

Abbreviated Guide to Small Claims

SHEBOYGAN COUNTY, WISCONSIN

Please read the information below carefully.

Substantial changes were made to the Sheboygan County Small Claims rules in April, 2020. It is important that you follow the procedures listed below. Court staff cannot make exceptions for individuals who do not follow the Small Claims procedures as established.

The full Basic Guide to Small Claims Actions, along with forms and other self help information, is available on the Wisconsin Court System website at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> The procedures listed below that are specific to Sheboygan County should be followed if they contradict the general information in the state publication.

For legal advice, please contact an attorney. Court Staff, Court Commissioners and Judges cannot give legal advice.

For the statutes governing small claims actions, see Chapter 799 of the Wisconsin Statutes.

Introduction

A. Small Claims actions can be filed for:

1. Money Claims
2. The return of property (called "Replevin")
3. Eviction of tenants
4. Arbitration confirmation and similar actions
5. Garnishment

YOU ARE NOT REQUIRED TO HAVE A LAWYER REPRESENT YOU IN THESE PROCEEDINGS.

B. If you are being sued in Small Claims Court, your options are:

1. To not contest the case - A judgment will then be entered against you for the amount in the complaint **OR** parties may settle the case and agree to a different amount owed and/or enter into a payment plan.
2. To contest the case by filing a written answer either through the e-filing system or by mail. The answer must be filed by noon on the Friday before the return date with the Clerk of Courts office. A copy of the answer must be mailed to the plaintiff or his or her attorney, if any, at the time of filing. **DO NOT COME TO THE COURTHOUSE IN PERSON ON THE RETURN DATE. ALL ANSWERS ARE TO BE SUBMITTED VIA THE E-FILING SYSTEM OR BY MAIL. THE RETURN DATE IS SET AS THE TIME THAT THE COURT COMMISSIONER WILL REVIEW ALL WRITTEN SUBMISSIONS, NOT AS A SCHEDULED IN PERSON COURT APPEARANCE.** Please make sure to

write the case number on your answer. If you do not receive the Summons and Complaint in time to file a written answer, please follow the instructions on Pages 4 and 5 of this Guide.

If your case is an eviction or replevin action, you will receive a notice with the information on when and how to appear for the hearing before the Circuit Court Judge.

If the claim is for a monetary amount only, the case will be set for mediation before a Court Commissioner. You will be sent a written notice of the time of the mediation teleconference and the information for joining appointment by phone. This teleconference appearance is **mandatory**. Failure to appear may result in a dismissal of the case or in a default judgment.

3. Your written answer may include:
- a. A counterclaim, if you think the plaintiff owes you money.
 - b. A cross-complaint, if there are other defendants in the case, and you think one of them is responsible for the damages claimed.

C. IF POSSIBLE, THE PARTIES SHOULD TRY TO SETTLE THE CASE BEFORE THE FIRST COURT APPEARANCE IS HELD.

D. If you are under 18 years old, the court may require the appointment of a guardian ad litem to protect your legal interests.

Plaintiff - Starting Your Small Claims Case

A. Where to file.

1. If your case involves a consumer transaction, you can file in the county:
 - a. where the customer lives, or
 - b. where the purchase was made, or
 - c. where the collateral is located.
2. For other classes of cases, you may file in the county where the claim arose, or:
 - a. where the property is located, or
 - b. where the defendant lives or does substantial business.

Please check the Wisconsin Statutes to confirm in which jurisdiction that your specific claim should be filed.

B. The Summons and Complaint.

The summons and complaint forms necessary to file a small claims action are available online on the Wisconsin Court System website at

<https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> This site will also provide instructions on how to file your case through the Wisconsin Court e-filing system.

Printed forms can also be obtained in person at the Clerk of Courts office located on the first floor of the Courthouse, 615 N 6th Street, Sheboygan Wisconsin 53081, (920) 459-3068.

COURT STAFF CANNOT GIVE LEGAL ADVICE.

C. Affidavit of Nonmilitary Service

Under Federal law, the court can not enter a default judgment against a defendant who is on active military duty. The plaintiff's lawsuit may be temporarily suspended until an affidavit is submitted establishing that the defendant is not on active military duty. This form (GF 175) and instructions are available at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> Printed forms can also be obtained in person from the Clerk of Court's office.

D. Filing the Forms.

Cases should be filed through the Wisconsin e-filing system whenever possible. Please see paragraph B above for the link to complete that process. When necessary, new cases can be filed by mail or in person at the Clerk of Courts office.

The Small Claims forms are designed to be filed by both non-attorneys as well as law firms. The forms are simplified for use by pro se individuals (those participating without an attorney). The online Self-Help Center mentioned in the second paragraph of this document also contains additional information that may assist in filling out and filing forms for a Small Claims case.

If it is necessary to file your case in person, you will need to bring the completed forms to the Clerk of Courts office for filing. Court staff cannot assist you in filing out the forms. Please refer to the State Self Help website or contact an attorney if you have remaining questions after reviewing all the information provided.

All fees related to the Small Claims proceeding must be paid at the time of filing. Most fees can be paid through the website. If, due to poverty, you are unable to pay the filing fees associated with this action, a Judge may waive the filing fees and costs of serving your papers. These fee waiver forms are also available on the Wisconsin Court Website.

E. Serving the Summons and Complaint on Defendant(s).

For most actions, if the defendant's home address is in Sheboygan County, the Clerk of Courts can serve the papers by regular or certified mail. In

replevin actions, if the defendant resides in Sheboygan County, the papers can be served by certified mail. In eviction actions and in all actions where the defendant resides outside Sheboygan County, the papers must be delivered by the Sheriff or a process server. Defendants who live outside Wisconsin can also be served with Small Claims papers under the applicable laws for that state.

If, after attempting to serve the court documents by the processes outlined above, you cannot serve the Summons and Complaint on defendant(s) by mail, Sheriff or process server, you can publish a form of the summons in the appropriate publication for the case. Please refer to the Self-Help Guide for instructions on how this should be accomplished. If this action is an eviction action, please refer to the self-help website or the Wisconsin Statutes for special requirements on posting and mailing the summons and complaint.

F. Appearance by Plaintiff

The plaintiff does not need to file a letter of appearance, but Proofs of Service and Proof of Non-Military service must be filed in the Clerk of Courts office by noon on the Friday before the initial appearance is scheduled. Submission through the e-filing system or by mail is strongly preferred.

Defendant - Answering the Complaint

In Sheboygan County, a defendant must file an answer in writing, either through the e-filing system or by mail. If necessary, the answer may be filed in person at the Clerk of Courts office. Most answers must be filed with the Clerk of Courts Office by noon on the Friday prior to the initial appearance date. **HOWEVER,**

- If you are a **DEFENDANT**, you may answer one of two ways:
 - You may efile or mail in your completed answer form to the Clerk of Courts office. Defendants should have received a copy of the form with the complaint. If you do not have a form, it can be downloaded at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm>, under "Forms," "Small Claims". Form SC5200V. Answers must be received by the Clerk of Courts Office before the date scheduled for the initial appearance and a copy must be mailed to the plaintiff at the time of filing.
 - If you do not receive the Summons and Complaint in time to file an answer with the court, you may call the Clerk of Courts Small Claims answer line before your scheduled initial appearance date. **This phone number is ONLY to be used for filing a temporary answer to a Small Claims case.** This is a recorded answer line. No staff member will pick up the call. Messages left at that number regarding anything other than an answer to an upcoming initial appearance will not be returned. You must leave your name, address, telephone number and

case number. Please state **ONLY** that you are entering a denial. DO NOT give the reasons for your denial. If this is an **EVICTION OR REPLEVIN** action, you must file a written, detailed answer with the Clerk of Courts within 3 days after your scheduled initial appearance and mail a copy to the plaintiff. If this is a **MONETARY ACTION ONLY**, you should file a detailed written answer with the Clerk of Courts office within 10 days of your scheduled initial appearance date.

The Small Claims Initial Appearance answer line phone number is (920) 459-3073.

Default Judgments.

If the defendant fails to answer in accordance with the statutory requirements and local rules, a default judgment may be entered against them. A notice that judgment has been entered will be sent to the parties.

In order to obtain a default judgment, the plaintiff must file an Affidavit of Nonmilitary Service supplying proof that the defendant is not actively serving in the military. If this document is not filed as required, a default judgment will not be entered.

Mediation

If the defendant contests the claim, the case will be set for mediation before the Court Commissioner. **Failure by either party to appear for mediation will result in dismissal of the case or in the entry of a default judgment against the non-complying party.** Mediation is an effort by the parties to resolve the dispute through the help of a neutral third party. Any agreement reached at mediation should be put in writing, signed by both parties and submitted to the court for signature. If the parties follow through with what has been agreed upon, the case will be dismissed without prejudice. If either side does not follow through on the terms of the settlement, either party can file an affidavit of non-compliance and the Court Commissioner can re-open the case, enter default judgment, or dismiss the case upon proper notice to the opposing party.

IN A LANDLORD/TENANT CASE – After a landlord gains repossession of the premises in question and evaluates the condition of the property, the landlord must send a written list of all damages claimed both to the court and to the defendant(s) at least 10 days prior to the scheduled mediation date. If the landlord has no forwarding address for the tenant, the damage list may be sent to the last known address of the defendant. The list of damages should be filed with the court within 30 days of regaining possession of the property. If damages are not filed in a timely fashion, the damages portion of the case may be dismissed.

Fact-Finding Hearings before the Court Commissioner

If the case cannot be settled at mediation, the next step will be a fact hearing before the Court Commissioner.

AT THIS TIME, DUE TO THE BACKLOG OF CASES ARISING FROM THE SUSPENSION OF HEARINGS DURING THE COVID-19 PANDEMIC, FACT FINDING HEARINGS WILL BE CONDUCTED BY TELECONFERENCE OR VIA THE ZOOM VIDEOCONFERENCING PLATFORM. PARTIES WILL RECEIVE WRITTEN INSTRUCTIONS ON THE PROCEDURE FOR APPEARING AT THEIR HEARING.

ALL TRIAL EXHIBITS MUST BE FILED WITH THE COURT AT LEAST 14 DAYS PRIOR TO THE SCHEDULED FACT FINDING HEARING. THE EXHIBITS SHOULD BE SUBMITTED THROUGH THE E-FILING SYSTEM OR MAILED TO THE CLERK OF COURTS OFFICE IN TIME TO ARRIVE BEFORE THE DEADLINE STATED ABOVE.

Plaintiff's exhibits should be identified by the letters A through Z. If additional identification beyond the letter Z is required, the exhibits should begin with the label "AA" and continue sequentially. Defendant's exhibits should be identified numerically.

A. Rules of Evidence

With certain exceptions, the usual rules of civil procedure regarding evidence do not apply. The exceptions are that evidence must be relevant; privileged information may not be used; and no finding of fact can be based on hearsay evidence. While the formal rules of evidence do not apply, small claims process does not change the law that decides the outcome of your case.

B. How to prepare your case.

Prepare a written summary of your claim; arrange for necessary witnesses to give testimony, and have your evidence identified and ready to present to the Commissioner. Witnesses must be available for cross-examination; written statements will not be admitted as evidence. You may have to subpoena some witnesses to compel them to come to court. If appropriate, you may present the testimony from an expert witness.

C. Court Commissioner's Decision.

The Commissioner will either decide the case at the conclusion of hearing or will send the parties a copy of a written decision within 30 days of the conclusion of the proceedings.

D. How to Request a De Novo Trial Before the Circuit Court Judge

After receiving the ruling of the Court Commissioner, a party may request a new trial before a Circuit Court Judge. This proceeding is called a hearing de novo, which means that the Circuit Court Judge will re-hear all the testimony and review all the evidence and reach a conclusion without regard to the decision of the Court Commissioner. The party requesting a hearing may do so by filing a written demand for a trial. The form is available at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> The written demand must be filed as follows:

1. Within 10 working days of the Commissioner's oral decision, or
2. Within 15 days of a written decision.

A jury may also be demanded at this time and the required jury fees must be paid when submitting the request for trial.

If no request for a new trial is filed within the time limits discussed above, the Commissioner's decision is the final decision of the Small Claims Court.

The Trial

If one of the parties requests a de novo hearing, the trial will be heard before a Circuit Court Judge, who will decide the matter unless a jury is requested. There is no extra fee for a trial before the Judge. There is a jury fee that must be paid if a jury panel is requested. If the jury fee is not paid when the request for trial is filed, the right to a jury will be waived.

1. Preparing for Trial.

Where necessary, a party may use a subpoena to require witnesses to attend the trial or to serve a "subpoena duces tecum" to make the parties or the witness(es) bring documents to the trial.

Before the trial, the Judge may hold a pretrial conference to see if the case can be settled. If scheduled, the parties must attend this conference or risk dismissal or a default judgment.

2. Trial

The Judge will decide the case based on the evidence presented at the trial. Physical evidence and documents submitted at the hearing before the Court Commissioner remain with the record and new copies of the evidence do not need to be submitted at trial. New documentary evidence can be submitted at the trial.

Witnesses will need to appear again and testify before the trial Judge. The parties have a right to ask questions of witnesses for the other side. Parties should not, however, argue with witnesses.

3. Stipulated Dismissal Pending Payment.

Before trial begins, the parties may enter into a stipulated agreement to settle the case. If the parties reach an agreement to resolve the case on their own terms, the Judge or Court Commissioner may issue a stipulated dismissal. The case will be dismissed as long the terms of the agreement are met. If the terms of the agreement are not met, the Judge or Court Commissioner may reopen the case and enter an order for judgment, enter an order of dismissal, or issue an order to set the matter for trial.

After the Trial

A. Reimbursement of costs.

The winning party can be awarded filing fees paid, out-of pocket court costs, and statutory attorneys' fees, if an attorney represented and appeared for that party during the proceedings.

Damages for lost wages, parking and transportation expenses to come to court are not awardable to either party.

B. Financial Disclosures by Judgment Debtors.

The Small Claims Court will order the party owing money pursuant to the decision to send a completed a financial disclosure statement to the prevailing party. The debtor will be required to provide certain information on the form, including his or her name, address, the names of employers and their addresses, any real property that he or she owns, financial institutions in which he or she has deposits, and other information as required by the form.

The debtor must mail the completed financial disclosure form to the prevailing party within 15 days after the judgment was filed in court. This information **must** be provided even if the judgment debtor decides to appeal.

If the judgment debtor does not provide the financial disclosure statement as required, the prevailing party may file for a supplemental hearing. At that hearing, the debtor must appear in person before the Court Commissioner to answer the questions on the form under oath. Additional court costs may be awarded to the debtor of if a supplemental hearing is required. The plaintiff may also petition a Judge to have the judgment debtor found in contempt of court.

C. Docketing and Satisfying the Judgment.

The prevailing party can docket the judgment by paying a fee in the Clerk of Court's office. Docketing the judgment will make it a lien on real estate owned by the judgment debtor in Sheboygan County. The judgment can also be docketed for a fee in other counties.

Satisfaction of Judgment or Partial Release filed pursuant to §806.19, will be required to satisfy or release judgments of all case types, including Small Claims. This form, GF-129, is available online at the <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> The satisfaction filing fee must accompany the forms when presented for filing.

D. Appeals.

A party may appeal the decision of the Circuit Court Judge to the Court of Appeals. There are no special Small Claims procedures in the Court of Appeals. Filing an appeal is a complicated matter and may require the assistance of an attorney. Please see the Wisconsin Statutes regarding the laws applicable to filing and prosecuting civil appeals.

E. Reopening Default Judgments.

A party may reopen a default judgment within 6 months after date of entry and, in some cases, up to a year after judgment is entered.

You must file a motion or petition to reopen the case. Motion and petition forms are available at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> or may be obtained in person from the Clerk of Courts Office. The motion will require that the petitioner describe the legal and factual reasons as to why the case should be re-opened. The Circuit Court Judge may schedule a hearing to consider the reasons for the request to reopen or may decide the motion on the merits of the documents filed.

F. Garnishment of Wages.

One of several ways to try to enforce a judgment is by "garnishment." Garnishment is an action to withhold part of a person's wages or bank accounts to pay off the judgment.

A garnishment is filed in Small Claims Court, just as the original case was. Forms for earnings or non-earnings garnishment are available at <https://www.wicourts.gov/services/public/selfhelp/smallclaims.htm> or may be obtained in person at the Clerk of Courts office. Consult the Self Help website or an attorney for further information.