

HOW TO SUE SOMEONE IN SMALL CLAIMS COURT

If you want to bring a lawsuit against someone who owes you money or who has caused damage to your property or possessions and you cannot resolve the dispute through mediation or other means and the damages are \$3,000.00 or less, you may file your case in Small Claims Court.

In Small Claims Court, there are no attorneys, no jury trials, and the judge's decision is final. The defendant has the right to ask that the case be removed to the General Civil Division so that the defendant can be represented by an attorney, ask for a jury trial or appeal the judge's decision.

WHAT TO EXPECT WHEN YOU GO TO COURT

Take your time and in your own words tell what happened and why you think the defendant owes you money, and what you would like the court to do. Remember, this is NOT the time or place to vent your anger or frustration. Keep your testimony to the facts of the case. Show the judge the evidence you brought and introduce any witnesses you may have. The witnesses will be allowed to tell the judge what they know about the case in their own words.

After you have finished, the defendants will have an opportunity to tell their side of the case. Listen carefully, it is up to you to make sure all the facts of the case are presented to the judge fairly and completely. If you think the defendant is leaving something out or changing the facts, tell the judge. The judge will give you an opportunity to speak after the defendant has finished speaking. The judge will want to hear all the facts before making a decision.

As the plaintiff, you have the burden to prove your case by a preponderance of the evidence. Remember, the judge's decision in Small Claims Court is **FINAL**. Neither you nor the defendant can take the case to a higher court once the judge has made a decision.

FEE SCHEDULE

Filing Fee (up to \$600.00)	\$25.00
Filing Fee (\$601.00-\$1,750.00)	\$45.00
Filing Fee (\$1,751.00-\$3,000.00)	\$65.00
Writ of Garnishment	\$15.00+\$6.00 for garnishee defendant
Motion for Installment Payment Plan	\$20.00
Motion for Alternate Service	\$20.00
Motion to Set Aside Installment Payments	\$20.00 If there is a payment plan in effect, the plaintiff must file a Motion to Set Aside the Installment Payments before garnishing the defendant's wages.
Request and Order to Seize Property*	\$15.00
Civil Discovery Subpoena*	\$15.00

*Must be served by a Court Officer

SERVICE OPTIONS:

- ★ Service by **CERTIFIED MAIL** is the responsibility of the plaintiff. Service **MUST** be **CERTIFIED/RESTRICTED DELIVERY**, at a rate set by the U.S. Post Office
- ★ Service charges by our **COURT OFFICERS** are \$21.00 plus mileage round trip PER DEFENDANT to be served from the issuing court to the place of service at the rate set by the State Court Administrative Office. You will be billed for this service by the Court Officer. If the Court Officer is given an incorrect address, you will be charged an additional \$10.00. **THE PLAINTIFF MUST PAY THIS FEE, IT IS NOT CHARGED TO THE DEFENDANT.** There may be other charges, for example, if the Court Officer has to file a Motion for Alternate Service. These fees must be paid even if you are unable to collect from the defendant.

POINTS TO REMEMBER

1. Do not be afraid to go to court. This is your court. If you feel you have a claim against an individual or a business which you cannot otherwise settle, you may take them to court. It is your right.
2. To file a claim in the 62-B District Court, the cause of action must have arisen in the City of Kentwood or the defendant must reside in the City of Kentwood or, if a business, be established in the City of Kentwood. If you want to have the defendant personally served by a Court Officer, you must provide a street address, not a P.O. Box number.
3. When you go to court, you must bring any paperwork to support your claim, such as bills of sale, receipts, guarantees, accidents reports, leases, promissory notes, repair estimates, etc...
4. The plaintiff has the burden to prove his/her case by a preponderance of evidence.
5. You do not need a lawyer to file and proceed with a case in the small claims division of the district court. In fact, lawyers are not permitted to practice in the Small Claims Division. The defendant may wish to be represented by an attorney and may ask that the case be removed to the General Civil Division of the District Court.
6. If you win your case, the defendant is legally bound to pay you. You can enforce the judgment by garnishing the defendant's paycheck, bank accounts and state income tax refund. You can have the Court Officer seize certain property and sell it to pay the judgment amount.
7. You can also sue in Small Claims Court for automobile collision damage caused by another driver which was not covered by your insurance (Michigan Mini-tort Law). However, you cannot recover more than \$500.00 if the at-fault driver had insurance on his/her car.
8. The burden of collecting on a small claims judgment is on the plaintiff. The court has the necessary paperwork to help you collect and can advise you of the fees and procedures. Any attempt to collect, such as a garnishment, those fees and costs that are successful may be added to the judgment amount. These are considered post-judgment costs. If an attempt to collect is unsuccessful (garnishment of a bank account shows that the account has been closed) cannot be added in to the amount that you can collect.
9. At the 62-B District Court we offer the mediation services of the Dispute Resolution Center of West Michigan. You can call the Dispute Resolution Center at 774-0121 to obtain information on how mediation works. Mediation is a process in which both parties sit down with a trained mediator and each party explains the issues causing the problem. The mediator helps the parties find a workable solution. Mediation can help avoid the confrontational court setting in which there is the possibility of losing your entire case. If both parties agree, you may be able to participate in mediation on the day of the court hearing before the court trial. If you try mediation but are unable to come to an agreement, your case will be heard by the court on the scheduled date.
10. If you have questions or need assistance, please contact the Small Claims Clerk at 698-6385. The clerks are prohibited from giving legal advice, but can answer questions about general procedures. Fees are charged for the filing and serving of collection documents.

COLLECTING ON YOUR JUDGMENT

If you win the suit, the judge will enter a judgment. A judgment is the decision of the court. **The defendant has 21 days to pay the judgment or make arrangements to pay through the court.** If the defendant does not pay voluntarily, the burden of collecting the judgment is on the plaintiff. Collecting the judgment can be the most difficult aspect of any lawsuit. There are several procedures available that may be used to collect money on a judgment. The most common procedure is garnishment.

GARNISHMENTS

You may garnish the defendant's wages, the defendant's bank account, or the defendant's state income tax refund. To file a garnishment, you may ask the clerk for the appropriate forms. There is a \$15.00 fee for each garnishment. The plaintiff must send the original proof of service to the court in a timely manner.

THE DEFENDANT'S WAGES. The plaintiff is entitled to garnish a portion of the defendant's entire paycheck, as determined by a formula set forth by Federal Law. In order to garnish a defendant's wages, you must use the **PERIODIC GARNISHMENT FORM** and a **GARNISHEE DISCLOSURE FORM** with the top one-third filled out and a **FINAL STATEMENT** with the top one-third filled out. You must include a \$6.00 fee payable to the defendant's employer. You must know the address to which the garnishment should be sent. This is not necessarily the same address as the defendant's place of employment.

BANK OR CREDIT UNION ACCOUNT. In order to garnish the defendant's account with a bank, a credit union or other financial institution use the **NON-PERIODIC GARNISHMENT FORM** and a **GARNISHEE DISCLOSURE FORM** with the top one-third filled out. You must also include a \$1.00 fee payable to the defendant's bank or credit union.

STATE INCOME TAX REFUND. A garnishment of the defendant's state income tax refund must be filed with the State of Michigan between November 1 and December 31 for the year you want to garnish. You must include a \$6.00 garnishment fee. You must include the defendant's social security number. File the **STATE INCOME TAX GARNISHMENT FORM** with the court, along with a check for \$6.00 made payable to the State of Michigan. Follow the directions on the garnishment form carefully. You do not need to include a disclosure form or final statement. Send the garnishment by certified mail with return receipt requested. Follow the instructions about sending the defendant his/her copy.

REQUEST AND ORDER TO SEIZE PROPERTY

You may also file a Request and Order to Seize Property. This is a court order commanding the court officer to seize and sell personal property of the defendant (that is not exempt by law) to satisfy the judgment. This is most effective if the defendant is a business. Fill out an **ORDER FOR SEIZURE OF PROPERTY FORM**. The filing fee is \$15.00. There will be additional fees for the Court Officer. You will need the following information:

1. Where the defendant's property is located,
2. The amount owed to you on the judgment, and
3. A list of what property you think the defendant owns.

CIVIL DISCOVERY SUBPOENA

If you do not know where the defendant works, banks, or what kind of property the defendant owns, you may file for a **CIVIL DISCOVERY SUBPOENA**. The cost for the subpoena is \$15.00. The subpoena must be personally served by a court officer. The court officer will charge \$21.00 for the service plus mileage. The court officer will bill you directly after the defendant is served. The plaintiff should plan to attend the discovery.

COSTS

Post-judgment costs may be added to the judgment amount if the post-judgment action is successful.

WHEN YOU FILE A SMALL CLAIMS CASE AT THE 62-B DISTRICT COURT

Please remember, when you file a Small Claims case, the following applies:

1. If the defendant pays you after you file and before the hearing, you are entitled to add the cost of the filing fee and service fee. You **MUST** call the court at 698-6385 to cancel the court date. Please let the clerk know the method of payment (cash, check or money order). You **MUST** file a **DISMISSAL** with the court. Forms are available at the court counter.
2. The defendant must be served with the Small Claims Affidavit by an uninterested third party. You can ask that a Court Officer serve the defendant personally or you can serve the defendant by certified mail, restricted delivery, return receipt requested. If you want to know more about how to serve the defendant, ask the clerk.
3. If the defendant pays you **BEFORE** service of the papers, you are also to call the Court Officer to cancel service of the Small Claims Affidavit. Please call promptly. If the papers are served before you call the Court Officers, you will still have to pay for the bill of service, and cannot collect this from the defendant if they have already paid you in full. The Court Officers of this court are as follows:

Paralegal Services (George Nobel)	451-9141	
Grizzel and Associates (Dave Grizzel)	451-0293	Cell: 339-5017

4. If the plaintiff serves the defendant by certified mail, restricted delivery, the plaintiff **MUST** contact the court at least two days in advance of the hearing to let us know whether or not the defendant has been served. The plaintiff will have to bring proof of service to the hearing. If possible, please submit proof of service or send a fax to the court at least two days before the hearing. Our fax number is 698-8199.
5. The court grants only **ONE** adjournment of the hearing date per side for **valid reason**. Please call as soon as possible if there is a conflict. Calling the day before the hearing does not guarantee an adjournment.
6. If the defendant pays in full before the hearing, you **MUST** file a **DISMISSAL** with the court. **THE PLAINTIFF IS STILL RESPONSIBLE FOR PAYING THE COURT OFFICER IF THE PAPERWORK HAS BEEN SERVED, BUT THE DEFENDANT PAID THE PLAINTIFF BEFORE COURT!** If the defendant pays in full after a judgment is entered, you **MUST** file a **SATISFACTION OF JUDGMENT**. Forms are available at the court counter.