

MARIETTA MUNICIPAL COURT



City Building
301 Putnam Street
Marietta, Ohio 45750
(740) 373-4474

Small Claims Division
(740) 376-6442

GENERAL INFORMATION REGARDING SMALL CLAIMS COURT (PROCEDURES & COLLECTIONS)

Janet Dyar Welch, Judge

Carol L. McKittrick, Clerk of Court

GENERAL RULES FOR FILING A SMALL CLAIM

1. The amount claimed cannot exceed \$3,000.00 and you may not separate your claim into multiple suits.
2. There is a \$50.00 filing fee for the filing of a Small Claims Complaint that names one defendant and \$7.00 filing fee for each additional defendant. (This fee must be paid at the time the complaint is filed.) Filing fees for counterclaims or crossclaims will be the same.
3. You must know the address of the party you file suit against.
4. If you are a minor, under 18, you must have your parent or guardian file the suit for you.
5. All Plaintiffs must sign the Complaint in front of a notary public or deputy clerk.
6. You may not sue a minor. You may sue a minor through his parent or legal guardian.
7. The party filing the suit must prove his case by a preponderance of the admissible, credible evidence.
8. **THE MEMBERS OF THE CLERK'S OFFICE ARE NOT ATTORNEYS AND BY LAW ONLY LAWYERS CAN GIVE LEGAL ADVICE.** If you require legal advice, you must get the advice from an attorney.
9. When a judgment is obtained and the defendant refuses to pay, the Clerk's office will supply the plaintiff with the necessary forms to attempt collection of the judgment.

INTRODUCTION

Small Claims Court is a division of the Marietta 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.

Small Claims Court provides a quick, informal and inexpensive way of resolving various types of 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.

Often a party wants his property returned. 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 be able to 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. If you have a dispute with your mechanic, for example, you can base an action on your bills or the estimated cost of redoing his work. But, you could not ask the Court to make the mechanic fix your car or release it before payment of a bill. 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 on a counter-claim or cross-claim transferred out of

Small Claim Court to the regular docket of this Court or to Common Pleas Court if the counterclaim exceeds \$15,000. If 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 (7) days prior to the date of the trial of the Plaintiffs claim.

HOW TO BEGIN PROCEEDINGS

An action in Small Claims Court begins when the plaintiff files his complaint with the Clerk at Marietta Municipal Court at 301 Putnam Street. Forms for the filing of a complaint are provided at no charge by the Court and may be obtained in the Clerk of Court's office, Civil Division, located on the first floor of City Hall. The claim states the amount and nature of this action. (See attachment 1) The complaint must be signed by all Plaintiffs before a notary public or a deputy clerk. When any complaint is based on an account, invoice or other written document, the Court requires that you provide a copy for the Court's file and one for each Defendant. One must be attached to the pleading, and the other becomes part of the Court record. If the account, invoice or written document is not attached, the reason why it is not attached must be explained in the pleading. A filing fee is paid at this time. The filing fee for each complaint, counterclaim or cross-claim is \$50.00 if only one defendant is named. If more than one defendant is named, the fee is \$ 7.00 for each additional defendant.

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/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 should 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, (dba means "doing business as".)

Only a corporation (John Doe's Car Repair, Inc.) can actually be sued in the company name. If you are unsure whether the business is incorporated, call the Ohio Secretary of State at 1 -877-767-3453. You may discover the business name is totally different from the actual corporate name, and it is the corporation identity you should be suing.

Finally, as a general rule, you should seek to sue a person or business in the county in which he/she/it resides or does business. Once you have determined who you are going to sue and for how much, go to the Clerk of Court's office to fill out a Small Claims Complaint form. You will pay the appropriate Court fees at this time. The Clerk will set the case for initial hearing. Although the Clerk may help you fill out the form, SHE IS NOT AN ATTORNEY AND CANNOT GIVE YOU LEGAL advice ABOUT YOUR CASE.

MAGISTRATE

Proceedings in the Small Claims Division are conducted before a magistrate appointed by the Court. The magistrate is an attorney, admitted to practice law in the State of Ohio.

PLACE OF HEARINGS

All hearings are conducted in the jury room on the second floor of the Marietta City Hall Building at the corner of Third and Putnam Streets, Marietta, Ohio.

INITIAL HEARINGS

At this first hearing, the magistrate runs quickly through the many cases set for that day. The purpose of the initial hearing is to determine whether the defendant (the person being sued), admits or denies the plaintiffs claim. **BE ON TIME.** Court starts promptly at the time written on your form. If you are late you may automatically lose.

At the time scheduled for initial hearing, the magistrate will call all the cases set for that day. If the plaintiff does not appear, the case will be dismissed. If the defendant does not appear, the magistrate may recommend that a default judgment be entered in the plaintiffs favor. A copy of the default judgment entry will be sent to the Plaintiff by the Court. If the defendant appears and admits that the money is owed plaintiff, but desires time to pay, the magistrate may set up a payment schedule. If such payment schedule is established, judgment for plaintiff against defendant shall be stayed as long as defendant makes the required payments. If the defendant denies the plaintiffs claim, the magistrate will continue the case and set it for a contested hearing.

CONTINUING A HEARING

Occasionally a party might discover that there is a legitimate conflict with a scheduled hearing. In that situation, you may request a continuance of the hearing but the decision on the request is made by the Judge or Magistrate.

If you wish to request a continuance, you are required to do the following:

1. Request your continuance in writing and explain your reason;
2. Mail or deliver a copy of your request for a continuance to the other parties;
3. File your request in the Small Claims Division at least ten days before trial;
4. Fill in the date and time of the hearing you want continued.

A continuance will be granted in the sole discretion of the Judge or Magistrate.

Continuances cannot exceed thirty days. Failure to comply with these rules may result in the denial of a continuance. The Clerk is not permitted to grant your continuance.

In the event a medical emergency arises less than ten days before the scheduled hearing, file your request for a continuance with that explanation.

CONTESTED HEARINGS

The contested hearing is the trial on the merits. This is both parties' opportunity to offer evidence and to present and cross-examine witnesses. The parties must appear on the date and time assigned. The hearing is an informal one; attorneys are permitted but not required.

A corporation may present its claim or defense through its officer or employee at the hearing, but may not present argument or engage in cross-examination without representation by an attorney.

PREPARING YOUR CASE

Organize the case before going to Court. Plan on what you will say and organize

your testimony and arguments so the magistrate will be able to understand clearly what happened and why you have been injured or wronged. Bear in mind you will have to convince the Small Claims magistrate not only that you are right but you are also entitled to a specific sum of money from the defendant.

Collect all documents related to your case; receipts, canceled checks, estimates, bills, contracts, photos, etc.

If you have a witness that is necessary to the proof of your case, please be advised that you have the right to subpoena that witness to guarantee his or her appearance at your hearing. You may obtain the subpoena forms from the Clerk's office of the Civil Division of the Marietta Municipal Court, 301 Putnam Street, Marietta, Ohio. The Court requests that the completed subpoena be turned into the Clerk's office at least five (5) days prior to the hearing. You must provide the witness being subpoenaed with a \$6.00 witness fee and mileage at 10 cents per mile. Out-of-state witnesses cannot be compelled to attend.

GOING TO COURT

At the contested hearing, the magistrate will swear in all parties and witnesses, hear testimony and receive evidence.

Again, BE ON TIME. Court starts promptly at the time scheduled.

PRESENT YOUR BEST CASE

Each side gets a chance to present testimony and evidence. Present your case in an orderly manner. Include all relevant facts and be sure to state the amount you are claiming and explain how you arrived at this amount. Show the magistrate any documents or other evidence you have.

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 also 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/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.

DECISIONS

After the contested hearing, the magistrate will then file a written report to the Court. The clerk will mail copies of the magistrate's report to the parties. This process will take approximately 30-45 days.

After the report has been filed, you have only fourteen (14) days to file an "objection" detailing the errors you believe the magistrate has made. Send a copy of your objections to your opponent (or his/her attorney) when you file them with the Court. If no timely objections are made, the magistrate's report will be adopted as the final order of the Court.

Within fourteen days of the filing of the report, a party may serve and file written objections to the magistrate's report. If objections are timely served and filed by

any party, any other party may serve and file objections within ten days of the date on which the first objections were filed. The objections shall be considered a motion.

Objections shall be specific and state with particularity the grounds of objection. Upon consideration of the objections, the Court may adopt, reject, or modify the report; hear additional evidence; return the report to the magistrate with instructions; or hear the matter itself. On appeal, a party may not assign as error the Court's adoption of a magistrate's finding of fact unless an objection to that finding is contained in that party's written objections to the magistrate's report. The Court may adopt any finding of fact in the magistrate's report without further consideration unless the party who objects to that finding supports that objection with a copy of all relevant portions of the transcript from the magistrate's hearing or an affidavit about evidence submitted to the magistrate if no transcript is available. In deciding whether to adopt a magistrate's finding of fact, 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. **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 COURTS.**

The Municipal Court Judge will review the record and rule on the objections. The parties will be notified of the decision of the Court.

You can appeal the Judge's ruling to the Washington County Court of Appeals.

At this point, however, the matter gets more complex and costly, requiring a transcript of the original hearing (you pay for it), and, possibly, the services of an attorney. Before taking this step, you are advised to consult with an attorney as to the merits of your arguments.

PAYMENT OF CLAIM

If the defendant agrees to settle before the trial, DO NOT sign a release dismissing the suit until you have received the agreed-upon settlement.

SATISFACTION OF JUDGMENT

Once a judgment has been satisfied in full, the Court requests the judgment creditor to file a document with the Court stating that judgment has been paid in full.

COLLECTING A JUDGMENT

No court (not just Small Claims) automatically forces a debtor to pay. The Court has confirmed that the debtor has a legal, enforceable obligation to pay, but then it becomes the creditor's job to collect that debt.

DEFAULT JUDGMENTS

Small Claims cases are often over even before they begin. The plaintiff appears at the initial hearing 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. This judgment is just as enforceable as it would have been had the defendant shown up, contested the case, and lost after putting on a spirited defense.

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 hearing, the Court assumes he or she understands the outcome of the suit. The Court does nothing (no notices, letters or phone calls) to inform the defendant that he/she has now become a judgment debtor or even to confirm the amount of judgment.

So, if you want to be sure the defendant fully understands what has happened and that you are now a judgment creditor, it is your job to notify him/her and request payment.

If the judgment debtor fails to pay, then your only hope of the collection lies with a more formal procedure. You may file to garnish the defendant's wages or attach the personal property or bank account of the defendant. Each of these collection steps will require you to return to the clerk, fill out more forms and pay more fees. (IT CAN BE A LENGTHY PROCESS, BUT IT CAN WORK.)

Before you collect from the reluctant debtor, you must first know something about his/her finances. If you are already familiar with where the judgment debtor banks, works, lives, does business, etc., you may know enough to proceed with collection.

LIST OF ASSETS AND LIABILITIES

In addition to the standard judgment debtor exam available to all judgment creditors, there is an additional, simplified process which may save considerable time.

You may, therefore, wish to try this before moving to the more time-consuming judgment debtor hearing process.

1. Wait until thirty (30) days after the judgment.
2. Go the Clerk's office and ask for a Request for List of Assets and Liabilities Form. Fill in the form with your case number, the name of the judgment debtor, and your name, etc. (This will cost you \$25.00 to file.)
3. The Clerk will mail this form to the judgment debtor asking for a list of his/her assets, liabilities, and personal earnings.
4. The judgment debtor will be given one (1) week to return the information to the Clerk. He/she will be informed that failure to respond within the week could result in a charge of contempt of Court.
5. When the list of assets and liabilities is filed with the Clerk, she will then send a copy of it to you.
6. If the judgment debtor fails to return the list to the Clerk, you will be notified to provide the Court with the defendant's date of birth and social security number so that an arrest warrant for contempt of Court can be issued. The police will not arrest any person without knowing the wanted person's social security number and/or date of birth.

JUDGMENT DEBTOR EXAMS; PERSONAL EXAM

The judgment debtor examination is the Court's way of helping judgment creditors learn about the judgment debtor's assets... information which then can be used to collect the judgment. While the by-mail process may be more convenient, you may find the information you receive is not specific or complete enough to enable you to proceed with collection. At this point, you may want to consult with an attorney to aid you in the process of a personal exam.

GARNISHMENTS

If the debtor is employed, has a checking account or savings account, or is a

landlord, you may “garnish” the employer, the bank, or the tenants.

Garnishment is a process which lets the creditor claim and take money owed to the debtor by another person. For example, the typical employee is paid one or two weeks after actually earning his/her wages. The employer is holding the employee’s money during that time and, through the garnishment process, may be required to pay a portion of these wages to the creditor. Garnishment as a process consists of the following:

1. Mail a fifteen (15) day notice of intent to garnish to the judgment debtor. (Forms are available at the Clerk’s office.) (See attachment 2.) This notice is not needed for a bank account or tenant. You will need to provide the Court with proof of mailing of this notice at the time the actual garnishment is filed with the Clerk.

Under Ohio Revised Code 2716.04, proof of mailing may be accomplished by sending the notice by certified mail or by regular mail. If sent by regular mail, a properly completed and stamped certificate of mailing, along with a copy of your 15-day notice and sworn statement (attachment 3) must be presented to the Court when filing your garnishment form. If sent by certified mail, the signed green card or unclaimed envelope must be presented to the Court when filing your garnishment form.

2. After the fifteen days have passed and no money has been received, go to the Clerk's office and complete a garnishment form. (Attachment 4 or 5). In all cases, you will need the correct mailing address for the garnishee (debtor's employer, bank, or tenants). There is an \$80.00 filing fee for a wage garnishment. There is a \$35.00 filing fee for a bank garnishment and other types of garnishments. All additional filing fees paid to the Court may be added to the judgment.
3. Within thirty (30) days the Clerk should receive a check from the garnishee. The Clerk's office will deposit the check and then reissue the check to you.

LIMITS AND EXCEPTIONS

A wage garnishment is ongoing until the judgment is paid in full, unless an

employer receives a garnishment order filed by another creditor. If this happens, the first garnishment order is good for 182 days. After this period, the second garnishment becomes active. In order for the first creditor to collect on the remaining balance, you must refile with the court after your original garnishment period has ended. This is not the case, however, with garnishments on the bank accounts or tenants, which can be done more frequently.

Income from sources such as Social Security, Welfare, Workman's Compensation, Unemployment Compensation, etc., are exempt and protected from garnishment. It is also 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.

EXECUTION

If the judgment debtor fails to pay within fifteen (15) days of the judgment, the judgment creditor may, through the Court, seize the debtor's property, sell it, and collect the judgment from the proceeds. This process is referred to by the law and attorneys as "execution on property".

Although the concept is rather simple, the laws on execution have made it a bit more

complicated. Again, you may want to consult with an attorney before going through this procedure. As explained below, execution against personal property to collect a Small Claims Judgment will usually make sense only when the property involved is worth considerably more than the amount of the judgment.

EXEMPTIONS

Ohio law defines certain property as being "exempt" from execution. Prior to processing an execution, the judgment creditor must have some reasonable expectation that the property to be attached and sold is not exempt.

In the case of personal property (household goods, cars, jewelry, etc.), the exemptions are defined in terms of the debtor's "interest" (in dollars) in that property.

For example, the law exempts the debtor's "interest", not to exceed one thousand (\$1,000.00) in one motor vehicle. That means if the car is attached and sold, the first thousand dollars (\$1,000.00) of the sale proceeds must go back to the judgment debtor. Thus, a judgment creditor seeking to collect a \$500.00 judgment would gain nothing at all from an execution on a car which ultimately sold for \$999.00. The judgment could not be collected unless the car sold for at least *\$1,500.00*.

If you have any questions as to whether a particular item of property you intend to execute upon is subject to an exemption, you should consult an attorney. An additional obstacle to collecting your money through execution could arise if the judgment debtor owes money on the property to someone else (for example a bank). In that case, you could be second or third in line when it comes time to collect from the sale proceeds. The proceeds from the sale are divided as follows:

- First: Any exempt amount claimed by the debtor;
- Second: Paying costs of the sale itself;
- Third: Paying the judgment;
- Fourth: Anything leftover goes back to the debtor.

LIENS

A "lien" (sounds like "lean") can be placed on real estate owned by the judgment debtor, if the real estate is in Washington County and was owned at the time the case was originally filed.

The lien must be renewed every five (5) years. The lien holder (Judgment creditor) will recover the amount of the judgment when the property is sold. The procedure for filing a lien is fairly simple:

1. Go to the Clerk's office and ask for a Certificate of Judgment. There will be a \$5.00 fee due at this time. The Clerk's office will mail the certificate to you once it has been completed.
2. Take the certificate to the Clerk of Common Pleas Court at the Washington County Courthouse, 205 Putnam Street, Marietta, Ohio. There will be a filing fee for this filing.