

Table of Contents

INTRODUCTION	3
CAN I FILE MY CASE IN SMALL CLAIMS COURT?	3
WHO CAN SUE/BE SUED IN SMALL CLAIMS COURT?	4
HOW AND WHERE DO I FILE MY SMALL CLAIMS CASE?	4
WHAT HAPPENS AFTER I FILE?	5
I'VE BEEN SUED! WHAT ARE MY OPTIONS?	6
CAN I SETTLE MY CLAIM BEFORE THE HEARING?	7
HOW SHOULD I PREPARE FOR MY CONTESTED HEARING?	7
What kinds of evidence should I bring?	8
How much evidence should I bring?	8
What should I do at the hearing?	9
WHAT HAPPENS IF I DON'T APPEAR?	9
WHAT IF I DON'T AGREE WITH THE MAGISTRATE'S DECISION?	10
HOW DO I COLLECT MY JUDGMENT?	10
WHERE CAN I GET MORE INFORMATION?	11
QUICK FACTS ABOUT SMALL CLAIMS	12

This guide is partially based upon the Ohio Judicial Conference's "Small Claims Court: A Citizens Guide" which is available for download from the organization's website. Where wording is borrowed from that publication, all rights are reserved by that organization.

Introduction

Why do I need this Guide? What's Small Claims Court?

What is this guide for?

In the pages that follow, you will find general information about the procedures involved in pursuing a judgment in Small Claims Court. This guide is meant to provide you with a working knowledge of what options are available to you as a party in a Small Claims suit. It is **NOT** meant to tell you what you must or should do in your particular case. The Marietta Municipal Court cannot give you legal advice; its staff is prohibited from doing so by law. If you feel at any time that you need legal advice about your situation, you should consult an attorney.

What is the purpose of Small Claims Court?

Small Claims Courts are meant to provide a relatively quick, informal, and inexpensive way to resolve disputes that are too minor to merit the expense of a regular civil suit. Procedures are less complex than in other court cases. There is no jury, hearings are informal, the Magistrate decides cases, and court costs are generally lower.

What about attorneys?

Everyone has a right to hire an attorney. It is helpful to be represented by an attorney, but the benefit should be weighed against the cost. A brief office conference with an attorney may be worth the expense. However, most parties in Small Claims Court appear without an attorney.

Can I File My Case in Small Claims Court?

Types of Disputes Generally Heard in Small Claims Court

- Claims for minor damages
- Claims by businesses for unpaid bills
- Damages for defective merchandise
- Claims for unpaid wages
- Breach of warranty
- Repair problems
- And many others....

BEFORE YOU FILE A SMALL CLAIMS CASE

The Court Suggests You Try to Settle Your Dispute by Sending the Other Party a Letter:

- ✓ Send the letter by certified mail
- ✓ Make it as elaborate or as simple as you think is necessary
- ✓ Set forth the basic facts of your claim
- ✓ Include the sum of money you want

As a result, the other party may pay the claim or offer an acceptable settlement.

There are a few general rules that limit the types of cases that can be filed in Small Claims Court:

1. The claim must be for **MONEY ONLY**.
2. No claim (including counter or cross claims) can exceed \$3,000 (not including interest and/or court costs).
3. There are some types of lawsuits that cannot be filed in Small Claims Court regardless of the amount requested. Lawsuits based on libel, slander, and malicious prosecution; seeking the return of

property; or brought by an assignee or agent cannot be filed in Small Claims Court. However, government entities may be able to file a lawsuit through an agent under certain circumstances.

If you have questions about whether or not your case meets these guidelines, the Deputy Clerk may be able to answer some of your questions; however, other questions can only be answered by an attorney.

Cases that fit small claims guidelines may later be transferred to the civil division of the municipal court if any claim in the case exceeds \$3,000 or the Judge grants a request of a party for a transfer.

Who Can Sue/Be Sued in Small Claims Court?

As a general rule of thumb, anyone over the age of eighteen (18) can sue or be sued in Small Claims and a minor may file a lawsuit through his/her parent or guardian. The agencies of the State of Ohio or the government of the United States cannot be sued in Small Claims Court.

Corporations, certain partnerships, and limited liability companies may also sue or be sued in Small Claims Court. **If you are an employee of one of these organizations and are involved in a Small Claims proceeding on that organization's behalf, please contact an attorney before filing any paperwork with the Court.** Non-attorneys may not advocate on the behalf of any such organization, and you may violate rules about the unauthorized practice of law even if you only file paperwork.

How and Where Do I File My Small Claims Case?

The Small Claims generally has jurisdiction over any eligible cases that meet one of the following criteria:

1. The transaction or incident took place within Washington County.
2. The defendant (or any one of the defendants, if there are more than one) lives or has his/her principal place of business within Washington County.

When you go to the Court to **File** your case, you need to bring the following information:

- The full name (and business name, if it applies to your case), address, and telephone number of the defendant(s);
- Whether or not the defendant(s) is on active military duty. The Court will ask for this information;
- The calculated amount for which you wish to sue. Decide whether or not you are requesting interest on any judgment or reimbursement of court costs. If so, have that information on hand as well.

Filing Fees

New Complaint -----	\$50.00
Each Defendant Over One ---	\$7.00
Counter/Cross-Claim-----	\$56.00

Ohio law does not allow you to collect lost wages on time spent preparing or filing the case or for the time spent at a court appearance;

- ***If you are suing for an uncollected account (unpaid bill, etc.), you must provide a statement of the account and enough copies of that statement to put with each copy of the complaint; and***
- Enough cash or a check to pay the filing fee(s).

The Small Claims Division is located on the first floor of City Hall at 301 Putnam Street. The forms for filing a Small Claims Complaint are available at that location. If you have any additional questions about the information you need to bring with you when you file, please contact the Court at 740-373-4474.

NOTE: If you are suing a **business**, you must determine whether it is a sole proprietorship, a partnership, or a corporation. If you are not sure, contact the Ohio Secretary of State at 614-466-2655. Unincorporated businesses must be sued in the personal name of the owner. Other forms of business ownership must be sued under the business' **correct legal name**. If you sue a business using the wrong legal name, you may be unable to collect any judgment.

What Happens After I File?

After you file your case, the Court must officially notify the defendant(s) of the suit. **It is your responsibility to provide an address where the defendant can be reached.** The official notice must be delivered to ("served on") the defendant, before the case can continue. This is usually accomplished by certified mail to the defendant's home address. The return receipt, signed by anyone 16 years of age or older at that address will count as proof of service. However, if the certified letter is returned undelivered, the case cannot proceed. If this should happen in your case, the Court will send a notice to you (or your attorney, if you have one) and you should contact the Court to find out about other ways to obtain service.

<p><u>NOTICE:</u> You can speed up this process by filing a request for ordinary mail service when you file your claim.</p>
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An initial hearing will be scheduled between 15 and 40 days after your complaint is filed, but problems with service on the Defendant will likely delay that date. At all hearings, you should be sure to bring anything you might need, including documents, paper, pencils/pens, and a calendar (with sufficient information to schedule hearings/payments).

At the initial hearing, the Magistrate will only determine whether the defendant admits or disputes the plaintiff's claim. If the defendant admits the plaintiff's claim, but desires time to pay, a payment schedule may be established. If the defendant disputes the plaintiff's claim, the case will be set for a Contested Hearing.

A Contested Hearing is the equivalent of a trial in Small Claims Court. Both parties have the opportunity to offer evidence and present and cross-examine witnesses, after which the Magistrate will file a written report to the Court. The Clerk will mail copies of the

Magistrate's Report to both you and the other party. This process generally takes between 30 and 45 days. If no timely objections are filed, the Magistrate's Report will be adopted as the final order of the Court.

I've Been Sued! What Are My Options?

If you have been sued in Small Claims Court, you will receive an official notice from Marietta Municipal Court. That notice will include the name of the plaintiff, the amount of the claim, the date of the initial hearing, and information on how to respond to the claim. If you decide to file a response to the claim, you must reply in writing **OR** appear at the initial hearing.

Depending on what you believe about the claim, you have several options:

- 1. If the plaintiff's claim is fair**, you may pay the plaintiff the full amount of the claim, plus court costs, and that will end the case.
- 2. If the plaintiff's claim is fair, but you wish time to pay**, you may appear at the initial hearing and request a payment plan.
- 3. If the claim is unfair**, you **must** appear at the initial hearing to dispute the claim **OR** file a written response no less than seven (7) days prior to that hearing.
- 4. If the plaintiff owes you money**, you can answer the original claim with a "counterclaim" no less than seven (7) days prior to the Contested Hearing.
- 5. If multiple defendants have been named in a case, and you believe you have a claim against one of those defendants**, you can file a claim against that defendant called a "cross-claim" no less than seven (7) days prior to the Contested Hearing.
- 6. If the plaintiff's claim leaves out some parties who are necessary to resolve the dispute**, you may ask the Court to bring in such other parties by filing a "third-party claim" no less than seven (7) days prior to the Contested Hearing. You will need the complete address of each party to be added and should state on the claim the reason for bringing each into the action.

If you wish to file counterclaims, cross-claims, or third-party claims, you may ask the Court how to file them. Be sure to consider:

- **Your claims:** Be sure to explain why each claim you file is justified and be ready to present evidence. The Court's staff can provide forms and explain the procedure for filing them.
- **Amounts:** If you believe that another party in the case owes you money, you should consider asking for your damages, interest on those damages, and court costs.

- **Official Notice:** All parties must be officially informed about all the claims in which they are involved. You must pay all associated fees for serving the parties with notice.

However you decide to respond, you should get your response to the Court as soon as possible.

Also, please remember that all of your communications about the case must clearly show the case number that appears on the notice you received from the Court. If you do not include this number, the Clerk may not be able to locate the proper file.

If, after a Contested Hearing is held (or a Default Judgment is entered against you) the Court determines that you owe money to another party, you should contact the person or entity that won the case and attempt to negotiate payment. ***Be sure to obtain receipts of any amount you pay.***

Can I Settle My Claim Before the Hearing?

Yes, but if a case has been officially filed with the Court, there are steps to take to formally close the case:

If you are the plaintiff, and you have received the agreed upon payment from the defendant to settle the claim, notify the Court in writing that the case has been settled. That notice will be made part of the record and the case will be dismissed. Remember, the Court **will not** return any of the fees or court costs you have paid, so any settlement you make should take that into account.

If you are the defendant, and you have made an agreement that you believe settled the claim, ask for written confirmation from the plaintiff and a copy of the notice of settlement he/she filed with the Court. If you do not receive a notice from the Court indicating that the case has been dismissed, you should contact us (740-373-4474) and make sure that the case has been officially settled and dismissed.

How Should I Prepare For My Contested Hearing?

Regardless of whether you are the plaintiff or defendant in a case, your job at the Contested Hearing is to give the Magistrate the facts of your case and convince him/her that the case should be decided in your favor. If you are asking for a judgment, you must also convince the Magistrate that you are entitled to the amount for which you are asking.

What kinds of evidence should I bring?

Before you appear at the Contested Hearing, you

Common Types of Evidence

- ✓ Your testimony
- ✓ Testimony of Witnesses
- ✓ Written Evidence; including receipts, contracts, notes, letters, memos, postal receipts, invoices, account statements, etc.
- ✓ Items relevant to the case
- ✓ Photos or diagrams, especially if you are seeking payment for damages

should organize your evidence, contact your witnesses, and prepare a written outline of your case.

Anything that could help you to prove your side of the case could potentially be used as evidence. **Contact the Clerk with questions regarding the number of copies you need of your evidence or any of the procedures for presenting that evidence.**

Certain witnesses may be especially useful to presenting your case. For instance, a trained repair-person may be able to give testimony describing poor workmanship. It is necessary and appropriate to talk to your witnesses before the hearing. You need to know what they know and if they will testify. Remember, the other party also has the opportunity to question your witnesses. Be sure to contact your witnesses to confirm the date and time of your hearing.

Witnesses must appear in person. The Court **WILL NOT** accept affidavits of witnesses as evidence in lieu of appearance except in very rare and limited circumstances. (One exception may be cost estimates; if it is relevant in your case.)

If a witness who lives in Ohio will not voluntarily appear, you can ask the Court to issue a subpoena to force that person to testify. File subpoenas at least two weeks before the date of the hearing and provide a witness fee of \$6.00, plus mileage of 10 cents per mile.

How much evidence is enough?

The amount of evidence you need to present will vary from case to case, but, in general, your testimony will not be enough. You should ask yourself if, as the Magistrate, you would be convinced based upon the evidence you have provided. If the answer is no, you probably do not have enough evidence.

The **quality** of your evidence is more important than the quantity of evidence you present. Your witnesses should be believable and should have direct knowledge of the facts they testify to. Written evidence should be clear and understandable. Remember, the other party will likely present evidence that conflicts with your own; be sure that your case is as strong as possible.

What to Remember at Your Contested Hearing:

- ✓ Be polite to everyone in the courtroom and control your temper. Good manners, a calm attitude, and an orderly presentation will give you the best chance of being successful.
- ✓ Be brief and stick to the facts
- ✓ Use your outline
- ✓ Emphasize your points and explain those raised against you
- ✓ If the Magistrate interrupts you with questions, answer them directly and politely to the best of your ability

Once you have gathered your arguments, you should prepare an outline of the points you wish to make to support your side of the case. You should list the witnesses and evidence in the order you want to present it and be sure that the order in which you present your case makes logical sense. It is generally a good idea to present your case in the order that events actually occurred, as if you are telling a story.

What should I do at the hearing?

At the contested hearing, you will be given the opportunity to present the case that you have prepared and the other side will be given the same. Have all of your evidence and witnesses with you. You will probably be one of several Small Claims cases scheduled on the day you appear, be patient and respond when your case is called.

The plaintiff will present his/her case first. When the plaintiff has finished presenting his/her side of the story, the defendant will be allowed to present his/her side of the case.

You will be nervous, try to relax and be yourself. The Magistrate knows you are not an attorney and will not expect you to know all of the procedures that are part of a normal trial. Listen carefully to what he/she says and respond accordingly.

After hearing both sides, the Magistrate will state that the claim is “heard and submitted.” He/she will issue a written decision within 30 to 45 days. You will receive a copy of the Magistrate’s Report after it has been filed.

What Happens if I Don’t Appear?

In most cases, if you don’t appear, the other side wins, regardless of how much evidence you have or how strong a case you could have presented. If the plaintiff appears at the Initial Hearing, but the defendant does not, a default judgment will be granted to the plaintiff. For this reason, it is essential that you be **ON TIME** to your Initial Hearing, so that the Magistrate does not record that you have failed to appear.

The Court will not notify the defendant of a default judgment; it assumes that he/she is aware of the consequence of not appearing. It is the plaintiff’s responsibility to notify the defendant of the judgment and request payment.

If the plaintiff fails to appear at the Initial Hearing, but the defendant appears, the case will be dismissed.

If you cannot attend the hearing on the date the Court has scheduled, you may request that the case be continued in writing. If you are submitting this request less than seven (7) days before the hearing, you must have the other party’s signature on the request. **ALL** requests for continuance must be submitted no less than three (3) days before the hearing. If an emergency arises that will prevent you from appearing or make you late for your hearing, you must contact the Clerk (1-740-373-4474) immediately and explain the situation. If the Court finds that the continuance is warranted, you will be notified of a new hearing date.

What if I Don’t Agree With the Magistrate’s Decision?

If you disagree with the Magistrate’s decision, you may file written objections to that decision within fourteen (14) days after you receive a copy of the Magistrate’s Report. You must ensure that the other parties in the case are served with copy of your

objections, and they may file a response to your objections up to ten (10) days after you file them. Your objections should be specific and explain exactly what you believe was wrong with the decision submitted by the Magistrate. Remember, evidence that was not submitted at the Contested Hearing **cannot** be submitted with your objections unless you can prove that you could not have discovered it before the hearing. (You cannot object to the Magistrate's Report because you did not adequately prepare your case.)

The Judge will consider your written objections and he/she may decide to adopt, modify or reject the report. The Judge may also decide to hear additional evidence, return the report to the Magistrate with instructions, order a new trial, or hear the matter him/herself. The parties will be notified of the decision of the Court.

If you disagree with the Court's decision, you can appeal the decision to a higher Court. If you have questions regarding what constitutes grounds for appeal, or what can be used in an appeal, you **MUST** speak with an attorney.

How Do I Collect My Judgment?

It is your responsibility to take action to compel the other party to pay any court ordered judgment. However, the Court will assist you in collecting your judgment if you follow the proper procedures.

The best and easiest way to collect on a judgment is voluntary payment by the judgment debtor (the person ordered to pay). If he or she refuses to pay, you can get help from the Court in several ways:

1. In order to collect your judgment, you must first have a working knowledge of the judgment debtor's finances. The first step is generally to ask for a **list of assets and liabilities**. You can also request a **debtor's exam** to learn more about the debtor's finances, though it might be advisable to talk to an attorney about the proper procedure at this point.
2. **Garnishment:** This is the usual method of forcing payment. In a garnishment, the Court orders the debtor's employer or bank to deduct money from the debtor's earnings or bank account and submit that money to the Court, which in turn will pay it out to the judgment creditor (the person owed the money). Forms for garnishment can be obtained from the Court.

There are several limitations to this process. First, the amount collected cannot exceed the amount of the judgment. Second, if the source of the funding in the account can be directly traced to worker's compensation, social security payments, or certain pension payments they cannot be garnished. Third, employers cannot pay out more than 25% of the debtor's net earnings. In addition, if the debtor has other judgments against him/her, you may have to "wait your turn" to collect by garnishment if others are pending.

3. **Execution:** Through this process, the judgment creditor may seize a portion of the debtor's property, sell it, and collect the judgment from the proceeds. The process is complicated and there are many types of property that are exempt from execution. It may be advisable to consult an attorney before pursuing this course of action.
4. **Judgment Liens:** A lien can be placed on real estate owned by the judgment debtor through the Washington County Clerk of Courts if the property is within Washington County. You should contact the Clerk (1-740-373-6623) for more information about the procedures and fees involved.

Where Can I Get More Information?

Questions About Procedure:

For information and assistance on filing or defending a Small Claims case, collecting a judgment on a Small Claims case, or any other procedural matter, you may contact the Court (740-373-4474).

Questions About the Law:

If you have questions about the law that applies to your type of claim and/or your rights and responsibilities, you should seek the advice of an attorney. If you do not know an attorney, you may contact the local bar association.

TRACK YOUR CASE ONLINE:

Go to www.mariettagov.com/courts

Click on "Public Access"

If you qualify, free legal advice is available on a drop-in basis from 6:00PM to 8:00PM every third Wednesday of the month at St. Luke's Episcopal Church (320 Second Street in Marietta) for those with incomes below 187% of the poverty level.

If you qualify by age or income, you can also contact Southeastern Ohio Legal Services for legal representation (1-740-374-2629).

Legal resources for researching your case are also available at the Washington County Law Library.

QUICK FACTS ABOUT SMALL CLAIMS

- ✓ This guide **CANNOT** substitute for the legal advice of an attorney
- ✓ Small Claims cases cannot exceed **\$3,000**
- ✓ Small Claims Court can **ONLY** consider claims for money
- ✓ Court staff **CANNOT** give you legal advice
- ✓ Meet all deadlines, be on time to all Court appearances, and read any document you receive
- ✓ Keep copies of all of documents
- ✓ If you pay on a judgment or to settle a case, get a receipt and keep a copy of it as evidence
- ✓ Bring everything you will need to your hearing, including pens/pencils, paper, and a calendar so you can schedule a later hearing or payments
- ✓ Follow through on your responsibilities