

## **DEFENDANT'S PROCEDURE FOR SMALL CLAIMS**

If you wish to be more informed on small claims procedures, there is a small claims guide available for FREE online at <http://www.wicourts.gov/publications/guides/smallclaimsguide.htm>.

### **COURT RETURN DATE**

If you **DO NOT AGREE** with the plaintiff's complaint, you **MUST APPEAR** in small claims court for Mediation on the return date shown on the summons you were served.

- If you fail to appear, judgment may be entered against you for the amount requested in the complaint, plus statutory costs which may include fees incurred for filing, service of the action, docketing the judgment for public records, statutory attorney fees, and enforcement of the judgment.
- **For EVICTIONS only please note:** If you are disputing the plaintiff's claim, the parties will have a pretrial conference with the Court Commissioner. **If it is determined that you are disputing the eviction portion (past due rent/breach of contract and/or notice to vacate) of the claim and have a valid legal defense §799.206(3), a trial will be held the same afternoon with the Intake Judge presiding. If providing exhibits at trial, please have available, a copy for the Court, a copy for the other party and retain the original for yourself. Originals offered to the Court will be retained in the Court file and will not be returned to you. If you want legal counsel to represent you, he/she will need to appear with you on the return date.**

**Show up** on the return date to object to the claim. **Arrive 15 minutes before your hearing**, if you are late a default judgment may be entered against you. Allow time for parking and finding the right courtroom. This is not the hearing to provide witnesses or present exhibits.

- When your case is called, please stand and state your name clearly for the record.
- Local court rules dictate that "contested small claims actions shall undergo mediation before being scheduled for trial."
- A Mediator will be assigned to your case; you will leave the courtroom with the mediator and the other party to meet in an adjacent conference room to attempt to settle the case yourselves.
- If an agreement is reached in mediation, it will be reduced to writing and filed with the Court. Comply with this agreement to avoid further court action.
- If an agreement is not reached, the Clerk of Court's office will be notified and a date for trial will be set. A notice of hearing will be mailed to you notifying you of this date. To ensure delivery, please alert the Clerk of Court's office with any address changes.

**If you agree with the plaintiff's complaint, then you do not have to appear in court.**

- A default judgment will be entered against you, which may include court costs.
- You will receive a notice of entry of judgment and an order for financial disclosure of assets form in the mail.
  - Fill out** the financial form and mail or deliver it to the **plaintiff/attorney listed on the form.**

### **Adjournment of the return date**

- **Written and timely** requests to the Court Commissioner will be considered.
  - Provide** a written request to the Clerk of Court's office. This request must be signed, dated, and include the name on the case, case number, return date and your current address and telephone number.

### **SETTLEMENT PRIOR TO OR AFTER JUDGMENT**

If you think you can work out an agreement **prior to the return date**, contact the Plaintiff or Plaintiff's Attorney.

- File** your agreement with the court to avoid a judgment.

**After a judgment** has been granted the creditor may take action to enforce collection of the judgment. You need to contact the Plaintiff or the Plaintiff's Attorney in order to make any type of payment agreement. Entering into an agreement for payment may be beneficial for both parties in terms of saving time and additional costs.

## **ANSWERS AND COUNTERCLAIMS**

- File** the Original **Answer and Counterclaim** form SC-5200V with the Clerk of Court's office.
  - There is no fee to file a counterclaim unless the total amount requested in the counterclaim exceeds \$10,000.00. In which case, there would be a statutory fee to transfer the case out of Small Claims to Large Claims.
  - Make sure the **Answer and Counterclaim** is signed, dated and includes your address, telephone number, the name on the case and the case number. **You still will need to appear at the initial return date.**
- Make copies for each party to the case and have them authenticated (file stamped by clerk) for service.
- Serve all parties with the **Answer and Counterclaim**.

## **VACATING JUDGMENT AND/OR REOPENING CASES:**

If you believe you have good cause:

- Submit** a written request to the Court for consideration of vacating and/or reopening judgment.
  - Time limits apply. The case being reopened is not guaranteed).
  - A **\$50** non-refundable reopen fee may be required upon determination of the Court.
  - Defaulted Agreements may be reopened based on agreement & approval of Court.

## **SATISFACTION AFTER THE JUDGMENT IS PAID (See Satisfaction Instruction Sheet for more information)**

## **BANKRUPTCY DISCHARGE OF JUDGMENT (See Satisfaction Due to Discharge in Bankruptcy sheet for more information)**

**The Clerk of Court's function:** Court staff may not provide legal advice or recommend a specific course of action for an individual. Our office does provide some forms, written instructions and common, routinely employed court procedures to assist court users. Court staff shall remain impartial and may not provide or withhold assistance for the purpose of giving one party an advantage over another. It is advised that an individual seek the assistance of an attorney for more comprehensive and individualized assistance. (Supreme Court Rule 70.41)

All numbered forms referenced can be found at [www.wicourts.gov](http://www.wicourts.gov) under forms→circuit court→small claims →view all small claims forms

See the Clerk of Courts website for further information at: <http://www.co.eau-claire.wi.us/departments/departments-a-k/clerk-of-courts>