

COLLECTING ON YOUR CLAIM

Excerpts taken from the Missouri Small Claims Court Handbook
as printed by The Missouri Bar, 2004 and Supreme Court Rule 90

After the judge has decided in your favor and you have waited ten (10) days from the date the judge decided the case (the losing party may not file an appeal after ten days), you may start trying to collect on the judgment if the losing party has not filed an appeal and posted a bond. If an appeal has been filed but no bond has been posted, you may attempt collection. **You are solely responsible for collecting your money. The collection process is not automatic as the result of a Judgment being rendered by the Court.**

GARNISHMENT: This is the most frequently used legal procedure to collect money (generally in a small claims case) once a Judgment has been awarded. Within this procedure, an employer or other person holding money belonging to the losing party is instructed to pay to the court the money owed to the winning party. This employer, bank, or other person is called the garnishee. The Court then disburses the collected amount to the winning party.

To collect money this way, you must complete Form CV92 which must be filed with the Circuit Clerk's office together with the required \$10.00 surcharge.

The responsibility of obtaining service now lies with the garnishor.

Garnishing Wages: Garnishing wages is the surest form of collection. The name and address of the losing party's employer must be entered on the Garnishment Application (CV92). The amount an employer can collect is set by law. If the losing party makes less than a certain amount of money, you may not be able to garnish his or her wages at all.

Garnishing a Bank Account: The name and address of the losing party's bank must be entered on the Garnishment Application (CV92). Be advised that if the bank account has another name on it, such as the losing party's spouse, you may not garnish it unless the judgment is against the spouse as well.

90.02 Request for Issuance of Writ of Garnishment

The clerk of the court that entered the judgment shall issue a writ of garnishment if the garnishor files a written request stating:

- (a) That a judgment has been entered against the debtor and remains unsatisfied;
- (b) The judgment balance, as defined in section 408.040, RSMo, and the amount remaining unpaid;
- (c) That the garnishor knows or has good reason to believe that the garnishee is indebted to debtor, that the garnishee is obligated to make periodic payments to debtor, or that the garnishee has control of property belonging to debtor;
- (d) The requested return date of the writ, which shall be either 30, 60, 90, 120, 150, or 180 days after the filing of the request for the writ or, alternatively, that a continuous wage garnishment is requested; and
- (e) Whether payments made by the garnishee shall be made to the court or to the attorney for the garnishor.

Upon receipt of the garnishment application, the clerk shall process the application, issue the writ, and return the garnishment to the requesting party, who shall serve the garnishment on the garnishee as provided by Rule 90.03.

90.03 Service on Garnishee – Return of Service – Return Date – Notice to Judgment Debtor – Service of Subsequent Pleadings and Papers

- (a) The garnishee shall be served with summons and the writ of garnishment by the sheriff. If the sheriff fails to obtain service upon a request to do so, the garnishor may request the court to appoint a special process server. The special process server shall have the same duties as the sheriff with respect to service of garnishments. In addition, service may be made upon an employee of the garnishee designated to receive service or upon the paying, disbursing, or auditing officer of the garnishee. Return of service shall be made as provided in Rule 54.20. The return date of the writ of garnishment, if applicable, shall be set forth in the summons.
- (b) Within five days of notice of service upon the garnishee, the garnishor shall serve a copy of the summons and writ on the judgment debtor by delivering it to the judgment debtor as provided in Rule 43.01(c) or by mailing the documents to the debtor's last known address. Service by mail shall be complete upon mailing. At the time of mailing, a certificate of service shall be filed with the court. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the documents, and the signature of the serving party or attorney.
- (c) Within five days of service of the summons and writ upon the garnishee, the garnishee shall hand deliver or mail a copy of the summons and writ on the judgment debtor at debtor's last known address according to the garnishee's records.
- (d) All pleadings and papers subsequent to service of the summons and writ of garnishment shall be served as provided in Rule 43.01.

Ask the clerk for assistance with regard to the required service fee or access www.lafayettecountymo.com to locate service fee information. There is no limit to the number of garnishment actions that may be processed. Be aware, however, that the judgment debtor has the right to certain legal exemptions from garnishment that may limit your abilities to collect the debtor's money.

In order to garnish, knowledge of cash assets of the losing party in the State of Missouri is required. These are most easily found in the form of wages or bank accounts.

EXECUTION: Requesting an Execution to Levy against real estate or personal property is another method of collecting a Judgment. The description/address or legal description of property to be levied upon must be included on Form CV91.

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INTERROGATORIES: Pursuant to Chapter 525, RSMO and SCR 90, interrogatories shall no longer be filed with the court except as set out in the rule. However, when both the interrogatories and answers are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document and the signature of the serving party or attorney. The garnishor shall provide the interrogatories to the serving officer after the issued summons and writ have been returned to the garnishor by the court.

The interrogatories shall be served on the garnishee at the same time as the writ and summons to garnishee and must be answered within 10 days after the return date of the writ of garnishment or in the case of a continuous wage garnishment, within 20 days from the date on which the garnishee is served with the writ.

STATEMENT OF JUDGMENT BALANCE: A statement of judgment balance remaining due (form CV93) is required to be filed every six months for a continuous wage garnishment or in any case in which the garnishor has elected to have payments made directly to its attorney pursuant to [Rule 90.10\(b\)](#). The statement must be filed by the garnishor with the issuing court no later than 20 days after the close of a six month period. The court will terminate a garnishment when a statement of judgment balance is not filed.

SATISFACTION OF JUDGMENT: Once a Judgment is paid in full, a Satisfaction of Judgment (CV250) should be filed.

FORMS: You may obtain the Garnishment Application and Order form (CV92), the Execution Application and Order form (CV91), the Interrogatories to Garnishee form (CV110) together with the Instructions, the State of Judgment Balance form (CV93) and the Satisfaction of Judgment form (CV250) from the Circuit Clerk or by accessing www.lafayettecountymo.com to locate the forms under the Courts tab then the Forms link.

Please be advised that while the Certificate of Service, as mentioned in SCR 90.03(b) and the interrogatory information is required, there is no form available for distribution. The details for said certificate is clearly provided in the rule.

We ask that you make every effort to complete the forms in their entirety before presenting them to the clerk's office for processing. If you should have any questions, please feel free to give us a call at 660-259-6101.

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Information provided in this packet is not to be considered legal advice. Missouri law forbids any person from engaging in the practice of law who is not a licensed attorney (Section 484.020, RSMo.) Clerks are therefore prohibited from providing legal assistance. By law, clerks may assist those filing adult abuse, child protection, small claims or family access actions.