

MASON MUNICIPAL COURT
5950 MASON MONTGOMERY ROAD
MASON, OHIO 45040
513-398-7901

SMALL CLAIMS DIVISION GUIDELINES

The following information is intended to help you understand the Small Claims process. This information does not provide you with legal advice, take place of an attorney, nor will it answer all of your questions. Small Claims Court hearings take place under relaxed rules of evidence and procedure, and are designed so that individuals may resolve small disputes without the necessity of attorneys. Often times in Small Claims Court, the individual acts as his or her own attorney. The members of the clerk's office are not attorneys and by law only lawyers can give legal advice. Therefore court personal are prohibited by law in advising you whom to sue, how to set forth the facts of your claim, the legal procedure to follow or which legal procedures are available to you or answering "What do I do next" as this would constitute the unlawful practice of law. If there is anything that you are unsure of or would like further clarification on, you should consult an attorney. If you need a lawyer but do not know where to turn, you may call the Warren County Bar Association at 513-695-1309.

Although a plaintiff may win a judgment for money, not all judgments are collectable. Even winning your case does not necessarily mean that you will ever get paid what you are owed. The Court determines who has a legal obligation to pay, but then it becomes the creditor's job to collect the debt. The court is not a collection agency.

GENERAL RULES FOR FILING A SMALL CLAIM SUIT

1. The amount claimed cannot exceed \$3,000.00, and you may not separate your claim into multiple suits.
2. The correct filing fee must be submitted for the claim to be filed.
3. You must know the complete address of the party against whom you file suit.
4. If you are a minor, under 18, you must have your parent or guardian file the suit for you.
5. You may not sue a minor. You may sue a minor through his or her parent or legal guardian.
6. The party filing the suit must prove his or her case by a preponderance of the admissible, credible evidence. This means you must prove that your case is more probable than the defendant's case.
7. You must provide sufficient copies of any and all documents submitted for both the court and each person named in the complaint.
9. If there is anything that you are unsure of or would like further clarification on, you should consult an attorney.

INTRODUCTION

Small Claims Court is a division of the Mason Municipal Court and is governed by Chapter 1925 of the Ohio Revised Code, Rule 53 of the Ohio Rules of Civil Procedure, and Rule 101(C)(8) of the Ohio Rules of Evidence.

Mason Municipal Court has jurisdiction in the City of Mason and Deerfield Township. As a general rule, you should sue a person or business in the county in which they reside or do business.

For a case to be heard in Mason Municipal Court:

1. the defendant should live in the court's jurisdiction, or
2. the defendant should have his or her principal place of business in the court's jurisdiction, or
3. the events that formed the basis of the complaint should have occurred in this court's jurisdiction

Small Claims Court provides a way of resolving various disputes one has with other individuals or companies. Complaints heard in Small Claims Court include a variety of legal disputes, such as repair problems, breach of warranty, defective products, unreturned rental deposits, undelivered goods, insurance claims, damage done to property, etc.

Small Claims Court can decide claims for money only. The Small Claims magistrate cannot order a defendant to do anything other than pay a specific sum of money. So, you must put a price tag on any damages you have suffered as a result of the defendant's actions. You must have evidence to offer to prove the damages.

Small Claims Court does not have jurisdiction in such actions as libel, slander, repossession or cases which do not involve actual monetary damages.

Ohio also has a consumer protection law, The Consumer Sales Practices Act (CSPA). The CSPA is part of the Ohio Revised Code (ORC), §1345, et. seq. It contains substantive rules. These rules explain specific consumer rights. Small Claims Court can hear cases in which a consumer claims a rule or consumer protection law has been violated.

The monetary limit on the amount of damages that can be claimed on a complaint is \$3,000.00, plus interest and court costs. The monetary limit of a counterclaim or cross-claim is \$3,000.00 plus interest and court costs. If a counterclaim exceeds this amount, the case must be transferred out of the small claims division to the regular civil division of this Court or to Warren County Common Pleas Court if the counterclaim exceeds \$15,000.00. If you are a defendant in a case and you believe that you have a claim

against the plaintiff, you must file a counterclaim with the court and must serve the plaintiff and all other parties with a copy of the counterclaim at least seven days prior to the date of the trial of the plaintiff's claim.

HOW TO BEGIN PROCEEDINGS

An action in Small Claims Court begins when the plaintiff files his complaint at the clerk's office of Mason Municipal Court. The claim must state the amount and nature of this action. The complaint must be signed before a notary public or a deputy clerk. A filing fee must be submitted. There will be an additional fee if more than one defendant is named.

Before you file, make sure you know the true, legal name of the person or business you intend to sue. If you sue the wrong party, the case may be dismissed or, you could wind up with an uncollectible judgment.

For example, a common mistake would be for a tenant to sue the resident manager for the return of a rent deposit, when he or she should have sued the owner of the building. Similarly, a mistake would be for a customer of a repair shop to sue the mechanic instead of the shop owner. A similar problem can result from suing a business name without making sure it is the business's legal name. Unless the business is actually incorporated under that name, there may be no chance of collection, even if you win.

An unincorporated business (sole owner or partnership) must be sued in the personal name of the owner or partner, i.e., John Doe dba John's Repair Shop. Only a corporation (Ex: John Doe's Care Repair, Inc.) can actually be sued in the company name. If you are unsure whether the business is incorporated, call:

Ohio Secretary of State at 614-466-3910

You may discover the business name is totally different from the actual corporate name, and it is the corporation identity you should be suing.

With regard to motor vehicle claims, the complaining party must present proof that he or she is the real party in interest (i.e. the one who may properly bring the claim). This is customarily accomplished by producing a valid certificate of title or the original lease (if the damaged vehicle is leased), or agreement of all responding parties in open court. Proof of damage may be demonstrated by producing at least two estimates of repair, or a receipted repair bill, or testimony from an expert in collision repair.

If your case is against a landlord for not returning a rent deposit, you could ask for and be awarded double damages if you can prove:

1. You gave proper notice before leaving and left a forwarding address
2. Thirty days after you moved, the landlord had not returned your deposit or provided an itemized statement of damages to you.

The right to double damages for wrongfully withheld security deposits is detailed in Section 5321.16 of the Ohio Revised Code.

If you win your case, you may be entitled to recover your court costs and interest. If a contract between you and the defendant does not stipulate an interest rate, you generally will be awarded the “statutory rate” from the date of judgment.

NO SERVICE / NO CASE

Until the person or legal entity you sue has been served a summons, no action can take place. The best case in the world is worthless if you cannot serve the defendant(s). Listed below are the two ways a summons is served:

1. Certified mail service to the defendant(s), with return receipt requested, is attempted first. If the Postal Service returns that letter to the court marked “refused” or “unclaimed” it may be sent out again via regular mail by the court at an additional charge. If the summons sent out in the regular mail is not returned, it is presumed to have been served under Ohio laws.

If the certified mail is returned for any reason other than “refused” or “unclaimed” or if the regular mail is returned, there is no service on the defendant(s) and you will be notified that the defendant(s) has not been served. If you have another address for the clerk to use for service, you must request in writing that the court serve the defendant(s) at the new address. There is an additional cost to reissue the summons to defendant(s).

2. If service by mail is not successful, you may submit a written request for personal service by a court bailiff at an additional fee. This written request must include your name, address and telephone number as well as the name and address of the party being served.

CASE TRANSFER OUT OF SMALL CLAIM DIVISION

Filing a complaint in small claims court does not guarantee that the case will be heard there. A Defendant may ask that the case be transferred out of small claims to the regular civil division of the municipal court. The court may grant such a request or motion upon payment of the filing fee.

Having your case transferred to the regular civil division may make it hard to proceed without an attorney regardless of whether you are a plaintiff or defendant. While you have the right to represent yourself the rules of procedure are not as relaxed as in the Small Claims Court. The Ohio Rules of Civil Procedure govern how a civil trial is conducted. There are strict rules regarding questioning of witnesses and how to admit evidence.

PREPARING YOUR CASE

Organize your case before going to court. Plan and organize your testimony and arguments. Be sure the magistrate understands why and how you have been injured or wronged. You will have to convince the Small Claims magistrate not only that you are right but you are entitled to a specific sum of money. Check the calendar for dates and times of important events in your case.

Collect all documents related to your case; receipts, cancelled checks, estimates, bills, contract, photos, etc. There are no second chances. Anything that you do not bring and present to the court at trial cannot be sent later on. You must also provide sufficient copies of any and all documents submitted for both the court and each person named in the complaint.

As a defendant, review the reasons for which the plaintiff is suing you. Formulate answers to questions that might be asked at the trial.

NOTE: Letters, affidavits, and written statements from other people are not good evidence in small claims court. Witnesses (anyone who has anything to say on your behalf or about your case) must appear in court. Letters and affidavits are not acceptable.

CONTINUANCES

WHAT IF YOU CAN'T APPEAR ON THE SCHEDULED COURT DATE?

Continuances are granted at the discretion of the court as follows:

1. If you have a real emergency or urgent reason, or
2. With the consent of the opposing party.

To request a continuance, submit a written letter to the court that:

- a. Requests a continuance,
- b. States your reasons, and
- c. states that you have sent a copy of your request for a continuance to the opposing party or their attorney, if they have one.

- d. Include the filing fee. The fee must be paid when you make your request.
- e. Include a certificate of service.

If the opposing party agrees to your request for a continuance, bring something signed by the opposing party which states that they agree.

NOTE: A request for a continuance must be made at least seven days before your trial. A continuance will not be granted less than 24 hours before the trial unless there are special circumstances.

DO NOT assume that your continuance request is automatically granted. If the continuance is granted, all parties will receive a notice of the new trial date from the court.

Even if you have the consent of the opposing party, the decision regarding a continuance will be made by the court; this is not an automatic process.

Your request must be made in writing on paper 8 ½ x 11. If your request is not clear, legible, and written (or typed), it will not be accepted.

WITNESSES

If a witness is reluctant to testify, you can have him or her subpoenaed. Subpoenas must be filed at least seven days before the trial date. An additional fee is required.

PRESENT YOUR BEST CASE

The magistrate will swear in all parties and witnesses hear testimony and receive evidence.

Each side gets a chance to present testimony and evidence. That means that both plaintiff and defendant have an opportunity to explain to the magistrate what happened. Present your case in an orderly fashion. Include all relevant facts and be sure to state the amount you are claiming and how you arrived at this amount. Show the magistrate any documents or other evidence you have. You must have all of your evidence at the hearing of your case. Under no circumstances will any new evidence be accepted after conclusion of the hearing.

The other side will have a chance to question (not argue with) you on any points you have raised in your testimony. The magistrate may also ask you clarifying questions.

Remember you are under oath and must answer truthfully and as completely as possible.

If you have witnesses, they will then have the chance to explain what they know about the case. They may be questioned (cross-examined) by the other side. After the plaintiff has finished, it is the

defendant's turn. You will have the chance to question each witness for the other side. Do not interrupt or argue. Permit the defendant or his or her witness to complete testimony and then the magistrate will give you a chance to ask questions. At the close of the hearing the magistrate will take the case under advisement.

MAGISTRATE'S DECISION

The magistrate will file a written decision. The clerk will mail copies of the Magistrate's Decision to all parties. If there are no timely objections filed to the Magistrate's Decision, the Magistrate's Decision will be adopted as the final order of the court.

If you do not agree with the Magistrate's Decision, you may object. Any objections shall be made in conformity with Civil Rule 53(E)(3). They shall be ruled upon in conformity with Civil Rule 53(E)(4). Any party may file written objections to a magistrate's decision within fourteen days of the filing of the decision. Thereafter, any other party shall have a period of ten days to file objections. If a party makes a request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision including findings of fact and conclusions of law.

Objections shall be specific and state with particularity the grounds for the objections. They shall further contain a statement signed by the filing party that copies have been served on all other parties. Any objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. The Court may disregard any evidence that was not submitted to the magistrate unless the complaining party demonstrates that with reasonable diligence he or she could not have discovered and produced that evidence for the magistrate's consideration.

If you do file an objection, you **MUST** send a copy to the other party and indicate that you have done this on your objection above your signature. If you fail to do this under Civil Rule 5D, your objection **WILL NOT BE CONSIDERED BY THE COURT. THE PARTIES MUST MAIL COPIES OF THE OBJECTIONS OR RESPONSES TO THE OTHER PARTIES AT THE TIME THEY FILE THE SAME WITH THE CLERK OF COURT.**

The Judge will thoroughly review the Case File, Magistrate's Decision, the Objections, if any, and enter Final Judgment which may be the exact Magistrate's Decision or a modification of it.

The Judgment entered by the Judge can be appealed to the District Court of Appeals. This is a very technical procedure which, must be done within 30 days after the Judgment and will probably require the services of an attorney.

DEFAULT JUDGMENTS

Small Claims cases are often over even before they begin. The plaintiff appears at the trial but the defendant does not. The magistrate grants the plaintiff a default judgment. A copy of the Default Judgment Entry will be sent to the Plaintiff by the Court.

However, there is one important difference. When the defendant actually appears in Court, he or she is notified in writing by the Court of the outcome of the case and that there is an obligation to pay the judgment amount to the Plaintiff.

The Defendant in a default case does not receive anything from the Court indicating the outcome of the trial. The Court assumes he or she understands the outcome of the trial. The Court does nothing (no notices, letters or phone calls) to inform the Defendant that he or she has now become a judgment debtor or even confirm the amount of judgment.

You are now the judgment creditor it is your job to notify the defendant and request payment. If the judgment debtor fails to pay, you may file to garnish the defendant's wages or bank account. Each of these collection steps will require you to return to the clerk, fill out more forms and pay more fees.

COLLECTING A JUDGMENT

Once a court judgment has been awarded, the names change. A winning plaintiff is now a judgment creditor and a losing defendant is a judgment debtor. If the defendant has won judgment on a counterclaim the winning defendant is now a judgment creditor and the losing party is a judgment debtor. The judgment creditor's problem is collecting money from the judgment debtor. You must wait thirty days from the date of judgment before you can start collection proceedings. This waiting period is to allow the losing party time to file an appeal

There are several ways you can attempt to collect money owed to you on a judgment. The best way is voluntary payment by the judgment debtor. After you receive judgment, contact the judgment debtor and arrange for payment. When the judgment debtor had paid in full, the judgment creditor must notify the court in writing.

IT IS UP TO YOU TO COLLECT. No court automatically forces a judgment debtor to pay. The court has determined that the debtor has a legal, enforceable obligation to pay, but then it becomes the creditor's job to collect that debt.

Before you collect from a reluctant debtor, you must first know something about his or her finances. This can be a treasure hunt. In small claims you act as your own attorney so finding out the information is the responsibility of the plaintiff. The court does not find this information for you, as the court is not a collection agency. If you are already familiar with where the judgment debtor banks, works, lives, does business, etc., you may know enough to proceed with collection. If not, the judgment debtor exam procedure may be your first step in the collection process.

JUDGMENT DEBTORS EXAM / MAIL

The judgment debtor's examination is the court's way of helping judgment creditors learn about the judgment debtor's assets. This information may then be used to collect the judgment. You must wait until 30 days after the date of judgment before requesting a judgment debtor's exam. To request a judgment debtor's examination you must submit the following to the court:

1. A completed Judgment Debtors Exam form.
2. The filing fee.
3. A self-addressed, stamped envelope.
4. The judgment debtor's date of birth and social security number.

Upon receipt of all of the above the clerks' office will:

1. Mail the form to the judgment debtor via certificate of mailing (or personal service if requested)

If the judgment debtor returns the completed judgment debtor exam to the court it will be forward to you in the self-addressed, stamped envelope you have provided to the court.

This does not always produce satisfactory results. The court does not guarantee that the defendant will answer the questionnaire or answer it truthfully. You may find the information you receive is not specific or complete enough to enable you to proceed with collection.

If the form is not returned, the court is unable to do anything further, unless and until you, the judgment creditor, tells the court, in writing, what to do next. At this point, you may want to consult with an attorney.

GARNISHMENT OF WAGES

Pick up a wage garnishment packet from the clerk's office. Review all of the forms and fill in the blanks with the name of the case, the case number, and all of the information which you have. Mail one copy of the form "Notice of Court Action to Collect Debt" or as it is commonly referred to "The Fifteen-Day-Demand" to the judgment debtor by U.S. mail. (Make an additional copy for you before mailing.) Obtain a "Certificate of Mailing" from the post office (this is a receipt you will get from the postal clerk). After mailing "The Fifteen-Day-Demand", wait at least 15 days but no more than 45 days before filing the garnishment order. After fifteen days have passed and no money has been received take a copy of the fifteen day notice along with proof of mailing, your completed garnishment forms, and the filing fee to the clerk's office to be filed.

If any funds are received the court will deposit the check and hold it for several weeks, then reissue a

check to you. Garnishment checks are dispersed once a month.

If the judgment debtor requests a hearing you will receive a notice by mail of the hearing date and time. At the garnishment hearing, both the judgment creditor and judgment debtor may appear. The judgment debtor may claim that the money cannot be used to pay the judgment based on Ohio law. This hearing has nothing to do with the facts involved in the original case. The only purpose of the garnishment hearing is to determine whether or not the money being held by the court can be used to pay the judgment according to Ohio law. A list of exemptions can be found in §2329.66 of the Ohio Revised Code.

BANK GARNISHMENT

Pick up a bank garnishment packet from the clerk's office. Fill in the blanks with the name of the case, the case number, and all of the information which you have. Take your completed garnishment forms along with the filing fee to the clerk's office to be filed.

If any funds are received the court will deposit the check and hold it for several weeks, then reissue a check to you. Garnishment checks are dispersed once a month.

If the judgment debtor requests a hearing you will receive a notice by mail of the hearing date and time. At the garnishment hearing, both the judgment creditor and judgment debtor may appear. The judgment debtor may claim that the money cannot be used to pay the judgment based on Ohio law. This hearing has nothing to do with the facts involved in the original case. The only purpose of the garnishment hearing is to determine whether or not the money being held by the court can be used to pay the judgment according to Ohio law. A list of exemptions can be found in §2329.66 of the Ohio Revised Code.

GARNISHMENT LIMITS AND EXCEPTIONS

Income from sources such as social Security, Welfare, Workman's Compensation, Unemployment Compensation, etc., are exempt and protected from garnishment. It is possible for the judgment debtor to block any action you take against a bank account if it can be shown the money in the account came from these types of sources (public assistance).

The amount that can be garnished from any employer (by creditors collectively at one time) is regulated by law. Creditors cannot attach the debtor's entire paycheck and the most creditors can ever obtain during any one period is 25% of the debtor's take-home pay.

LIENS

A lien can be placed on a real estate owned by the judgment debtor, if the real estate is in Warren County and was owned at the time the case was originally filed. The lien must be renewed every five years. The lien holder Judgment Creditor will recover the amount of judgment when the property is sold. The procedure for filing a lien is fairly simple.

1. In writing request a Certificate of Judgment from the clerk's office.
2. Submit the filing fee
3. Take the completed Certificate of Judgment to the appropriate Common Pleas Court to be filed.

SATISFACTION OF JUDGMENT

Once a judgment has been satisfied in full, the Court requires the judgment creditor to file a document with the Court stating that judgment has been paid in full. The judgment creditor must also serve a copy to the judgment debtor or their attorney, if they have one.

A FINAL POINT

COLLECTIBILITY

Although you have won your case, you have not won money. What you have won is the right to a specific amount of money. Now, you need to collect that money from the judgment debtor. This is also called enforcing your judgment of executing on your judgment. Please remember, it is possible that your judgment is uncollectible. This means that even though you have won a judgment, you may not be able to collect the amount of money for the judgment. The court cannot make the judgment debtor pay something he/she does not have. Please consider this before you invest time, effort, and money in preparation of a small claims case.

As a reminder all requests must be made in writing. If your request is not clear, legible, and written (or typed), it will not be accepted.

THIS INFORMATION IS NOT TO BE CONSIDERED LEGAL ADVICE, AS WE ARE NOT ATTORNEYS. THIS INFORMATION IS ONLY A GUIDE IN FILING A SMALL CLAIM IN OUR COURT. IF YOU HAVE QUESTIONS OR IF YOU NEED LEGAL ADVICE CONTACT AN ATTORNEY.

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