MISSOURI SMALL CLAIMS COURT HANDBOOK

Cases involving money in the amount of $5,000 or less

THE MISSOURI BAR
YOUNG LAWYERS' SECTION

Revised April 2021

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I. INTRODUCTION TO SMALL CLAIMS COURT

Small claims court is a division of the circuit court presided over by an appointed judge. Small claims court was established to help people handle cases involving money ($5,000 or less, not including costs) by themselves and without a lawyer.

Each county has a circuit clerk's office. The circuit clerk's office can assist persons who wish to file a case in small claims court.

Small claims proceedings are informal in nature. Rules of evidence do not apply. You must fill out all required forms and present your own evidence in court. There are no jury trials.

While the small claims court system was designed to settle uncomplicated disputes, filing and winning a claim — as well as collecting your money — can feel complicated. There are certain rules you must follow if you want your claim to succeed.

This handbook is designed to introduce you to many of those rules and to assist you in pursuing your claim in small claims court.

Finding Legal Assistance

LawyerSearch tool

Use LawyerSearch to find a lawyer currently accepting new clients. Not all Missouri lawyers are listed in LawyerSearch - only those who have indicated that they would like to be included. You can search by areas of practice or location.

Missouri.FreeLegalAnswers.org

Missouri.FreeLegalAnswers.org is a free service for low-income Missouri residents who think they cannot afford a lawyer to get answers about non-criminal problems from volunteer lawyers.

See if you qualify

Answer a few questions to see if you qualify to use this service.

Ask a question

Ask our volunteer attorneys a specific question about your civil legal issue.

Check your email

You'll receive an email telling you when your question receives a response.

Log back in

See the response to your question; ask more questions.

II. THINGS TO CONSIDER BEFORE BRINGING A CLAIM

A. Who can I sue? What can I sue them for?

Any person or business with a civil claim that DOES NOT EXCEED $5,000 may bring a suit in small claims court. The $5,000 limit does not include court costs and any interest the judge may award you. You may still file a claim if the amount exceeds $5,000. However, if you choose to do this, you give up your right to claim any amount exceeding $5,000 both in your present suit and in any other claim involving the same person or business and the same issues.

You can only file a claim in small claims court against someone who owes you money; you may not file a claim on behalf of others. Furthermore, an assignee of a claim (i.e., a person or business that purchases or otherwise has the right to a claim) may not file in small claims court.

You may file no more than 12 claims in small claims court in any calendar year. The court can only handle claims for money. Therefore, the court cannot force anyone to return property to you, nor can the small claims court be used by landlords to evict tenants. Furthermore, the court is not responsible for collecting the money that the judge may determine is owed to you.

B. When do I have to file my lawsuit?

Depending on the type of claim you are making, you have a certain amount of time to file the claim. This time limit is called the statute of limitations, and you must file your claim before the time period expires. This time period begins to run when the injury or damage occurs or when the injury or damage should have been discovered.

The time period allowed varies with different types of claims. Claims for personal injury or damage to your property and claims for money damages for breach of contract must be filed within five years. Claims to recover money for breach of a written promise to pay must be filed within 10 years from the date of the breach of the written promise. The time periods for other types of actions vary, however, you generally have two years to file a claim.

To be safe, you should file your claim as soon as possible. If you are unsure about when your claim must be filed, you should consult a lawyer as soon as possible.

C. Can I settle before I sue?

Yes. Attempting to settle a claim before filing suit is a good idea, unless you're at risk of running out of time. Pursuing a claim in court is a serious matter with unpredictable results. If you sue, you may lose. Be sure you feel you can adequately explain and prove your claim to a judge.

Even if you win, YOU are responsible for collecting the money from the defendant (the person or business you name in the claim). If the defendant refuses to pay you voluntarily, you must use specific court procedures in

order to compel your opponent to pay. The small claims court does not pay you money if you win.

Furthermore, the defendant may file a valid claim against you (a counterclaim), and the judge could decide that you owe the defendant money.

The courts should be used as a last step to get what you think you are owed. If the court, in its discretion, decides you are only suing in order to harass the defendant, your case may be dismissed, your court costs forfeited, and your access to the small claims courts barred for up to one year.

Given the difficulties of going to court, you should first try to settle the claim. A successful settlement will save you the time and money you would have spent on going to court. Furthermore, if you are unable to settle, your attempts to do so may be looked on favorably by the judge. You can settle your case at any time before or after the case is heard by the judge, if you and the defendant are willing.

One method of settlement is to communicate with the person you believe owes you money, explain why and how much is owed to you, and request payment. This can be done in person, over the telephone, or by writing a letter. You should do so in writing by certified mail, if possible. If you write the defendant, be sure to keep copies of all correspondence sent and received. If you end up going to small claims court, you can use this written correspondence to show the judge that you have made reasonable attempts to settle the claim and that you are not suing to harass the defendant.

If your dispute is with a business, there are consumer protection agencies in some areas that may assist you in settling your claim before you sue. One such agency is the Better Business Bureau in your area, which often acts as a mediator to settle claims by agreement between both sides in the suit. If their proposed settlement is unsatisfactory, you do not have to accept it. An additional agency you might want to report your problem to is the Consumer Protection Division of the Missouri Attorney General's Office at 1-800-392-8222 or online at ago.mo.gov/app/consumercomplaint.

If you settle your dispute after you filed your case but before going to trial, notify the clerk that you would like to dismiss your case. If your settlement is not to be paid immediately, you should put the agreement in writing in the form of a judgment, signed by the parties and filed with the court so the judge can enter a judgment.

If the defendant then fails to pay, you can file an appropriate action in court to collect your money (see Section IV, Collecting on Your Claim). The defendant should be sure the plaintiff files a "Dismissal" form if the defendant pays the judgment before the court hears the case.

If the plaintiff obtains a judgment and the defendant pays this amount, the plaintiff and defendant should be sure a "Satisfaction of Judgment" is filed with the court.

III. WHAT DO I DO BEFORE I SUE?

A. How do I prepare to bring my claim?

If efforts to settle your claim have failed, there are several things you should do before going to the courthouse to file your claim. Remember, if you have any questions, ask the clerk of the court or a lawyer licensed in Missouri.

Clerks under the supervision of the small claims court judges shall explain to litigants the procedures and functions of the small claims court and shall assist them in filling out all forms and pleadings necessary for the presentation of their claim or counterclaim to the court.

Get the correct name, address and telephone number of the person or business being sued

To begin with, be sure the person you want to sue is the one who actually injured you or owes you money. It is essential that you name the defendant properly. If you do not have the correct legal name of the person or business you want to sue, your case may be dismissed by the judge or you may not be able to collect your judgment.

In addition, the defendant's correct address is also essential. The court notifies the defendant of the suit by certified mail, and the address is also important to you for determining the proper court in which to file your claim. It is your responsibility to obtain this information.

As a general rule, there are three types of plaintiffs and defendants. The following are examples of how each must be listed on a small claims petition:

- *For individuals, use their full name. For example, "John Doe" not "J. Doe."*

- *For unincorporated businesses or partnerships, use the following: "Name of Owner d/b/a the Name of the Business." For example, "John Doe and James Roe d/b/a Roe's Tractor." If the business is unincorporated but is a partnership, you must find out who the partners are. You must sue and serve notice on each partner individually. (d/b/a means "doing business as")*

- *For a corporation or limited liability company (LLC), use the correct business name. For example, "Doe's Tractor, Inc" or "Doe's Tractor, LLC." You must also have the name and address of the registered agent of the corporation. The agent is the person who will receive the summons (notice of the suit filed). In addition to the name of the agent, the officers of the business may be named in the claim.*

Determine the type of business for purpose of naming defendant

To determine whether the business you are dealing with is incorporated, unincorporated, or a partnership, call the Secretary of State's Office in ***Jefferson City at 573-751-4153***, in ***Kansas City at 816-889-2925***, or in ***St. Louis at 314-340-7490***.
Information about business ownership may also be available through the occupational licenses office at your city hall. Ask them if the business is incorporated and for the correct business name. You may also perform a

business search through the Secretary of State's Office at https://bsd.sos.mo.gov/search.

If the business is incorporated, ask for the registered agent's name and address. If it is not incorporated or is not listed with the Secretary of State's Office and you know the name of the owner, list the name of the business as shown above.

If the business is a partnership, the Secretary of State's Office can assist you in finding the names of the individual partners. The Secretary of State's Office has an online tool you can use to look up business information here: https://bsd.sos.mo.gov/. Free copies of the information may be downloaded from this site, or a certified copy can be emailed to you for $10.

Be sure to bring the answer you received from the Secretary of State with you when you go to the courthouse to file your claim. The clerk can assist you in determining what name to put on the summons.

Choose the right court ("venue")

You must choose the correct court in which to file your claim. If you file in the wrong court, you will have to refile in the right court and pay the filing fee again. You have several courts to choose from, but check with the clerk or a lawyer to be sure you are in the right court and the right county. A claim can be filed in the small claims court:

1. In the county where the defendant lives. If the plaintiff is suing more than one defendant on the same claim, filing is proper in the county in which at least one of the defendants lives;

2. in the county where the transaction occurred that is the basis of your claim;

3. in the county where the plaintiff lives and the defendant may be found in that county (i.e., the defendant works in that county or has other regular business there);

4. in any county where the defendant has an office if the defendant is a business; OR

5. in the county of the registered agent of a business.

Filing for minors (under age 18)

If you are under the age of 18, you may still file a claim, but you must also bring someone over the age of 18 with you to the courthouse when you file your claim and when you go to trial. This person must be willing to act as your "next friend" (the person who will formally act in court for you). The clerk of the court has all the appropriate forms for this procedure and can answer your questions.

State your claim

Be prepared to state your claim as simply and as precisely as possible on the form provided by the clerk. **Here is a sample petition:**

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	**Case Number:**	(Date File Stamp)
Plaintiff(s): 1. 2. vs.	Plaintiff's Address (No. 1): City, State, Zip:	Defendant's Address (No. 1): City State, Zip:
Defendant(s): 1. 2.	Telephone Number: Plaintiff's Address (No. 2): City, State Zip: Telephone Number:	Telephone Number: Defendant's Address (No. 2): City, State, Zip: Telephone Number:

Petition Small Claims Court

Plaintiff states he/she has a claim against Defendant in the amount of $ _____. The claim arose on or about _____ (date) as a result of the following events:

(continue on additional page, if needed)

Plaintiff states that the information contained in this petition is true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim and that he/she has not filed more than 12 other claims in the Missouri small claims courts during the current calendar year.

Plaintiff understands that, should he/she be successful in this action and obtain judgment, and if Defendant does not appeal within ten days, this judgment becomes final. Plaintiff cannot commence another action involving the same parties and issues. Plaintiff understands that he/she is waiving the right to jury trial on these issues in the small claims court.

_____ Date

_____ Signature of Plaintiff

Keep a copy of this petition and bring it to court.

SJRC (05-23) SC40 1 of 1 SCR 141.01; 482.330, 482.340 RSMo

Access small claims forms here: https://www.courts.mo.gov/page.jsp?id=704

Pay the court costs

There is a filing fee to file each small claims case, plus the cost of mailing a certified letter, depending on the circumstances. Contact the county clerk's office to learn the precise charges and what payment methods are accepted. Be prepared to pay costs in addition to the filing fee and certified letter. For example, if you are unable to serve the defendant with notice of your claim by certified mail, you will have to pay additional costs for the sheriff or another special process server to serve the defendant.

If you are unable to pay the filing fee, you must ask the judge to let you file without paying the fee, and you must show the judge that you are not able to pay. One way to show the judge is to file a written statement or "affidavit" with the court stating specifically that you have a good claim and why you cannot afford to pay the fee. You must be very poor to file a claim without having to pay the fee.

After collecting all the required information and selecting the right court, you should be ready to go to the courthouse to file your claim. Once there, locate the associate division or small claims court and ask for the clerk who works in small claims court. All the necessary forms for filing a small claims case are provided by the court, including the petition (see above). The petition is the initial filing document. You are the "plaintiff." You must properly identify yourself on the petition and sign it. If one or more people are joining you in the claim, each person must be named as a plaintiff and sign the petition.

When you file your petition, or shortly thereafter by mail, you will receive a copy of your petition containing the case number, court date, time of hearing, and division in which your case will be heard. Mailing in your petition, rather than filling it out in person at the courthouse, is not recommended. However, if you do mail in your petition, you should mail all copies of the petition back to the court, along with a stamped, self-addressed envelope so the court can return a copy to you. Before mailing, you should make a copy of all documents in case they are lost or destroyed. Be sure the form is legible and signed by all the plaintiffs if there are more than one.

B. How can I get the other person to court?

Serving notice on the defendant

After you file your claim, the court will prepare a summons. The summons is the court document that orders the person you sued (the "defendant") to appear in court on a specific date and time. It also explains what happens if they do not appear and includes some instructions for the defendant. A copy of your petition gets sent to the defendant with the summons. The summons is most commonly served to the defendant by either certified mail or personal service. Different counties and courts handle service of the summons differently, so it is always best to ask the clerk how they handle it. You must verify with the clerk that the defendant will be served at least 10 days before the scheduled court date.

Regardless of the method of service, you will need to provide the court with an address where the defendant can receive mail or be physically located. This is usually a residence or place of employment. You are required to bring the cost of service to the clerk's office at the time of filing to avoid unnecessary delay. If the summons is sent by certified mail, the defendant will be required to sign for the letter. The cost would be the cost of a certified letter. If the summons is personally served, the defendant is handed the petition and summons by a law enforcement officer or special process server. The cost would be the fee for service and may include

mileage. This method of service is typically significantly more expensive than certified mail but is usually more reliable.

Alternative methods of serving notice on the defendant

If the defendant does not sign for the letter, you may need to have the notice served by a process server, such as the sheriff, which will cost you an additional fee. This is called "personal service," and it means a court official hands the summons to the defendant or a member of his or her immediate family over the age of 15. While this type of service can be quite expensive, personal service is usually more reliable. Ask the clerk for information and assistance on arranging for personal service. Also, remember to bring the fee in cash to pay for this service and to avoid further delay.

Failed service of summons

In the event you are unable to get a summons served on the first attempt, ask the clerk to issue a second summons or an "alias summons." The second summons will require payment of additional fees and it may or may not result in successful service. You should consider the likelihood of obtaining service before spending additional money or pursuing the claim.

Postponement of the trial

For good cause, a trial may be postponed by the judge. Such a postponement is referred to as a "continuance."

C. What do I do if I've been sued in small claims court?

If you are being sued (someone else sued you first)

If you have received notice in the mail that you are being sued, do not throw it away. Be sure you understand it and bring it to court. If you do not appear on the day and time stated in the summons, the judge may issue a default judgment ordering you to pay the person who is suing you. After receiving the summons, if you believe you owe the plaintiff some but not all the money claimed in the petition, you may try to settle the claim.

If you do settle, be sure to put the agreement in writing and file it with the clerk of the small claims court. If you are unable to settle with the plaintiff or do not agree that you owe the plaintiff any money, prepare to go to court and present your side of the story. You may bring a lawyer if you feel you need one to protect your rights. If you are under the age of 18, you may need to have a guardian appointed for the purpose of defending you in the action. Ask the court clerk if you have any questions.

Counterclaims (the person being sued responds by filing a different claim)

If you think you have a claim against the person who is suing you, you may file a "counterclaim" against the plaintiff at the same time you are being sued. The defendant does not have to pay the filing fee but must pay for the cost of mailing the counterclaim to the plaintiff. Some counterclaims must be filed with the court within 10 days after you receive notice that the plaintiff has sued you, and others may be brought at any time up to and including the time of the hearing.

Check with the clerk or a lawyer about when you must make your counterclaim. **Here is a sample counterclaim:**

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	**Case Number:**	(Date File Stamp)
Plaintiff(s): 1. 2. vs.	Plaintiff's Address (No. 1): City, State, Zip:	Defendant's Address (No. 1): City State, Zip:
Defendant(s): 1. 2.	Telephone Number: Plaintiff's Address (No. 2): City, State Zip: Telephone Number:	Telephone Number: Defendant's Address (No. 2): City, State, Zip: Telephone Number:

Petition Small Claims Court

Plaintiff states he/she has a claim against Defendant in the amount of $ _____. The claim arose on or about _____ (date) as a result of the following events:

(continue on additional page, if needed)

Plaintiff states that the information contained in this petition is true and correct to the best of his/her knowledge, that he/she is not an assignee of this claim and that he/she has not filed more than 12 other claims in the Missouri small claims courts during the current calendar year.

Plaintiff understands that, should he/she be successful in this action and obtain judgment, and if Defendant does not appeal within ten days, this judgment becomes final. Plaintiff cannot commence another action involving the same parties and issues. Plaintiff understands that he/she is waiving the right to jury trial on these issues in the small claims court.

_____ Date

_____ Signature of Plaintiff

Keep a copy of this petition and bring it to court.

Access small claims forms here: https://www.courts.mo.gov/page.jsp?id=704

There are two types of counterclaims

- **Counterclaim arising out of the same transaction:** This is a claim that arises from the same transaction, occurrence, or set of facts as the plaintiff's claim. After receiving the summons, you may go to the clerk and file your counterclaim on forms provided by the clerk, or the counterclaim may be raised at the hearing. You should file your counterclaim as soon as possible and as much in advance of the trial date as possible. Ask the clerk or a lawyer for assistance on filing a counterclaim. During the trial, if the defendant or judge discovers a counterclaim against the plaintiff arising out of the same transaction, the claim may be decided at the trial or at a separate hearing. If the defendant does not want to have the counterclaim decided in the present trial, only the plaintiff's claim will be decided. The defendant may then file a claim at a later date. The plaintiff may either agree to have the counterclaim decided immediately or have the trial postponed to allow the plaintiff an opportunity to prepare a defense to the counterclaim.

- **Counterclaim arising out of a different transaction:** This is a claim which did not arise out of the same transaction, occurrence, or set of facts as the plaintiff's claim. If you wish to have this counterclaim tried at the same hearing as the plaintiff's claim, you must file it before the hearing and not more than 10 days after receiving the summons (example: if you receive the summons Jan. 3, you must file this counterclaim on or before Jan. 13). The court clerk or a lawyer can assist you in completing a "Counterclaim Not Arising Out of Same Transaction" form. If you fail to file your claim within 10 days of receiving the summons, you will have to file a separate suit at a later date in which you will be the plaintiff.

Note on counterclaims over $5,000

- For both types of counterclaims, if the defendant's counterclaim is more than $5,000 (not including interest and costs), both the defendant and the plaintiff must agree to have it heard in the small claims court.

- If all parties do not consent and if the counterclaim arises out of the same transaction or facts pled in the petition, the court has to transfer the case to an associate judge.

- If one or both parties do not agree and the counterclaim does not arise out of the same transaction or facts, the court must dismiss the counterclaim without prejudice (meaning the claim can still be filed at another time).

- If the parties do not consent and if the counterclaim arises out of the same transaction or occurrence alleged in the petition, and the court determines the amount or nature of the counterclaim is not made in good faith (i.e. it is not based in fact, is malicious, is made to harass, is not relevant), the court must dismiss the counterclaim.

- If the case is transferred due to the claim or counterclaim exceeding $5,000, either party with a claim exceeding the limit may amend or change their claim so it does not exceed $5,000.

D. How should I prepare for trial?

Here are some suggested guidelines to consider that will assist you in pursuing your claim, whether you are a plaintiff asking for money in a petition, a defendant asking for money in a counterclaim, or a defendant claiming that you owe a plaintiff nothing:

Before court: Preparing yourself

- Mark your court date on a calendar which you look at often. On the day you were told your claim would be heard, be there. IF YOU MISS YOUR COURT DATE, YOUR CASE MAY BE DISMISSED. If you fail to show up and your case is dismissed, you cannot refile your claim in small claims court.

- Make sure you are familiar with the court's dress code and that you dress in accordance with it. You can ask the circuit clerk for this information.

- Gather everything you need, such as books, papers, documents, receipts, cancelled checks, photographs, etc., and put them in the order you need for presentation to the court. Bring anything that you think will help you in proving your claim to the judge.

- Make sure all witnesses necessary for you to prove your case are in the courtroom on time. If you have a witness who does not want to come to court, you have the right to "subpoena" the witness, which is a legal method used to require that person's presence. The clerk will issue the subpoena at your request. It must be personally served before your court date on the witness by you or someone over age 18. (This is different from the summons to the defendant which must be served by a court official or special process server.) There may be a small additional fee for this service.

- Be prepared, by making notes to yourself or otherwise, to give details of your claim to the judge as he or she questions you about it.

- If you have the opportunity, sit in on a session of the small claims court to familiarize yourself with the process. Also, it might be a good idea to practice your presentation before you go to trial.

- Remember, at any time before the case is heard by the judge, you and the other party can settle your claim. If you settle, notify the clerk as soon as possible. Also, you should put the settlement agreement in writing and file it with the clerk so that you may enforce it in court if the other party later refuses to pay.

- Either party can ask the judge for a continuance (a postponement of the trial date) if they will not be ready for trial at the date set. The judge can only grant a continuance for "good cause," such as a situation where you were in the hospital or had a very important event you could not reschedule. Therefore, the better the reason for not being ready for trial or not being available for court on the scheduled date and time, the more likely the judge will grant a continuance. Granting a continuance is the judge's decision to make, not yours or the other party's. You should show the judge you have done everything you could to be prepared for trial. In addition, you should notify the other party that you will be asking for a continuance. If a continuance is granted, you should then notify the other party of the new court date.

During court: Proving your claim

Be there early. If you are not there when your case is called, it can be dismissed, postponed to another day, or decided without you.

When your case is called, walk to the front of the court. You will talk to the judge who will ask you and your witnesses to tell your sides of the story. Show the judge your evidence as you tell your story rather than giving all the evidence at one time after finishing your presentation. The plaintiff and plaintiff's witnesses go first, then the defendant and defendant's witnesses. It is suggested that you only address the judge and not argue with the judge or the other party. Do not interrupt the other party. Remember, you must only convince the judge you are right, not the other party. There are no juries.

- Be courteous to both the judge and the other party.
- Have all your evidence (pictures, papers, estimates, witnesses, etc.) available to the judge. The burden is on you to prove your side of the story.
- The judge will decide who is owed how much money. This may be done after hearing both sides, or the judge may wait to think about the case and then mail you the decision. Once the judge announces the decision, the judge cannot help you any further. Do not argue with the judge as it will not change the outcome of your claim. If you have any questions, please direct them to the small claims clerk who helped you file your claim. If you win, neither the judge nor the clerk will collect the money for you.

After court

If you win the case, you are responsible for collecting the money the judge decided you are owed. The judge and the clerk will not do it for you. See Section IV for information on collecting on your claim.

E. How do I appeal the judge's decision?

Both parties have the right to appeal the judge's decision and to have a completely new trial before a new judge or before a jury. You must pay another fee and file a form called "Application for Trial de Novo" within 10 days of the day the judge decided your case. The fee is likely to be significantly greater than the small claims court fee. The clerk can assist you with this process.

The new trial will be heard in the circuit division. Because the rules of the circuit division are more complicated and the judge and the clerk are not permitted to help you, it is advisable to seek the assistance of a lawyer.

Even if the losing party appeals the case, the winning party can still try to collect the money. To prevent this while the case is being appealed, the losing party may post a bond with the court. Posting a bond is not necessary in order to appeal the decision. The clerk can assist you with this process.

IV. IF I WIN, HOW DO I GET MY MONEY?

After the judge has decided in your favor, and you have waited 10 days from the date the judge decided the case, you may start trying to collect your money, if the losing party has not filed an appeal and posted a bond. If an appeal has been filed but no bond has been posted, you may attempt collection. Check with the small claims court clerk to see if a bond has been posted.

Remember, you are solely responsible for collecting your money. The judge and the clerk will not do it for you. It is strongly suggested that you seek the services of a lawyer to discuss your rights as a creditor, rights of debtors (those who owe money), and how long the judgment is good for before it expires. There are several ways to collect your money:

A. What happens to the losing party?

Whether the loser agrees to pay you in a lump sum or in installments over a period of time, an agreement between you and the losing party is the best and most efficient way to collect your money. You should attempt to arrange such an agreement, because collection procedures through the court cost money and will probably take longer. However, if you cannot agree on a method of payment or the losing party stops paying as originally agreed, you may start collection proceedings through the court on forms provided by the clerk. The clerk can assist you with this process.

B. Money: Garnishment

Garnishment is the most frequently used legal procedure to collect money in a small claims case. Under this procedure, an employer or other person holding money belonging to the losing party pays to the court the money owed to the winning party. (This employer, bank, or other person is called the "garnishee.") The court then pays the winning party.

To collect money this way, you must request the court to issue a garnishment, and you must pay a fee. Ask the clerk or a lawyer for assistance. You may file as many garnishment actions as you need in order to collect the entire amount you are owed.

Be aware the loser, a judgment debtor, has the right to certain legal exemptions from garnishment that may limit your ability to collect the debtor's money. In order to garnish, you must first locate some cash assets of the losing party in the State of Missouri. These are most easily found in the form of paychecks (wages) or bank accounts.

Garnishing wages

Garnishing wages is the surest form of collection. To do this, you must find out the name and address of the losing party's employer. The following may be helpful in discovering this information: Talk to businesses or other persons who might know about the losing party, but be careful not to harass the losing party; examine court records for more details of the losing party's background. Under this procedure, the employer, usually for a period of 90 days, collects a portion of the losing party's wages and sends the money to the court. The amount an employer can collect is set by law. If the losing party makes less than a certain amount of money, you may not be able to garnish his or her wages at all.

Garnishing a bank account

As with garnishing wages, to do this you must find out the name and address of the losing party's bank. A check or other record the losing party gave you might indicate where the party banks; a canceled check you wrote to the losing party may reveal the name of the bank on the back of the check. Be aware that if the bank account has another name on it, such as the losing party's spouse, you may not garnish it unless the judgment

is against the spouse as well. Under this procedure, the bank, usually for a period of 30 days, collects from the losing party's account an amount of money up to the total of the judgment, court costs, and garnishment filing fee. The bank then sends the money to the court.

Executing your garnishment action (wages or bank account)

When you have located assets of the losing party (the judgment debtor), either wages from an employer or a bank account, the following instructions will assist you in collecting the money owed to you:

Request for execution

Obtain from the clerk of the small claims court and complete the form called "Request for Execution, Garnishment, or Sequestration." Provide the name and address of the "garnishee" (i.e., the bank or employer). Second, specify how long the execution is to "run" (i.e., how long the bank or employer will withhold money owed the judgment debtor). The execution may run for not less than 30 days or no more than 90 days (a garnishment against a bank account usually should be no longer than 30 days while a garnishment against wages should probably run at least 90 days). Ask the clerk if you have questions.

Return date

The last day the garnishee may withhold money from the judgment debtor is called the "return date." For instance, if you requested your execution be returnable in 60 days, then the 60th day from the date the garnishment is issued is the return date. You should call the small claims clerk one week after requesting your garnishment to find out the return date.

Interrogatories

Before the garnishment is issued, you must complete a portion of the "interrogatories" (i.e. questions) which are to be served on the garnishee. The small claims court clerk may provide you a set of interrogatories. This set of questions asks the garnishee exactly how much money has been withheld from the judgment debtor. The garnishee must answer these interrogatories and return one copy to you and one copy to the court within 10 days of the return date. If you do not receive the completed interrogatories from the garnishee by 10 days after the return date, it is suggested you call the garnishee to see if there is a problem. If the garnishee refuses to comply, you may have to retain a lawyer. At this point, the clerk can no longer help you.

C. Other collection methods

There are other court methods you can use to collect the money that is owed you. These methods are much more complicated than garnishment proceedings and will usually require the assistance of a lawyer. No judgment of a small claims court may be a lien on real estate.

D. Satisfaction of judgment

If you lose a small claims case and are ordered to pay a money judgment to the winner, once you pay the judgment in full, you should demand that the winning party file a "Satisfaction of Judgment" form with the court to verify that you have paid the winner in full satisfaction of the judgment. You may do this whether you paid the entire judgment voluntarily, through garnishment, or some other procedure. This is a good idea to prevent the plaintiff from attempting to sue you again or collecting again on the same claim. Conversely, if you win your small claims case and the other party has paid the judgment in full, you must file a "Satisfaction of Judgment" with the court.

V. COMMONLY USED TERMS IN THE SMALL CLAIMS COURT

appeal — The process of asking a higher court to review the lower court's decision. An appeal of a small claims case is called a "trial de novo."

associate circuit court — The lowest level state court in Missouri which can hear claims up to $25,000 in amount. The small claims court is a part of the associate circuit court.

assignee — A person or business that purchases or otherwise acquires the right to a claim.

bond — In small claims court, a deposit of money for the court to hold to prevent the winning party from collecting its money while the losing party appeals the case.

continuance — The postponement of a court hearing until a later date or time.

counterclaim — A claim presented by the defendant against the plaintiff.

default judgment — A judgment in favor of the plaintiff because the defendant failed to show up for the trial, which the defendant had a duty to do.

defendant — The person against whom an action is brought.

docket — The court's list of all cases to be heard on a particular day.

execution — The legal process of enforcing a judgment.

garnishee — A third party, such as an employer or bank, who has money belonging to the losing party. The third party is ordered to give the money to the court rather than to the losing party.

garnishment — Process whereby the winning party is paid by a third party who owed that money to the losing party. Wages owed by an employer or deposits held by a bank are most used.

judgment — The decision of the court.

judgment debtor — A person who owes money to someone else according to the decision of a court.

next friend — A person appointed to act formally for a minor in small claims court who is not the minor's regular guardian.

petition — A written request to the court.

plaintiff — A person who brings an action against another person.

registered agent — A person designated by a company to receive official documents for the company.

service — The delivery to a person of an official court document by an authorized court official.

special process server — A person appointed by the court to deliver official court documents, such as summonses, to people involved in a case.

statute of limitations — The time period in which one must file a claim.

subpoena — A legal method used to require someone, such as a witness, to appear in court if that person does not want to appear voluntarily.

summons — A document used to notify a party that a claim has been filed and that the party is required to answer the claim in court.

trial de novo — An appeal of a small claims case decision. A trial de novo is a new trial before a judge other than the one who originally decided the case.

This handbook is produced and revised by the Young Lawyers' Section Council of The Missouri Bar.

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If you have additional questions or for further information about local court rules, check with the small claims court clerk. This information is presented as a service of The Missouri Bar. It is not intended as legal advice or as a substitute for legal advice.

Please visit MissouriLawyersHelp.org to view, download, or print this handbook as needed.

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