

## “CAN I HANDLE A SMALL CLAIMS CASE BY MYSELF?”

Small claims court presents several advantages for the small business owner. However, it is still a court of law and there is many a pitfall for the uninformed or lazy litigant. This article should make the decision whether to sue or defend a case on your own versus with the help of an attorney less of a problem.

Many people have an idea of what small claims court is like. Perhaps surprisingly, most of them are correct. The average person would probably state small claims court is “like what I see on Judge Judy.” Although it lacks much (but not all) of the drama, that is a fairly accurate description. The small claims system is intentionally set up to be relatively rule-free compared to the plenary (regular) circuit or superior courts. The result is a simpler procedure where issues such as hearsay and admissibility of documents are less important than they might be in other cases. Such issues are taken into consideration along with the rest of the case and decided by the presiding judge. The benefit (and to some extent, the cost) of this system is that one need not have intimate knowledge of procedural and evidentiary rules. The system allows for a free presentation of whatever facts the parties deem appropriate. The judge in a small claims suit is both the referee of the trial and the ultimate fact-finder.

Small Claims court presents some distinct advantages for a plaintiff. The filing fee of \$72.00 (in Vanderburgh County) is considerably less than the plenary (regular Superior Court) division fee of \$132. Perhaps the most important advantage is the streamlined nature of small claims court. In most instances, the parties will appear in court only two times after suit is initiated. The first time will be when the defendant appears to either admit or deny the claim. If the claim is admitted, the plaintiff will receive his or her judgment as long as the proper amount of the judgment can be proven. Where the proper amount of the judgment cannot be proven, the court may award a “judgment on proof,” meaning the plaintiff will need to submit proof of the judgment amount at a later time.

If the claim is denied, the court will usually set a date for a trial, typically a few months into the future. It should be noted that not all small claims courts will have the initial hearing where the claim is admitted or denied. Some jurisdictions conduct the trial the first time the parties appear. The prudent business looking into filing a lawsuit in small claims court should check with an attorney or with the appropriate court to determine how the trial would progress. Many counties have manuals or guides for parties to small claims courts. The advantage of abbreviated court appearances should be qualified insofar as it does not take into account the elusive opposing party. For example, the plaintiff who receives a judgment will next be faced with the often daunting task of collecting his or her judgment. This process could lead to numerous court appearances where the defendant fails to appear, or appears and still has not paid the judgment. There are remedies available to the plaintiff in that situation, but they are varied enough to warrant a specific conversation with an attorney.

Although there are some advantages to small claims court for a plaintiff, there are also some disadvantages. First, not every case can be heard in the small claims division. Certain types of cases, such as a foreclosure on a mechanic's lien, cannot be heard by a small claims court. Second, the jurisdictional limit on small claims was recently increased, but the cap is still \$6,000.00. If a plaintiff is seeking more than that amount, it must either file in the plenary division or seek \$6,000.00 as a trade-off for the streamlined nature of the court. Many prospective plaintiffs are understandably unwilling to reduce their recovery simply to go through small claims court. A third disadvantage is somewhat less tangible. Although removing certain rules and procedures makes the process faster and easier, a faster and easier process is not always better. The unscrupulous plaintiff or defendant in small claims court has a greater ability to introduce evidence that may not be considered under the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence. Because the numerous, complicated safeguards present in those rules aimed at establishing the truth are gone, the judge could easily be barraged with evidence that would otherwise be excluded. On a similar note, many business representatives who have never appeared in a court of law before will be extremely nervous in front of the judge, regardless of whether they are seeking money for their business or to trying to avoid a judgment.

It should be remembered, however, that small claims court does not preclude the use of any attorney. On the contrary, many attorneys have a practice that includes small claims trials. Retaining an attorney provides benefits on two sides. First, one still retains the benefit of the streamlined process, so attorney fees will be far less than those incurred in a suit on the plenary docket. Second, the plaintiff or defendant receives the benefit of having an attorney to guide them through the process and conduct the trial.

The trial itself is a fairly straightforward and often brief event. Unlike trials in the plenary division, there are no "opening statements" or "closing statements" per se, nor is there a jury selection. The judge will usually ask the plaintiff to explain why he or she is there and what they want the court to do. The defendant will then have an opportunity to explain his or her side of the story. If either party strays too far from the pertinent facts, the judge will often re-direct the testimony back to the subject at hand with a few helpful questions. Both sides will have any opportunity to introduce exhibits such as pictures, contracts, invoices, or proofs of payment. Either side may call additional witnesses and ask them questions on the witness stand. Although the plaintiff or defendant may think they are going to spend hours presenting their case, they are often finished in ten minutes or less. When both sides have spoken, the case is ready for the judge to rule. One difference between television and real life is that the judge in real life often needs some time to think about the case. If the parties provided documents, the judge may want some time to review that material before making a decision. In any event, the small claims judges before whom this author has tried cases are fairly quick about making a ruling.

As noted above, the case is not necessarily over if the plaintiff obtains a judgment (it is over if the defendant obtains a judgment, barring any appeals). The plaintiff with a judgment must next collect his judgment, which could lead to future dates. The exact process of collecting a judgment is outside the scope of this article.

Small claims courts are a helpful tool for both plaintiffs and defendants in certain contexts. However, they are not for everyone in every instance. The plaintiff considering a lawsuit and the defendant receiving notice of a suit in small claims court should carefully consider retaining the services of a qualified attorney to either discuss the process in detail or to aid them throughout the process.

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