

Abbreviated Guide to Small Claims

SHEBOYGAN COUNTY, WISCONSIN

This is an abbreviated version of the detailed Guide to Small Claims Court dated December 2005, prepared by the Wisconsin Judicial Council. This summary is intended as an introduction to Small Claims Court. It is not intended as legal advice.

The detailed Guide to Small Claims Court is available for download at <http://wicourts.gov/about/pubs/circuit/smallclaimsguide.htm>

For legal advice, contact an attorney.

For the statutes governing small claims actions, see Chapter 799 of the Wisconsin Statutes.

Introduction

A. Small Claims actions can be filed for:

1. Money
2. The return of property (called "Replevin")
3. Eviction of tenants
4. Arbitration confirmation, etc.
5. Garnishment

YOU ARE NOT REQUIRED TO HAVE A LAWYER.

B. If you are being sued in Small Claims Court, your options are:

1. To not contest the case.
(A judgment will then be entered against you for the amount in the complaint, unless the parties "settle" the case by agreeing to a different amount.)
2. To contest the case by filing a written answer by noon on the Friday before the return date or to appear on the return date and time to contest the case by giving your answer at that time in writing. (Be sure to put the case number on your answer and send a copy to the plaintiff or plaintiff's lawyer, if any.) The case will then be set for mediation before a Small Claims Commissioner. You will be sent a written notice of the time and place to appear.
3. Your written answer may include:
 - a. A counterclaim, if you think the plaintiff owes you money.
 - b. A cross-complaint, if there are other defendants in the case, and you think one of them should pay the money.

C. IF POSSIBLE, THE PARTIES SHOULD TRY TO SETTLE THE CASE BEFORE THE FIRST COURT APPEARANCE IS HELD.

D. If you are under 18 years old, the court may require the appointment of a guardian ad litem to protect your legal interests.

Starting Your Small Claims Case

A. Where to file.

1. If your case involves a consumer transaction, you can file in the county:
 - a. where the customer lives, or
 - b. where the purchase was made, or
 - c. where the collateral is located.

2. For other kinds of cases, you file in the county
 - a. where the claim arose, or
 - b. where the property is located, or
 - c. where the defendant lives or does substantial business.

B. The Summons and Complaint.

You can get the necessary Summons and Complaint forms in the Clerk of Courts Office, located on the first floor of the Courthouse, 615 N 6th Street, Sheboygan Wisconsin 53081, telephone: (920) 459-3068.

COURT STAFF CANNOT GIVE LEGAL ADVICE.

C. Affidavit of Nonmilitary Service

Under Federal law, the court can not enter default judgment against a defendant who is on active military duty. Your lawsuit may be temporarily suspended until you show that the defendant is not on active military duty. This form (GF 175) and instructions are available at www.wicourts.gov/forms1/circuit.htm

D. Filing the Forms.

The Small Claims forms are basically self-explanatory. If you need help, the staff can answer simple questions for you about filling them out. You will need to bring the completed forms to the Clerk of Courts Office for filing.

If you are indigent (too poor), a judge may waive the filing fees and costs of serving your papers, otherwise, you must pay these fees and costs when you file.

E. Serving the Summons and Complaint on Defendant(s).

For most actions, if the defendant's home address is in Sheboygan County, the Clerk of Courts can serve the papers by regular or certified mail. In replevin actions, if the defendant resides in Sheboygan County, the papers can be served by certified mail. In eviction actions and in all actions where the defendant resides outside Sheboygan County the papers must be

delivered by the Sheriff or a process server. Defendants who live outside Wisconsin can also be served with Small Claims papers in their home state

If you cannot serve the papers on defendant(s) by mail, Sheriff or process server, you can publish a form of the summons in a newspaper which is likely to give notice in the area or to the defendant(s).

The First Hearing

In Sheboygan County, a defendant can file an answer in writing, but the answer must be filed with the Clerk of Courts Office by noon on the Friday prior to the first appearance date.

Also in Sheboygan County, the plaintiff may appear at the first hearing by a letter filed in the Clerk of Courts Office by noon on Friday prior to the first appearance requesting that if the defendant appears or answers the case be set for hearing, or if the defendant fails to appear or answer judgment be entered for the plaintiff.

IF THE PLAINTIFF FILES A LETTER OF APPEARANCE, AND THE DEFENDANT FILES A WRITTEN ANSWER OR DOES NOT WISH TO CONTEST THE CLAIM, NEITHER PARTY NEEDS TO APPEAR AT THE FIRST HEARING (called a "Joinder").

Default Judgments.

If the defendant fails to answer by mail (or in person) a default judgment may be entered against the defendant. A notice that judgment has been entered will be sent to the parties.

In order to obtain a default judgment, you must file an Affidavit of Nonmilitary Service giving proof that the defendant is not serving in the active military. If this is not filed you will not be granted a judgment.

Dismissal

If the plaintiff fails to appear either in person or by letter at the first hearing, the case will be dismissed.

Mediation

If the defendant contests the claim, your case will be set for mediation before the Court Commissioner. Mediation is an effort by the parties to resolve the dispute through the help of a neutral third party. Any agreement reached at mediation will be put in writing and, unless the plaintiff or defendant does not follow through with what has been agreed upon, the case will be dismissed without prejudice. If either side does not follow through, the Court Commissioner can enter default judgment or dismiss the case upon proper notice to the small claims clerk. Likewise, failure by either party to appear for mediation will result in dismissal or default judgment.

Court Commissioner Hearings

If the case cannot be settled at mediation, the next step will be a hearing before the Court Commissioner.

A. Rules of Evidence

The rules of evidence do not apply, except that evidence must be relevant, and privileged information may not be used. (NOTE: An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence.) While the formal rules of evidence do not apply, small claims process does not change the law that decides the outcome of your case.

B. How to prepare your case.

Make a written summary of your claim; arrange for necessary witnesses or get their written statements. You may have to subpoena some witnesses to make them come to court. If appropriate, you may present the testimony or written statement from an expert witness.

C. Court Commissioner's Decision.

The Commissioner will either decide the case orally at the trial, or will send the parties a written decision within 30 days.

D. How to Request a Trial in Circuit Court Before a Judge.

A party may request a new trial before a Circuit Court Judge by filing a written demand for a trial. The written demand must be filed as follows:

1. Within 10 working days of the Commissioner's oral decision, or
2. Within 15 days of a written decision.

A jury can also be demanded at this time, but required jury fees must be paid.

If no request for a new trial is filed on time, the Commissioner's decision is the final decision of the Small Claims Court.

The Trial

This is usually before a Circuit Judge, but can be before a jury. There is no extra fee for this trial, unless a jury is requested.

1. Preparing for Trial.

Where necessary, use a subpoena to force witnesses to attend the trial, or a "subpoena duces tecum" to make the witness(es) bring documents.

The judge may hold a pretrial conference to see if the case can be settled. The Judge will decide the case based on the evidence presented at the trial. The Commissioner's decision will not be considered.

2. Cross-examination.

The parties have a right to ask questions of witnesses for the other side. Parties should not, however, argue with witnesses.

3. Stipulated Dismissal Pending Payment.

Before judgment is entered, if the parties enter into a stipulation agreement, the Judge or Court Commissioner may enter a stipulated dismissal. The case will be dismissed as long as payments are made; if the agreed payments are not made, the case is reopened, either for entry of a judgment, or for trial.

After the Trial

A. Reimbursement of costs.

The winning party is entitled to be paid filing fees, out-of pocket court costs, and statutory attorneys' fees, if an attorney participated.

Lost wages, parking and transportation expenses to come to court are not allowed.

B. Financial Disclosures by Judgment Debtors.

The Small Claims Court will order the party owing money under the decision (the Judgment debtor) to send to the other party a statement disclosing his name, address, employers and their addresses, real property s/he owns, financial institutions in which s/he has deposits, and other information on a standard financial disclosure form.

This financial disclosure form must be mailed to the winning party within 15 days after the judgment was filed in court. This information must be provided even if the judgment debtor decides to appeal.

If the judgment debtor does not provide the financial disclosure statement as required, the plaintiff can petition a judge to have the judgment debtor found in contempt of court.

C. Docketing and Satisfying the Judgment.

The plaintiff can docket the judgment by paying a fee. Docketing the judgment will make it a lien on real estate owned by the judgment debtor in Sheboygan County. The judgment can also be docketed for a fee in other counties.

Because Wisconsin Supreme Court Order 98-01 makes court forms approved by the Records Management Committee mandatory in Wisconsin Circuit Court proceedings, form GF-129, Satisfaction of Judgment or Partial Release filed pursuant to §806.19, will be required to satisfy or release all case types, including Small Claims. This form is available on line at the [Wisconsin Supreme Court Website](#). The satisfaction filing fee must accompany the satisfaction when presented for filing.

D. Appeals.

A party may appeal to the Court of Appeals from a Small Claims judgment. You will probably want an attorney to help you, if you decide to appeal.

E. Reopening Default Judgments.

A party may reopen a default judgment within 6 months and, in some cases, up to a year after judgment is entered.

You must file a motion or petition to reopen the case. Motion and petition forms are available at the Clerk of Courts Office. If necessary, a hearing will be set to consider the reasons for the request to reopen.

F. Garnishment of Wages.

One of several ways to try to enforce a judgment is by "garnishment." Garnishment is an action to withhold part of a person's wages or bank accounts to pay off the judgment.

A garnishment is filed in Small Claims Court, just as the original case was. Forms for earnings or non-earnings garnishment are available from the Clerk of Courts Office.