GOING TO COURT ON SMALL CLAIMS

A GUIDE TO BRINGING AND DEFENDING

SUITS ON SMALL CLAIMS IN OHIO

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* * * LEARN ABOUT YOUR SMALL CLAIMS CASE* * *

WHAT IS THE SMALL CLAIMS COURT?

Every municipal court and county court in Ohio has a small claims division, known as the small claims court. Its purpose is to resolve minor disputes over money – **not more than $6,000.00 –** quickly and inexpensively, but fairly.

Its procedures are usually simpler and faster than in regular court cases, the hearings are more informal, and "rules of evidence" do not apply. Therefore, **most people do not need a lawyer**, but anyone can bring one. There is no jury and cases are decided either by a magistrate, who is an appointed judicial officer, or by an elected judge. A magistrate hears most of the small claims cases in the Elyria Municipal Court.

WHAT CASES CAN THE COURT HANDLE?

A small claims court is a neutral place to resolve disputes. A small claims court can hear and decide most claims for money up to $6,000.00. Small claims cases are like most other lawsuits, except the amount of money at issue is regarded as too little to make the time-consuming procedures and various expenses of regular court cases worthwhile.

Almost any kind of claim can be filed. Typical cases include tenants against landlords for security deposits or landlords against their former tenants for unpaid rent or utilities or for property damage. Some people sue because of defective merchandise from a business or poor performance by a contractor. A business might sue a customer or another business on an unpaid account. Other common disputes are for unpaid wages, outstanding loans between friends or relatives, dog bites, and minor auto accidents.

There are important limitations: First, the claim must be for *money only.* A plaintiff who wants return of property or a court order to make someone do or not do something should file in the regular division of this Court. Second, the claim cannot exceed $6,000.00 per plaintiff, not counting interest, attorney fees and court costs. If a plaintiff's injury is greater than $6,000, a suit may still be filed in this division, but no more than $6,000 may be asked for or awarded. Third, an "agent" or "assignee" cannot file a case for another, meaning that one person (including someone with a power of attorney) cannot file to try to collect for someone else's injury. Fourth, regardless of the amount involved, the small claims court can't handle certain types of claims, such as for defamation, wrongful arrest or malicious prosecution. Finally, "punitive damages" may not be awarded (unless a special law fixes a specific additional amount that a claimant might receive, like some consumer protection, wage, and landlord-tenant laws.)

WHO CAN SUE OR BE SUED?

Almost anybody. If a person, business or an organization is able to do or receive a wrong or injury, he, she, or it usually is able to sue or be sued. A corporation can file a case or defend through a salaried employee or a corporate officer, subject to some restrictions. Be sure, though, the right person is suing or being sued. Do not name an employee if the contract is from or with or the wrong was caused by an employer. The person who brings the small claim is the *plaintiff* and the person against whom it is brought is the *defendant.*

WHERE DO I FILE MY CLAIM?

A lawsuit on a small claim should be filed in the small claims court that has "venue." A court usually has venue if the transaction or incident on which the claim is based took place in that court's territory or if by contract a debt is payable to a person or business in the court's territory. A court also has venue if the defendant (or any one defendant if more than one) lives in the court's territory, regardless where the incident or transaction took place or where a contract debt is payable. **Elyria Municipal Court's territorial venue is the Cities of Elyria and North Ridgeville, Villages of Grafton, LaGrange and Townships of Carlisle, Columbia, Eaton, Elyria, Grafton and LaGrange**.

HOW DO I FILE MY CLAIM?

A lawsuit on a small claim is begun by filing a complaint *under oath* that identifies the parties, describes the nature of the claim, and asks for money from the other side.

Before you file, not only be sure that you have an idea of how the defendant has done something wrong to you, but some evidence of your financial harm. It might be a good idea, but not required, to make a last effort to settle it, sending a potential defendant a warning that you plan to sue with a copy of this evidence and a deadline to respond. He or she might pay or offer a sensible compromise, avoiding the trouble of a lawsuit.

Take the following information with you to the Clerk's office:

(1) The full legal name (and/or business name, if applicable), address, and telephone number of every plaintiff and defendant. Make sure that you use correct, full names. Everyone who claims to been wronged should be named as a plaintiff (and must also sign the complaint) and every person or business that you believe might be responsible for the wrong should be listed as a defendant.
(2) Whether or not each defendant is on active military duty.
(3) Any information that you want the Clerk to attach to the complaint and serve on the defendant(s) to help explain your case. What is attached to the complaint, though, is not a substitute for evidence at trial. You must still bring all of your papers to be used as evidence on the date of the trial.
(4) The names, addresses and phone numbers of witnesses if you want the Court to order them to appear at hearing by subpoena if they will not appear voluntarily.
(5) The necessary court costs. See below.

The Elyria Municipal Court has a form available to the public called a "**Small Claim Information and Complaint**" that you may prepare and file. This is available online, by mail or in person. Fill it out completely and in clear, legible language. State the nature, circumstances, and amount of your claim as clearly, but as briefly as possible. You can attach copies of evidence if you think it will help the defendant understand your claim. If you want interest on your claim, fill in the date that you think that interest should begin to run. The Clerk's office can answer many of your questions and help you fill out this form and file your claim.

WHAT DOES IT COST?

The initial court costs for filing runs about twenty dollars less than filing in the regular division which includes the expense to send notice of your filing to one defendant. A small fee is charged for each additional defendant. These fees may be awarded back to you as part of your judgment if you win. **Check our website or call the Clerk's office to verify the amount**. Other charges might have to be paid if problems arise in getting notice of your filing to a defendant, you need an order or subpoena to make a witness appear, or you need to file papers to try to collect if you win.

I'VE BEEN SUED! WHAT DO I DO NOW?

If you receive notice that someone has filed a case against you, you have several options. **First look for the date and time of the trial on the summons** that you received from the Court. As explained below, certain important steps might have to be or would be wise to be completed by you **at least seven days prior to the date of trial**.

If you dispute any part of the claim, make sure that you prepare for and attend the trial with your evidence and witnesses. **Read "How Do I Prepare My Case" below**.

If you do not wish to dispute the plaintiff's claim, you may pay the plaintiff the amount demanded in the complaint *plus court costs* in exchange for the plaintiff filing a written dismissal of the case and that will be the end of the matter. If you pay long before trial, check our website or call the Clerk's office a day before trial to confirm that the plaintiff has filed the dismissal. If the case is not yet dismissed, you may still wish to come to the trial with proof of your payment in full. You can always come to court with the money on the day of trial if you have problems reaching the plaintiff to pay. See also the section, "What If the Claim is Settled Before Trial," below.

If you admit that you owe the claim, but can't afford to pay the full amount, you should come to the trial. Tell the magistrate immediately that you only want a payment plan. The Court can make the small claims plaintiff accept a payment plan, if appropriate.

COUNTERCLAIMS: If you not only deny that you owe the plaintiff any money, but believe the plaintiff owes **you** money instead, you can file a lawsuit of your own against the plaintiff(s), called a **counterclaim**. If you want to counterclaim, court costs must be paid to the Clerk and the counterclaim must be **filed with the Clerk AND copies delivered to the plaintiff** (and other parties) **at least seven (7) days before the trial**. Follow the instructions, "How Do I File My Claim," except that the paper you will file should be renamed a "counterclaim." Be sure to keep the order of names as "plaintiffs" and "defendants" as on the complaint and include the original case number on this or any other paper later filed with the Court.

If the amount of your counterclaim is greater than $6,000, the case will be transferred to the regular court. Even without a counterclaim above $6,000, if you file a motion and show proper grounds through an affidavit, you can ask to have the case transferred to the regular court. Remember, though, strict rules of evidence and more complicated rules of procedure apply there, court costs will be higher and hiring a lawyer will be advisable.

WHAT IF THE CLAIM IS SETTLED BEFORE TRIAL?

The parties may always "settle" or work out a compromise of their dispute. **The courts strongly encourage parties to try to find a resolution of their disagreements by settlement.**

If the settlement occurs before trial and will result in a dismissal of the case, the plaintiff must file a written notice of dismissal with this Court. The Clerk can supply a form for this or the parties can make up their own. A dismissal must be signed by same person(s) who signed the complaint and, like every other filing, must identify the case by the parties' names and case number. A properly prepared dismissal can be mailed, dropped off at the Clerk's civil window or faxed to 440-326-1878.

If the settlement includes a promise to pay over time or for something else to be done, the parties should try to write out the terms in detail and each sign the agreement. A complete dismissal may not be the best option, because if one party does not satisfy the settlement terms, another lawsuit might have to be filed. **The parties should still come to the hearing**. The magistrate or judge can help them figure out how to best fit their intentions and the terms of their agreement into a legal framework, perhaps through a continuance, a "conditional" dismissal, or the signing of a consent judgment.

HOW DO I PREPARE MY CASE?

Whether you are the plaintiff or the defendant, your job at trial will be to present sufficient evidence to convince the Court to make a decision in your favor. How much is enough? There is no standard answer. Your testimony alone may be enough or you may need supporting testimony or evidence. Ask yourself, if I were the judge and knew nothing of this dispute beforehand, what would I have to see and hear to convince me that the *facts* require a decision in my favor?

It might help if you gather your evidence, line-up supporting witnesses, and make a written outline of your case at least two or more weeks before the date of trial. Your evidence may include anything in writing or any tangible thing on which your claim, defense, or counterclaim is based, such as that shows that something wrong did or did not happen and how much, if anything, fixing the alleged problems has, will, or should cost. Examples of evidence include estimates, sales receipts, ledgers, contracts, leases, warranties, promissory notes, I.O.U.'s, pictures, diagrams, photographs, account books, checks or check stubs, money orders or stubs, memos or notes, and letters. Anything that supports your position may be useful as evidence. **If in doubt, bring it to the hearing!**

- **If your evidence includes writings, emails, text messages, videos or photos ON A COMPUTER, CAMERA, OR PHONE, PRINT THEM OR TRANSFER THEM INTO ANOTHER FORM THAT THE COURT CAN KEEP or you will risk the Court being unwilling to look at or take them!**
- **If you will be discussing many matters, make lists for yourself and the Court.**
- **Cover or strike out from your evidence any personal information that you do not want to become part of the public record like account or social security numbers, but bring one copy that still retains the information, in case needed.**
- **To reduce delays during the trial, you should make extra copies of your documents and photos for the magistrate or judge and for your opponent.**

Keep in mind that testimony, including your own, is the most common and often the most valuable evidence at trial. Friends, relatives, neighbors, or bystanders with personal knowledge of the incident, transaction or some aspect of it can make or break a case too.

If your case involves a subject where special or technical knowledge is required to understand what was done or went right or wrong, sometimes no less than a person in that trade or profession will be necessary, that is, evidence from an "expert witness," like a roofer, mechanic or other tradesperson. The best evidence is always from the mouth of a witness, but on occasion a detailed, written statement – ideally notarized – from that person might be enough. Sometimes, a technical manual is helpful as well.

Whoever your witnesses are, contact them right away, get them to agree to appear, and make sure they know when and where to show up. If a witness will not come voluntarily, you can make him or her do so by asking the Court to issue a *subpoena*. This will cost extra, but you can recover that cost if you win. A request for a subpoena should be filed as soon as possible, but no less than seven (7) days before the hearing.

With your testimony planned and evidence in hand, sit down and write an outline of the points you wish to make in presenting your case, listing your evidence and witnesses in the order you wish to present them. A good way to present your version of the incident or transaction is in the order it actually happened, just like telling a story.

WHAT IF THE PLAINTIFF OR DEFENDANT DOES NOT SHOW AT TRIAL?

If a plaintiff does not show up, the Court will assume that the plaintiff has changed his or her or its mind about suing or has fully settled and will usually dismiss the case for "failure to prosecute." If the defendant does not appear – *and the court papers that were sent to the defendant appear to have been delivered* – the Court will regard the absence as a "default" and assume that he or she or it does not contest the plaintiff's claims. The plaintiff may still have to present evidence, but will usually get the benefit of any doubt.

A request to reschedule the hearing should be filed with the Court, with a copy served on the other parties, no less than seven (7) days before trial. In a true emergency situation where a request cannot be made in advance as required, **both** the other parties and the magistrate's office should be contacted *immediately* by phone and a written motion to continue filed as soon as possible, attaching documents that confirm the emergency. **Do *not* assume that request to reschedule will be permitted.** Check with the Court!

WHAT DO I DO ON THE DAY OF MY TRIAL?

The trial is your day in court - your opportunity to present your claim, defense, or counterclaim - so make it count. **Bring all of your evidence and witnesses with you**.

Be sure to check in with the bailiff opposite the steps on the second floor. **Your case might be called right away or you may have to wait quite a while.** If no bailiff is present *by the time set for your trial*, come to the glass window of the magistrate office's to announce your presence and you will receive instructions. If you find yourself arriving early or waiting a while, you see your opponent *and you feel comfortable speaking with*

him or her, see if you can resolve your case before the trial is called. You might also want to use this time to review each other's evidence, which could save time during the trial.

If your opponent is not present by the time of trial, you may wish to double check with the bailiff or the Clerk's office to confirm that notice of the case or the hearing was actually delivered. If not delivered, the trial might have to be reset. Ask for instructions!

Once you are in the courtroom and your case is called, step forward and identify yourself by name and as plaintiff or defendant. You should also advise the magistrate or judge if you have any witnesses, whether or not in the courtroom. If everyone is ready to begin, you will be asked to sit at one of the trial tables. You should stay seated until you are asked to take the witness stand, but you may be asked to stand when speaking if the judge or magistrate indicates a preference. The magistrate or judge will ask the plaintiff to give his or her side first and then will ask the defendant to respond. Be brief and stick to the facts. Emphasize the points in your favor and explain the points against you. Use the outline that you made when you prepared your case as a reference if needed and your story will come through more clearly. Don't forget to ask that your witnesses be given a chance to speak if you brought any with you! The magistrate or judge may interrupt you or your witnesses with questions, which should be answered to the best of your or their knowledge. You may also be given a chance to ask your opponent questions and your opponent an opportunity to ask you questions, which is called "cross-examination."

Be polite, not just to the magistrate or judge, but also to any witnesses and to your opponent. *Do not interrupt a witness just because you disagree with what is being said*, but you may always "object" if you feel that something is wrong with the evidence being presented. Whatever happens, keep your temper. Good manners and even tempers help the fair, efficient conduct of the trial, and make a good impression.

Don't be nervous. Remember that a trial in small claims court is informal and lack of legal knowledge is no handicap. (Watching TV small claims court shows like "Judge Judy" or "The People's Court" might give you some idea but also may make you nervous. Don't try to use fancy trial techniques seen on television, some of which make trained lawyers laugh.) Just relax, be yourself, and put your case on in the way that comes most easily to you. **Don't be afraid to ask a question or say you don't understand** if you are confused by what is going on or by the words that are being used in the case. The magistrate or judge knows that you are not a lawyer and will make allowances.

The magistrate or judge will make a decision after hearing both sides, but not always in the courtroom on the day of hearing. Even when an intended decision is announced at hearing, it is not final until put in writing. Sometimes you will get the results in writing after a few days or weeks, but other times, when the legal issues or facts are complicated, it may take a lot longer before you get the decision or judgment in the mail.

If a magistrate has heard your case, the magistrate will write a "decision" to recommend an outcome, which will be sent to you. Either party may file written, specific "objections" to the decision within fourteen (14) days after the magistrate's decision is *filed*, sending a copy to all other parties. With or without objections, a judge will always review the case and decide the ultimate outcome by entering a judgment, which will also be sent to you.

WHAT IF I WIN – OR I LOSE?

A final decision in favor of one party or the other in a case is called a "judgment." The decision may include not only an award of money, but interest and court costs.

Sometimes, a case ends due to a problem with procedure. It may seem like one side has won and the other has lost, but that is not case. If the problem is fixable, the case might be filed again in this or another court. This is called a "dismissal" which is "without prejudice" to the plaintiff filing again. The case is simply over for the time being. However, a dismissal of a claim "on the merits" or "with prejudice" or by a "judgment" that is entered "for" or "in favor of" the defending party in fact ends the case.

When a "judgment" is entered that awards money to the plaintiff for all or part of the claim in the complaint or for the defendant for all or part of a counterclaim, the loser (the person found to be owing the money) becomes a *judgment debtor* and the winner (person entitled to the money) becomes the *judgment creditor*. **Additional court papers must be filed and procedures followed for you to try to collect** if the judgment is not paid or discharged promptly by the judgment debtor. See "how do I get my money" below.

A judgment debtor in small claims court may ask for a payment plan at any time, before, during or after the hearing. Even after a judgment is rendered, a judgment debtor may ask for a payment plan by filing a request in writing and sending a copy of that request to the judgment creditor. A hearing will be set to determine if a payment plan is appropriate based on the assets and income of the judgment debtor. The judgment creditor can appear and object. The parties can work out their own informal payment plan, but a court-ordered payment plan is usually better protection against garnishments and other actions taken against the assets of the judgment debtor.

HOW DO I GET MY MONEY?

Several ways exist to try to collect money owed on a judgment. Ideally, a judgment debtor will voluntarily pay after receiving notice of the judgment. If the judgment debtor does not, effective ways to collect include garnishment of personal earnings or bank accounts. If a judgment creditor already knows where the judgment debtor works or banks, **the judgment creditor should act swiftly to begin collection**, which requires new papers be prepared and filed and additional fees paid. A judgment creditor can also quickly put a lien on lands owned by the judgment debtor. If the judgment creditor lacks information about the judgment debtor, a "request for financial disclosure" can be filed. The Clerk of this Court has a booklet called, **"How to Collect Your Judgment,"** which should be carefully read by a judgment creditor after receiving a judgment to be used if the judgment debtor does not voluntarily pay. The Clerk can also answer questions.

WHERE CAN I GET MORE INFORMATION?

If you need information or assistance on filing or defending a small claim or on collecting a judgment on a small claim, contact the Clerk of the Court at 440-326-1800. For other legal help, contact a local attorney, the bar association for a lawyer referral, or the legal aid society. A good online resource is at "For the Public" of www.ohiolegalservices.org.