

SMALL CLAIMS DIVISION

Small claims matters are informal adjudication of claims where the amount in controversy is \$3,000.00 or less. These matters are heard initially by the attorney/magistrate of the court, unless the parties agree to participate in a mediation process. You can obtain a copy of the small claims affidavit at the clerks desk. Once it is completed, you file the claim with the clerk and pay the appropriate filing fee. You must also pay a fee to have the person you are suing served with a copy of the claim.

By proceeding in the Small Claims Division, you waive several rights. These include the right to be represented by an attorney, jury trial, appeal beyond the district court. You also waive any claim you may have in excess of \$3,000.00. By filing in the Small Claims Division, you additionally waive the ability to pursue claims for intentional torts (intentional wrongs such as intentional destruction of property, libel, slander, fraud, intentional trespass), which, with limited exceptions, are prohibited from being filed in the Small Claims Division. If you have more than one claim against a party, you may be required to combine all claims you have into one small claims complaint, rather than file separate actions. Please check with your attorney.

A procedure booklet on how to complete the various Small Claim's forms may be purchased from the civil clerk for \$6.00. Several of the forms with instruction sheets is posted next to the civil clerk's window at the court building. Copies of the forms with the appropriate number of carbon copies may be purchased from the clerk for \$0.25 each.

A full time employee of a business (sole proprietorship, partnership or corporation) may appear for the business, if that full time employee has personal knowledge of the facts in dispute. If such employee is not available, a supervisor of that employee may appear.

SMALL CLAIMS AGAINST THE STATE OF MICHIGAN

You cannot use the District Court for any claims against the State of Michigan. If you have a claim against the State of Michigan, you should consult with an attorney, as you must use the Michigan Court of Claims. If your claim is for an amount under \$1,000.00, you can file that action before the State Administrative Board. You can obtain information about that Board through their web site: [State Administrative Board](#)

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HOW TO COMPLETE THE SMALL CLAIMS AFFIDAVIT

Instructions by line number: (The Small Claims Affidavit may be obtained from the Civil Clerk's counter at the court)

1. Your complete name, address and telephone number. You are called the Plaintiff.
2. The complete name, address and telephone number of the person or business you are suing. If you are suing a business, put in the business name. If you are suing a specific person, put in the persons name. The person being sued is called the Defendant.
3. Check the appropriate box. Are you an individual?- check the first box. Are you bringing this action as a partner in a partnership? - check the second box. Or are you a full time employee of a corporation and you have personal knowledge of the facts that will be in dispute? - check the third box.
4. Check the appropriate box. Are you an individual? - check the first box. Are you a partner in a partnership? - check the second box. Are you a full time employee of a corporation? - check the third box. Are you an individual owner of a business that is not a partnership or corporation and this is a business lawsuit? - check the fourth box.
5. Check the appropriate box. Is the person you are suing an individual? - check the first box. Are you suing a partnership? - check the second box. Are you suing a corporation? - check the third box. Are you suing a business that has an individual owner that is not a partnership or corporation and this is a business lawsuit? - check the fourth box.
6. What date did the incident occur that is the subject of the lawsuit?
7. How much are you asking the Court to award? Do not include court costs (filing fee or service fee) in this box.
8. State the reason for the claim. Include as much information as possible, so the Court understands why you are asking for money.
- 9 & 10. Read these - be sure these are both true.
11. Sign the form. YOU MUST SIGN THIS IN THE PRESENCE OF A NOTARY (AND HAVE THE AFFIDAVIT NOTARIZED) OR IN THE PRESENCE OF A CLERK OF THE COURT.
12. The court clerk fills this box in. You must have the defendant served by this date or your claim will be dismissed.
13. The clerk fills in this box. This is your Court date. Please come with all of your evidence, letters, documents and witnesses.

HOW TO SERVE THE DEFENDANT

- 1) You may have the court clerk send the affidavit and claim to the defendant, using certified mail, restricted delivery. If you desire certified mail, only the court clerk may send it. This is a less expensive method, but the Defendant (not anyone else) will need to sign for the envelope to complete service. The Postal Service will return the green signature card directly to the court to show service was completed.
- 2) A court officer can hand deliver (for a fee) the affidavit and claim to the defendant. See the court clerk for a list of approved court officers. Choose one. They will deliver the affidavit and claim for you and send you an invoice. When you pay the invoice, the court officer will deliver papers to the court to show service was completed.
- 3) Any competent adult (except the Plaintiff) can personally deliver the affidavit and claim to the Defendant.

There are specific requirements - so please consult an attorney before you do this.

HOW TO PREPARE AND PRESENT YOUR SMALL CLAIM

A) Rights waived by proceeding in Small Claims Division

1) Attorney

"Defendant in small claims suit, by electing not to remove suit to district court, thereby waived his right to counsel for all proceedings in small claims action, including judgment enforcement proceedings". In re Goehring, 184 Mich.App. 360; 457 N.W.2d 375 (1990)

2) Jury Trial

3) Appeal

"... except that if the action is heard before a district court magistrate pursuant to section 8427, the parties have a right to an appeal to the small claims division of the district court as provided by section 8427." MCL 600.8412

This request must be made in writing within seven (7) calendar days of the magistrate's judgment.

4) Amounts in excess of the jurisdictional limit for small claims (\$3,000.00) MCL 600.8412.

"Fact that defendant remained until judgment was rendered by small claims court lent credence to conclusion that she waived rights enumerated in § 600.8412 with respect to actions in such court, including right to appeal, and thus circuit court properly rejected defendant's request for appellate review of the small claims court's decision, despite contention that small claims judge had failed to apply the substantive law of the state". Marshall v. Pech, 95 Mich. App 454; 291 N.W.2d 78 (1980).

5) Intentional Torts. You additionally waive the ability to pursue claims for intentional torts (intentional wrongs such as intentional destruction of property, libel, slander, fraud, intentional trespass), which, with limited exceptions, are prohibited from being filed in the Small Claims Division. See section H below.

B) REMOVAL:

You can remove the matter from the Small Claims Division and into the General Civil Division at anytime up to time of the small claim hearing. If a magistrate is scheduled to hear your small claim, you can demand the small claim hearing be held before the District Judge and not the magistrate.

"Once matter has been removed from small claims court to district court, rules of evidence obtain, and right to jury and to appeal are retained". Schomaker v. Armour, Inc. 217 Mich.App. 219; 550 N.W.2d 863 (1996)

MCL 600.8425 (2) If an action properly commenced in the small claims division is removed to the district court or to any other court pursuant to section 8408 or 8423, either party may amend his or her own pleadings to increase the amount claimed upon payment of any difference in the applicable filing fee.

C) Where do you file (venue)?

- 1) where the cause of action arose, or
- 2) in the district in which the defendant is established, or
- 3) in the district in which the defendant resides, or
- 4) (small claims only) is employed.

If venue proper for small claims but improper for general civil, a removal from small claims to general civil division is not grounds for motion to change venue.

D) Who can sue?

a) Individual party injured - such claims may not be assigned to a third party, nor may a third party use a "power of attorney" to represent an injured party.

b) Corporation, Partnerships, sole proprietorships - full time employee with personal knowledge may sign the form and appear in court for the business. If full time employee with knowledge not available, then supervisor of that person may appear.

c) Governmental body

E) Who cannot be a Plaintiff?

Assignees, representatives of the injured party, someone with a power of attorney for the injured party, third party beneficiaries, collection agencies, unless pursuing their own claim.

F) ATTORNEYS

No representation by attorneys is allowed in the small claims division.

G) FORMS:

Where do I get the form??? Any court clerks office. In the 55th, the fee for each such form is \$0.50. You can also obtain the forms by accessing our Small Claims Form Page - click [HERE](#).

H) What CANNOT be Brought in the Small Claims Division?

Fraud, libel, slander, assault, battery, or other intentional torts

Michigan Compiled Laws, Sec.600.8424. (1) Actions of fraud and actions of libel, slander, assault, battery, or other intentional torts shall not be instituted in the small claims division. This subsection does not apply to either of the following:

(a) An action for fraud under section 2952 or under the Michigan Consumer Protection Act, MCL 445.901 to 445.922.

(b) An action under section 73109 (trespass) of the natural resources and environmental protection act, MCL 324.73109. This section of law reads: Cause of action by property owner - "The owner of property on which a violation of this part is committed, or his or her lessee, may bring a cause of action against a person who violates this part for \$250.00 or actual property damages, whichever is greater, and actual and reasonable attorney fees.")

I) Service of Process

Certified Mail - Restricted Delivery - less expensive, but the postal service is not good about the restricted delivery part. If anyone other than the Defendant signs the delivery card, there is no service. MCL 600.8405, certified mail must be by the clerk of the court. MCL 660.8406, Defendant is entitled to at least 7 days notice of the claim, prior to the hearing.

Process Server - there are several professional process server's authorized by the court. If you choose this route, please indicate to the clerk which process server you would like to use. Each process server is allowed to place brochures at the civil window and the civil clerks have designation forms for your use.

J) Adjournments

Only for good cause shown. Usually this requires you to contact the other party to the action and ask for their consent before you make the request to the Court. Adjournments cannot be requested by telephone.

K) Preparing your Evidence

This is the area where many claims fail, as there is not adequate preparation. The magistrate will know nothing about the case prior to the hearing. You need to educate the magistrate as to what happened and why the defendant owes you money, - with 10 minutes (or so) to do so.

1) Gathering documents - originals if possible. Bring all documents from the transaction. In the sale of the home, bring EVERYTHING - Buy-Sell agreement, all addendum's, closing statements and agreements.

In a security deposit claim, bring the lease and any other documents or rules list, ending inventory from the tenant previous to the defendant, beginning and ending inventory of the defendant, the 30 day notice and the response to the 30 day notice. Also bring all receipts for the items you are claiming.

In a traffic crash, a copy of the police report and a diagram of the area where the crash occurred, showing the movement of the vehicles. Photographs of the damaged vehicles and the area where the crash took place are very welcome.

2) Bring the damaged item - If a damaged article is too big to bring with you, photographs can be presented as evidence.

L) Preparing your Witnesses

1) Subpoena - If you have a witness that is reluctant to come to court, you can obtain an order for him/her to appear. Forms are available from the civil clerk. The witness fee of \$6.00, plus round trip mileage, must be paid to the witness when the subpoena is served.

2) What if witness is out of town? Get a written statement from him or her, called an affidavit. This is not as good as having the person there. Many cases fail because a key witness is not present. Also remember written statements are considered hearsay - they are not allowed in general civil cases, but are allowed in small claims - so much less consideration is given to a written statement. It is preferred that if you must have a written statement, get it notarized.

3) Use of Affidavits - Be sure the statement of the witness is factual. Having the statement notarized does place some additional benefit to the value of the document. Be sure that if the reason you want a statement of this witness is that person's opinion, be sure that opinion is fully written down.

A mechanic statement that the alternator needs replacing does not help me at all in a case where a previous mechanic is alleged to have done poor work. Have this witness record what the problem is and WHY the previous mechanic did poor work. Again - it is much better to have this type of witness with you in court.

M) Presenting your claim - telling the story

1) Who can appear for the corporation/partnership/sole proprietorship? A full time employee who has personal knowledge of facts in dispute, or the supervisor of that full time employee, if the full time employee with direct knowledge is unavailable. A collections manager who did not directly deal with the defendant is not acceptable. Someone who just reviewed the file and spoke with people directly involved is not acceptable.

2) What happens on the hearing date

a) If both the person filing the lawsuit and the defendant appear, the judge or magistrate may recommend that the parties go to mediation and the case may be adjourned. If either party does not want to try mediation, the hearing may proceed.

b) If the party filing the lawsuit does not appear, and the defendant does appear, the case will be dismissed.

c) If the defendant does not appear, the person filing the lawsuit may ask for a "default" judgment. This means that if the judge/magistrate decides you have a good claim, you can obtain a judgment without a hearing since the person or business you are suing did not appear to challenge your claim.

3) Rules of Procedure - The hearing is held in an informal manner so as to do substantial justice between the parties according to the rules of substantive law. Small Claims hearings need not follow statutory provisions of procedure, or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

"Sole object of small claims hearings is to dispense expeditious justice between parties". Schomaker v. Armour, Inc. 217 Mich.App. 219; 550 N.W.2d 863 (1996).

4) Rules of Evidence - Hearsay. Hearsay is what someone else told you about the incident. This is generally not admissible, however, in small claims - may be heard. But keep in mind the value of such testimony, opposed to live witnesses or documents.

5) Telling the story - in about 10 minutes, you have to explain to the magistrate why the defendant owes you money. You don't need to present a life history, just what happened in this case. Avoid comments about the defendant's attitude or language they used.

N) Courtroom Decorum - (when not to talk)

Each party is entitled to make their presentation uninterrupted. Make notes during the other parties presentation, so you can address each of those points when it is your turn again. If you have questions for the other party, ask permission to question the other party directly or present the questions to the judge or magistrate to ask them for you.

O) Getting a Judgment

Once a judgment is obtained, the defendant has 21 days to voluntarily comply. If they do not pay the judgment, it is up to the Plaintiff to take steps to enforce the judgment. You may not have an attorney do this for you. This is one of the down sides of small claims. The court has a forms booklet available next to the clerks counter - showing the various forms available to collect your judgment, with instructions. Copies of the book (with additional information) may be purchased from the civil clerk for \$6.00.

P) Time Judgment is Valid

Judgment is valid 6 years from date of entry. MCL 600.5809. A small claims judgment is not a judgment of record, so being able to enforce a small claims judgment in another state is questionable.

Q) MEDIATION:

The Judges of 55th District Court have found that a great number of cases filed in the Small Claims Division

can be settled most effectively through mediation. Mediation is a process where a neutral third party meets with the parties to work towards a resolution of the dispute. Mediation helps you reach a resolution in a non-adversarial manner.

You can learn more about the mediation process at the court by using this link to our [MEDIATION](#) page

This service is provided in the Ingham/Eaton/Clinton/Ionia county area by:

Dispute Resolution Center of Central Michigan
1609 E. Kalamazoo, Suite 9
Lansing, Michigan 48912
(517) 485-2274 or (800) 873-7658

In the 55th District Court, mediators from the Dispute Resolution Center of Central Michigan are in the building and able to provide services each Friday morning. Small claims litigants arriving at the building are offered the opportunity to participate in mediation prior to their small claim hearing.

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