

SMALL CLAIMS BOOKLET

Small Claims is the division of the Trial Court used by people to settle their disputes without lawyers. When a case is tried in the Small Claims Division, all parties give up:

1. The right to an attorney
2. The right to appeal (if the case is heard by a judge)
3. The right to a jury trial.

FILING A SMALL CLAIMS SUIT

The following information helps determine who is the proper person to file and appear in the Small Claims Division.

APPEARING IN COURT

If Plaintiff is / then this person may file and appear in court:

1. **Individual** / Anyone 18 years of age or older may file and appear on his/her own behalf
2. **Partnership** / Any partner or full-time employee
3. **Proprietorship** / The proprietor or any full-time employee
4. **Corporation** / Any office or full-time employee

MAXIMUM JUDGMENT

A judgment for \$6,500 plus court costs is the maximum amount allowed by law.

JURISDICTION

A claim may be filed in the Small Claims Division of the Berrien Trial Court if:

- The defendant resides in Berrien County
- The defendant conducts business in Berrien County
- The incident took place in Berrien County
- The defendant is employed in Berrien County

A Small Claims case cannot be filed for fraud, libel, slander, assault, battery, other intentional actions, or actions against a state or governmental agency.

WHEN FILING A CLAIM

Plaintiff must have the following when filing a claim:

1. The filing fee (see fee schedule)
2. The fee for certified mail, if service by mail is chosen (see fee schedule)
3. Defendant's full, correct name and current address
4. Exact amount of claim and dates the claim arose
5. A short, complete statement about the claim. Include why the defendant should pay the claim and proof of the exact amount owed.
6. Two copied sets of any papers you have to support the claim (receipts, bills of sale, invoices, guarantees, accident reports, leases, repair estimates)
7. If filing by mail, the plaintiff's signature must be notarized.

By law, court clerks must remain impartial regarding any claim filed and cannot give legal advice. However, the clerks are able to answer questions about how to complete the form and file the claim.

TRIAL DATE & SERVICE OF PAPERS TO DEFENDANT

The trial date is scheduled approximately six weeks from the date the claim is filed. The claim with notice of the trial date must be promptly served before the trial. Proper service is accomplished by:

PERSONALLY HANDING THE SMALL CLAIMS AFFIDAVIT TO THE DEFENDANT

A deputy sheriff or process server is qualified to make proper service. The deputy or server sends a bill to the plaintiff when the defendant is served the papers. Pay the deputy or server with a check or money order by mailing to the address on the bill.

If the address for the defendant is incorrect, the deputy or server charges \$10 for an incorrect address fee. A legally competent adult, who is not involved in the case, or not an officer of a corporation filing the claim, may also serve papers to the defendant.

MAILING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

(See the fee schedule.) By law, the court sends the certified mail and the plaintiff pays for mailing fee at the time of filing. If the certified mail is not signed by the defendant, the Post Office returns the unclaimed mail to the court. The plaintiff may file an amended Affidavit and Claim (no filing fee required) and request service by a deputy. The certified mail fee may not be included as costs with the judgment if the mail is returned unclaimed.

PROOF OF PROPER FILING

The claim cannot be heard at trial unless there is proof of proper service filed with the court before the trial date.

REMOVAL

At any time before the trial, either party has the right to remove the case to the General Civil Division of the Trial Court. The form used for this is "Demand and Order for Removal."

After removal from the Small Claims Division both parties have:

1. The right to hire an attorney
2. The right to a jury trial (\$50 fee)
3. The right to appeal any final judgment of the Berrien Trial Court.

If the plaintiff by filing in Small Claims gave up the right to claim any amount over \$6,500, the plaintiff may now claim the entire amount up to \$25,000, by filing an amended complaint and by paying the difference in the filing fee.

The defendant must file a written answer within 14 days from the date of the order. Once the case becomes a General Civil case, all parties are required to follow the Michigan Court Rules and corporations must be represented by an attorney.

SETTLEMENT BEFORE COURT DATE

If the defendant wants to settle the case before the trial date, the defendant contacts the plaintiff and arranges to pay the claim. The plaintiff is entitled to the cost of the filing and service fees in addition to the amount claimed on the affidavit. If the entire amount is paid before the trial date, the plaintiff should notify the court in writing to dismiss the case.

TRIAL DATE

The trial date is shown on the Affidavit and Claim form in the Notice of Hearing area. Check in with the clerk at the location noted on the form at least 15 minutes before the scheduled time. All proofs and witnesses must be brought to court on the trial date.

1. If the defendant appears, but the plaintiff does not, the court dismisses the case.
2. If the defendant appears, admits the debt is owed, a consent judgment enters.
3. If the defendant is properly served and does not appear, a default judgment enters.
4. If the defendant appears and disagrees with the claim, the judgment enters after trial.

JUDGMENTS

JUDGMENTS ARE FINAL

All citizens have the right to have their dispute heard and decided by a judge or an attorney magistrate. A decision by a judge may not be appealed. A decision by an attorney magistrate may be appealed to a judge within 7 days after the trial.

COLLECTING ON A JUDGMENT

The Small Claims Division can enter money judgments only. This court has no authority to force anyone to do something, or to stop them from doing something. A money judgment means the court decides that one of the parties owes a certain amount of money to the other party, but it is not the court's responsibility to collect the judgment. In some cases, it may be very difficult or impossible to collect a money judgment.

The party who owes the money may be unemployed or bankrupt; may have gone out of business or left town; or may not earn enough wages for garnishment. Income such as unemployment compensation, public assistance benefits, or social security cannot be garnished. If the defendant is "uncollectible", it may be a waste of time and money to obtain a Small Claims judgment.

INSTALLMENT PAYMENTS

Parties are encouraged to discuss an agreement for installment payments on the same day as the trial to avoid having to make another trip to court.

An agreement for installment payments becomes part of the judgment when entered at the time of trial. No proceedings to collect the judgment occur as long as the defendant makes the payments.

If the defendant does not make the payments, the plaintiff files a "Motion to Set Aside Installment Payments." When the payment agreement is set aside, the plaintiff proceeds to collect with garnishments or any other means provided by law.

If the defendant does not appear at time of trial and a default judgment enters, the defendant has the right to petition the court later for installment payments. The defendant completes the form "Motion for Installment Payments" and files it with the court. If the plaintiff does not object to the motion within 14 days, the court enters the payment order. As long as the defendant makes the payments, no garnishment issues against his personal wages.

JUDGMENT DEBTOR SUBPOENA

When the plaintiff does not have the information for filing a garnishment or execution against property, the plaintiff may file a Judgment Debtor Subpoena to require the defendant to appear in Court under oath and provide income and asset information to the plaintiff. The subpoena is an "Order to Appear" entered by a judge.

FILING FOR A SUBPOENA

The form is available at the civil counter or online. There is a \$15 filing fee and the subpoena is served to the defendant by a process server. A date and time for the plaintiff and defendant to appear in Court is scheduled at the time of filing. The subpoena is an order for the defendant to produce the information requested by the plaintiff.

The cost for filing and serving the subpoena may be added to the Judgment.

FAILING TO APPEAR

The subpoena is a Court Order. If the defendant fails to appear at the scheduled time, the Court may issue an Order to Show Cause as to why the defendant should not be held in contempt of court. If the defendant fails to appear at the Show Cause hearing, a bench warrant may be issued for the defendant's arrest. The plaintiff must provide identifying information for the bench warrant, including the defendant's date of birth, driver's license number, and/or social security number.