

Consumer Fraud

GENERAL INFORMATION

The Milwaukee County District Attorney's Office has a special Consumer Fraud Unit to review and handle consumer complaints for consumer transactions that occur in Milwaukee County. Any individual who feels that he or she has been wronged by a business can file a consumer complaint directly with the Milwaukee County District Attorney's Office. All consumer complaints should be filed in writing on the consumer complaint form provided by the Milwaukee County District Attorney's Office. This form can be obtained by calling (414) 278-4585 and requesting a consumer complaint form. Please be prepared to answer the questions which appear at the end of this section.

All consumer complaint forms should be completely and legibly filled out by the complaining party. Copies of all contracts, cancelled checks and other documents related to the transaction should be attached to the completed consumer complaint form and mailed to the Milwaukee County District Attorney's Office.

The Milwaukee County District Attorney's Office only has jurisdiction over transactions that took place in Milwaukee County and only has authority to prosecute criminal violations that may have taken place in the consumer transaction.

The Milwaukee County District Attorney's Office does not have the legal authority to represent a wronged consumer in a civil action against the business. If you wish to pursue a civil action, you must either hire a private attorney or represent yourself in a small claims action against the business. Information on how to proceed in Small Claims Court is listed separately on this Internet site.

Upon receiving the filled out consumer complaint form with attached copies of all relevant documents, an assistant district attorney will review all of the information to determine the appropriate action that needs to be taken. In all cases, a letter will be sent to the complaining party advising them of how the case will be handled.

If the assistant district attorney determines there are no potential criminal violations for which the Milwaukee County District Attorney's Office would have jurisdiction, the complaining party will be advised of this fact and will be further advised of other potential remedies he or she may have.

In addition to filing a consumer complaint with the Milwaukee County District Attorney's Office, an individual should consider filing a complaint with the Greater Milwaukee Better Business Bureau at (414) 273-1600 [<http://www.wisconsin.bbb.org/>] and with filing a complaint with the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, the State's Consumer Protection Agency at (800) 422-7128 [<http://datcp.state.wi.us/>]

SMALL CLAIMS

INTRODUCTION

This information is intended only as a summary of basic procedures and information for small claims matters. A small claims action may be filed if the claim does not exceed \$5,000. However, all eviction cases, regardless of the amount of damages claimed, are filed in small claims court. You are responsible for presenting your own case. It is not necessary to be represented by an attorney. The Clerk of Circuit Court, court commissioners and other court personnel are not authorized to provide legal advice. Small Claims procedures are contained in Chapter 799 of the Wisconsin Statutes. You should also refer to District I Rules, Section IX for local procedures. An informational video is also available, (These items are found in the Milwaukee Legal Resource Center, Room 307A, Courthouse.) There is a Small Claims Information Line available at (414) 278-4140.

VENUE

For most claims, the proper county to file your lawsuit is:

- (1) Where the claim arose;
- (2) Where the subject property is located;
- (3) Where the defendant resides or does substantial business.

It is your responsibility to review the facts of your case and to decide where to file your action.

QUICK DEFINITIONS

Summons: The form used to notify the defendant that he or she is being sued.

Complaint: The statement describing why the defendant is being sued.

Plaintiff: The person filing the lawsuit.

Defendant: The person(s) being sued.

Judgment Creditor: Successful party in a small claims lawsuit.

Judgment Debtor: Unsuccessful party in a small claims lawsuit.

FORMS

Small claims summons and complaint forms are purchased from the Clerk of Circuit Court cashiers in Room G-9, Courthouse. (See fee schedule) Samples are available to help you fill out both forms. A sign in Room G-9 gives you information on potential court dates.

SETTING A HEARING DATE

You may choose your own date with certain restrictions. Your first court date cannot be more than 30 days from the date that you filed the summons. For eviction actions, the defendant must be served at least five days prior to the first court date. For all other small claims cases, the defendant must be served at least eight days prior to the first court date. Make sure that you allow adequate time to accomplish timely service when choosing your court date. Remember that Saturdays, Sundays, and holidays are not included in computing the number of days required for proper service.

All small claims cases and eviction actions are first heard in Room 400, Courthouse. Small claims actions are scheduled at 9:00 a.m. Eviction actions are scheduled for 2:00 p.m.

FILING SUMMONS AND COMPLAINT

Both the summons and the complaint must be filed to begin a lawsuit. The originals of the summons and complaint must be filed with the Intake section in Room 104 before a copy may be served on the defendant. A case number will be assigned at this time. You can then arrange for service on the defendant.

SERVICE OF SUMMONS

Summonses and complaints may be served by the sheriff, a private process server, or an adult resident of the state who is not a party to the lawsuit. Service by mail is not authorized in Milwaukee County. If you choose the sheriff, the papers should be taken to Room 102, Safety Building, 821 West State Street. The sheriff's hours are Monday through Friday, from 8:00 a.m. to 4:00 p.m. The fee for service by the sheriff is set by law.

The Milwaukee County Sheriff does not serve papers outside of Milwaukee County. If service is to be made outside of the county, contact the sheriff for that county or a private process server to make service arrangements.

A copy of the summons and complaint should be personally served on the defendant or a competent member of the defendant's household. If, with reasonable diligence, the defendant cannot be personally served, the plaintiff may appear on the court date and ask for an adjournment to allow for service by publication. Publication is accomplished by placing a notice in the legal section of a local newspaper for one week and mailing a copy of the summons and complaint to the defendant's last known address. Publication forms are available in the small claims court or from the cashiers in Room G-9.

HEARINGS

The plaintiff must appear at the court date or the case will be dismissed. When the case is called, proof of service must be filed. This should be a sworn statement in writing signed by the process server. If the defendant does not appear, a default judgment will be granted. If the defendant appears, the parties may consider a settlement. Mediators are available to help with settlement discussions. If no settlement occurs, a hearing will be held immediately or scheduled for another date. A commissioner or judge will weigh the evidence and render a decision.

JUDGMENT

Once the judgment is granted, it will be entered on the court record by clerk of circuit court staff and a "Notice of Entry of Judgment" will be mailed to each party at their last known address. This notice will state the amount of the judgment, including statutory costs.

COSTS

State law directs the Clerk of Circuit Court to compute costs and insert them in the judgment in favor of the successful party as follows: filing fee, service fees, statutory attorney fees, witness fees, jury fee, and any other costs which may be allowed by the court.

DISCLOSURE OF ASSETS

State law provides that if a person obtains a judgment for money, he or she is entitled to receive information regarding the financial status of the unsuccessful party within 15 days after entry of judgment. A form called "Order for Financial Disclosure and Financial Disclosure of Assets" is available in the small claims courtroom (Room 400), and should be requested from the court clerk when judgment is granted. Failure of the judgment debtor to provide this information in writing to the judgment creditor is punishable by court imposed sanctions. The judgment creditor may compel the judgment debtor to appear in court and disclose this information by filing a "Petition and Order for Hearing." This form is also available in Room 400. If the judgment debtor fails to appear at this hearing, the court may issue a warrant for arrest.

COLLECTION

A court judgment in your favor does not automatically result in the payment of money. If the debtor does not pay voluntarily, you must initiate collection of a judgment. Further court procedures are necessary. The primary methods available to small claims litigants for enforcing the payment of judgments are: (A) Garnishment and (B) Writs of Execution.

(A) Garnishment is a method of collection that allows the judgment creditor to obtain monies owed by others to the judgment debtor, usually attaching the judgment debtor's earnings or bank accounts. (See §814 Wis. Stats.)

(B) A judgment creditor may ask the court for a Writ of execution directing the sheriff to seize specific non-exempt personal or real property belonging to the judgment debtor for the purpose of satisfying a judgment. You may want to obtain professional legal advice to decide if a Writ of Execution is appropriate for your case. (See §815 Wis. Stats.)

DOCKETING THE JUDGMENT

Once a judgment has been obtained, the judgment creditor may "docket" it by taking the case file to the cashier in Room G-9 and paying a fee. When a judgment is docketed, the effects to place a lien on any real estate owned by the judgment debtor in Milwaukee County for 10 years. However, it is not required that a judgment be docketed to attempt collection from the judgment debtor.

REOPENING JUDGMENTS

The small claims court may reopen a default judgment if the motion to reopen is filed within six months after the entry of judgment and a good reason exists. To reopen the judgment a "Notice of Motion and Motion to Reopen" is prepared and submitted to the court commissioner in Room 400. This form is available in Room 400. The commissioner reviews the request. A date and time for the hearing is obtained from the clerk for the assigned court. A copy of the notice of motion must be served on the opposing party at least five days before the motion date. Do not count Saturdays, Sundays, and holidays. The judge will determine whether the judgment will be set aside and a hearing held on the merits of the case.