

INTRODUCTION TO CIVIL MATTERS

THERE ARE FOUR DIFFERENT TYPES OF CIVIL PROCEEDINGS IN OUR COURTS

- ❖ Small Claims
- ❖ Civil Actions
- ❖ Summary Proceedings
- ❖ Dangerous Dog

SMALL CLAIMS



SMALL CLAIMS

- ❖ A simple, informal judicial procedure to collect only money claims of up to \$3000.00.
- ❖ The court must have at least *one evening session* every other week for hearing of small claims cases, OR
- ❖ The court may allocate some part of every court session.

SMALL CLAIMS — JUDGE'S RESPONSIBILITY

1. To conduct an informal fact finding proceeding to determine the validity of a claim or counterclaim for money.
2. Must be digitally recorded.
3. Court **MUST** administer oath or affirmation to all parties/witnesses.
4. No default may be ordered until at least one hour has passed.
5. Court's decision must "do substantial justice" in accordance with the rules and principles of "substantive law."
6. The court must render judgment within 30 days from the time when the case is submitted for decision.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

Accepting a Small Claim for Filing - 7 Steps:

1. Provide **Small Claims Handbook** to persons seeking to file a small claim
2. Review filing to determine if you are proper court for filing
3. Collect appropriate filing fee
4. Reduce small claims statement to a concise *statement of the claim*, if necessary
5. Mail *statement of claim* and **Small Claims Handbook** to defendant
6. Accept counterclaim for filing (if applicable)
7. Set hearing date

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 1

Provide the Small Claims Handbook

- ❖ The clerk shall provide a copy of the Small Claims Handbook to every plaintiff.
- ❖ The Small Claims Handbook explains small claims procedures.
- ❖ Must provide the defendant with a copy as well. (*See Step 5*)

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 2

Determine if you are the Proper Court

The Plaintiff (party bringing the action) may **NOT** be:

1. A corporation (except municipal corporations, public benefit corporations, school districts or school district public library wholly or partially within municipality),
2. A partnership,
3. An association, or
4. An assignee or insurer

If the plaintiff does not know the true legal name of the defendant, may use any name in which the defendant conducts business (signs, vehicles, advertising, etc.).

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 2

Child under 18 years of age filing claim

- ❖ Child under the age of 18 may not file a small claim on their own
- ❖ Action must be brought by parent (or legal guardian, if no parent)
- ❖ Caption should read: “John Doe, as parent and natural guardian of Jimmy Doe v. Defendant”

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 2

Determine if you are the Proper Court

Defendant (party being sued) **must** either:

1. Reside in municipality or
2. Have an office for the transaction of business in the municipality or
3. Be regularly employed within the municipality

Corporations **may be** a defendant in small claims.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 3

Collect the Appropriate Fee

- ❖ \$10 for claims of \$0 to \$1,000;
- ❖ \$15 for claims of over \$1,000 to \$3,000

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 4

Reduce the small claim statement provided by plaintiff to a concise *statement of claim*.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 5

Mail s tatement of claim and Small Claims Handbook to Defendant

- ❖ **One** copy ordinary first class mail, and
- ❖ **Second** copy sent by certified mail, return receipt requested.

If not returned after 21 days, presumed delivered.

Service by mail cannot be to a P.O. Box.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 6

Accept Counterclaim for Filing (if provided)

1. May be filed within 5 days of defendant receiving claim, or can be filed at the court appearance.
2. Filing fee is \$3 plus cost of mailing.
3. The counterclaim is sent by first class mail to the Plaintiff.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

STEP 7

Schedule Hearing Date

- ❖ Hearing should be scheduled not less than 22 days or more than 45 days from date the claim was filed.

SMALL CLAIMS - CLERK'S RESPONSIBILITY

POST-SMALL CLAIM

Enforcement of a Small Claims Judgment

- ❖ Issuing a **transcript of judgment** to judgment creditor
- ❖ Issuing **Information Subpoenas** for the judgment creditor and provide the creditor with assistance in their preparation, if necessary

*An Information Subpoena compels answers to questions regarding the whereabouts of income or assets which could be used to satisfy the judgment.

CIVIL ACTIONS



CIVIL ACTION – TRADITIONAL LAW SUIT

Formal legal proceedings, governed by Civil Practice Laws and Rules (CPLR) and the Uniform Justice Court Act (UJCA) – this is very different from the *informal* legal proceedings involved in a small claim.

CIVIL ACTION — TRADITIONAL LAW SUIT

To collect money claims of up to \$3,000.00.

For the return of personal property, the value of which is no more than \$3,000.

CIVIL ACTION - JUDGE'S RESPONSIBILITY

Judge conducts the proceedings up to and including trial (bench trial or jury trial) and enters judgment as appropriate.

CIVIL ACTION — CLERK'S RESPONSIBILITY

1. File the copy of the summons and complaint with proof of service provided by the plaintiff.
2. Collect the \$20.00 filing fee at the time of the filing of Step #1 above.
3. Assign a hearing date for the parties to be present before the court - no less than 6 days, no more than 30 days from date of service of summons and complaint.
4. Docket any Judgment entered by the court.

SUMMARY PROCEEDINGS: ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY

Governed by Real
Property Actions &
Proceedings Law
(RPAPL) Article 7

SUMMARY PROCEEDINGS

Some Types of Summary Proceeding Include (landlord vs non-landlord):

1. Tenant is a holdover
2. Objectionable tenant
3. Tenant fails to pay rent
4. Tenant violates provision limiting number of persons allowed to reside on premises
5. Illegal use of property

SUMMARY PROCEEDINGS — JUDGE'S RESPONSIBILITY

Judge rules on the timeliness and sufficiency of the papers, conducts the hearing (if required) and renders judgment.

SUMMARY PROCEEDINGS — CLERK'S RESPONSIBILITY

1. Sign Notice of Petition
2. Set court date (maybe)
3. Accept papers for filing following service
4. Collect filing fee(s)
5. Prepare **Warrant of Eviction** when ordered by the court (maybe)
6. Prepare **Money Judgment** when ordered by the court (maybe)

SUMMARY PROCEEDINGS — CLERK'S RESPONSIBILITY

Signing the Notice of Petition:

- ❖ The Notice of Petition may be signed by the clerk or the judge.
- ❖ The Notice must contain the court date (return date) for the proceeding.
- ❖ The Court may collect \$20.00 fee for signing the Notice of Petition.

SUMMARY PROCEEDINGS — CLERK'S RESPONSIBILITY

Accept papers for filing & collect filing fee:

- ❖ Following service of the Notice of Petition and Petition on the respondent (tenant), the petitioner (landlord) must file a copy of the Notice of Petition, Petition and Affidavit of Service with the court.
- ❖ Filing Fee is \$20.00

SUMMARY PROCEEDINGS — CLERK'S RESPONSIBILITY

Preparing Warrant of Eviction and/or Money Judgment:

- ❖ If the petitioner is successful, the court may grant a **Warrant of Eviction** and/or a **Money Judgment**.
- ❖ Generally, courts have the petitioner submit such papers for the court's signature.

SATISFACTION AND EXECUTION OF JUDGMENTS

SATISFACTION OF JUDGMENT

When a person with a judgment receives payment or partial satisfaction of the judgment, the party who satisfied the judgment is entitled to a written document from the court attesting to the full or partial satisfaction of the judgment.

EXECUTIONS ON JUDGMENTS

- ❖ An execution of judgment is a way of enforcing a money judgment.
- ❖ May be issued by the judgment creditor's attorney or, if there is no attorney, by the court.
- ❖ Executions are levied by enforcement officers, sheriff, constable, marshal, etc.



QUESTIONS?