

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL DISTRICT
CHAMPAIGN COUNTY, ILLINOIS

IN THE MATTER OF THE STATUS OF
BODY ATTACHMENTS IN SMALL CLAIM
AND LAW MAGISTRATE CASES ISSUED
PRIOR TO JULY 25, 2011.

No. 2012-5

MEMORANDUM OF OPINION AND ADMINISTRATIVE ORDER

This matter is before the court in the wake of the enactment of Public Act 97-848, effective July 25, 2012. The court notes that Public Act 97-848 contains substantive revisions of statutory law relating to the issuance of legal process and proceedings thereon in cases involving the collection of debts. Among the new provisions contained in Public Act 97-848 is section 12-107.5 of the Code of Civil Procedure. New section 12-107.5 provides as follows:

§ 12-107.5. Body attachment order. (a) No order of body attachment or other civil order for the incarceration or detention of a natural person respondent to answer for a charge of indirect civil contempt shall issue unless the respondent has first had an opportunity, after personal service or abode service of notice as provided in Supreme Court Rule 105, to appear in court to show cause why the respondent should not be held in contempt.

(b) The notice shall be an order to show cause.

(c) **Any order issued pursuant to subsection (a) shall expire one year after the date of issue.**

(d) The first order issued pursuant to subsection (a) and directed to a respondent may be in the nature of a recognizance bond in the sum of no more than \$1,000.

(e) Upon discharge of any bond secured by the posting of funds, the funds shall be returned to the respondent or other party posting the bond, less applicable fees, unless the court after inquiry determines that: (1) the judgment debtor willfully has refused to comply with a payment order entered in accordance with Section 2-1402 or an otherwise validly entered order; (2) the bond money belongs to the debtor as opposed to a third party; and (3) that any part of the funds constitute non-exempt funds of the judgment debtor, in which case the court may cause the non-exempt portion of the funds to be paid over to the judgment creditor.

(f) The requirements or limitations of this Section do not apply to the enforcement of any order or judgment resulting from an adjudication of a

municipal ordinance violation that is subject to Supreme Court Rules 570 through 579, or from an administrative adjudication of such an ordinance violation.

735 ILCS 5/12-107.5, effective July 25, 2012, emphasis added.

The new statute clearly imposes strict temporal limitations on the viability of so-called “body attachments.” Body attachments are the immediate analog under civil law of the arrest warrants that are more widely known under criminal law. Although the new statute is textually silent with respect to the continuing validity of body attachments issued prior to July 25, 2012, the court has concluded from its review of Public Act 97-848 in its entirety that stale body attachments are contrary to Illinois public policy as declared by its legislature.

Accordingly, the court holds that all outstanding body attachments, in cases classified as a small claim (“SC”) or a law magistrate (“LM”) case issued on or before August 24, 2011 are of no force or effect. The court further directs that all body attachments issued after July 25, 2012 are to bear a conspicuous recital that such writ is not to be executed beyond one year from the date of its issuance.

IT IS SO ORDERED.

DATE: 8/23/12

ENTER: *Thomas J. Difanis*
Thomas J. Difanis
Presiding Judge