

Michigan Judicial Institute

District Court Case Processing: *Small Claims*

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Participant Materials
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General Information

- Amount a party is suing for does not exceed \$5,500. MCL 600.8401.
- May be conducted by either judge or attorney magistrate
- No attorney representation permitted.
 - Attorneys shall not take part in the prosecution or defense of litigation (unless he/she is pursuing her own claim)
 - Attorney may file for removal to general civil
- Attorneys are prohibited from participating in post judgment enforcement proceedings in the small claims division

Small Claims Limits

- The jurisdiction of the small claims division shall be confined to cases for the recovery of money in which the amount claimed does not exceed the following:
 - Beginning January 1, 2015, \$5,500.00.
 - Beginning January 1, 2018, \$6,000.00.
 - Beginning January 1, 2021, \$6,500.00
 - Beginning January 1, 2024, \$7,000.00.

Parties

- Plaintiff initiates the lawsuit and alleges damages; Defendant is served with the lawsuit
- The parties are acting in *pro per* or *pro se* (self-represented).
- A sole proprietorship/partnership/corporation as plaintiff or defendant may be represented in court by an officer/employee with direct knowledge (ex. credit union employee)
- A county/city/village/township or school district as plaintiff or defendant may be represented only by an elected or appointed officer or employee who has direct and personal knowledge of the facts
- The state cannot be named a party in a small claims action
- Assignee of a claim may not file/prosecute a claim in small claims division
- A collection agency may not file/prosecute in the small claims division

Parties

- Defendants may include:
 - Individuals
 - Sole proprietorship
 - Partnership
 - Corporation
- May be sued in any name used in any ad, sign, invoice, sales slip, business card, contract

Waiver of Rights

- Unless removed to general civil, the following rights are waived by the parties:
 - Right to an attorney
 - Right to jury trial
 - Right to recover more than jurisdictional limit
 - Right to appeal to a higher court (If the action is first heard by a district court magistrate, then the parties can appeal to a judge)
- Any party or their attorney may request removal of a small claims action to the trial court for further proceedings.
 - File a written demand or appear before the court and demand removal

Actions Excluded from Small Claims

- Cannot file actions for:
 - Fraud
 - Libel
 - Slander
 - Assault/battery
 - Intentional torts
- Dishonored checks and Consumer Protection actions are allowed in small claims
- See MCL 600.8424

Where to File?

- First Class District:
 - Against individual: file in county where cause of action arose or the county where the defendant lives or works
 - Action against city/village/township: file in county where city located
 - Action against county: in that county
 - Action against school: file in county where the school has its main administrative office.

Where to File?

- 2nd and 3rd class Districts
 - Against individual: filed in the district where cause of action arose or district where defendant lives or works
 - Action against city/village/township: file in district where city located
 - Action against county: in the district in which the county seat of the county is located
 - Action against school: file in district where the school has its main administrative office.

Filing a Small Claim

- Affidavit and Claim (form DC 84)
 - Must provide copy of Affidavit for each defendant to be served
 - Can't file more than 5 claims a week
- Filing Fees
 - \$25 (up to \$600); \$45 (up to \$1750); \$65 (over \$1750)
- Signature:
 - Individual Plaintiff: plaintiff or plaintiff's guardian/conservator/next friend must sign. MCR 4.302(B)(1)
 - Sole proprietor/partnership/corp. plaintiff: signed by person authorized by 600.8407(3)

Contents of Notice to Appear

- Hearing Date is on the Affidavit/Claim form
- When and where to appear (box at upper right of DC 84)
 - The date for the appearance shall not be less than 15 days nor more than 45 days after the date of the notice.
- Other information contained on DC 84
 - Bring all books/papers/witnesses
 - Failure to appear may result in judgment against defendant
 - May appear to arrange terms of payment

Service of Claim

- Defendant to be served by Certified Mail w/return receipt and restricted delivery sent by the clerk; by personal service; or alternate service by court order
- If defendant is a corporation or partnership, certified mail does not have to be sent restricted delivery
- Service Fees:
 - Mailing Fee: A fee in an amount equal to the prevailing postal rate for the service provided shall be charged and collected for each defendant to whom a copy of the affidavit is mailed by the clerk. MCL 600.8420(2).
 - Personal Service: If the affidavit and notice to appear and answer are served by personal service, the person serving the process is entitled to the same fee and mileage as for the service of a summons and complaint out of the district court.

Notice Not Served/Not Timely

- If notice is not received by defendant at least 7 days before appearance date, and defendant doesn't appear, at plaintiff's request, clerk must issue further notice without extra costs to plaintiff setting a new hearing date. MCR 4.303(C)
 - New notice is served as provided in MCR 2.105.
- If defendant is not served personally or doesn't sign the certified mail receipt at least 7 days before appearance date, there is no jurisdiction to enter the judgment unless defendant appears. MCL 600.8406.
- If Affidavit expires before defendant is served, discuss your court's policy with your court administrator.

Appearance/Non Appearance

- If all parties fail to appear, court may dismiss claim for want of prosecution.
- If defendant fails to appear, judgment may be entered by default (if defendant was served)
- If plaintiff fails to appear, claim may be dismissed for want of prosecution, the defendant may proceed to trial on the merits, or the action may be adjourned.

Removal

- Before trial begins, either party may demand removal to general civil or may demand the proceeding be held before a judge not a district court magistrate.
- Demand for removal may be made in writing and filed with the clerk or by appearing before the court and making the demand at the time set for hearing.
 - The demand may be made by an attorney.
- Upon receiving the demand, the court by written order directs removal for further proceedings.
 - Order directs defendant to file a written answer and serve it within 14 days of order date.
 - Clerk must mail copy of the order to each party.

Removal

- There is no fee for removal.
- If plaintiff amends the complaint to an amount greater than the original claim then he has to pay any difference in the filing fee for the new amount claimed.
 - For example, if plaintiff filed a claim in SC for \$600 and paid the \$25 filing fee, but then amends his complaint to claim \$7,000 upon removal to GC which has a \$65 filing fee, he would have to pay the difference between the filing fees of \$40.
- After removal, the rules applicable to other civil actions govern.
- If there is default after removal (ex. defendant fails to file an answer), MCR 2.603 governs.

Counterclaim or Separate Action

- Defendant may assert a counterclaim in a small claims case and if so, court may grant a continuance upon request.
- If a defendant asserts a separate claim against plaintiff that exceeds small claims jurisdiction, the defendant's claim must be filed in the proper court (this could be in district court or circuit court) and the small claims division shall order that the small claims action be transferred to the court where the defendant filed his separate action.
- MCL 600.8422, 8423

Hearing

- Before or at the hearing, settlement may be completed in writing and signed by both parties either before or at the hearing.
- No jury and no verbatim record of proceedings.

Judgments

- Judgment is entered at the time of the court's findings.
- Court may order judgment paid in lump sum or installment payments.
- Court may provide for stay of enforcement while defendant is in compliance with installments.
- May be modified or vacated as allowed in other civil actions but no appeal may be taken (except party may appeal a district court magistrate's decision MCL 600.8427).
- Copy of judgment shall be given in court, delivered or mailed to each party following entry. MCL 600.8410(6).
- Copy of instruction sheet on collecting judgment shall be offered to plaintiff at time judgment is entered. MCL 600.8409(2). (SCAO form DCi84)
- Judgment is good for 6 years and may be renewed. MCL 600.5809

Post Judgment Proceedings

- Appeals: If case was heard by district court magistrate, an appeal de novo may be taken by either party within 7 days of the magistrate's decision. Matter will be heard before the district court judge. No further appeals are available.
- Garnishment is permitted. \$15 filing fee.
 - May not issue until 21 days after judgment entry.
- Order to seize property: \$15 filing fee.
- Discovery Subpoena: \$15 filing fee.
- At plaintiff's request, a judgment arising from vehicle crash may be reported by the court to MDOS.

Post Judgment Proceedings

- Motion to Set Aside Default Judgment
 - Only heard by a judge
 - Motion must be filed within 21 days after default entered
 - MCR 2.603(D)
- Motion to Set Aside Installment Payment Order

Questions?

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