

# LawClips

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Topic for the Month:

## Small Claims

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**What is a "Small" Claim?** By definition, a "small claim" is anything with a case value of \$5,000 or less. In addition to the amount claimed, reimbursement of statutory costs and attorney's fees may be ordered. The procedural rules for small claims cases are set forth at chapter 799 of the Wisconsin Statutes. Small claims procedural rules allow for simplified and relaxed evidentiary rules and procedures. For example, oral pleadings after the initial written Complaint are permitted; litigants can represent themselves, and there is a quicker turnaround time from the date of filing to hearing date, compared with larger claims. Small claims forms can be obtained on-line at: [www.wicourts.gov/forms1/circuit.htm](http://www.wicourts.gov/forms1/circuit.htm).

**Filing a Small Claims Action:** A small claims action is initiated by filing of a Summons and Complaint form. The party filing the action is referred to as the plaintiff. The party against whom the action is brought is referred to as the defendant. The Complaint identifies the name and address of the plaintiff and defendant; lists the amount of money damages being requested and a description of the facts. The small claims Summons and Complaint are filed with the clerk of court office in the county where the action is filed. The filing fee is \$85. Each county is required to make available publications which explain the small claims procedures.

**Serving the Defendant:** The next step is to obtain formal service of process on the defendant. In some counties, service of process is permitted by mail, as long as the defendant resides in the county where the action was filed. Mail service is achieved by paying an additional fee of \$2 per defendant. The clerk of court then mails an authenticated copy of the Summons and Complaint to the defendant. If the defendant resides outside of the county in which the matter is pending, formal service of process must be obtained. This involves the use of a process server or the sheriff's department to personally serve the defendant. The cost for personal service is higher than the cost of mail service.

**Initial Appearance:** The next step is an initial appearance. In larger counties, a court commissioner is assigned to handle the initial appearance. A defendant is obligated to appear in person or through his/her attorney, at the initial appearance. If a defendant fails to appear at the initial appearance, a default judgment may be issued. Should the defendant appear, the court commissioner will determine if a factual or legal dispute exists. If the court finds a factual or legal dispute exists, a hearing will be scheduled. The court commissioner also has the power to hold a conference with all parties to identify the issues in dispute.

**The Hearing:** At the time of the hearing, both sides are required to present evidence through use of

documents and witnesses, to support their claims. This procedure is relaxed, as compared to that in a larger civil claim. At the end of the hearing, the court commissioner will make a determination on whether or not a judgment should be granted to the plaintiff or if the claim should be dismissed. If judgment has been granted, the court is required to order the defendant to file a financial disclosure statement with the plaintiff or plaintiff's attorney.

**Entry of Judgment and Executing on a Judgment:** If the plaintiff obtains a judgment, a notice of entry of judgment will be sent out in the mail. All that is required to docket a judgment is to pay a \$5 statutory fee to the clerk of court office. The act of docketing a judgment creates a lien against any property that the defendant has in the county in which the judgment is docketed. In addition, docketing a judgment allows interest to accrue on the judgment amount.

**Do I Need an Attorney to Handle My Small Claims Case?** Generally, you do not need an attorney to handle your small claims case. There are always situations where consumers feel more comfortable having an attorney represent their interests. Our firm has many qualified attorneys who can handle large civil cases as well as small claims civil cases. If you have any questions about a civil case or the small claims procedure, just give us a call. We pride ourselves on educating and advising consumers on their rights.

**In Memory:** On July 10, 2006, Attorney Jackson T. Main, Jr. passed away after a courageous battle with cancer. Attorney Main had been with our firm for the past 4 years. Attorney Main had a way of making people feel at ease with themselves and their legal situations. He had an infectious laugh and a positive attitude. His positive attitude continued, in spite of his battle with cancer. We were proud to have Jackson as a member of our legal team. He will be missed.



Jackson T. Main, Jr.