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COST FOR FILING A SMALL CLAIM
NO PERSONAL CHECKS ARE ACCEPTED
CASH, VISA OR MASTERCARD ARE ACCEPTED

\$60 for one (1) Defendant ... includes Certified Mail Service.

If you are filing against more than one (1) Defendant, it will be an additional cost of **\$10** for each additional Defendant.

\$25 additional for Bailiff Service for one Defendant.

RULES FOR FILING A SMALL CLAIM

1. The amount claimed cannot exceed **\$3,000** and you may not separate your claim into multiple suits.
2. You must know the address of the party you file suit against, and they must live within the jurisdiction of this Court, have their principal place of business here, or else the incident for which you're filing must have taken place here. This Court's jurisdiction includes: **PAINESVILLE, CONCORD TWP., GRAND RIVER, FAIRPORT, LEROY, PERRY, AND MADISON.**
3. If you are a minor, under, 18, you must have your parent or guardian file the suit for you.
4. You may sue a minor through his parent or legal guardian only.
5. No person, firm, or corporation may file more than six (6) complaints in one week.
6. The party filing the suit (the Plaintiff) must prove his case by a preponderance of admissible and credible evidence.
7. The HEARING DATE is the date of the TRIAL.
8. **THE MEMBERS OF THE CLERK'S OFFICE ARE NOT ATTORNEYS AND THEY ARE PROHIBITED BY LAW TO GIVE LEGAL ADVICE.** If you require Legal Advice, you must get the advice from an **ATTORNEY**.
9. When a judgment is obtained and the Defendant refuses to pay, the Clerk's Office will supply the Plaintiff with the necessary forms and assistance to attempt to collect on the judgment.
10. Auto accidents or any automobile-related incidents require proof of title in Court. You must be the owner of the car in order to file suit.
11. Be prepared to spend several hours at the Court.

WARRANTIES & DISCLAIMERS:

This Consumer Guide to Small Claims

WILL NOT . . .

- . . . provide you with any legal advice;
- . . . make you an authority on Small Claims;
- . . . guarantee you will win your case or collect a judgment;
- . . . take the place of an attorney; or
- . . . even answer all of your questions.

But, the Consumer Guide

SHOULD . . .

- . . . help you understand the Small Claims process;
- . . . provide step-by-step guidance through numerous procedures;
- . . . increase your chances of collection (if you win); and
- . . . possibly even overwhelm you with information.

NEED A LAWYER?

If you need an attorney, but don't know where to turn, call the Lake County Bar Association. The Bar's "Lawyer Referral Service" will provide a name from a list of attorneys. (Call: 440 352-6044)

The "Consumers' Guide to Small Claims Court" originated with the Division of Human Services, Office of Consumer Protection, City of Cincinnati, and has been adopted, with applicable changes, for the Painesville Municipal Court Small Claims Division.

All information as to addresses, phone numbers, fees, etc. was confirmed as of July 9, 2008.

WHAT'S, WHERE'S, AND HOW'S

What is Small Claims?

Small Claims is a division of Municipal Court. There are three (3) Municipal Courts in Lake County ... Painesville, Mentor and Willoughby, and each has its own Small Claims division. Which of these Courts you will file your Claim in is determined by **1**) where the Defendant (person being sued) resides, **2**) where the Defendant's principal place of business is, or **3**) where the action took place. Small Claims was created by the Ohio Legislature to permit easy access to court for persons with disputes involving relatively small amounts of money. In Painesville Municipal Court, cases are heard by a "Magistrate" who is an attorney appointed by the Court.

Is a lawyer required?

No! One objective of Small Claims is to make it possible for individuals to argue their own cases without the added expense of hiring a lawyer. For this reason, Small Claims rules and procedures are not as strict as those in regular Court.

Corporations may use Small Claims Court with an individual representative so long as the representative does not act as an advocate, and he/she may not engage in cross-examination, arguments, or other acts of advocacy. A corporate representative shall be a bona fide officer or salaried employee only. (*This means a corporation must have their attorney handle any collection proceedings.*)

How big is "small"?

The most you can sue for in Small Claims is **\$3,000**; there is no minimum amount, and you can only sue for money.

What does it cost and where do I file?

The typical cost is **\$60.00**. This includes certified mail service to notify the Defendant. You file in the Civil/Small Claims division of Painesville Municipal Court Clerk's Office, 7 Richmond St., in downtown Painesville (same building as the City Hall and Safety Center). If you win your case, the Defendant will probably be ordered to pay the Court costs back to you in addition to the amount of your judgment. The costs are slightly higher if you are suing more than one person. (See Page 1 for more details on costs.)

What kinds of cases are heard?

Small Claims can only decide claims for MONEY. The Small Claims Magistrate cannot order a Defendant to do anything other than pay a specific sum of money. So, you must be able to put a price tag on any damages you have suffered as a result of the Defendant's actions. (See the section on determining your damages on Page 5.)

Small Claims does NOT have jurisdiction in real or personal property matters, alimony or support from a divorce or dissolution. Only Domestic Relations Court has jurisdiction to deal with these issues.

Small Claims does NOT have jurisdiction in such actions as libel, slander, repossession or any other kinds of cases which do not involve actual monetary damages. If you have a dispute with your mechanic, for example, you can base an action on your bills or the estimated cost of redoing his work. BUT, you could not ask the Court to make the mechanic fix your car or release it before payment of a bill. Typical cases involve contract disputes, rental security deposit claims, accident damages, etc. Small Claims is also used by many merchants to sue consumers who have defaulted on loan agreements. The following are examples of some of these typical cases.

Rent Deposits

If your case is against a landlord for not returning a rent deposit, you could ask for and be awarded DOUBLE damages if you can prove:

1. You gave proper notice before leaving, and left a forwarding address,
AND
2. 30 days after you moved, the landlord still had not returned your deposit nor provided an itemized statement of damages to you.

*** If you can prove the landlord's damage claims (although sent within 30 days) are false, you may still claim double damages.

Car Damages

If your case involves damages to a motor vehicle, you may have a special problem proving the amount of damages.

Although a repair estimate may seem the logical way to prove this, the Court will require something totally different. The Magistrate will want to know how much the car was worth (its "value") just BEFORE the damages occurred, and how much it was worth AFTER the damage. The difference between these two values is your actual damages. (See the section on determining your damages on Page 5.)

Filing Your Case

Before you file:

Make sure you know the true, legal name of the person or business you intend to sue. If you sue the wrong party, the case may be dismissed (thrown out), or you could wind up with an uncollectible judgment.

For example, a common mistake would be for a tenant to sue the resident manager for the return of a rent deposit, when he/she should have sued the owner of the building. Similarly, it would be a mistake for the customer of a repair shop to sue the mechanic instead of the shop owner.

A similar problem can result from suing a business name (such as NM's Car Repair) without making sure it is the business's legal name. Unless the business is actually incorporated under that name, there may be no chance of collection, even if you should win.

An unincorporated business (sole owner or partnership) must be sued in the personal name of the owner or partner, i.e., Joe Sleaze dba Sleazy Joe's. ("dba" means "doing business as")

Only a corporation (NM Car Repair, Inc.) can actually be sued in the company name. If you are unsure whether the business is incorporated, call the **Ohio Secretary of State at (877) 767-3453**, or on the internet at www.sos.state.oh.us. You may discover the business name is totally different from the actual corporate name, and it is the corporate identity you should be suing.

Finally, as a general rule, you should seek to sue a person or business in the county (or municipality in which he/she/it resides or does business, or where the incident for which you are suing occurred.

Determining your damages:

Since you can only collect money from a Small Claims action, it is very important you put the right price tag on your claim. For example, if you are suing for damages to your car from an accident, you will have to determine the value of your car just before the accident and what it is worth to you after the accident. To determine the value before the accident, you could use a "blue book" or some other such guide to appraise your car's worth. All you really need to do is state what you feel was its value "within reason." To determine the car's worth after the accident, you could get repair estimates, but that is not absolutely necessary; the Court will basically be concerned with the car's value to YOU, again within reason.

For example, you determine your car was worth \$1,500 before the accident. After the accident, you feel your car is only worth \$500. Therefore, your damage claim would be \$1,000.

How and where to file:

Once you have determined who you are going to sue and for how much, go to the Clerk of Courts office (Civil/Small Claims division) to fill out a Small Claims Complaint Form. You will pay the appropriate Court fees at this time. Although the Clerk may help you fill out the form, he or she **is not an attorney and cannot give you legal advice** about your case.

No service . . . no case:

Until the Defendant has been served with (received) a summons, nothing can happen. The best case in the world is no good if you cannot get service on the Defendant. Listed below are the three (3) ways service can be attempted.

1. Certified mail is tried first. If the Postal Service returns that letter to Clerk of Courts unserved, you will be sent a notice notifying you of "failure of service". The next move is up to you.
2. You can ask the Clerk to try re-serving the Defendant with "regular mail" (but ONLY if the certified mail was returned "Unclaimed" or "Refused"). If the regular mail summons is NOT returned (marked "Addressee Unknown", etc.), it is assumed to have been served. (To save time, the clerks' office will have you sign an authorization to reissue the summons by regular mail at the time you file your complaint.)
3. If all else fails, you can ask to have a Court Bailiff attempt personal service of the summons . . . for an additional **\$25** fee.

***If you hear nothing from the Clerk's office, DO NOT assume that service was successful. Call the Clerk (440 392-5900) in the afternoon of the last business day before your hearing date to make sure. (And to make sure that the case has not been continued for some reason)

Beware!!!

Unfortunately, filing suit in Small Claims Court does NOT guarantee that the case will be heard there. Any Defendant has the right to ask that the case be taken out of Small Claims and put into the regular Municipal Court docket.

The Court usually grants such requests or "motions." If this happens to your case, it will be scheduled for a pretrial in regular Court, and it may make it harder for you to continue without an attorney. While you would still have the right to represent yourself in Municipal Court, you will not enjoy the relaxed rules of Small Claims and you should, therefore, consider at least consulting with an attorney before going into Municipal Court on your own.

Observe:

If you have the time, visit Court as a spectator some time before your Court date. Watch and listen carefully, you will learn some valuable lessons about presenting your own case.

PREPARING YOUR CASE

Organize:

Organize the case before going to Court. Plan just what you will say and organize your testimony and arguments so the Magistrate will be able to understand clearly what happened and why you have been injured or wronged. Bear in mind you will have to convince the Small claims Magistrate not only that you are right, but that you are also entitled to a specific sum of money from the Defendant.

Rehearse:

Try out your presentation on a friend or relative before going to Court.

Gather Evidence:

Collect all documents related to your case, (receipts, cancelled checks, estimates, bills, contracts, photos, etc.)

***If the case involves damages to your car, you will have to have the title with you in Court to prove ownership.

Round Up Witnesses:

Line up your witnesses. You will not be allowed to tell the Magistrate what someone else (except the Defendant) told you. This is called "hearsay" and is not permitted in Court.

So, if a mechanic has told you that your car was improperly repaired, or that repairs would cost you a certain amount, that person must actually testify to do any good. It will NOT be good enough just to have a copy of a letter, estimate, or statement from the person.

If a witness is reluctant to testify, you can have him/her subpoenaed. Subpoenas are arranged for at the Clerk's office (there's a fee) and must be requested at least seven (7) days before trial.

If you plan to call an "expert" witness, (i.e., a mechanic, roofer, or anyone whose testimony will involve expert OPINION), you should be prepared to pay that person for his/her service.

Continuance: If you find that you must have your hearing continued to another date, you must file a Motion for Continuance, which will cost you **\$30**, and which must be filed at least one week prior to your scheduled hearing date. The Continuance forms are available at our web site, www.pmcourt.com, or at the Civil window at the Court.

GOING TO COURT

1. **BE ON TIME!!!** Court starts promptly at the time printed on your notice. If you are late, you may automatically lose.
2. As instructed on your notice, you should call the court between 3:00 PM and 4:30 PM on the last business day before your hearing date to find out if your complaint has been properly served, and if your case will be heard at the original time and date, as listed on your notice.

3. The bailiff will call your case when the Magistrate is ready for you. If a Plaintiff (the one who is suing) is absent, the case is dismissed . . . it's all over! If a Defendant (the one who is being sued) is absent, the Magistrate will probably grant a "default judgment", which means the Plaintiff has automatically won. So, remember: if you are absent (or even very late), you lose, whether you are Plaintiff or Defendant.
4. After role call, the Magistrate will begin hearing the actual case.

Present Your Best Case:

1. Each side gets a chance to present testimony and evidence. If you filed the suit, you are the Plaintiff, and you talk first. The entire Small Claims hearing will be limited to 15 minutes.
2. Remember your plans and rehearsals, and present your case in an orderly manner. Include all relevant facts and be sure to state the amount you are claiming and explain how you arrived at this amount. Show the Magistrate any documents or other evidence you have.
3. The other side will have a chance to question (not argue with) you on any points you have raised in your testimony. The Magistrate may also ask you clarifying questions. Remember you are under oath and must answer as completely as possible.
4. If you have witnesses, they will then have the chance to explain what they know about the case. They may also be questioned (cross-examined) by the other side.
5. Remember that "hearsay" (what somebody not in Court told you, such as "... and my mechanic said...") is NOT permitted. You should, however, be permitted to repeat anything the Defendant said directly to you.
6. After the Plaintiff has finished, it is the Defendant's turn.
7. You will have the chance to question each witness for the other side. Do not interrupt or argue. Permit the Defendant or his/her witness to complete their testimony and then the Magistrate will give you a chance to ask questions.
8. The Magistrate may ask questions to clarify the case.
9. You will either win or lose. If you win, (judgment for the Plaintiff), the Magistrate will set the amount of your judgment, (i.e., how much money you are entitled to collect from the Defendant). This judgment is then entered into the Court's records, and both parties will receive the Magistrate's decision in the mail.

If you lose. . .

If the Magistrate finds against you, there are procedures for appealing the Magistrate's decision:

1. After the Magistrate's Decision has been filed, you have only seven (7) days to request an explanation of the Magistrate's Decision, which is called "Findings of Fact and Conclusions of Law". You would do this by writing to the Court and requesting that the Magistrate prepare "Findings of Fact and Conclusions of Law" on your case.
2. After the Findings of Fact and Conclusions of Law have been filed, if you still want to, you can file "Objections" with the Court within fourteen (14) days of the time-stamped filing date of Magistrate's Findings of Fact, detailing the errors you believe the Magistrate has made. Send a copy of your objections to your opponent (or his/her attorney) when you file them with the Court. When one party files Objections, the opposing party has 10 days to respond to the Objections before the case is submitted to the Judge for a final ruling.
3. The Decision and Findings of the Magistrate, and your Objections will be reviewed by a Municipal Court Judge. His decision will be mailed to both parties.
4. If your Objections are upheld, you may be granted a new hearing, or the Judge may simply modify the judgment.
5. If the Magistrate's Decision is upheld by the Judge, you CAN appeal the Judge's ruling to the Eleventh District Court of Appeals. At this point, however, the matter gets more complex and costly, requiring a transcript of the original hearing (YOU pay for it), and, possibly, the services of an attorney. Before taking this step, you should consult with an attorney as to the merits of your arguments.

If you win . . .

The losing Defendant becomes a "judgment debtor" with thirty (30) days to voluntarily pay the judgment. If you are lucky, the debtor will pay and the case will become a fond memory. If not, however, you will need to study the next section of this booklet: "Collecting a Judgment".

COLLECTING A JUDGMENT

The real work begins:

Once the judgment has been awarded, the name game changes. The victorious Plaintiff is now a "judgment creditor", and the losing Defendant is a "judgment debtor". The judgment creditor's problem from here is to collect from the judgment debtor.

Default Judgment:

Small Claims cases are often over even before they begin. The Plaintiff shows up, ready for trial, but the Defendant does not. The Magistrate grants the Plaintiff a default judgment. This judgment is just as enforceable as it would have been had the Defendant shown up and lost after putting on a spirited defense.

However, there is one important difference. When the Defendant actually appears in court, he/she hears the Magistrate explain that the case has been lost and there is an obligation to pay the judgment amount to the Plaintiff. Although the Defendant in a default case obviously has not heard this, the Court assures that he/she is notified of the outcome of the suit by mailing a copy of the final Judgment Entry to both parties. The Court does nothing else, however, (no notices, letters, or phone calls) to try to get the judgment debtor to pay the debt. So, if you want to be sure that the Defendant fully understands what has happened and that you are now a judgment creditor owed \$729, it is **your** job to notify him/her and request payment.

If the judgment debtor fails to pay, then your only hope of collection lies with the more formal procedures outlined in the following pages.

It is up to you!

"The Magistrate told the Defendant to pay me \$729, but he won't pay, and I understand the Court won't force him to pay me. That's not fair!"

No Court (not just Small Claims) automatically forces a debtor to pay. The Court has confirmed that the debtor has a legal, enforceable obligation to pay, but then it becomes the creditor's job to collect that debt. There are, however, several kinds of actions you can take THROUGH the Court to collect. These are the same kinds of actions commercial creditors (banks, furniture stores, etc.) use, including garnishment of wages, attaching property, and attaching bank accounts. The only difference--you are trying to do it for the first time!

Step by step . . .

Each of these collection steps will require you to return to the Clerk, fill out more forms, and pay more fees. It can be a lengthy process, but it can work.

Before you collect from the reluctant debtor, you must first know something about his/her finances. This can be a major treasure hunt! If you are already familiar with where the judgment debtor banks, works, lives, does business, etc., you may know enough to proceed with collection.

However, if not, all's not lost. Read on to discover the wonders of the "judgment debtor examination"!

SMALL CLAIMS EXAM QUESTIONNAIRE

In addition to the standard judgment debtor exam available to all judgment creditors, the Small Claims victor has an additional, simplified process which may save considerable time. You may, therefore, wish to try this.

1. Wait until thirty (30) days after the judgment.
2. Go to the Clerk's office and ask for a precipe (rhymes with recipe) for a Small Claims Exam Questionnaire. This will cost you **\$30**, which will be added into the Court costs the debtor owes you, as will all your Court fees. Fill in the form with your case number, your name, the name of the judgment debtor, and the address where you want the judgment debtor served.
3. The Clerk will then mail a "Small Claims Debtor's Exam Questionnaire" to the judgment debtor, asking for a list of his/her assets, liabilities, and personal earnings.
4. The judgment debtor will be given one (1) week to return the information to the Clerk. He/she will be informed that failure to respond within the week could result in a charge of contempt of court.
5. To obtain the judgment debtor's exam answers, you will have to appear before the Court on the scheduled hearing date.
6. If you appear, and if you must ask the debtor the Exam questions, and if you believe the debtor is lying, or if he/she refuses to answer your questions, ask the Bailiff to take you both before the Magistrate. Then ask the questions in the Magistrate's presence. This is sometimes needed to persuade the debtor to cooperate.
7. If the judgment debtor fails to return the completed Exam Questionnaire to the Clerk, and fails to appear at the hearing, the judgment debtor can be found in contempt of Court, fined and a warrant may issue for his/her arrest (to be brought before the Court for purposes of Examination).

Once you have obtained your information, you can then proceed to use the various collection approaches outlined on the following pages.

Garnishment

If the debtor is employed, has a checking account or savings account, or is a landlord, you may "garnish" the employer, the bank, or the tenants. A bank garnishment is **\$50** to file, and you provide the Court with the name and address of the bank.

Garnishment is a process that lets the creditor claim and take money owed to the debtor by another person (employer, bank, etc.). The employer is holding the employee's money and, through the garnishment process, may be required to pay a portion of those wages to the creditor.

Garnishment of wages, as a process, consists of the following:

1. Mail a fifteen (15) day notice of intent to garnish to the judgment debtor (either by certified mail or with a certificate of mailing, from the post office). Fifteen day notice forms are available at the Clerk's Office. This notice is not needed for a bank account or tenant.
2. After the fifteen (15) days have passed and no money has been received, go to the Clerk's office and tell them that you want to file a wage garnishment. You will need to bring your copy of the fifteen day notice (and the proof of service), the name and address of the employer, and a **\$50** filing fee.
3. The clerk will prepare your forms for you, but you must have these figures ready when you file: **A)** the judgment amount; **B)** your total court costs; **C)** the interest computed to-date; and **D)** the total amount due. **BE PREPARED.**
4. The clerk's office will mail these forms out to the employer as soon as possible, and should receive an answer in about two (2) weeks.
5. When the Court receives a check from the employer, these funds will automatically be mailed to you in the following month.

Limits and exceptions:

1. Income from sources such as Social Security, Welfare, Workman's Compensation, Unemployment Compensation, etc., are exempt and protected from garnishment. It is also possible for the judgment debtor to block any action you take against a bank account if it can be shown that the money in the account came from these types of sources (public assistance).
2. The amount that can be garnished from any employer (by creditors collectively at one time) is regulated by law. Creditors cannot attach the debtor's entire paycheck and the most creditors, collectively, can ever obtain during any one pay period, is 25% of the debtor's take-home pay.

Liens:

A "lien" (sounds like lean) can be placed on any real estate owned by the judgment debtor, if the real estate is in Lake County, and was owned at the time the case was originally filed.

The lien must be renewed every five (5) years. The lien holder (judgment creditor) will recover the amount of the judgment when the property is sold. The procedure for filing a lien is fairly simple:

1. Go to the Clerk's office and ask for a "Precipe for Certificate of Judgment for Lien".
2. Complete the information on the form and file it, along with a **\$20** fee, and the clerk will give you a Certificate.
3. Take the Certificate to the Clerk of Common Pleas Court (next door to the Common Pleas Courthouse) and ask for assistance in filing a lien on the judgment debtor's real property. The fee for this is another \$20.

FINAL NOTE

Your judgment is good for five (5) years from the date of the last action taken. If you do not take some kind of action on your judgment (file a lien, a garnishment, etc.) within five years, your judgment will become "dormant". This means that if you try to collect on your judgment (after it has become "dormant") you will first have to file a "Motion to Revive Dormant Judgment" with the Court. There's a fee for this, and you have another hearing.