enforcement life of a judgment. A judgment debtor should never be left without funds to pay for food/shelter. Considering that a debtor may file bankruptcy periodically and claim a Personal Property Exemption each time, justice requires Illinois law acknowledge the exemption may be used more than once. The proposed rule allows a court to exercise its sound discretion to determine if an additional Wildcard Exemption claim is reasonable.

Thank you for your review of these comments.

Sincerely,

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P.S. Disclosure: I served on the Access to Justice Commission sub-committee that drafted these proposals. For the past 30 years, I have drafted and/or helped negotiate every amendment to the Illinois Code of Civil Procedure related to judgment enforcement.

Credentials:

- Former Chair: Illinois Institute for Continuing Legal Education
- General Editor & Primary Co-Author: Creditors' Rights, IICLE (1995-Present)
- Founding President: Illinois Creditors Bar Association
- Past President; National Creditors Bar Association
- Member: Illinois State Bar Association, Chicago Bar Association, American Bar Association, Decalogue Society of Lawyers