

The Shaker Heights Municipal Court

**3355 Lee Road
Shaker Heights, Ohio 44120**

Small Claims Plaintiff or Defendant:

This small claims brochure is designed to help you work within the small claims court system. It is an informational guide and not a substitute for legal advice.

The small claims division of the Shaker Heights Municipal Court hears an average of 1,150 cases per year. The claims are for money only, up to \$6,000. It takes several weeks from the time a claim is filed until a trial is set. Although a plaintiff may win a judgment for money, not all judgments are collectible. This means that even if you win a judgment against another person, that person may not have the money to satisfy the judgment (which means “pay you”.) This is called being “uncollectible.” Some people find that they can settle their dispute through mediation.

It is my hope that this brochure will make your experience in small claims court a bit easier. It is intended to guide you, as plaintiff or defendant, through the small claims process. The small claims process is governed by the Ohio Revised Code Chapter 1925. The Ohio Revised Code, or the ORC, is the compilation of the laws that govern the State of Ohio. A copy of the ORC may be found in any public library, and in most lawyers’ offices.

If there is anything that you are unsure of or would like further legal clarification on, you should consult an attorney.

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DISCLAIMERS

This small claims brochure will NOT:

- Provide you with legal advice.
- Make you an authority on small claims.
- Guarantee you will win your case.
- Guarantee you will collect your judgment.
- Take the place of an attorney.
- Answer all of your questions.

HOWEVER...

This small claims brochure SHOULD:

- Help you understand the small claims process.
- Provide step-by-step guidance through the mechanics of the numerous procedures you may encounter as a small claims party.
- Increase your chances of collection if you win.
- Increase your ability to defend against a claim as a defendant.

IS A LAWYER REQUIRED?

No. A lawyer is not required. One goal of small claims court is to make it possible for you to argue your own case without the added expense of an attorney. Procedures in small claims court before the magistrate are not as strict as those in the municipal court before the judge. However, some procedures in small claims court may be complicated and may require an attorney. Sometimes legal advice may prove to be really helpful.

If you need a lawyer but do not know where to turn, you may call:

Cleveland Metropolitan Bar Association – (216) 696-3525

or

www.clemetrobar.org

and ask for or click on Lawyer Referral Service.

HOW MUCH DOES IT COST?

Costs for various procedures change from time to time. Make sure you pick up a copy of the cost sheet from the clerk's office so that you will know what fees are required.

SOME RULES FOR FILING A SMALL CLAIMS CASE

1. Your claim cannot exceed \$6,000. You may not separate your claim into several separate cases to fall below this monetary limit.
2. You must know the full name and address of the party against whom you file suit. You will need a complete address: street, house or building number, suite or apartment number, city, state, and zip code. If you have a phone number, please provide it.
3. If you are under the age of 18, you must have your parent or legal guardian file the complaint for you.
4. If you file the complaint, you are the plaintiff. You must prove your case by the greater weight of the evidence. This means that you must prove that your case is more probable than the defendant's case.
5. You will be given a trial date. It is the only time that you have to present witnesses and documentary evidence (letters, invoices, canceled checks, etc.). Everyone and everything must be ready on the date of your trial!
6. The staff of the clerk of court's office are not attorneys and cannot, by law, give you legal advice. The clerk may help you fill out forms, but they are not allowed to answer any legal questions. We realize that it may be confusing to you that the simplest questions and answers are considered legal advice, but if you need legal advice, you must consult an attorney.

7. Corporations may qualify to sue in small claims court without an attorney to represent the corporation under Ohio Revised Code (ORC) §1925.17. An officer or salaried employee of the corporation may appear on behalf of the corporation to give testimony but may not represent the corporation or ask questions as in cross-examination. This means that the officer or employee cannot call witnesses and cannot argue in support of the corporation or do any other “acts of advocacy.” Therefore, corporations usually need attorneys.
8. You should be prepared to spend all morning or all afternoon in court on the date of your trial. Bring a book!
9. Call us to check on specifics such as your court date and time. Write down the name of the person you speak with.

Telephone (216) 491-1305

Fax (216) 491-1314

WHATS, WHERE'S, HOWS & COSTS

WHAT IS SMALL CLAIMS?

The small claims court is a division of the Shaker Heights Municipal Court. Small claims court was created by the Ohio Legislature to permit easy access to the court for people with disputes involving a relatively small amount of money. Cases are usually heard by a magistrate (a lawyer appointed by the court to hear cases).

HOW BIG IS SMALL?

As a plaintiff, the most you can sue for in small claims court is \$6,000. If a claim is more than \$6,000 it will be dismissed for lack of jurisdiction. If a counterclaim is filed for more than \$6,000, either the case will be transferred (moved) to the regular docket or the counterclaim will be dismissed. Jurisdiction is legalese for authority.

WHO'S WHO & WHY ARE YOU HERE?

The plaintiff is the person filing the complaint. The defendant is the person against whom the complaint has been filed. Plaintiffs and defendants are called parties or litigants. For the case to be heard in this court:

1. the defendant should live in the court's jurisdiction, or
2. the defendant should have his/her principal place of business in the court's jurisdiction, or
3. the events that formed the basis of the complaint should have occurred in this jurisdiction.

Otherwise, the defendant may have the case transferred to a different court. The jurisdiction of the Shaker Heights Municipal Court includes Beachwood, Hunting Valley, Pepper Pike, Shaker Heights, and University Heights.

WHAT KINDS OF CASES ARE HEARD?

Small claims court can only hear cases which ask for money. The small claims court cannot order a party to do anything other than pay an amount of money. Thus, if you are a plaintiff, you must be able to put a price tag on the damage you have suffered as a result of the defendant's actions.

If you have a dispute with your mechanic, for example, you can base a claim on your bills or on the estimated cost of re-doing his/her work. You cannot ask the court to force the mechanic to fix your car or release it before payment of a bill. Small claims cases might arise from disputes such as contract disagreements, rental bills, etc. Small claims court is also used by many merchants and businesses to sue consumers who owe them money or have defaulted (not paid) on loan agreements.

Ohio also has a consumer protection law, The Consumer Sales Practices Act (CSPA), The CSPA is part of the Ohio Revised Code (ORC), §1345, et. seq.. It includes substantive rules. These rules explain specific consumer rights. Small claims court can hear cases in which a consumer claims a rule or consumer protection law has been violated. The CSPA (and ORC) may be found in several public libraries and most lawyers' offices.

DETERMINING YOUR DAMAGES AS A PARTY

or

HOW MUCH DO I SUE FOR?

Since you can collect only money from a small claims action, it is very important for you to put the right price tag on your claim. For example, if you are suing for damages to your car from an accident, you will have to determine the value of your car just before the accident and what it is worth to you after the accident. To determine the value before the accident you could use a "Blue Book" or "Red Book" or some other guide to appraise your car's worth. You need to prove what the value was within reason. Photographs may be helpful.

Your damages may be calculated in various ways. To determine your car's worth after an accident you could get repair estimates. If it will cost you \$1,000 to repair your vehicle, you would ask the court to award you \$1,000 in damages. Another way to put a price tag on your claim would be to bring evidence to court to show how much you could sell your car for just before and just after the accident. If you determine your car was worth \$1,500 before the defendant hit your car and only \$500 after the accident, you would ask the court to award you \$1,000 in damages.

COSTS AND INTEREST

If you win your claim (or counterclaim), you may be entitled to recover your court costs. Also the amount of money awarded earns interest until it is paid to you in full. Usually the interest accrues from the date of judgment. Sometimes, however, you may be entitled to interest from an earlier date depending on the nature of your claim.

The rate of interest earned on a judgment will generally be the statutory rate set by law. Sometimes, because of a contract between the parties, the interest rate will be controlled by the contract. For example, the interest rate on contracts for credit and charge cards or on loans will be spelled out in the contract, and the court will be bound to follow those rates.

Thus, it is important to ask for interest and court costs in your complaint. If you are using the Shaker Heights Municipal Court's small claims complaint form, your request is already **included on the form**.

KNOWING WHOM TO SUE

Make sure you know the true, legal name of the person or business you intend to sue. If you sue the wrong party, the case may be dismissed or you could wind up with a judgment that is worthless.

For example, a common mistake is for a tenant to sue the building manager for the return of a security deposit. S/He should sue the owner

of the building. Sometimes the owner of the building is an individual. However, if the owner of the building is a corporation, partnership, or other legal entity, then the tenant should sue that entity.

Other common mistakes: a customer sues the mechanic of a repair shop by name instead of the shop owner; a homeowner sues a repairperson instead of the repairperson's employer. If, however, a repairperson is an independent contractor, someone who works for her/himself, then sue the repairperson. If the repairperson is incorporated or has formed some other legal entity for her/his business, you will have to sue that entity. Similar problems occur when suing a business name (such as Sleazy Joe's Car Repair) without checking its true legal name.

An unincorporated business (sole owner, doing business as or dba), must be sued by naming the owner or partner i.e., Tom Sleaze dba Sleazy Joe's. The defendant(s) in a lawsuit against a partnership may be the partnership or the individual partner(s).

A corporation (i.e. Sleazy's Car Repair, Inc.) or a legal liability company (i.e., Sleazy's Car Repair, LLC) should be sued in the company name. Corporations and legal liability companies are legal entities. That is, they are created under the law and you may sue them just as you would a "real" person. If you are unsure whether a business is incorporated, (a corporation), call:

Ohio Secretary of State at (614) 466-3910.

If the business is a corporation or a legal liability company, ask the Secretary of State for the name and address of the statutory agent. A statutory agent is someone who has been designated to accept service for a corporation or limited liability company. You may discover that the business name is totally different from the name on the building. It is the corporate entity that you should be suing. In this situation, you should address the complaint in care of the statutory agent and use the statutory agent's address. (i.e., Anne Plaintiff vs. Sleazy's Car Repair, Inc. c/o Tom Smith, Statutory Agent, 123 Agents Street, Anytown, Ohio 12345-6789.)

Finally, you should sue a person or business:

1. In the municipality in which s/he lives (if a person), or
2. In the municipality in which s/he has her/his principal place of business, or
3. In the municipality in which the action that forms the basis of your complaint took place.

If the person or business you want to sue is located in or the action took place in any of our five municipalities (Beachwood, Hunting Valley, Pepper Pike, Shaker Heights, or University Heights), then your claim may be filed in the Shaker Heights Municipal Court.

HOW AND WHERE TO FILE AS A PLAINTIFF

Once you have determined whom you are going to sue and for how much, go to the clerk of court's office in the Shaker Heights Municipal Court located at 3355 Lee Road, Shaker Heights, Ohio, 44120. Tell the clerk at the small claims window that you would like to fill out a small claims complaint form. Remember to fill out the form carefully and completely. Do not attach your exhibits to the complaint; just bring them to court for trial. The only exception is for a written contract. If you have a written contract with the defendant, a copy of the contract should be attached to the complaint. After you complete the complaint form, you must sign it in front of a court deputy clerk or a notary public.

If you are unable to come to the clerk's office, you may obtain forms by mail. Send a written request (a telephone call is not sufficient) to the address in the paragraph above and enclose a self-addressed, stamped envelope.

You may also obtain a complaint form and other forms you may want online at the Shaker Heights Municipal Court website at www.shakerheightsmunicipalcourt.org. Click on the link below the name of the form you want.

When you return the form to the court by mail, remember to have your signature on the small claims complaint form notarized when you sign it. If your signature is not notarized, the court cannot accept your complaint.

Once your complaint has been filed, the court will set a trial date in about three to six weeks. You will receive a copy of your complaint in the mail with the court case number, case trial date, and trial time noted at the bottom of the form.

*****PLEASE REMEMBER*****

Although the clerk may help you complete the claim form, please remember that s/he is not an attorney and is not allowed to answer any legal questions. If you have legal questions, please consult an attorney. Your question may seem simple, but often the answer is governed by a rule found in Ohio laws or cases decided by this or other courts in the past.

NO SERVICE...NO CASE

Until the person or legal entity you sue has been served a summons, no action can take place. The best case in the world is worthless if you cannot serve the defendant(s). If you do not hear from the clerk of court's office, do not assume that service on the defendant(s) was successful. Call the clerk's office at (216) 491-1305 the day before your court date to make sure the defendant(s) has been served! Ask for the small claims department. Listed below are the two ways a summons is served:

1. Certified mail service to the defendant(s), with return receipt requested, is tried first. If the Postal Service returns that letter to the court marked "refused" or "unclaimed," it will automatically be sent out again in the regular mail by the court at no additional charge to you. If the summons sent out in the regular U.S. mail is not returned, it is presumed to have been served under Ohio laws.

If the certified mail is returned for any reason other than “unclaimed” or “refused” or if the regular mail is returned, there is no service on the defendant(s) and you will be notified that the defendant(s) has not been served. If you have another address for the clerk to use for service, you must request in writing that the court serve defendant(s) at the new address. There is an additional cost per defendant. See the court’s cost sheet.

2. If service by mail does not work, you may have a process server attempt to serve the summons. A process server is a person who, literally, serves the papers on the defendant(s). That is to say, the process server goes out, finds the defendant(s), and gives (or touches and leaves) the defendant(s) a copy of your complaint and summons. The process server then signs her/his copy of the paperwork, states whom s/he served, and returns it to the court.

Appointment of a process server is a procedure that must be requested in writing. It is not automatic. This written request must include your name, address and telephone number so that the clerk’s office can contact you. This is not something that you can request while standing at the small claims window. Request it in writing!

PROCESS SERVERS

A court bailiff may act as a process server if the defendant(s) is being served within this court’s jurisdiction (Beachwood, Hunting Valley, Pepper Pike, Shaker Heights, and University Heights). There is an additional charge for this service. If the bailiff cannot act as a process server for you, anyone who is over 18 years of age and who is not involved with the case may act as a process server. There is one fee for each person a bailiff attempts to serve. The bailiff will attempt to serve the papers three times during normal business hours. The bailiff will not attempt to serve the papers at night, on the weekend, or on legal holidays.

If someone other than a court bailiff will be a process server, you must call the court to arrange a time for that person to come to the court to be

appointed. Before a process server can be appointed, some documents need to be filed; therefore appointments are necessary. Call the small claims department at (216) 491-1305, tell the clerk you want to have a process server appointed, and arrange for an appointment. At the pre-arranged time your process server should come to the small claims window. The clerk will appoint that person a process server for your case and will explain what must be done in order to properly serve the defendant(s).

REMEMBER: You are responsible for supplying the correct name, address, and telephone number of the defendant(s) you want to have served.

CASE TRANSFER OUT OF SMALL CLAIMS COURT

Filing suit in small claims court does not guarantee that the case will be heard there. For certain reasons a defendant may ask that the case be taken out of small claims court and transferred to the regular civil docket of the municipal court. The court may grant such requests or motions but the transfer occurs only after the defendant pays the necessary filing fee. The filing fee is the same as it is for any other case in the municipal court.

Having your case transferred to the regular civil docket may make it hard for you to proceed without an attorney regardless of whether you are the plaintiff or defendant. While you have the right to represent yourself in the municipal court, the rules of procedure are not as relaxed as in the small claims court. The Ohio Rules of Civil Procedure govern how a civil trial is conducted in a municipal court. There are strict rules regarding questioning of witnesses and how to admit evidence for review by the judge. Therefore, you might want to consult an attorney before going to municipal court on your own.

OPPOSITION TO A MOTION TO TRANSFER TO THE REGULAR CIVIL DOCKET

If the defendant has filed a motion to transfer the case from small claims to the regular civil docket, you have 14 days from the filing date to file a written opposition to the motion to transfer. If the filing date is not stamped on your copy of the motion to transfer, call the small claims clerk at (216) 491-1305 for the date.

When you file your opposition to the motion to transfer, you must send a copy to the other side. You must write on your opposition that a copy has been sent to the opposing side. This is called a certificate of service. If you do not file a certificate of service, your opposition will not be considered. There is no charge for filing an opposition. The judge will consider the motion to transfer as well as any opposition and will make a decision. You will be notified of the judge's decision by mail.

A sample certificate of service appears in Appendix A. In your motion be sure to include all needed information: your name, the other party's name and address, the case number, and why you oppose the motion to transfer. Your opposition must be signed. You may deliver or mail your opposition to the court.

WHAT TO DO WHEN YOU RECEIVE A SUMMONS: YOU ARE A DEFENDANT

Receiving a *complaint and summons* means that you have been named as a defendant in a case (a lawsuit). To defend yourself against the claim, you should:

1. Prepare for trial by organizing your case and collecting evidence.
2. File a *counterclaim* if you have a claim against the plaintiff in this case. A counterclaim is a claim by a defendant against a plaintiff. You may use a court *complaint* form and substitute the word "*Counterclaim*" for "*Complaint*". The plaintiff and

defendant remain the same. Only the “Statement of Claim” changes.

If you do not appear at trial, the plaintiff will be granted a default judgment against you for the amount of the claim plus interest and costs. This means that the court will grant the plaintiff a judgment for the amount s/he says that you owe her/him. This will happen even if you don't owe the plaintiff anything.

*****DO NOT IGNORE THE SUMMONS*****

PREPARING FOR THE TRIAL

OBSERVE

If you have the time, visit a small claims court trial session as a spectator before your court date. Watch and listen carefully. You will learn valuable lessons about presenting your own case. Small claims cases may be scheduled all day on Fridays. Call the court first to make sure that there are cases scheduled for the time when you want to observe.

ORGANIZE

Organize your case before going to court. Plan and organize your testimony and arguments. Be sure the magistrate understands why and how you have been injured or wronged. Check the calendar for dates and times of important events that occurred in your case.

As a plaintiff, bear in mind that you will have to convince the small claims magistrate not only that you are right, but also that you are entitled to a specific sum of money from the defendant.

As a defendant, review the reasons for which the plaintiff is suing you. Formulate answers to questions that might be asked at the trial.

For all parties, it is always a good idea to document dates, times, and any important occurrences. A time line is very helpful in establishing exactly what happened and when. Writing out what you want to say may be very helpful as well.

GATHER EVIDENCE

Collect all the documents that are related to your case: receipts, canceled checks, estimated bills, contracts, leases, photos, etc. These will be your trial exhibits. Make sure that you bring all the documents on your court date. There are no second chances. Anything that you do not bring and present to the court at your trial cannot be sent later on. Bring enough copies of each exhibit so that you have:

1. A copy for yourself
2. A copy for the court
3. A copy for the defendant

NOTE: Letters, affidavits, and written statements from other people are not good evidence in small claims court. Estimators, repair people, doctors, sales clerks, etc. must be your witnesses. Witnesses (anyone who has anything to say on your behalf or about your case) must appear in court. Letters and/or affidavits are not acceptable.

ROUND UP WITNESSES

Line up your witnesses. For example, if a mechanic told you that your car was improperly repaired, or that repairs cost a certain amount, that mechanic must be present in court to testify. A letter, notarized statement, or affidavit will not do. The witness must be at your trial. You cannot bring the witness at some other time.

If a witness is reluctant to testify, you can have her or him subpoenaed (ordered to come to court). Subpoenas are arranged by the clerk's office and must be requested at least seven days before trial. Using subpoenas involves certain fees. Check with the deputy clerk if you wish to use subpoenas. (Appendix D)

***An affidavit is a document that makes statements of fact and is signed by the person who is 'testifying' to these facts. That person is called an affiant. The signature of the affiant on the affidavit is notarized. That means that a person known as a notary public (or notary) witnessed the affiant signing the affidavit and has signed the bottom of the affidavit as a notary.

If you plan to call an expert witness (mechanic, roofer, doctor, dentist, or anyone else whose testimony will involve an expert opinion), you should be prepared to pay that person for her/his time. You should discuss payment with your expert witness before the day of the trial. How much you pay your expert witness is a matter between you and the expert witness.

REHEARSE

Write out questions for the other party(ies) or your witnesses and say them out loud. Practice in front of the mirror or use a tape recorder. Try out your presentation on a friend or relative before going to court. It is especially helpful to try out your arguments on someone who knows nothing about your case. That person will be able to point out the parts of the story that you leave out. Remember, the court (magistrate or judge) does not know you or what has happened to you and you must explain everything from the beginning to the end.

GOING TO COURT

1. Show up on time. Court starts promptly at the time written on your forms. Whether you are the plaintiff or defendant, if you are absent or late, you will lose.
2. Small claims cases are usually heard in Courtroom #1. Go to Courtroom #1 and check in with the bailiff. The bailiff should be sitting at a desk to the left of the bench (where the magistrate or judge sits). Walk up to the bailiff, state your name and tell her/him that you are in court for a small claims trial.
3. Be prepared to wait as several cases may be scheduled at the same time. Bring a book! Bring paper and pencil to jot down pointers you pick up as you listen to other cases.
4. Once the magistrate has come into the courtroom, the bailiff will start calling the cases, one at a time. Walk up toward the bench when your case is called. Bring all of your evidence and notes. Your witnesses should come forward at this time, also. The bailiff will tell you where to stand and will swear in everyone who intends to testify during the trial.

PRESENTING YOUR BEST CASE

1. Each side gets a chance to present testimony and evidence. This means that both plaintiff and defendant have an opportunity to explain to the magistrate or judge what happened.

The plaintiff and his/her witnesses speak first and then the defendant and his/her witnesses follow. Each party may ask questions of any of the witnesses.

2. As a plaintiff, you should present your case in an orderly manner. Include all relevant dates and facts. Be sure to tell the magistrate or judge how much money you are asking for and how you calculated the amount; don't forget to ask for interest and court costs. Show the magistrate any documents and other evidence you have. Ask your witnesses to speak.

3. As a defendant, you too should be organized. Respond to what the plaintiff has said. Offer explanations that are relevant, along with any relevant documents or testimony from your witnesses. If you have a counterclaim, explain why you disagree with the plaintiff's claim first. Then, present your claim against the plaintiff. If you have a counter-claim, don't forget to ask for interest and court costs. Remember to ask that the plaintiff pay the costs if the plaintiff loses the case.
4. The opposing side will have a chance to question (not argue with) you on points you have raised in your testimony. (See paragraph 7) Remember, you are under oath to tell the truth and must answer as truthfully and as completely as possible.
5. If you have witnesses, they will also have the chance to explain what they know about the case. The other side may also question your witnesses. (see paragraph 7)
6. Remember: Telling what someone said who is not in court is "hearsay" and is not good evidence. Bring your witnesses to court.
7. Cross examination: After each party or witness testifies, the other side (or her/his attorney) will have an opportunity to question the testimony; this is called cross examination. When a person is testifying, please allow her/him to finish without interruption. After the testimony is given, the magistrate will give you (or your attorney) a chance to question the testimony. Please do not argue or interrupt. You, too, will have a chance to ask questions.
8. The magistrate may ask additional questions throughout the trial to clarify and understand the case.
9. The magistrate may announce her/his decision at the end of the trial or may choose to review the testimony and evidence presented and make a decision in the near future.

AFTER THE CASE IS HEARD

Your case has been heard by a magistrate. What happens next? After the magistrate hears your case, s/he will file a written *Magistrate's Decision* and you will receive a copy of the written decision by mail.

IF YOU WIN

If you win, the magistrate will set the amount of your judgment, that is, how much money you are entitled to collect from the opposing party. The magistrate will file the *Magistrate's Decision* with the clerk of court's office which will mail a copy to all of the parties. If there are no objections to the *Magistrate's Decision*, the court renders a judgment which becomes final in court records. All parties will receive a copy of the final decision of the court.

IF YOU LOSE OR OBJECT

If you do not agree with the *Magistrate's Decision*, you may *object*.

To *object* you must follow a very specific procedure. First, you will need to have *Findings of Fact and Conclusions of Law*. These are written by the magistrate; however the *Magistrate's Decision* may or may not include them. If they are included in the decision you will know because the *Magistrate's Decision* will say: *Magistrate's Decision, Findings of Fact and Conclusions of Law*. If they are not included in the decision you **must** request them, in writing, from the court. You may bring your request to the court in person or mail it in. There is a fee for filing a request for findings of fact and conclusions of law. Check with the clerk's office.

Your request does not need to be fancy or complicated but it must be filed with the court within seven days of the date the *Magistrate's Decision* was filed. The filing date is stamped on the decision. If you wait more than seven days you will automatically lose your ability to object to the *Magistrate's Decision*. You must include your case number as well as your name and address in your request and it must be signed. You must also send a copy of your request to the other side and

include a certificate of service on your request. Once your request for *Findings of Fact and Conclusions of Law* has been filed, the magistrate will write and file an *Amended Magistrate's Decision/Findings of Fact and Conclusions of Law*. The *Amended Magistrate's Decision* will be mailed to all of the parties.

Once you have obtained the *Findings of Fact and Conclusions of Law* and you still want to object, you must do so in writing. There is a fee to file objections. Check with the clerk's office. Send a copy of your objections to the other side and file a copy with the court, including a *Certificate of Service* that says that you sent a copy of your objections to the other side. If you do not send a copy to the other side, your objections will not be considered. You have 14 days from the date on the *Magistrate's Decision* or *Amended Magistrate's Decision* to file specific, written objections with the court. As with the *Findings of Fact and Conclusions of Law*, you may bring your written objections to the court in person or mail them to the court. If you wait more than 14 days from the date on the decision, your objections will not be considered. Your objections must include your case number, your name, and your address. You must state what you object to and why you object. You must be specific. Sentences like "I object to _____ because of _____." are good. Your objections must be signed. *(See Appendix B)

Be very specific and state all of your reasons for objecting. After the judge reviews your objections, s/he will decide whether they are valid objections. If the judge finds your objections to be valid, your case may be tried again. You will be notified of the judge's decision by mail. If the judge decides to hear the case, you are back at the beginning of the process, as if there had never been a trial. If there is another trial, it will be like the first one. You will need to bring all of your documents (unless already submitted to the court in the first trial) and all of your witnesses and/or experts. If you had to issue a subpoena for a witness at the first trial, you will probably have to do that again for the second trial. If the judge does not find the objections to be valid, the *Magistrate's Decision* or *Amended Magistrate's Decision* will be adopted, and the judge will render a judgment that mirrors that of the *Magistrate's Decision* or *Amended Magistrate's Decision*.

The rules and deadlines for requesting *Findings of Fact and Conclusions of Law* are printed at the bottom of the *Magistrate's Decision* that you will receive. They are also reproduced in Appendix E.

DEFAULT JUDGMENTS

Small claims cases are often over and done before they begin. The plaintiff shows up ready for trial, but the defendant(s) does not. This may happen even though there has been proper service on the defendant(s). In these situations, the magistrate will most likely listen to the evidence from the plaintiff and grant a default judgment, which means the plaintiff has won. A default judgment is as enforceable as if the defendant had come to court and put on a defense. No matter what happens, all of the parties will receive a copy of the written *Magistrate's Decision* in the mail.

When it comes to collecting the judgment, even a Default Judgment, the judgment creditor (the person who has won a judgment) has various choices, several of which are explained in "Collecting A Judgment," found later in this booklet. Remember, the judgment creditor must collect his/her own judgment; the court does not do this.

CONTINUANCES WHAT IF YOU CAN'T APPEAR ON THE SCHEDULED COURT DATE?

Continuances are granted at the discretion of the court as follows:

1. If you have a real emergency or an urgent reason, or
2. With the consent of the opposing party.

To request a continuance, send a written letter to the court that:

- a. Asks for a continuance,
- b. States your reasons, and

- c. States that you have sent a copy of your request for a continuance to the opposing party or their lawyer, if they have one.
- d. Includes the filing fee.
The filing fee must be paid when you make your request. Call the court ((216) 491-1305) to find out what that fee is.
- e. Includes a certificate of service (Appendix A).

If the opposing party agrees to your request for a continuance, bring something signed by the opposing party (or their lawyer, if they have one) which states that they agree, or have that person contact the small claims clerk. The opposing party (or their lawyer) must speak (or write) directly with the court.

NOTE: A request for a continuance must be made at least five days before your trial. Continuances are not granted less than 24 hours before the hearing unless there are special circumstances.

Last, but certainly not least, DO NOT assume that your continuance request has been automatically granted. If the continuance is granted, all parties will receive a notice of the new hearing date from the court. If you do not hear from the court, call the small claims department ((216) 491-1305) to check on the status of your continuance request before the original hearing date. Otherwise, come to court ready for the hearing on the original hearing date.

Remember, even if you have the consent of the opposing party, the decision regarding a continuance will be made by the court; this is not an automatic process.

SPECIAL NOTE REGARDING REQUESTS

When requesting a continuance (or anything else, e.g., a Debtor's Examination, a form, etc.), your request must be made in writing; on your letterhead or on plain paper, 8 ½ x 11, lined or unlined. Post-it notes, invoices, receipts, etc., are not acceptable "paper." Further, your request must be clear and legible. If your request is not clear, legible, and written (or typed) on your letterhead or plain paper, it will not be accepted. Also, the request must contain a certificate of service.

COLLECTING A JUDGMENT: THE REAL WORK BEGINS

Once the court judgment has been awarded, the names change. A winning plaintiff is now a *judgment creditor* and a losing defendant is a *judgment debtor*. If the defendant has won judgment on a counterclaim, the winning defendant is now a judgment creditor and the losing plaintiff is a judgment debtor. The judgment creditor's problem is collecting money from the judgment debtor.

COLLECTING ON YOUR JUDGMENT

There are several ways you can collect money owed to you on a judgment. The best way is voluntary payment by the judgment debtor. After you receive your judgment, contact the judgment debtor and arrange for payment of the money you've won. When the judgment debtor has paid in full, the judgment creditor must notify the court, in writing, so that the court can mark the judgment as paid or "satisfied." You may use a form, like the one in Appendix C.

IT IS UP TO YOU

"The magistrate told the losing party to pay me \$750 but s/he won't pay me and the court won't force her/him to pay me. That's not fair!"

No court automatically forces a judgment debtor to pay. The court has confirmed that the debtor has a legal, enforceable obligation to pay, but then it becomes the creditor's job to collect that debt.

There are several steps you may take, with a court's help, to collect. These are the same kinds of procedures commercial creditors (banks, loan companies, furniture stores, etc.) use including garnishment of wages, attaching property, and attaching bank accounts. The only difference is you must do it for yourself!

Each of the collection steps will require you to return to the clerk's office, fill out more forms, and pay more fees. It can be a lengthy and increasingly costly process, but it can work. You may have no other

choice if you want to collect your money. The good news is that any costs incurred in the collection process may be reimbursed by the debtor as part of paying off the debt.

Before you collect from the reluctant debtor, you must first know something about her/his finances. This can be a major treasure hunt. If you are already familiar with where the judgment debtor banks, works, lives, does business, etc., you may know enough to proceed with collection.

JUDGMENT DEBTOR EXAMS

GETTING THE DEBTOR TO COURT

The judgment debtor examination is the court's way of helping judgment creditors learn about the judgment debtor's assets. This information may then be used to collect the judgment. There are two types of debtor's examinations – an "in person" debtor's examination and a mail debtor's examination.

"IN PERSON" DEBTOR'S EXAMINATIONS

In the "in person" debtor's exam, the creditor asks the court to insist that the judgment debtor attend a court hearing to answer questions about her/his finances. At the hearing the judgment creditor asks the judgment debtor about her/his assets and where these assets can be found.

Forms for requesting the debtor's exam are available at the clerk's office. Ask a civil clerk for an *Order to Appear before the Court for Examination in Aid of Execution of Judgment*.

NOTE: To complete this form, you will need to supply the judgment debtor's social security number and date of birth.

Once you have completed the form, file it with the clerk of court as follows:

1. Bring the original form and three copies to the clerk's window. The original and two copies will be used by the court. The third copy will be stamped and returned to you to keep.
2. Bring a filing fee.

About one week after you file the debtor's examination form, you will receive a notice in the mail with your hearing date for the examination. Debtor's exams are usually held on Wednesday mornings.

The debtor's exam form is served on the defendant by certified mail, return receipt requested unless you have specifically requested bailiff service or have had a process server appointed. There is an additional fee for bailiff service. The bailiff will attempt to serve papers on the judgment debtor three times at the location you provide. Bailiffs serve papers during normal business hours, Monday – Friday ONLY. They DO NOT serve papers at night or on legal holidays. If night or weekend service is necessary, you will need to have a process server other than a bailiff appointed.

On the day before the exam is scheduled, call the small claims department, 216-491-1305, and ask if service has been made on the judgment debtor. If there has been no service, there can be no examination. You may want to try another address for the judgment debtor. If you have another address at which to serve the judgment debtor:

1. Bring a written request to the court with that address.
2. Bring a filing fee for each judgment debtor to be served. If you had a process server (or bailiff) the last time and you want to do so again, you must:
 - a. Ask for that specifically in writing,
 - b. Repeat the appointment process,
 - c. Pay the same fees again.

Remember, it's up to you to tell the court what to do, whom to serve, and how to complete that service.

DEBTOR'S COURT DATE

When the judgment debtor appears, you will have the right to ask questions to determine where you might find enough assets (money or property) to pay your judgment. Have your questions prepared in advance; write them out. It's also a good idea to leave spaces on your paper to write down the judgment debtor's answers.

The following information may be helpful to you:

- Place of employment, including the address and telephone number.
- Identity of employer, including address and telephone number.
- Amount of take-home pay.
- Bank accounts:
 - Name and address of all banks
 - Account numbers of all bank accounts
 - Balance in all bank accounts
- Location of any land or houses owned, including address.
- Location of any rental property owned, including address, and identity and telephone number of tenants.
- Number, make, model, year, license, of any motor vehicles and/or boats owned and amount owed to a bank or loan company for them.
- Loans made to other people, balances owed, collateral (if any), and identity and address of the person to whom the loan was made.
- Amount of cash in the judgment debtor's pockets and/or wallet.

You might also want to ask the questions found in the written mail debtor's examination form. (Available from the clerk of court's office at the Small Claims window) Remember, it is up to you, not the judge, the magistrate, the clerk, or the bailiff to ask the judgment debtor these questions.

When your case is called:

1. You and the judgment debtor approach the judge's bench.
2. The judgment debtor is sworn in by the bailiff. As a result, the debtor will be under oath to tell the truth.
3. The judge or bailiff will tell you where the examination will be held and will show you to the room assigned.
4. Now is the time to ask your list of questions. Write down the debtor's answers as you go along.
5. If the debtor refuses to answer your questions or you think the debtor is lying:
 - a. Return to the courtroom.
 - b. Ask a bailiff to let you go before the judge to repeat your questions.
 - c. Repeat your questions. The judge may help at this time.
 - d. Write down the answers.

The information you get will be helpful when utilizing other methods to collect on your judgment.

NO SHOW BY THE DEBTOR

If the debtor is served with notice to come to court for the examination but fails to appear, you may ask the court to issue a civil warrant for contempt of court. A warrant is a court order demanding that the debtor be arrested and brought to the court. A warrant may be issued by the court only if:

1. The debtor was personally served (handed or touched with) the *Summons to Appear for Debtor Examination*, and

2. You provide the court with the debtor's date of birth and social security number.

The issuance of a warrant for the judgment debtor's arrest is not automatic; it is up to the discretion of the judge. If, after issuance of a warrant the judgment debtor is stopped by the police, the judgment debtor may be arrested and brought before the judge and questioned about her/his non-appearance at the debtor's examination. A new date may then be set for the debtor's examination.

If personal service was not made on the judgment debtor or if you do not know the judgment debtor's date of birth and social security number, you may want to consult a lawyer about filing a *Motion to Show Cause*.

MAIL DEBTOR'S EXAMINATION

In addition to the "in person" debtor's examination available to all judgment creditors, there is an additional, simplified process known as a mail debtor's examination. To request a mail debtor's examination, either mail or personally deliver to the court:

1. A completed *Mail Debtor's Examination Request* form.
2. The filing fee.
3. A self addressed, stamped envelope.
4. The judgment debtor's date of birth and social security number.

Upon receipt of the items listed above the clerk's office will:

1. Complete the top of the examination form.
2. Stamp the judge's signature at the appropriate space.
3. Mail the form to the judgment debtor with a certificate of mailing.

PLEASE NOTE: The court does not keep records of mail debtor's examinations. The court simply completes the mail debtor's examination form, sends it out to the judgment debtor, and returns it to you if it is received back at the court. That is all the court does.

After at least 30 days have passed since you sent in you *Request for a Mail Debtor's Examination*, you may call the small claims department at (216) 491-1305 to ask if your form has been returned to the court by the judgment debtor. If so, the court will mail the form to you. If the form has not been returned, the court is unable to do anything further unless and until you, the judgment creditor, tell the court, in writing, what to do next. Should you get to this point, you may want to consult an attorney.

GARNISHMENT OF WAGES OR BANK ACCOUNTS

If you learn that the judgment debtor is employed or has a checking or savings account, you may garnish the employer or the bank accounts of the judgment debtor. This means that you may be able to have the amount that the judgment debtor owes you directly withdrawn from his or her wages or bank account(s).

FILING AN EMPLOYER GARNISHMENT BY A JUDGMENT CREDITOR

As a judgment creditor, you may use an employer garnishment to collect the money owed to you. Come to the court and request an employer garnishment packet. If there is more than one employer, you need one packet for each employer, and you must complete the process, individually, for each employer. Each packet will include:

- Notice of Court Proceeding to Collect Debt (also known as the demand)
- Affidavit, Order and Notice of Garnishment and Answer of Garnishee
- Notice and Affidavit of the Judgment Debtor of Current Balance Due on Garnishment Order
- Notice to Judgment Debtor
- Request for Hearing
- Interim Report and Answer of Garnishee

- Final Report and Answer of Garnishee

THE FORMS

The *Notice of Court Proceedings to Collect Debt* (Demand) is the first step and does the following:

1. Reminds the judgment debtor that s/he owes you money on a judgment.
2. Demands payment of the debt.

The lower part of this form is entitled *Payment to Avoid Garnishment*. It explains what the debtor can do to avoid the garnishment.

The *Affidavit, Order and Notice of Garnishment and Answer of Garnishee* (Affidavit form) is three forms in one: the affidavit, the order and the answer.

1. The top portion of the front of the form is an affidavit, signed by you, stating under oath, that you are owed money from a judgment against the judgment debtor.
2. The bottom portion of the front of the form is a *Court Order and Notice of Garnishment* which:
 - a. Tells the employer (garnishee) that the judgment debtor owes you money.
 - b. Orders the employer (garnishee) to complete the *Answer of Employer* form (on the back of the form) and return it to the court within 5 business days.
3. The back of the affidavit form is the *Answer of Employer*. This form requests the employer/garnishee:
 - a. Verify that the judgment debtor is employed by the employer/garnishee.

- b. Send money (wages) owed to the judgment debtor/employee by the garnishee/employer to the Shaker Heights Municipal Court.

The *Notice and Affidavit to the Judgment Debtor of Current Balance Due on Garnishment Order* tells the judgment debtor that the Shaker Heights Municipal Court issued an order that will allow the judgment creditor to have a portion of judgment debtor's wages garnished in order to pay off the debt owed. It also explains how to request a garnishment hearing.

The other forms are provided for the garnishee to complete. The worksheet for calculating interest shows the judgment creditor how to calculate the interest due on a particular debt so that s/he may put the correct figure on the garnishment paperwork.

The instruction sheet explains the process of garnishing personal earnings.

THE PROCEDURE

Once you have your employee garnishment packet, fill in the blanks with the name of the case, the case number, and all information which you have and:

1. Mail one copy of the *Notice of Court Proceedings To Collect Debt* (the demand) to the judgment debtor (NOT to the court) addressed to her/his last known place of residence by either:
 - a. Certified mail, return receipt requested
 - b. Regular mail with a certificate of mailing attached.

If the judgment debtor properly completes a payment to avoid garnishment at this time, you must wait until the expiration of the debtor's pay period as established in the "Payment To Avoid Garnishment" before issuing a new Notice of Court Proceedings To Collect Debt.

2. Complete the necessary parts and file the following at the court:

- a. The original and three copies of the affidavit, Order and Notice Of Garnishment and Answer of Garnishee. Attached to this must be the signed return receipt or the unclaimed letter if the demand was sent by certified mail, or the certificate of mailing if the demand was sent by regular mail.
 - b. Notice and Affidavit to the Judgment Debtor of Current Balance Due on Garnishment Order.
 - c. Notice to Judgment Debtor (original and 3 copies)
 - d. Request for Hearing (original and 3 copies)
 - e. Interim Report and Answer of Garnishee (1 copy)
 - f. Final Report and Answer of Garnishee (1 copy)
3. Pay the filing fee at the time you file the forms.

PLEASE NOTE

When the employer's Answer is filed, the court sends a copy to the judgment creditor. If any funds are received, the court will send a check to the judgment creditor from the clerk's office unless the judgment debtor requests a garnishment hearing. If this happens, the court will hold the funds pending the outcome of the garnishment hearing.

This process is good and continuous until the judgment is satisfied or until one of the circumstances listed in O.R.C. §2716.041 occurs. These reasons are complicated and you should become familiar with them. Consider consulting an attorney to be sure you understand the whole process.

FILING A BANK GARNISHMENT BY THE JUDGMENT CREDITOR

Another way in which to collect the money owed to you is to garnish property other than personal earnings. This is often called an "other than" garnishment and refers to money of the judgment debtor being held in banks, savings & loans, credit unions, or other financial

institutions. To file an “other than” garnishment, come to court and request an “other than” garnishment packet. This packet will include the following forms:

- *Affidavit in Support of Motion for Order of Garnishment of Other than Personal Earnings* (Affidavit) (four copies)
- *Notice to Judgment Debtor of Garnishment of Other Than Personal Earnings/Request for Hearing* (Notice) (three copies)
- Worksheet for calculating interest (one copy)

THE FORMS

The *Affidavit in Support of Motion for Order of Garnishment of Property Other Than Personal Earnings* (or *Affidavit* form), is three forms in one: the affidavit, order and answer.

1. The top portion of the front of the form is an *affidavit*, signed by you, stating, under oath, that you are owed money from a judgment against the judgment debtor. It also states who the judgment debtor is and exactly what property (savings account, checking account, *etc.*) you, the judgment creditor, believe the garnishee (bank or other financial institution) has in its possession that belongs to the judgment debtor.
2. The bottom portion of the front of the form is a *Court Order* and *Notice of Garnishment* which:
 - a. Tells the garnishee (financial institution) that the judgment debtor owes you money.
 - b. Orders the garnishee to complete the *Answer of Garnishee* form (on back of the form).
 - c. Gives the date by which the garnishee’s answer must be filed with the court.

3. The back of the affidavit form is the *Answer of Garnishee* form (on the back of the form).
 - a. To verify that the judgment debtor has funds on deposit with the financial institution and to send money of the judgment debtor owed to the judgment creditor to the Shaker Heights Municipal Court, or
 - b. To verify that no money is available.

The *Notice to Judgment Debtor of Garnishment of Property Other Than Personal Earnings/Request for Hearing* (Notice) form tells the judgment debtor that the Shaker Heights Municipal Court issued an order that will allow the judgment creditor to have a portion of the judgment debtor's deposits garnished in order to pay off the debt owed. It also explains how to request a garnishment hearing.

The worksheet for calculating interest shows the judgment creditor how to calculate the interest due on a particular debt so that s/he may put the correct figure on the garnishment paperwork.

THE PROCEDURE

File at the court:

1. The original and three copies of the *Affidavit*.
2. The original and two copies of the Notice. (If you are requesting information from more than one financial institution you will need separate paperwork for each financial institution to be garnished.)
3. The filing fee made payable to the Shaker Heights Municipal Court for one bank and one debtor. There is an additional fee for each additional financial institution and each additional debtor.

4. A \$1.00 check or money order made payable to **each** financial institution you are contacting. Cash is not acceptable.

The clerk will send the forms to the financial institutions(s). The day after the *Affidavit in Support of Motion for Order of Garnishment of Other Than Personal Earnings and Notice to Judgment Debtor of Garnishment of Other Than Personal Earnings/Request for Hearing* forms are sent to the financial institution(s), a copy of each form is sent to the judgment debtor. The financial institution is given 12 days in which to complete and file an Answer.

If the court receives any monies, a check, will be sent to the judgment creditor from the clerk of court's office unless the judgment debtor requests a garnishment hearing. If this is the case, the court will hold the monies pending the outcome of the garnishment hearing.

PLEASE NOTE

The "other than" garnishment, is good for one garnishment per month (30 days). If you want to garnish again, you must repeat the entire process, including paying more fees. The good news is that all the fees associated with the garnishment process are recoverable from the judgment debtor as part of her/his debt to you.

GARNISHMENT HEARINGS

With either type of garnishment, the debtor is given a form through which s/he can request a hearing. The debtor must file the *Request for Hearing* form with the court no more than five business days after receiving it.

If the court receives a *Request for Hearing* form, a garnishment hearing is scheduled as soon as possible, usually within one week. If any monies have been sent to the court by the employer or the financial institution, they will be held by the court until the garnishment hearing is held. The court will send both the judgment debtor and the judgment creditor (or

their attorneys) a notice with the date and time of the garnishment hearing.

At the garnishment hearing, both the judgment creditor and judgment debtor may appear. The judgment debtor may claim that the money cannot be used to pay the judgment based on Ohio law. This hearing has nothing to do with the facts involved in the original case. The **only purpose** of the garnishment hearing is to determine whether or not the money being held by the court can be used to pay the judgment according to Ohio law. A list of exemptions from collection can be found in §2329.66 of the Ohio Revised Code.

GARNISHMENT LIMITS & EXCEPTIONS

1. If you are the judgment debtor and have questions as to whether your wages or bank accounts are exempt according to §2329.66 of the Ohio Revised Code, you should check the Ohio Revised Code or consult an attorney. Do not call the court clerk's office. Advice about exemptions is considered to be legal advice. The clerks do not know the answers to these questions, they do not have the Ohio Revised Code available to them, and they cannot give you legal advice.
2. All the costs and fees associated with the garnishment process are collectible from the judgment debtor as part of the debt.
3. Income from sources such as Social Security, Unemployment Compensation, etc. cannot be taken in a garnishment. Money in a bank account may not be taken in a garnishment if it can be shown that the money in the account come from sources like Social Security or if the money is truly not the judgment debtor's money (*i.e.*, a joint account with an elderly parent).

4. The amount that can be garnished from any employer (by creditors collectively at one time) is regulated by law. Judgment creditors cannot take the judgment debtor's entire paycheck. The most a creditor can ever take during any one pay period is 25% of the debtor's take-home pay.

LEVIES and LIENS

Levies and Liens are two more means of collecting a debt. A levy is a complicated and expensive process. The Shaker Heights Municipal Court does not have forms to help you. If you are considering a levy, you should consult an attorney.

A lien **may** be placed on any real estate owned by the judgment debtor if the real estate was owned by the debtor at the time the small claims case was originally filed. This is another procedure that the Shaker Heights Municipal Court cannot assist you with. Although it is not as complicated as a levy, there are certain requirements and restrictions. Again, if you are considering a lien, you should consult an attorney.

MEDIATION

The Shaker Heights Municipal Court has a growing mediation program, and your case may be selected for mediation. If this happens, you will be contacted by our mediator before your court date.

The goal of mediation is to determine whether the parties can agree to a settlement of their dispute before going to trial. The advantage of agreeing to a settlement is that you can be sure of the outcome. Also, most people tend to be happier with a settlement rather than a judgment from the court. Remember, the only thing that the small claims court can award is money. The court cannot order someone to do or not to do something. So, if what you really want is your unfinished paint job finished or your washing machine still doesn't work and you want a working washing machine, and not the money to have someone else fix it, then mediation might just get you the result you want.

- A FINAL POINT - COLLECTIBILITY

Although you have won your case, you have not won money. What you have won is the **right** to a specific amount of money. Now, you need to **collect** that money from the judgment debtor. This is also called enforcing your judgment or executing on your judgment. Please remember, it is possible that your judgment is uncollectible. This means that even though you have won a judgment, you may not be able to collect the amount of money for the judgment. Although the court can assist you within limits in enforcing your judgment, it cannot make the judgment debtor pay something s/he does not have. Please consider this before you invest time, effort, and money in preparation of a small claims case.

APPENDIX A

CERTIFICATE OF SERVICE

I have sent a copy of the foregoing _____
Put the name of the document that you are sending here.

To _____
Put the name(s) of the person or people you are sending this to here.

At the following address: _____
Put the address you are sending this to here.

On _____ Date. This was sent by regular U.S. Mail, postage pre-paid.

Sign your name here.

APPENDIX D

**SHAKER HEIGHTS MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO**

_____)	CASE NO. _____
_____)	
Plaintiff)	
_____)	JUDGE ANNE WALTON KELLER
-vs-)	
_____)	SUBPOENA
_____)	
Defendant)	Subpoenaed by: _____

Sign your name here
Plaintiff/Defendant
(circle one)

TO: _____

You are commanded to appear on _____ at _____ at
(date) (time)

_____ to

- _____ 1. attend and give testimony at a trial/hearing/deposition;
- _____ 2. produce the documents or tangible things listed below at trial/hearing/deposition;
- _____ 3. produce and permit inspection and copying of any designated documents listed below that are in your possession, custody, or control;
- _____ 4. produce and permit inspection and copying, testing, or sampling of any tangible things as listed below that are in your possession, custody, or control: or
- _____ 5. permit entry upon designated land or other property as identified below that is in your possession or control for the purposes described in Ohio Civ. R. 34 (A)(3).

See Reverse for text of Civil Rule 45 (C) and (D) (Not provided on this SAMPLE FORM)

Issued this _____ day of _____, 20_____,
STEVE TOMASZEWSKI, CLERK

By _____
Deputy Clerk/Attorney for Plaintiff/Attorney for Defendant

RETURN

Received this Writ _____, 20_____, **and served the same**
on the _____ **day of** _____, 20_____, **by** _____

Fees on this Writ:

Service \$ _____
Mileage \$ _____

Deputy Bailiff

APPENDIX E

Findings of Fact and Conclusions of Law

If *Findings of Fact and Conclusions of Law* are not filed by the Magistrate as part of the original Magistrate's Decision, you must request them, **in writing**, within 7 days of the filing of the Magistrate's Decision. The Magistrate will then file an *Amended Magistrate's Decision*.

Objections to the Magistrate's Decision (see Appendix B)

You have 14 days from the filing of the *Amended Decision* (or the original *Magistrate's Decision* if it included *Findings of Fact and Conclusions of Law*) to submit **specific written objections** to the decision. If you file objections, you must send a copy to the opposing party's lawyer or to the party if there is no lawyer. The document that you file with the Court must include a Certificate of Service (see Appendix A).

Response to Objections to the Magistrate's Decision (see Appendix B)

You have 10 days from the filing of *Objections to the Magistrate's Decision* to file a **specific written response** to the Objections. Just like with the Objections to the Magistrate's Decision, the response must be in writing and you must send a copy to the opposing party's lawyer or to the party if there is no lawyer. The document you file with the court must include a Certificate of Service (see Appendix A).

APPENDIX F

PLAINTIFF

SMALL CLAIM COMPLAINT

Zip Code

**IN THE SHAKER HEIGHTS MUNICIPAL COURT
3355 LEE ROAD
SHAKER HEIGHTS, OHIO 44120-3499**

Tele. No. _____
-vs-

Case No. _____

DEFENDANT

DEFENDANT

Zip Code

Zip Code

Tele. No. _____

Tele. No. _____

TO THE CLERK: Please notice that a claim is hereby filed against the above defendant(s) and request that he/she (they) be summoned to appear in Court to answer same.

STATEMENT OF CLAIM

Wherefore Plaintiff prays judgment against Defendant(s) in the sum of \$ _____ plus interest and costs.

STATE OF OHIO) SS:
CUYAHOGA COUNTY)

AFFIDAVIT OF COMPLAINANT'S CLAIM

_____, being first duly sworn, on oath states that he (they) is (are) the Plaintiff(s) in the above entitled cause; that the said cause is for the payment of money, that the nature of plaintiff's demand is as stated, and that there is due to plaintiff from the defendant the amount stated above; defendant(s) (is are) not now in the military or naval service of the United States. If service of process by certified mail is returned by the postal authorities with the endorsement of "refused" or "unclaimed" the undersigned requests ordinary mail service in accordance with Civil Rule 4.6 (C) or 406(C).

PLAINTIFF(S)

Subscribed and sworn to before me this _____ day of _____, 20_____.

Clerk, Deputy Clerk, Notary Public

NOTICE AND SUMMONS IN ACTION FOR MONEY ONLY

TO DEFENDANT(S) _____
Plaintiff(s) _____ asks judgment in this court against you for \$ _____.

Interest and costs upon the claim as stated above.

THE COURT WILL HOLD TRIAL ON THIS CLAIM IN THE SMALL CLAIMS DIVISION LOCATED AT 3355 LEE ROAD, SHAKER HEIGHTS, OHIO IN COURTROOM #2 AT _____ O'CLOCK _____ .M. ON THE _____ OF _____, 20_____.

If you do not appear at the trial, judgment may be entered against you by default, and your earnings may be subjected to garnishment of your property may be attached to satisfy the judgment. If your defense is supported by witnesses, account books, receipts, or other documents, you must produce them at the trial. Subpoenas for witnesses, if requested by a party, will be issued by the clerk. If you admit the claim but desire time to pay, you may make such a request at the trial. If you believe you have a claim against the plaintiff, you must file a counterclaim with the court and must serve the plaintiff and all other parties with a copy of the counterclaim at least seven days prior to the date of the trial of the plaintiff's claim.

Clerk – Deputy Clerk