

Dunn County Clerk of Court – Small Claims Division
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SUMMARY OF SMALL CLAIMS PROCEDURES

INTRODUCTION

This handout is intended as a summary of basic small claims information and procedures. You are responsible for filing, preparing and presenting your small claims case. You are not required to be represented by an attorney; however you may retain one if you wish. The Clerk of Court, court commissioners and other court personnel are not authorized to provide legal advice. Small claims procedures are contained in Chapter 799 of the Wisconsin Statutes. There is a Guide to Small Claims available for purchase in the Clerk of Court Office for one dollar. Small claims forms are available from the Clerk of Court Office. The following are types of small claims cases:

- Claims for money (such as breach of contract, property damage or personal injury) when the amount claimed is \$10,000 or less
- All evictions, regardless of the amount of rent claimed (rent claim may be in excess of \$10,000)
- Replevins (repossessions) if the value of the property does not exceed \$10,000 or if the property is consumer goods leased or purchased on credit from a dealer.

VENUE: WHERE TO FILE YOUR CASE

For most claims, the proper county to file your lawsuit is:

1. Where the claim arose, OR
2. Where the property which is the subject of the claim is located, OR
3. Where the defendant resides or does substantial business

It is your responsibility to review the facts of your case and decide where to file your action.

COMMENCING AN ACTION

All small claims actions are commenced by completing a summons and complaint and paying a filing fee (see attached fee schedule and sample form). Claims for money judgments, evictions and replevins all vary slightly. See each labeled section below for specifics that apply to each class type. The following apply to all small claims cases.

- Parties must be properly identified as either an individual, a partnership or a corporation. If any of these do business under another name that may be listed also.
- If you are filing any attachments along with the summons and complaint, you are responsible for providing copies of those attachments for the defendant.
- If your case requires personal service of the summons and complaint upon the defendant, it is your responsibility to make arrangements for that personal service. Personal service means that the defendant must be personally given a copy of the paperwork by someone who is not a party to the case and can provide the court with an affidavit of service. You can have the Sheriff's department or a process server serve the papers. The copies for service will be returned to you after filing. Once the defendant is served, the original certificate of service must be filed with this office on or before the initial hearing date.

Claim Under the Dollar Limit (Money Judgments)

- The date and time on the Summons and Complaint is only a deadline to contest the action and is not a court appearance date.
- If the defendant resides in Dunn County, all that is required for service is first class mail: certified mail and personal service are optional. See fee schedule for costs. All mailings must be done by the Clerk of Court Office.
- If the defendant resides outside of Dunn County, Wisconsin Statutes require that personal service be made.
- The defendant must be served at least 8 days prior to the return date (not counting weekends or holidays).
- If the defendant does not answer the claim, a judgment will be entered in your favor. If the case settles prior to the deadline date or you wish to adjourn the matter you must inform the court of such. If you fail to do so and a judgment is entered against the defendant, you will have to file a motion with the court to reopen the case and make a court appearance before the judge.
- All contested money claims will be set for mediation. The date and time of that hearing will be mailed to parties.

Evictions

- The summons and complaint must clearly state the address that is the subject of the eviction.
- The summons and complaint must be signed by the property owner, a full time employee of the property owner, or the property owner's attorney.
- A copy of the lease and the notice to vacate must also be submitted with the summons and complaint.
- Eviction actions may also make a claim for monetary damages.
- **Personal service is required.** The defendant must be served at least 5 days prior to the court date (not counting weekends or holidays).
- Your appearance at this hearing is mandatory. If the defendant fails to appear you may be granted a judgment as requested.
- The Court Commissioner will hear all contested eviction claims on the date and time on the summons and complaint.

Replevins

- Replevins that are the result of a consumer transaction require the filing of the "Summons for Consumer Replevin" (form SC-516) along with a formal Complaint in Replevin. A copy of the Note and the Notice of Right to Cure should also be filed with the summons and complaint.
- **Personal service is required.** The defendant must be served at least 8 days prior to the court date (not counting weekends or holidays).
- Your appearance at this hearing is mandatory. If the defendant fails to appear you may be granted a judgment as requested.
- Replevin Hearings are heard by the Circuit Court Judge assigned to the case.

MEDIATION

Mediation is a service that helps parties resolve their disputes without going to trial. This service provides a trained and impartial person (mediator) who listens to the dispute, asks questions and guides a discussion in order to help people reach their own solution. Agreements can save you time, money and emotional stress. There is no charge for mediation and it is mandatory for all contested money claims.

STIPULATIONS

If you reach an agreement with the defendant that they will pay the agreed amount by a certain date (or in certain installment payments), you may file a stipulated dismissal. Forms are available from this office. The case is dismissed without a judgment being entered. However, if the defendant fails to pay as required by the agreement, you can file a sworn statement (affidavit) with the court and have the stipulated dismissal withdrawn and a judgment entered for the amount the defendant still owes. No hearing is necessary.

COURT TRIALS (CLAIMS FOR MONEY)

If your dispute cannot be settled through mediation, it will be scheduled for a court trial before the Court Commissioner. If your case is set for trial you must be prepared to present the facts of your case. It is highly recommended that you read through the Guide to Small Claims referenced at the beginning of this summary. You will want to bring any evidence and witnesses that will help you prove your case. After hearing each side of the case, the Commissioner will make a decision either orally or in writing. Either party will have the right to appeal the Commissioner's decision and have a new trial before a Circuit Court Judge.

JUDGMENTS

If a judgment is entered, a Notice of Entry of Judgment will be mailed to all parties. The debtor will also receive an Order for Financial Disclosure statement. The debtor must within fifteen days of the judgment either pay the judgment amount in full or complete the financial disclosure and return it to you, the creditor. The purpose of the financial disclosure is to assist you in making attempts at collection on the judgment. If the debtor fails to complete the financial disclosure, you may begin a contempt action by filing a Motion and Request for Hearing on Contempt. Forms and further information are available from this office.

COLLECTING ON JUDGMENTS

As a creditor, having a judgment does not mean you will automatically receive payment from the debtor. If the debtor does not voluntarily pay the judgment, you may make attempts at collecting the judgment in several ways. By docketing the judgment (a five dollar fee paid to the Clerk of Court) the judgment will act as a lien on any real property the debtor owns in Dunn County. The judgment may also show up on a credit search thereby affecting a credit rating. A judgment can be transcribed to any county in the state of Wisconsin or any county throughout the country. Please note that once a judgment is entered, interest accrues at the statutory rate of 1% per month (simple interest).

As the creditor you may also commence a garnishment. A garnishment is a method of collection that allows the creditor to obtain monies owed by others to the debtor, usually by attaching the debtor's earnings or bank accounts. A wage garnishment is commenced by filing an Earnings Garnishment Notice with the court and paying the proper fee. You will then be given a garnishment packet that you will have to complete. Non-wage garnishments are commenced by filing a Non-Earnings Garnishment Summons and Complaint and paying the proper fee. The court will then set a garnishment return date to allow the garnishee to answer if funds are available to garnish.

An execution is another method of collection. An execution is a writ issued by the court directing the sheriff to seize or attach the debtors personal property or real estate so that it may be sold to satisfy the judgment. Note, certain assets are protected by statute from garnishment and execution.

SATISFYING A JUDGMENT

Once the judgment is paid, you must provide to the debtor a Satisfaction of Judgment. Please note, your signature on this form must be notarized. If the debtor files this document with the Clerk of Court and pays a five-dollar fee the judgment will be released and show as satisfied.

FEE SCHEDULE

Small claims filing fee.....	\$94.50
Electronic filing fee.....	\$20.00
Regular first class mail service.....	\$2.00
Certified mail service.....	\$8.00
Garnishment filing fee	\$92.50
Garnishee fee – Earnings (paid to employer).....	\$15.00
Garnishee fee – Non Earnings (paid to garnishee).....	\$3.00
Docket fee.....	\$5.00
Execution fee.....	\$5.00
Writ fee.....	\$5.00
Satisfaction of judgment fee.....	\$5.00
Transcript of judgment (for filing in another county).....	\$5.00
Counterclaim or crossclaim in excess of \$10,000 limit.....	\$125.50
Appeal fee – Court of Appeals (not including postage).....	\$195.00
Transmittal fee.....	\$15.00