

## Estate Planning and Probate Section CLE Program Webinar December 11, 2023

### Welcome/Announcements and Introduction

Sara Riechert, Estate Planning and Probate Law Section Chair

**12:00 PM – 1:00 PM**

### Program

#### **Avoiding Games and Frustration with Claims and Citations!**

Dave Feldman, Aronberg Goldgehn and Dave Gower, Lillig & Thorsness, Ltd.

Many attorneys who practice in probate court want nothing to do with a probate case that involves hotly contested litigation, such as disputed claims and citations to discover or recover assets. This course will demystify claims and citations proceedings.

### Link to Evaluation

The evaluation must be completed to receive CLE credit.

<https://www.surveymonkey.com/r/EstatePlanning12112023>

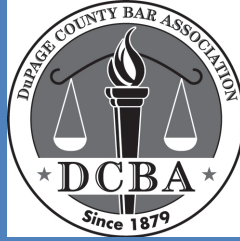
### Estate Planning Program

January 24<sup>th</sup> – Joint program with Civil Law Section on Intersection of wrongful death civil actions with probate, Brad Pollock and Alex Benigni

### DCBA Events:

December 4<sup>th</sup>-16<sup>th</sup> – Lawyer Lending a Hand Toy Drive – Bar Center

December 14<sup>th</sup> – [DCBA/DAWL/Justinians 2023 Holiday Gala](#) – The Drake of Oak Brook



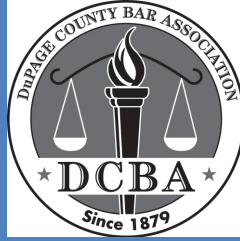
**2024 Attorney Security Pass** - Renew your pass today! All 2023 Passes expire January 31, 2024. If you received confirmation of your ARDC registration for 2024, you can renew your court ID through the DCBA website at this link - [dcba.org/courtid](https://dcba.org/courtid). If you renew online, a sticker will be sent in January. Please note, if you have lost your transponder or have never had one before, visit the Bar Center.

### **DCBA OnDemand CLE is Available on IICLE:**

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) catalog on the DCBA website under the menu item **CLE & Events**→**IICLE Online Library**. You must be logged into your DCBA Membership Profile to view courses for free or at a reduced price.

### **View & Print CLE Certificates through the DCBA Website:**

**CLE Certificates can take up to a week following the date of the CLE program to appear in your member profile.** Members can view and print their certificates for any DCBA CLE program attended by first signing into their account on the DCBA website. Hover over the **CLE & Events** menu item and select **Find My CLE Credits**. This page will list all the CLE credits earned with DCBA. To the left of each program is an icon to print or email the Statement of Credit. You can find a list of all CLE credits earned in Illinois by signing into your account on the MCLE Board website.



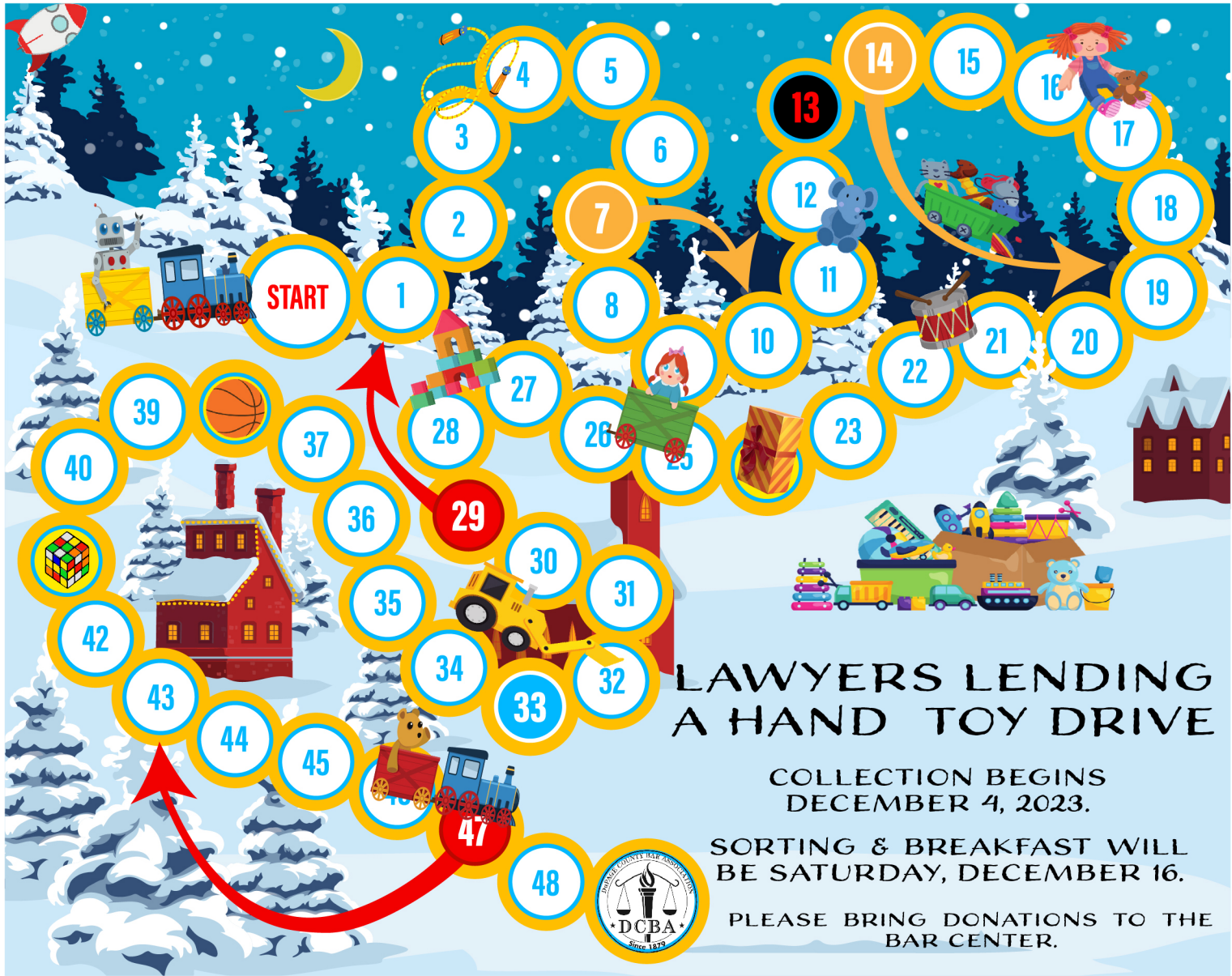
**David Gower** is a partner at Lillig & Thorsness, in Oak Brook, Illinois. He concentrates his practice in the areas of estate planning, estate administration, and estate litigation.

David has served as the Chair of the DCBA Probate and Estate Planning Section, and he currently serves as a member of the DCBA's Board of Directors.

He graduated from the University of Illinois in Champaign, and Loyola University Chicago School of Law. Dave is a Navy veteran.

**David Feldman** concentrates his practice on business, estate, trust and probate disputes, as well as family law. His experience also includes commercial and real estate litigation, including significant trial experience, injunctive relief, and enforcement of restrictive covenants and breach of contract.

David joined Aronberg Goldgehn in 2022. Prior to joining the firm, he practiced for 10 years at a boutique law firm in the Chicago area. Earlier in his professional career, he served as the CEO and General Counsel of Glassworks, Inc., the leading glass company in Chicago, as well as in private practice for approximately 15 years.



# LAWYERS LENDING A HAND TOY DRIVE

COLLECTION BEGINS  
DECEMBER 4, 2023.

SORTING & BREAKFAST WILL  
BE SATURDAY, DECEMBER 16.

PLEASE BRING DONATIONS TO THE  
BAR CENTER.





# 2023 Holiday Gala

*Thursday, December 14, 2023*

*The Drake, Oak Brook*

*Cocktails at 5:30 p.m., Dinner at 7:00 p.m.*

*Holiday Festive Attire*

*Visit [dcba.org/23Holiday](https://dcba.org/23Holiday) for more information and tickets*

*For sponsorship, contact Robert Rupp at [rrupp@dcba.org](mailto:rrupp@dcba.org).*



**AVOIDING  
GAMES AND FRUSTRATION  
WITH  
CLAIMS AND CITATIONS!** @2023

**Presented to DuPage County Bar Association  
Estate Planning & Probate Section**

**December 11, 2023**

**David M. Gower, Lillig & Thorsness, Ltd.  
David Feldman, Aronberg Goldgehn**

# Claims and Citations

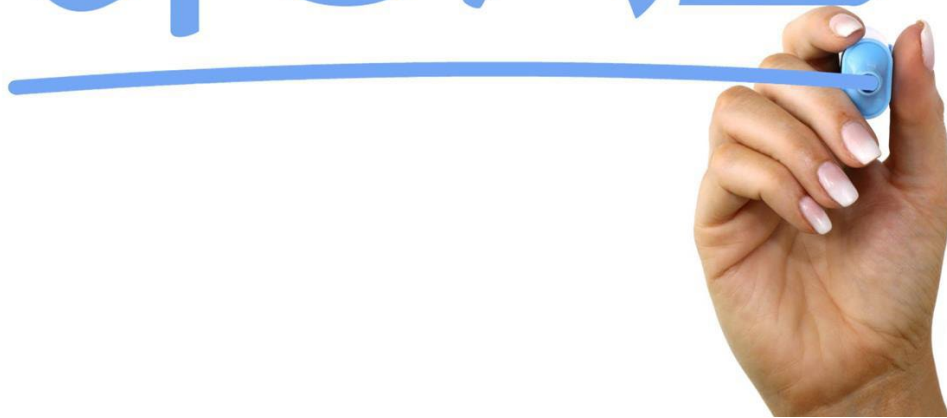
What to do when your simple estate becomes a... *probate nightmare!*



# Goals of Presentation

---

GOAL

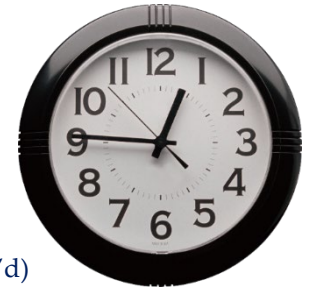




# Over the Next 60 Minutes

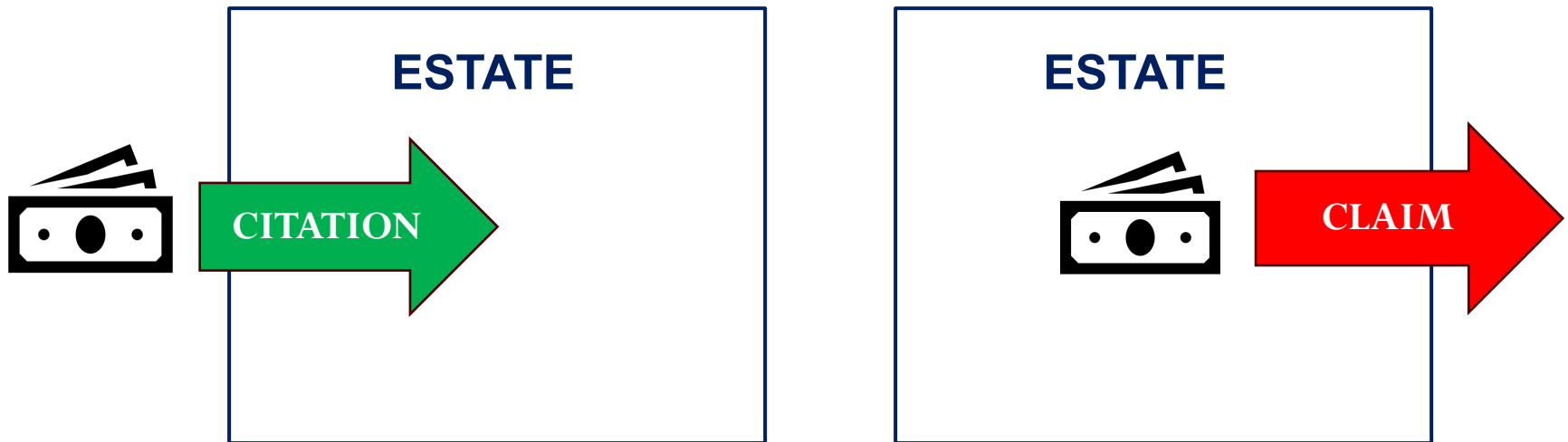
- Introduction of claims and citations in probate estates.
- How to file, prosecute and defend citations.
- What constitutes a claim in Illinois?
- How to provide proper notice of probate to potential creditors.
- How to submit a claim.
- How to handle notice of a claim.

# Over the Next 60 Minutes (Cont'd)



- **Allowing a claim.**
- **How to handle payment of claims.**
- **How to address insolvent estates.**
- **Disallowing a claim.**
- **How to protect an estate from a claim.**
- **Litigating a claim.**
- **Questions.**

# Claims and Citations in a Nutshell



# Two Types of Citations

---

- 1. Citation to Discover Assets**
  - Search for assets that belong to the estate.
- 2. Citation to Recover Assets**
  - Determine ownership of assets.
  - Transfer assets to the estate.

**Statutory Authority: 755 ILCS 5/16-1.**

# Who Can Be the Petitioner?

- **In the estate of a Decedent**
  - The estate representative.
  - Any other person interested in the estate.
- **In the estate of a Ward**
  - The estate representative.
  - Any other person.

755 ILCS 5/16-1(a)

# Who Can Be a Respondent?

- **Any person the petitioner believes:**
  - **Concealed, converted, or embezzled property or records of the estate; or**
  - **Has possession or control of property or records of the estate; or**
  - **Has information or knowledge needed by the representative for the recovery of any property**

# Getting Started

- **File petition asking the court to issue a citation. 755 ILCS 5/16-1(a).**
- **Set a return date and serve the citation on the Respondent. 755 ILCS 5/16-1(b):**
  - In the same manner as a summons in civil cases.
  - Not less than 10 days before the return date.
- **If the respondent is the representative of the estate, petition the court to appoint a special administrator. 755 ILCS 5/16-1(c).**

# Pleadings

## ➤ Allegations:

- State a cause of action or be subject to dismissal. *Matter of Shugart's Estate*, 81 Ill. App. 3d 538, 540 (3rd Dist. 1980).
- Allege all elements of a claim. *Matter of Estate of Muhammad*, 123 Ill. App. 3d 756, 762 (1st Dist. 1984).

## ➤ Jury Demand:

- For questions of title and right of property. 755 ILCS 5/16-3.

## ➤ Certification Under Oath:

- 755 ILCS 5/1-5

# Statute of Limitations

---

- Statutes of limitations do not apply. *In re Estate of Lashmett*, 369 Ill. App. 3d 1013, 1018 (4<sup>th</sup> Dist. 2007).
- The 6-month limitation period for claims in section 18-12 of the Probate Act does not apply. *In re Estate of Kolbinger*, 175 Ill. App. 3d 315 (2<sup>nd</sup> Dist. 1988).

# What Rules Apply?

- **Illinois Code of Civil Procedure and Illinois Supreme Court Rules governing civil law. 755 ILCS 5/16-6.**
- **Rules of Evidence**
  - **Liberally applied.** *In re Weisberg's Estate*, 62 Ill. App. 3d 578, 585-86 (1st Dist. 1978).
  - **Relaxed.** *In re McVicker's Estate*, 39 Ill. App. 2d 389, 397 (1st Dist. 1963).

# Dead Man's Act

---

- **The Dead Man's Act bars an adverse party from testifying "on his or her own behalf" about conversations with the decedent, and about events that took place in the presence of the decedent. 735 ILCS 5/8-201.**

# Dead Man's Act (Cont'd)

## ➤ Exceptions:

- A person testifies on behalf of the representative about a conversation with the decedent or event that took place in the presence of the decedent. 735 ILCS 5/8-201(a).
- Account books and records. 735 ILCS 5/8-201(c); 735 ILCS 5/8-401.
- The heirship of the decedent. 735 ILCS 5/8-201(d).
- Citation proceedings.
  - *Keshner v. Keshner*, 376 Ill. 354, 362 (1941).
  - *In re Baumgarth's Estate*, 23 Ill. App. 2d 319, 325-26 (1st Dist. 1959).
  - *Storr v. Storr*, 329 Ill. App. 537, 546-47 (2nd Dist. 1946).
  - *Shanahan v. Bowen*, 375 Ill. App. 3d 269, 273 (3rd Dist. 1978).

# Joint Ownership

## GIFT

If the asset was a gift to the joint owner, it belongs to the joint owner.

765 ILCS 1005/2(a).

## NOT A GIFT

If the asset was not a gift to the joint owner, and it was joint for convenience purposes, it belongs to the estate.

*Konfrst v. Stehlik*, 2014 IL App. (1st) 132113.

*In re Estate of Harms*, 236 Ill. App. 3d 630 (4th Dist. 1992).

*In re Estate of Shea*, 364 Ill. App. 3d 963 (2nd Dist. 2006).

# Remedies

755 ILCS 5/16-1(d)

**The court may:**

- **Determine all questions of title.**
- **Commit the respondent to jail if he/she:**
  - **refuses to answer proper questions;**
  - **refuses to obey court's order to deliver property or records.**
- **Enter such orders and judgment as the case requires.**
- **Tax the costs of the proceeding against respondent.**

# Turning the Page...

---

Your simple estate... and now your **probate nightmare continues... CLAIMS!**



# What Constitutes a Claim?

Anyone who has a cause of action against the decedent may file a claim against the estate.

This can include claims for:

- Spousal Awards
- Statutory Custodial Claim
- Unpaid Debts
- Tort Claims for Wrongful Conduct
- Breach of Contract
- Other Liabilities



# How to Provide Proper Notice of Probate to Potential Creditors

- **Unknown Creditors**
- **Known/Ascertained Creditors**



# How to Provide Proper Notice of Probate to Potential Creditors (Cont'd)

## ➤ Unknown Creditors



# How to Provide Proper Notice of Probate to Potential Creditors (Cont'd)

- Publish notice to unknown creditors in newspaper utilized in county where estate is being administered.
- Notice runs in newspaper for 3 consecutive weeks.

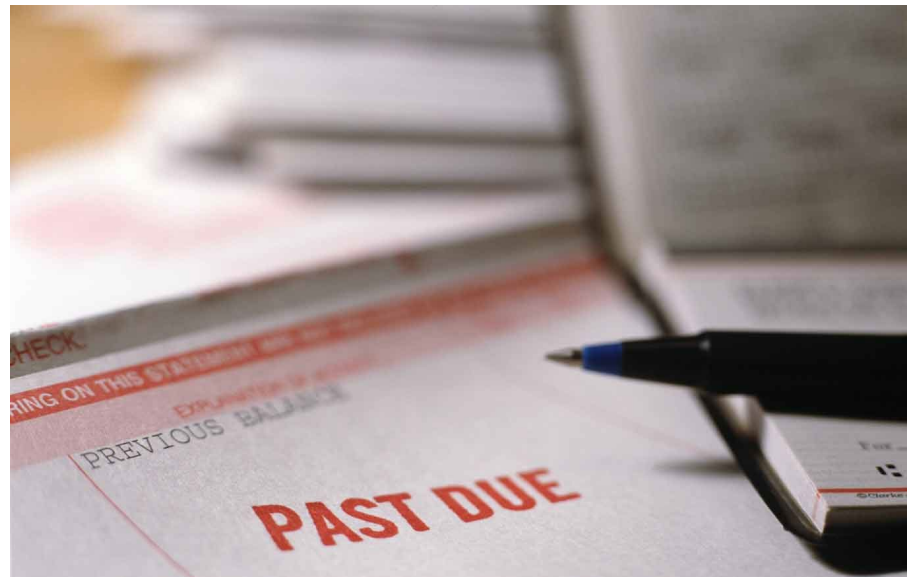


# How to Provide Proper Notice of Probate to Potential Creditors (Cont'd)

- If unknown creditor does not receive personal notice and if claim is not filed within 6 months from the date of publication, claim by this creditor is barred.
- *Be careful:* If there is an error with the notice, the claims deadline defaults to the *2-year* statute of limitations.

# How to Provide Proper Notice of Probate to Potential Creditors (Cont'd)

## ➤ Known or Ascertained Creditors



# How to Provide Proper Notice of Probate to Potential Creditors (Cont'd)

---

- Representative mails notice of probate estate to all known creditors.
- Creditors have 3 months to file a claim.
- If creditor does not file a claim within this time period, the claim is barred.

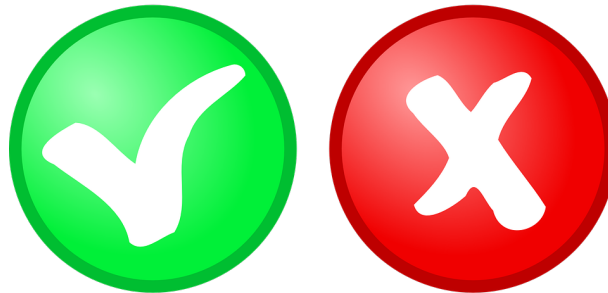
# How to Submit a Claim

- A claim against the estate can be filed with the Court; or
- Mailed to the representative of the estate; or
- Both.



# How to Handle Notice of a Claim

- Allow the claim; or
- Send notice to claimant informing them they are “disallowing” the claim.



# Allowing a Claim



- When a representative allows the claim, they agree that this claim is legitimate and they agree to pay it from estate funds *to the extent that funds are available.*
- Payment or consent in writing to all or any part of a claim binds the estate.

# How to Handle Payment of Legitimate Claims

## Seven Classes of Probate Estate Claims

- **First Class Claims – funeral/burial expenses, expenses of administration, statutory custodial claims**
- **Second Class Claims – surviving spouse's and children's statutory awards**
- **Third Class Claims – amounts due the United States**

# How to Handle Payment of Legitimate Claims (Cont'd)

## Seven Classes of Probate Estate Claims

- **Fourth Class Claims – amounts owed to employees and medical expenses**
- **Fifth Class Claims - assets held in trust by decedent**

# How to Handle Payment of Legitimate Claims (Cont'd)

## Seven Classes of Probate Estate Claims

- **Sixth Class Claims – debts to the state, county, local or municipal government**
- **Seventh Class Claims – all other claims**

# How to Address Insolvent Estates



# Disallowing a Claim



- If a representative intends to disallow a claim, they should do so within 30 days of receipt of the claim.
- If the claim has been filed with the Court, the representative may either file the Court's disallowance form or verbally disallow the claim at the initial hearing on the claim.

# Disallowing a Claim (Cont'd)



- If the claim has not been filed with the Court and has only been sent to the representative, the representative should mail a notice to the claimant of their intention to disallow the claim.
- The claimant has 2 months from the date of the notice from the representative to file the claim with the Court.

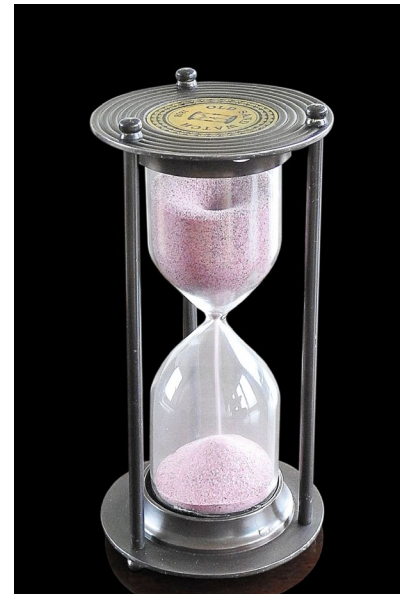
# Disallowing a Claim (Cont'd)



- **If the claimant does not file the claim with the Court within this time, the claim is barred.**

# How to Protect an Estate from a Claim

- Has claim been properly submitted?
- Is it time barred?



# Litigating a Claim



- **When claim is filed with Court, Court provides an initial hearing date.**
- **At initial hearing date, the representative for the estate will either allow the claim or disallow the claim and Court will schedule date for hearing on claim or continue the matter to allow for discovery and settlement discussion.**

# Litigating a Claim (Cont'd)



- If hearing (trial) held, Illinois Rules of Civil Procedure are followed.

# Questions?



**David M. Gower, Lillig & Thorsness, Ltd.**  
**1900 Spring Road, Suite 200**  
**Oak Brook, IL 60523**  
**(630) 571-1900**  
**[dgower@lilliglaw.com](mailto:dgower@lilliglaw.com)**

**David Feldman, Aronberg Goldgehn**  
**301 S. County Farm Road, Suite A**  
**Wheaton, Illinois 60187**  
**(312) 923-7336**  
**[dfeldman@agdglaw.com](mailto:dfeldman@agdglaw.com)**

**755 ILCS 5/16-1 Citation on behalf of estate.**

(a) Upon the filing of a petition therefor by the representative or by any other person interested in the estate or, in the case of an estate of a ward by any other person, the court shall order a citation to issue for the appearance before it of any person whom the petitioner believes (1) to have concealed, converted or embezzled or to have in his possession or control any personal property, books of account, papers or evidences of debt or title to lands which belonged to a person whose estate is being administered in that court or which belongs to his estate or to his representative or (2) to have information or knowledge withheld by the respondent from the representative and needed by the representative for the recovery of any property by suit or otherwise. The petition shall contain a request for the relief sought.

(b) The citation must be served not less than 10 days before the return day designated in the citation and must be served and returned in the manner provided for summons in civil cases. If there is a personal representative who is not the respondent, notice of the proceeding shall be given by mail or in person to the personal representative not less than 5 days before the return day designated in the citation.

(c) If the representative is the respondent, the court may appoint a special administrator to represent the estate. The court may permit the special administrator to prosecute or defend an appeal.

(d) The court may examine the respondent on oath whether or not the petitioner has proved the matters alleged in the petition, may hear the evidence offered by any party, may determine all questions of title, claims of adverse title and the right of property and may enter such orders and judgment as the case requires. If the respondent refuses to answer proper questions put to him or refuses to obey the court's order to deliver any personal property or, if converted, its proceeds or value, or books of account, papers or evidences of debt or title to lands, the court may commit him to jail until he complies with the order of the court or is discharged by due course of law and the court may enforce its order against the respondent's real and personal property in the manner in which judgments for the payment of money are enforced. The court may tax the costs of the proceeding against the respondent and enter judgment therefor against him.

**STATE OF ILLINOIS** **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**  
**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT**

IN RE THE ESTATE OF

\_\_\_\_\_  
**CASE NUMBER**

- DECEDENT
- MINOR
- DISABLED PERSON

**CITATION**  
**TO DISCOVER ASSETS**  
TO BE USED IN  
DECEASED - MINOR - DISABLED  
ESTATES

File Stamp Here

To: Name of Respondent \_\_\_\_\_

Address of Respondent \_\_\_\_\_

**YOU ARE COMMANDED** to appear remotely via Zoom conference before the Honorable Judge  
or any Judge sitting in their stead on \_\_\_\_\_ Courtroom \_\_\_\_\_ located at the DuPage County Judicial  
Center, 505 N. County Farm Road, Wheaton, Illinois to be examined under oath concerning the property, income and assets of:

No "in-person" appearances are permitted. Visit [www.dupageco.org/courts](http://www.dupageco.org/courts) for more information.

**YOU ARE COMMANDED** to produce at the examination (bring with you) the following:

YOUR FAILURE TO COMPLY WITH THIS CITATION MAY SUBJECT YOU TO PUNISHMENT FOR  
CONTEMPT OF COURT AND TO SUCH ORDERS AND JUDGMENTS AS THE CASE REQUIRES

**TO THE PROCESS SERVER OR OFFICER**

This Citation must be served not less than ten (10) day before the day of the appearance. It must be returned by the Officer or other person to whom it was given for service, with endorsement of service and fees, if any, not later than five (5) days after service.

Name: \_\_\_\_\_

DuPage Attorney Number: \_\_\_\_\_  Pro Se

Attorney for: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

**WITNESS:**

**CANDICE ADAMS**, Clerk of the Eighteenth  
Judicial Circuit Court, and the seal thereof, Wheaton,  
Illinois



\_\_\_\_\_ Date

\_\_\_\_\_  
Clerk of the Eighteenth Judicial Circuit

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - PROBATE DIVISION

Case No. \_\_\_\_\_ Calendar \_\_\_\_\_

Estate of \_\_\_\_\_

**CITATION**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are commanded to appear before the Honorable \_\_\_\_\_

or any judge sitting in his/her stead on \_\_\_\_\_ at \_\_\_\_\_ M in Room \_\_\_\_\_,  
Richard J. Daley Center, 50 W. Washington Street, Chicago, Illinois 60602.\*

To the officer:

This citation must be served not less than 10 days before the day for appearance. It must be returned by the officer or other person to whom it was given for service with endorsement of service and fees, if any, not later than 5 days after service.

\*State facts that form the basis of citation under  
755 ILCS 5/16-1, § 5/23-3, or § 5/24-16.

WITNESS: \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

(Seal of Court)

Attorney Number \_\_\_\_\_

Name \_\_\_\_\_

Firm Name \_\_\_\_\_

Attorneys for \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Email \_\_\_\_\_

2072 Citation Issued

2654 Return Personal Service

2655 Return No Service

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - PROBATE DIVISION

Case No. \_\_\_\_\_ Calendar \_\_\_\_\_

Estate of \_\_\_\_\_

\_\_\_\_\_, Petitioner

v.

\_\_\_\_\_, Respondent

**ORDER CONCERNING DISCOVERY CITATION**

**THIS MATTER** coming before the Court on the return date of the Citation to Discover issued against \_\_\_\_\_ ("Respondent"), appearing before the Court are

\_\_\_\_\_  
[counsel and/or parties appearing]

and the Court having been advised that:

A. With respect to service of the Citation:

- The Respondent was served on \_\_\_\_\_.
- The Respondent was not served, and Petitioner requests leave to use a Special Process Server.
- The Respondent's attorney, \_\_\_\_\_, accepted service on behalf of Respondent.

B. With respect to Respondent's compliance with the Citation:

- The Respondent \_\_\_\_\_ (has) (has not) complied with the Citation to Discover.
- The Respondent requests additional time to comply with Citation to Discover.
- \_\_\_\_\_

**IT IS ORDERED THAT:** *(check all applicable)*

Alias Citation issue.  4213

Petitioner is granted leave to use \_\_\_\_\_  
[printed name of private investigator]

\_\_\_\_\_ as Special Process Server for service of citation.  
[printed license number of private investigator]

4209

Respondent comply with the Citation to Discover as follows:  4281

a. Respondent produce all records and documents on or before \_\_\_\_\_

b. Respondent's citation examination be taken on or before \_\_\_\_\_

The Citation to Discover against the Respondent is dismissed.  4273

Status on the Citation to Discover against Respondent is set for \_\_\_\_\_  
at \_\_\_\_\_ M in Room \_\_\_\_\_ without further notice.  6158

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ENTERED:**

\_\_\_\_\_, 20 \_\_\_\_\_

[Judge]

[Judge's number]

Attorney Number \_\_\_\_\_

Name \_\_\_\_\_

Firm Name \_\_\_\_\_

Attorneys for \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Email \_\_\_\_\_