

## PROCEDURES RELATIVE TO INFORMATION SUBPOENAS

WHAT IF THE JUDGMENT DEBTOR FAILS TO PAY THE JUDGMENT AWARDED IN MY FAVOR?

The following explains procedures which may assist you in the collection of your judgment. Please note that it is your responsibility to locate the judgment debtor and any of his or her assets. It is possible that the judgment debtor has no job or assets. Therefore, you may be unable to collect any amount of your judgment. However, your money judgment is good for twenty years and you can continue to attempt collection during that period. You may wish to have your judgment transcribed to the County Clerk so that the information is available to other potential creditors.

If your small claims judgment remains unsatisfied, you may attempt to locate assets of the judgment debtor by use of an information subpoena. You may obtain an information subpoena from the Small Claims Clerk upon payment of a \$7.02 fee. The information subpoena will then be sent to the judgment debtor.

**WHEN SHOULD I EXPECT RETURN OF THE ANSWERS TO THE INFORMATION SUBPOENA?**

The Civil Practice Law and Rules in section 5224 provides that answers to the information subpoena shall be returned to you together with the original of the questions within seven days after receipt. However, you must allow five additional days for service by mail pursuant to CPLR 2103, for a total of 12 days.

## WHAT IF THE INFORMATION SUBPOENA IS NOT OBEYED?

If the judgment debtor fails to comply with the information subpoena within 12 days, you may initiate a civil contempt proceeding.

In order to do so, first complete the following two forms which will be supplied by the clerk: 1) Affidavit in support of application for order to show cause; 2) Order to show cause.

Next, submit the completed forms to the clerk for the judge's signature. The signed forms must then be personally served on the judgment debtor. Judiciary Law § 756 provides that the papers shall be served no less than ten and no more than thirty days before the time at which the application is noticed to be heard. The CPLR in section 2103 provides that any person of the age of eighteen years or over and not a party to the action may serve the order and the accompanying papers. CPLR §308 sets forth the detailed procedures for effecting personal service. However, these provisions are somewhat technical and must be complied with, to the letter, in order to be effective. Therefore, it is strongly recommended that you contact a process server for the completion of personal service. Please note that it is your responsibility to ensure that the affidavit of service is filed with the Court.

WHAT IF THE JUDGMENT DEBTOR FAILS TO APPEAR ON THE DATE THE ORDER TO SHOW CAUSE IS RETURNABLE IN CITY COURT?

If the judgment debtor fails to appear, the judge will then issue a final order of contempt. This order must also be personally served on the judgment debtor. Again, it is strongly recommended that you contact a process server for the completion of personal service. You must again ensure that the affidavit of service is filed with the Court. If the judgment debtor fails to comply with the order, you may present proof by affidavit that more than ten days have elapsed since personal service on the judgment debtor. Upon such submission, and pursuant to Judiciary Law §772, the Court may issue a warrant commanding the arrest of the judgment debtor. The clerk of the court will provide the proper form and assist you if necessary.