

## 04 - Small Claims Brochure

### ***COLLECTIBILITY SHOULD BE A PRIME CONSIDERATION BEFORE STARTING A SUIT.***

While the staff of this court will attempt to assist either party to an action in this court, the following must be understood:

- Staff members are not attorneys and they may not give legal advice
- The judges, who are attorneys, may not and will not advise on matters they may have to rule on.
- This court can render money judgments only and has no power to force anyone to do something or to stop doing something.

### ***Starting a Small Claims Suit***

To start a suit in this county the subject of the suit must be here, the transaction must have occurred here OR the defendant must reside or be established here.

- You must have a direct interest in the suit
- Your claim may not exceed \$5000.
- You may not:
  - have an attorney represent you
  - have a jury decide the case
  - appeal the judge's decision
- The defendant cannot be forced to waive these rights and submit to small claims division. If he refuses, the matter will be transferred to the general civil division. This may not be known until the time of the hearing.
- YOU ARE RESPONSIBLE FOR PROVIDING THE COURT WITH:
  - your full name and current address
  - defendant's name and current address
  - defendant's place of employment is helpful
  - amount of claim and pertinent dates
  - a concise statement as to the nature of the claim
  - \$25.00 Filing fee for suit \$600.00 and under
  - \$45.00 Filing fee for suit \$600.01- \$1750.00
  - \$65.00 Filing fee for suit \$1750.01 - \$5000.00
  - service fee for each defendant (outlined later)
- As a claim is filed, a hearing date is set 3-4 weeks away. This assures (generally) the defendant receives notice by the required 7 days prior to the hearing date.
- It is essential the defendant be served with a copy of the summons which is done in one of two ways:
  - Certified mail to addressee only, with return receipt requested: Fee \$11.00. If certified mail is not picked up by defendant the court cannot proceed.
  - A copy is left with him personally by a court officer: Fee \$23.00 minimum, plus mileage.

*Fees are subject to occasional statutory changes.*

### ***Settlement Prior to Hearing Date***

Frequently, the defendant may offer a settlement prior to the hearing date. If settlement is made prior to his/her being served with the summons, you are not entitled to your court costs. If settlement is made after he/she is served you are entitled to add your court costs. If lump sum settlement is not possible and you are agreeable to installment payments, REDUCE THE AGREEMENT TO WRITING, SIGNED BY BOTH PARTIES AND FILE A COPY WITH THE COURT to avoid a future dispute as to the terms of the agreement. If the claim is paid, you should dismiss the suit. If the agreement is reached, you may wish to dismiss the suit; many people prefer to continue to judgment in the event there is a default on the agreement.

### ***Hearing Date***

One of several things may occur:

- Defendant may appear, but refuse to submit to small claims division; the matter will be transferred to general civil division and a new trial date will be assigned
- Defendant may appear, admit liability for your claim, and a consent judgment will be entered
- Defendant may fail to appear. If the court can determine he/she had proper notice and through your evidence you have a proper claim, a default judgment will be entered
- Defendant may appear, dispute the claim, agree to have it heard in small claims division and a hearing will be held at that time.

On the hearing date, there may be several matters or a very few. It is difficult to determine this prior to hearing. The court will attempt to dispense with the uncontested matters first.

ON THE HEARING DATE, IT IS ESSENTIAL THAT YOU HAVE ALL PAPERS, PHOTOS, WITNESSES OR OTHER

## EVIDENCE TO SUPPORT YOUR CLAIM.

### ***The Hearing***

Contested matters are heard before a magistrate or judge. Plaintiff makes a statement explaining why the defendant is liable. Plaintiff offers evidence and witnesses, if any.

The defendant may then state why he/she is not liable. Defendant may also offer evidence and witnesses.

Each party has the right to question the other party and/or the witnesses. This is called cross examination. This *must* be in the form of questions. All statements are to be made to the court and you may not address each other except in the form of a question. The court will not permit parties to argue with each other.

After all the testimony and evidence has been presented, each party has the opportunity to summarize his/her case before the magistrate or judge.

The court will then either render a decision at the end of the case or take the matter under advisement. In the latter event, the decision will be mailed to the parties.

If the plaintiff wins, the court costs are added to the amount of the claim in the judgment.

IT IS ESSENTIAL THAT EACH PARTY HAVE THE EVIDENCE AND WITNESSES WITH HIM/HER AT THE TIME OF THE HEARING. IT IS DIFFICULT FOR THE COURT TO RENDER A FAIR DECISION WITH LESS THAN ALL THE INFORMATION.

### ***Collection of the Judgment***

The court encourages the parties to agree among themselves how payment will be made if a lump sum payment is not possible.

If agreement cannot be reached, the defendant has the right to petition the court to set the payments. A hearing date will be set and the plaintiff will be notified and may be present if he chooses. The defendant must provide the court with all income and expense information to permit the court to set a payment that is reasonable yet satisfying the judgment without undue delay. The plaintiff will have an opportunity to offer any facts or opinions if he/she wishes.

If the payment agreement or order setting payments is adhered to, the plaintiff may not garnishee wages.

### ***Garnishment***

If you know money is owed to the defendant, such as wages, bank accounts, rentals, etc. you may file a garnishment to attach this money. Help is available in the court office to accomplish this.

To file a garnishment, you are responsible for the following necessary information:

- Who owes him/her the money (this will be the garnishee defendant)
- Proper name and current address of the garnishee defendant
- The amount the principle defendant still owes you on the judgment
  - Filing Fee \$15.00
  - Disclosure Fee \$6.00
  - Service Fee (varies)

The creditor is responsible for keeping track of how much has been paid on the judgment either through or outside the court.

If there is an indebtedness at the time of the service of the garnishment you may add these costs to the amount owing.

The garnishee defendant must advise the court within 7 days of any indebtedness.

In the case of wages, the plaintiff is entitled to only a portion of those wages according to a federal formula.

A garnishment will only require a disclosure of the amount of indebtedness at the time of service. A garnishment for wages is effective for 91 days after service.

### ***Points to Consider***

The court is only a tool that is available to you for settling disputes or establishing and reducing your claims to judgment.

You are responsible for locating the parties, determining your course of action, gathering your evidence and witnesses, determining a judgment debtor's source of income, etc.

If either party has a necessary witness that is unwilling to appear voluntarily, the subpoena power of the court is available. The party requesting the subpoena will be responsible for the payment of the service fee and the witness fee. To avoid hearing date problems, subpoenas should be requested at least a week prior to the hearing date.

There are often situations where a judgment is not particularly difficult to obtain but the collection of the money is difficult, if not impossible. Benefits such as welfare, unemployment, social security and similar assistance are not subject to garnishment.

A garnishment cannot be issued prior to judgment.