

Insights

COVID-19 and Supplemental Proceedings: Illinois Supreme Court Provides Guidance

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On April 24, 2020, the Supreme Court of Illinois issued an emergency order ("Order") concerning post-judgment proceedings against consumers. [1] The Order was entered to complement Governor J.B. Pritzker's Executive Order 2020-25, which suspended the service of wage garnishment and deduction summonses, as well as citations to discover assets. The Order also was issued to supplement the Court's March 17, 2020 order, which continued and/or curtailed non-essential court matters, such as supplemental proceedings.

By operation of IL law, financial institutions are required to hold up to double the value of the judgment amount once a summons is received, and may not transfer or release the funds until further order of the court.[2] Also, once a financial institution receives the summons, the judgment balance becomes a lien on all property held by the financial institution, such as funds in an account.[3] By suspending service of summonses and continuing supplementary proceedings, many IL financial institutions were required to freeze judgment debtors' accounts for a much longer period of time than normal. This was to the detriment of judgment debtors, too, since they were unable to claim the funds as exempt or otherwise contest the citations. Also, despite receiving recovery rebates payments from the CARES Act, or a tax refund, some IL consumers were unable to access the funds if their accounts were subject to a pending citation.[4]

The Order's scope is broad, as it defines "Covered Supplemental Proceedings" as all citation proceedings under 735 ILCS 5/2-1402, as well as wage garnishment proceedings under 735 ILCS 5/12-701 *et seq.*, stemming from a judgment that exclusively is against a natural person.[5] Section 2(a) of the Order additionally targets covered supplemental proceedings in which a summons or citation was served after March 8, 2020, or had an original return date between March 8, 2020, and the termination of the "Gubernatorial Disaster Proclamations." [6] In these instances, if a third party respondent, such as a financial institution, holds personal property of the judgment debtor that is valued in excess of \$4,000.00 (the amount of the personal property exemption contained in 735 ILCS 5/12-705 and 735 ILCS 5/2-1402(b)(1)), then the respondent shall release the property valued to \$4,000.00 to the judgment debtor, and there will be no lien on the funds.[7] This only applies to instances where the account is not a business account.[8] Thus, the Order effectively assumes any judgment debtor would claim the permissible \$4,000.00 exemption, and requires respondents to release that amount. The Order further states that it does not preclude a judgment debtor from subsequently claiming other exemptions in addition to the \$4,000.00.[9] Note that while the Order does not set a deadline for the release of funds to the judgment debtor, it seems fair to assume that this should occur promptly.

The Order includes a subsection 2(b) for instances where subsection 2(a) is "inapplicable." This seems to apply to financial institutions who hold less than \$4,000.00 of personal property of the judgment debtor.[10] Like subsection 2(a), subsection 2(b) applies only to non-business accounts. In these instances, the Order requires the garnishee or citation respondent to release to the judgment debtor all personal property that the garnishee or citation respondent may have frozen, withheld, or seized.

Section 3 of the Order further requires financial institutions and respondents to release funds, regardless of the date of summons or return date.[11] This anticipates much cooperation with counsel for judgment creditors as it

requires financial institutions to release the funds without order of the court. This section is the most far-reaching, since it not limited to consumer accounts as is subsection 2(a).

The Order has some important limitations. It does not vacate any agreed orders previously entered among the parties in the proceedings, and it does not prevent parties from entering into any further agreed orders. It also is inapplicable to wage deduction proceedings under 5/12-801, as well as proceedings arising out of domestic support obligations.^[12] Most importantly, it does not relieve financial institutions of their obligation to answer or otherwise respond to citations.^[13] Thus, even if financial institutions release certain funds to the judgment debtor, they still must answer the citation, or amend their previously filed answer.

As noted above, the Order is far-reaching, and remains in effect until the suspension of service of summonses and citations in supplemental proceedings, pursuant to the Illinois Governor's Executive Order 2020-25, no longer is in effect. The overarching goal of the Order apparently is to provide clarity to IL financial institutions, to enable access to funds for cash-strapped consumers, and to achieve this with minimal court intervention.

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[1] Available at <https://courts.illinois.gov/SupremeCourt/Announce/2020/042420.pdf>.

[2] See 735 ILCS 5/2-1402(f)(1).

[3] *Id.* at (m).

[4] Rhys Saunders, *Illinois Supreme Court Issues Order Limiting Freezes on Personal Bank Accounts*, Illinois Lawyer Now (April 24, 2020)

[5] Available at <https://courts.illinois.gov/SupremeCourt/Announce/2020/042420.pdf>.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*