New York Lawyers' Practical Skills Series

Debt Collection and Judgment Enforcement

William Ilecki, Esq.*

2011–2012

* This monograph was originally written by Jack Getman, Esq., and substantially revised and updated by the late Paul A. Peters, Esq. William Ilecki, Esq., has been the update author since 2010.

NEW YORK STATE BAR ASSOCIATION NYSBA

CONTENTS

PART ONE: DEBT COLLECTION

I. Forwarders 1
II. Commercial Law League of America and Law Lists 2
III. Attorney Fees 2
IV. Fees for Defending a Counterclaim 3
V. Disbursements 3
VI. Receiving the Claim 4
VII. Evaluating the Claim 5
VIII. Evaluating the Debtor 7
A. Client's File 7
B. Directories 8
C. Court Records 8
1. Judgments, Deeds and Liens 8
2. Security Agreements and Federal Tax Liens 9
3. Motor Vehicle Lien Search 9
4. Tax Assessor's Office 9
D. Employment Confirmation 9
E. Bank Accounts 9
F. Law Journals 10
G. Previous Experience 10
H. Private Detectives 10
I. Local Sheriff's Office 10
J. Asset Locate Firms 10
K. Online Search Engines 10
IX. Identifying the Debtor 10
X. Restrictions on Debt Collection 11
A. Communications in Connection With Debt Collection 12
B. FDCPA Update 13
C. False or Misleading Representations 16
D. Unfair Practices 16
E. Claims Against Estates 16
F. Damages (Civil Liability) 17
XI. Demand Upon the Debtor 17
A. Purpose of Demand 17
B. Written Demand 18
C. Telephone Demands 18
XII. Payment Agreements 19
XIII. Alternatives to Litigation 19
A. Confessions of Judgment 19
B. Stipulations of Settlement 20
C. Arbitration 20
XIV. Instituting Suit 20
A. Jurisdictional Limits 21
B. Where Defendant Can Be Served 22

C. Venue 23
D. Consumer Credit Transactions 23
E. Commercial Divisions of Supreme Court 24
XV. Preparing the Pleadings 24
A. Summons With Notice 25
B. Summons With Endorsed Complaint 25
C. Summons and Complaint 25
D. Verification 26
E. Summons and Motion for Summary Judgment in Lieu of Complaint 26
XVI. Service of Process 27
A. Who May Serve and When 27
B. Service of Process Upon a Natural Person 27
1. Personal Delivery 27
2. Delivery and Mailing 27
3. Agent for Service 28
4. Nailing and Mailing 28
5. Court-Directed Service 29
C. Service Upon a Corporation and Limited Liability Company 29
D. Personal Service Upon a Partnership 29
E. Personal Service Outside New York State 30
F. Affidavit of Service 30
G. Filing of Proof of Service 30
H. "Additional Notice" Required to Be Filed in Some Cases 31
1. Individuals 31
2. Corporations 31
I. Personal Service by Mail 32
J. Time to Answer 32
XVII. Entry of Default Judgment 33
A. Severance 34
B. Interest Rates 34
XVIII. Pre-Judgment Remedies 35

Appendix: § 208.6 Summons 37

Debt Collection Forms Index 41

PART TWO: JUDGMENT ENFORCEMENT

I. General Considerations 105
A. Applicability of Fair Debt Collection Practices Act 105
B. Enforcement of Judgment Procedures 106
II. Restraining Notices 108
A. Use With Information Subpoena 108
B. Law Effective January 1, 2009 109
III. New Federal Regulations 120
IV. Subpoenas 120
A. Attendance Subpoena 121
B. Information Subpoena 121

V. Orders for Payment or Delivery of Property 122
VI. Personal Property Executions 123
A. Forms 123
1. Property Executions 123
2. Property Execution with Notice to Garnishee 123
B. Property Subject to Execution 123
C. Exempt Property 124
D. Enforcement of Execution 125
1. Demand for Payment 125
2. Levy 125
a. Levy by Seizure 125
b. Levy by Service 126
E. Notice to Judgment Debtor 126
F. Sale Under Property Execution 126
G. Entry to Premises 127
VII. Income Executions 127
A. Form 127
B. Procedure 127
VIII. Transcripts of Judgment 128
IX. Executions Against Real Property 129
A. Homestead Exemption 129
B. Procedures for Advertisement and Sale 130
X. Return of Executions 130
XI. Priorities Among Executions 131
A. Personal Property Executions 131
1. Executions Delivered to the Same Enforcement Officer 131
2. Executions Delivered to Different Enforcement Officers 131
B. Income Executions 131
C. Real Property Executions 132
D. Tax Liens 132
E. Attorney Liens 132
XII. Determination of Adverse Claims 132
XIII. Sheriff's Fees and Poundage 133
XIV. Contempt of Court 134
XV. Receivers 134
XVI. Civil Arrest 134
XVII. Modification or Protective Order 134
XVIII. Satisfactions of Judgment 135
XIX. Conclusion 135

Enforcement Forms Index 139

Table of Authorities 215
About the Author 225

INDEX OF FORMS

Written Demand to Commercial Debtor 43
Written Demand to Consumer Debtor 44
Written Demand to Corporate Debtor and Guarantor 45
Postal Search 46
Confirming Letter 47
Affidavit of Confession of Judgment 49
Alternate Affidavit of Confession of Judgment 53
Stipulation of Settlement for Full Payment 57
Stipulation of Settlement for Less Than Full Payment If No Default 59
Summons 61
City Court Summons 62
Complaint (Goods Sold and Delivered) 63
Verified Complaint (Promissory Notes) 67
Affidavit of Proof of Service 71
Affirmation of Mailing of Summons (CPLR 3215(g)) 72
Statement of Service by Mail and Acknowledgment of Receipt 73
Statement for Judgment 75
Order to Sever 77
Affidavit in Support of Plaintiff's Claim for Attorneys' Fees 79
Order Awarding Attorneys' Fees 81
Alternate Attorney Fee Application and Order 83
Summons and Motion for Summary Judgment in Lieu of Complaint; Judgment and Order 87
Affidavit of Mailing (Natural Person) – CPLR 3215(g)3 93
Additional Mailing Notice (Corporation) – CPLR 3215(g)4 94
Affidavit Mailing Notice (Corporation) – CPLR 3215(g)4 95
Request for Judicial Intervention 97
Request For Judicial Intervention Addendum 99
Commercial Division Request for Judicial Intervention Addendum 101

INDEX OF FORMS

Information Subpoena with Restraining Notice to Financial Institution 141
Questionnaire for Bank or Financial Institution 143
Sample Form of Notice of Right to Garnish Benefits 147
Information Subpoena to Judgment Debtor 151
Questionnaire for Individual Judgment Debtor 153
Questionnaire for Corporate Judgment Debtor 163
Questionnaire for Place of Employment 171
Order to Show Cause to Punish for Contempt and Affirmation 173
Final Order of Contempt 177
Warrant of Commitment and Affirmation 181
Subpoena *Duces Tecum* with Restraining Order to Judgment Debtor 185
Notice of Motion to Set Installment Payments 191
Affirmation in Support of Motion to Set Installment Payments 193
Installment Payment Order 195
Notice to Judgment Debtor Regarding Exempt Property or Income 197
Income Execution 199
Property Execution 203
Property Execution with Notice to Garnishee 205
Notice of Petition (Turnover Proceeding—CPLR 5227) 207
Petition (Turnover Proceeding—CPLR 5227) 208
Judgment (Turnover Proceeding—CPLR 5227) 209
Exemption Notice 211
Exemption Claim Form 213

WILLIAM ILECKI, ESQ.

William Ilecki is a partner in the firm of Chiari & Ilecki, practicing in the areas of commercial litigation, creditors' rights, bankruptcy and general practice. A 1989 graduate of the State University of New York at Buffalo School of Law, he received his undergraduate education at Canisius College, graduating in 1986 (*magna cum laude*, All-College Honors Program). Mr. Ilecki is admitted to practice law in all courts of the states of New York and Pennsylvania, as well as the United States District Court and Bankruptcy Court for the Western District of New York. He is a member of the American and the New York State Bar Associations, the Bar Association of Erie County (Banking and Commercial Law Committee), and past president of the Erie County Bar Foundation. He has frequently lectured to various groups regarding collections and bankruptcy law.