

INFORMATION SHEET: CIVIL CASE PLAINTIFF

As the person bringing the lawsuit, you are referred to as the plaintiff. The person you are bringing the lawsuit against is the defendant.

As the plaintiff, you must fill out the civil complaint form entirely. Court personnel may assist you if requested, but they may only write down what you tell them and cannot give you advice about your particular case.

THE COMPLAINT: It is **IMPORTANT** that you give a proper address for each defendant. The physical location of where the defendant can be found is necessary - **a post office box alone is not enough if service of process is to be completed by the sheriff.** Directions to the home of each defendant are acceptable. The first and last name of each defendant is required. In addition, the date on which the claim arose, the nature of the claim and the nature of the relief you are requesting has to be included.

CHARGES: Before the magistrate court accepts a civil complaint, filing fees, court costs and service of process fees involving the court must be paid. However, if you have filed an affidavit of indigency and have been granted a waiver, the case will proceed without payment of these costs and fees.

COSTS: The following filing costs are charged in civil actions in magistrate court and collected in advance. If the dollar amount of the relief requested in the complaint is:

\$ 0.01 to \$ 500.00: the cost is \$50.00, plus service fees
\$ 500.01 to \$ 1,000.00: the cost is \$55.00, plus service fees
\$1,000.01 to \$ 2,000.00: the cost is \$60.00, plus service fees
\$2,000.01 to \$10,000.00: the cost is \$70.00, plus service fees

- If a civil suit seeks relief other than money damages, the cost is \$50 plus any appropriate service of process fee for each defendant.
- A copy of a bill, estimate, etc. may be provided at the time of filing. No judgment by default may be granted without enough proof of your claim.

METHODS OF SERVICE OF PROCESS AND FEE FOR EACH METHOD: To begin a civil suit the defendant must be notified of the civil suit by serving a copy of the summons and complaint by certified mail, first-class mail, or by personal service on the defendant or family member. As the plaintiff you are responsible for choosing how the defendant will be notified of your civil suit and pay for the method of service you select.

- If you want the court to handle notification of the defendant, you may choose to have the clerk send the summons and complaint by certified mail [which costs \$20], or first-class mail [which costs \$5].
- If you request service by the sheriff, the summons and complaint will be sent to the sheriff's office of attempted personal delivery on the defendant(s). The cost of service through the sheriff is \$25 per defendant. A service of process fee is charged for each defendant served.
- You also may hire a private process server or get another person who is over the age of 18 and is not a party, to attempt personal delivery of the complaint and the summons. If a private process server is to attempt service of process, no process fees are paid to the court.

SERVICE OF PROCESS OPTIONS:

1. ***Certified mail, return receipt requested and delivery restricted to addressee:***
 - a) If the defendant accepts certified mailing of the complaint and summons, SERVICE IS COMPLETE; see ANSWER OPTION NO. 7 on failure to answer.
 - b) If the defendant, affirmatively refuses the certified mailing of the complaint/summons, SERVICE IS COMPLETE; **however, the clerk is required to mail the defendant a copy of the summons and complaint and a notice that despite refusal the case will proceed and that a judgment by default may be rendered against the defendant if he or she does not appear to defend the suit.**
 - c) If certified mail is returned for any other reason, SERVICE IS NOT COMPLETE; see below, INCOMPLETE SERVICE.
2. ***First-class mail:***
 - a) If the defendant completes and returns the notice and acknowledgment of receipt of summons and complaint mailed first-class along with the summons and complaint, SERVICE IS COMPLETE, see ANSWER OPTION NO. 7 on failure to answer.
 - b) If the defendant fails to complete and return the notice and acknowledgment of receipt of summons and complaint form, SERVICE IS NOT COMPLETE; see below, INCOMPLETE SERVICE.
3. ***Personal service,*** on the defendant himself or herself. SERVICE IS COMPLETE; see ANSWER OPTION NO. 7 on failure to answer.
4. ***Service on a family member*** (age 16 years or older) at the **defendant's home (residence)**. SERVICE IS COMPLETE; see ANSWER OPTION NO. 7 on failure to answer.

SERVICE IS INCOMPLETE IF:

- (1) Certified mail is returned without being accepted or refused;
- (2) Service is by first-class mail and the defendant fails to complete and return the notice and acknowledgment of receipt of summons and complaint form;
- (3) Personal service is not made; OR
- (4) Service on a family member at defendant's home is not made.

When service is incomplete, the service may be tried again by any means listed under service of process options EXCEPT if service by first-class mail was attempted, subsequent attempts to obtain service may be only by:

- a) personal service on the defendant by the sheriff's office or by a private process server, OR
- b) personal service on a family member by the sheriff's office or by a private process server, OR
- c) delivery of a copy of the summons and complaint on an agent or attorney-in-fact authorized by statute to receive process; OR
- d) certified mail.

After a second attempt and failure to complete personal of family member service, you may file an affidavit with the magistrate court clerk and request an order of publication.

IMPORTANT NOTICE: *If service is not completed and you as plaintiff fail to take further action within 6 months of the filing date, the case will be dismissed without prejudice.*

ANSWER REQUIREMENT: The defendant is usually required to file and answer with the court within 20 days or receiving service (or 30 days if service is accepted by an agent or attorney-in-fact authorized to accept service). The defendant must provide you as plaintiff a copy of the answer. The answer period for suits involving wrongful occupation of residential rental property and unlawful entry and detainer is 5 days after service of the summons and complaint.

ANSWER OPTIONS:

1. If the defendant files an answer and **confesses judgment** (admits to all matter in the complaint and waives a trial) without any reservation, judgment will be granted in your favor. Any payment or payment schedule must be arranged between the plaintiff and the defendant. The court accepts **no** payments. If the defendant fails to contact your (or defaults on a payment plan), after 21 days have passed from the judgment date, you may contact the magistrate court clerk's office by telephone or in person about the next step in collection.
2. If the defendant **denies or admits** the matters set forth in the complaint, but does not actually confess judgment, a trial date will be set. You as the plaintiff and the defendant may still reach an out-of-court settlement before that date.
3. If the defendant **admits in part and denies in part** the matters set forth in the complaint, a trial date will be set. You as the plaintiff and the defendant may still reach an out-of-court settlement before that date.
4. The defendant has the right to file a counterclaim which is a claim against you. Any **counterclaim** should be stated on the answer form. No reply to a counterclaim is required but the matter will be taken up at the trial involving the complaint you filed.
5. If your claim is against two or more defendants and the claim arose from the same transaction or occurrence, one defendant may file a **cross-claim** against another defendant. The cross-claim may be included in the defendant's answer and will be taken up during the trial in your case.
6. If the defendant alleges that another person not named in the case is responsible for all or part of the claim the defendant may file a **third-party complaint** against that person and that person will become a party to the case you filed. The defendant is responsible for seeing that person receives notice of the suit against them and the matter will be taken up at the trial in the case you filed.
7. If the defendant is served but fails to answer or appear, as plaintiff you have the right to appear 21 days from the service date (or 31 days if service is accepted by an agent or attorney-in-fact authorized to accept service) and file an affidavit requesting **judgment by default**.

IMPORTANT NOTICE: *If the defendant does not answer and you as the plaintiff fail to file for default judgment within 6 months of the service date, this case will be dismissed without prejudice. Without prejudice means that you would be permitted to file a complaint on the same claim at a later date. If you refile a complaint, you will have to pay filing fees again.*

ELECTION OF A JURY TRIAL: You may elect a jury trial if the amount of the claim is for at least \$20 or involves possession of real estate. If you wish to elect a jury trial, you must do so in **writing** within 20 days of service of the answer or in wrongful occupation and unlawful detainer cases, within 5 days of service of the summons and complaint. The written request is to be sent or delivered to the magistrate court. Be aware that if you elect to have a jury brought in, a jury fee will be assessed against the losing party either you or the defendant or the fee may be split between you and the defendant.