

— LITTLE THINGS MEAN A LOT —

GOING TO COURT ON SMALL CLAIMS

A GUIDE TO BRINGING AND DEFENDING

SUITS ON SMALL CLAIMS IN OHIO

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Elyria Municipal Court
601 Broad Street
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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, those involving not more than \$6,000.00, quickly and inexpensively, but fairly.

No one needs a lawyer in small claims court, but anyone can have a lawyer if he wishes. The procedure is much simpler than in regular court, and hearings are informal. There is no jury, and cases are decided either by the municipal or county court judge, or by a magistrate, who is appointed by the judge. The magistrate hears small claims cases in the Elyria Municipal Court.

WHAT CASES CAN THE COURT HANDLE?

The lawsuits which a small claims court can hear are most claims for monetary damages up to \$6,000.00

Small claims cases are like other lawsuits, except the amounts involved are too small to make the expense of suing in regular court worthwhile. Many suits are by tenants seeking to recover security deposits. Sometimes landlords sue for unpaid rent or damage to their property. Frequently, buyers sue for damages for defective merchandise. Businesses may sue for unpaid bills. The parties in minor auto accidents may sue for repair costs. Employees, baby-sitters, maids, handymen, and others may sue for unpaid wages.

There are some limitations. First, the claim must be for *money only*, because an award of money damages is the only remedy the small claims court is authorized to provide. Second, the claim can't exceed \$6,000.00, not counting court costs and interest. Third, regardless of the amount involved, the small claims court can't handle certain special lawsuits for money damages, such as libel and slander. Fourth, "punitive damages" may not be requested or received (unless a law fixes a specific additional amount to which a person may become entitled, like some consumer protection, wage, and landlord-tenant laws.)

WHO CAN SUE OR BE SUED?

Anybody. If a person or organization is able to do or receive a wrong or injury, he, she, or it is able to sue or be sued.

Any individual, company, business, or organization can file a claim or have a claim filed against them. A minor under 18 can use the court through his parent or guardian. A corporation can file a case or defend through a salaried employee or corporate officer, subject to some restrictions. 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 division court having venue.

A court has venue if the transaction or incident on which the claim is based took place in that court's territory or if a contract debt is owed to a person or business in that court's territory. A court also has venue if the defendant (or any one defendant, if there is more than one) lives in the court's territory, regardless of 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, which contains a description of the nature and amount of the claim, plus certain other information.

Before you file a claim, it is a good idea (but not required) to make a last effort to settle it. For example, you might send the potential defendant notice of your claim by certified mail, return receipt requested. He might pay the claim or offer a sensible compromise, saving you both the trouble of a lawsuit.

Take the following information with you to the clerk's office: (1) the full name (and business name, if applicable), address, and telephone number of every plaintiff and defendant. Everyone who claims to have been wronged should be named as a plaintiff (and also sign the complaint) and every person or business who you believe is legally responsible for the wrong should be listed as a defendant. (2) whether or not the defendant is on active military duty; and (3) whatever evidence you may want to attach to the complaint to help explain your case to the defendant. However, what is attached to the complaint is not evidence. Therefore, you should bring additional copies, particularly the original copies, to present into evidence on the date of trial. (4) the names, addresses and phone numbers of any witnesses that you want the court to order to appear at hearing by subpoena.

The Elyria Municipal Court uses a form called a Small Claim Information and Complaint Form. Fill it out completely and in clear, legible language. Under the heading complaint state the nature, circumstances, and amount of your claim as briefly as possible. If you want interest on your claim and reimbursement for court costs, be sure to ask for both in addition to damages. The clerk's office will answer any questions and help you fill out the forms and file your claim.

WHAT DOES IT COST?

The basic court costs will run around \$89.00. These may be recovered if you win. Call the clerk's office to verify the amount.

When you go to file your claim, take at least \$89.00 to cover the filing and mailing charges, which will vary somewhat depending on the number of defendants and the method used to notify them of your suit. There will be additional charges if there is more than one defendant or if any witnesses won't appear voluntarily and have to be ordered in by subpoena, or if further court action is necessary to collect the money awarded at the trial. Costs can be recovered provided you win your suit.

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

If you receive notice that someone has filed a suit against you, you have several options depending on the circumstances.

If the plaintiff's claim is fair, you may pay him the full amount plus court costs and that will be the end of the matter. If you admit that you owe the claim, but can't afford to pay the full amount, the court can make the small claims plaintiff accept a payment plan from you. If part of the plaintiff's claim is fair, you may admit part

of his claim and contest the rest. If his claim is completely unfair, you may deny that you owe anything. If, rather than you owing him money, he actually owes *you* money, you may answer his suit by filing a suit of your own, called a *counterclaim*. If you want to file a counterclaim, that counterclaim must be filed and served on plaintiff(s) and all other parties at least seven (7) days prior to the date of trial. Follow the instructions above for “How Do I File My Claim”, except that the paper that you file will be called a “counterclaim”. Be sure to keep the order of names as “plaintiffs” and “defendants” as on the complaint against you and include the original case number on this or any other paper that is filed with the court.

You may prefer not to have the case handled in small claims court, and if you show proper grounds, you can ask to have it moved to the regular court. Remember, though, that the rules of evidence and more complicated rules of procedure apply there, court costs will be higher and you will probably need an attorney. If a jury is demanded, the costs will skyrocket. The loser will have to pay the court costs, and each party usually pays his own attorney, win or lose.

WHAT IF THE CLAIM IS SETTLED BEFORE TRIAL?

If you decide not to go through with the trial for any reason, let the magistrate’s office know.

If the defendant pays the entire claim before the day of the trial, the plaintiff should make sure the filing costs are included in the payment. It may be that the plaintiff and defendant come to a mutually satisfactory compromise and settle the matter before trial. In either case, *the plaintiff must notify the magistrate’s assignment commissioner at (440) 326-1800.*

HOW DO I PREPARE MY CASE?

Whether you are the plaintiff or the defendant, your job at the trial will be to give the judge the facts, and convince him he should decide in your favor. It will help if you assemble your evidence, line-up your witnesses, and make a written outline of your case beforehand.

Your evidence may include anything in writing, or any tangible thing, on which your claim, defense, or counterclaim is based. Examples of evidence include estimates, faulty merchandise, sales receipts, contracts, leases, warranties, promissory notes, I.O.U.’s, pictures, diagrams, photos, account books, checks or check stubs, money orders or stubs, memos or notes, letters, postal return receipts, and unclaimed letter notices. Anything that can support your case may be useful as evidence, but whatever it is, get it together.

Testimony, including your own, is evidence too, and certain kinds of testimony may be especially useful. For example, a professional repairman is a good witness when poor or incomplete workmanship is an issue. There may be friends, neighbors, or bystanders familiar with the incident or transaction or some aspect of it. Whoever your witnesses are, contact them before trial, get them to agree to appear, and make sure they know when and where to show up. If a witness will not appear voluntarily, you can make him do so by asking the court to issue him a *subpoena*. This will cost extra, but you can recover it if you win. A subpoena should be filed at least five (5) days before the hearing.

How much evidence and testimony is enough? There is no pat answer. Your testimony alone may be enough, or you may need supporting testimony, or supporting evidence, or both. Ask yourself, if I were the judge and knew nothing of this case beforehand, would what I have to present to convince me that the *facts* require a decision in my favor?

When you have your evidence and testimony 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 you would tell a story. In this way, the separate bits of evidence and testimony will fit together to make a complete, easily understandable picture.

WHAT IF I DON'T APPEAR AT THE TRIAL?

This would be bad manners, but much worse, it could lose the case for you on the spot.

If either the plaintiff or defendant doesn't show up at the trial, and can't give a good reason why, the judge or magistrate might reschedule the trial, but don't count on it. He can, and quite possibly will decide the case then and there in favor of the one who shows up.

Do your best to get there, but if for some good reason you can't, *contact the magistrate's assignment commissioner, (440) 326-1800* with enough advance notice that the other parties and witnesses can be told that the hearing is cancelled. Another trial date might be arranged. Don't, under any circumstances, give a false or silly excuse.

WHAT DO I DO AT THE TRIAL?

The trial is your day in court - your opportunity to present your claim, defense, or counterclaim - so make it count.

Bring your evidence and witnesses with you. Step forward when the judge calls your case. The judge will ask the plaintiff to give his side first, then will ask the defendant for his explanation. Be brief and stick to the facts. Emphasize the points in your favor, and explain the points against you. Use the outline you made when you prepared your case, and your story will come through more clearly. The judge may interrupt you with questions, which you should answer straight out and to the best of your knowledge.

Be polite-not just to the judge, but also to any hostile witnesses and to your opponent. 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. Don't try to use trial techniques seen on television (TV legal maneuvers usually make trained lawyers laugh). Just relax, be yourself, and put your case in the way that comes most easily to you. The judge knows you aren't a lawyer, and will make allowances.

The judge will make his decision after he has heard both sides. Whether you win or lose, you can be assured you will have received a fair hearing.

WHAT IF I WIN - OR LOSE?

A decision in favor of one party or the other is called a *judgment*, and is entered in the court's records.

If the defendant has not made a counterclaim, a judgment in his favor ends the case. If the judge awards

judgment to the plaintiff for all or part of his claim, or awards judgment to the defendant for all or part of his counterclaim, the loser becomes a *judgment debtor* and additional action can be taken against him if his debt is not paid or discharged promptly.

When a magistrate hears the small claims case, you or your opponent may file written objections to the decision of the magistrate within fourteen (14) days after the decision is filed with the Clerk of Court. You will have to pay an additional fee and send a copy of the objections to your opponent. A judge will then review the objections and the magistrate's decision and issue a judgment.

HOW DO I GET MY MONEY?

There are several ways to collect the money owed you on a judgment. The most practical ways on a small claim judgment are voluntary payment by the judgment debtor or garnishment of his personal earnings or bank account.

If possible, you should arrange with the judgment debtor to pay your judgment, either all at once or in installments. If he will not pay voluntarily, there are two main ways you can make him pay. The usual method is *garnishment*, in which the court orders the judgment debtor's bank to pay any funds on deposit or the judgment debtor's employer to pay up to 25% of his net earnings into court to satisfy the judgment. The second method is *attachment*, in which the court orders some of his personal property seized and sold to pay the judgment. Some kinds of personal property of judgment debtors are protected by law from attachment, so it is a good idea to talk to a lawyer before doing this. In other words, attachment is complicated, and the added expense may be more than a small claim is worth.

If you do not know where the judgment debtor works or has a bank account, after thirty (30) days have passed since the judgment, you may come into the Court and pay a filing fee of \$15.00 and fill out a form called a , financial disclosure. The Clerk's Office will then send the form to the judgment debtor requesting him to list his assets, liabilities, and personal earnings. If the judgment debtor does not complete the form within 7 days, the debtor can be cited for contempt of court. The penalty may include jail or fine, or both.

An easy collection measure is asking the Clerk of the Municipal court for a "certificate" of your judgment to take to the Clerk of the Common Pleas Court to be filed as a "lien" on any real estate of the judgment debtor in the county for five (5) years at a time.

Whatever action is taken to force payment of your judgment, you must take the first step-the court will not initiate any such action on its own. You may wish to consult with an attorney.

HOW DO I START GARNISHMENT PROCEEDINGS?

Only one step is needed to garnish a bank account, though you must take two steps to start a garnishment of personal earnings, both of which are done through the clerk's office.

Don't be hasty if the judgment debtor doesn't pay immediately - wait a week or so after payment is due before starting a garnishment. The debtor's payment of the judgment or his installment payment may merely be delayed, and if you are too quick off the mark you will have gone to a lot of trouble for nothing. To start a garnishment of a judgment debtor, you will need to know the name and address of his employer, or the name and address of the bank or branch bank where he does business

A garnishment of a bank account requires only that you fill out a form called an “Order and Notice of Garnishment of Property other than Personal Earnings.” You will have to pay a \$25.00 fee, of which the defendant must repay you only \$24.00 if you are successful. The bank will be required to pay into the court any funds of the judgment debtor on deposit up to the amount due on the judgment. The court will keep 2% of any amount deposited, though, as a fee.

To start a wage garnishment you will need to get from the Clerk of Court’s Office, two copies of a form called “Notice of Court Action to Collect Debt” (usually called a “15-Day Demand”). The clerk will help you fill it out. Keep one copy and send the other to the defendant at his home by certified mail, return receipt requested, you may mail it by certificate of mailing through the United States Postal Service, or you can pay the court for the bailiff to serve the defendant with the notice personally.

If the judgment debtor doesn’t pay within 15 days of mailing the 15-day demand, go back again to the clerk’s office with your copy of the demand, plus either the unclaimed letter or the return receipt. Have the clerk file them, and ask for an “Order and Notice of Garnishment and Answer of Employer”. Deposit the \$77.00 garnishment fee with the clerk. Which you can recover if the garnishment is successful. Money will be taken out of the judgment debtor’s pay check on a regular basis and paid to you, less a 2% surcharge as the court’s fee.

A garnishment may not yield anything or it may not yield enough to pay your entire judgment, and you will have to try again later. The bank can’t pay more than the debtor has in his account, and his employer can’t pay more than 25% of the net earnings due him. Once the garnishment of wages begin, the wages will be garnished for at least 182 days or until judgment is paid in full. Normally, only if another creditor has started to garnish the judgment debtor’s wages after 182 days or if the judgment debtor loses or changes his job will you have to file another wage garnishment.

If you are a judgment debtor and receive a 15-day demand, you can stop the garnishment by paying the judgment within 15 days, starting a payment plan through a credit counseling company, filing bankruptcy, or by applying for trusteeship through this or another municipal court. It is to your advantage to avoid garnishment of personal earnings because the placing of the extra burden on your employer possibly could cause you to lose your job, though Federal Law prohibits your discharge for garnishment by only one creditor.

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, or on filing for trusteeship, contact the clerk of the court.

Besides the clerk, you might see an attorney, or the legal aid society in your area. For information and assistance on a federal wage earner plan or bankruptcy, see an attorney or your local legal aid society.

Compliments of:

ERIC J. ROTHGERY

Clerk of Elyria Municipal Court

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www.elyriamunicourt.org

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