

Small Claims

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Court Certification of Unsatisfied Judgment

(rev. 5/08)

8.1 Overview

A. Purpose

The purpose of the small claims division is to handle relatively minor civil cases for which the recovery of money is the primary purpose. The amount of the claim which can be recovered is currently limited to \$3,000.00. The intent of the small claims division is to provide a forum for handling minor cases in a manner which is efficient, uncomplicated, inexpensive, and fair. (MCL 600.8411[2])

B. Authority and Definitions

1. Small Claims Division

- A small claims division is created in each district as a division of the district court. A judge of the district court shall sit as judge of the small claims division. The jurisdiction of the small claims division is confined to cases for the recovery of money only. The jurisdictional limit is defined by statute. (MCL 600.8401)
- The small claims division has equity jurisdiction and may rescind, reform, or order specific performance of contracts. (MCL 600.8302) Taking equity jurisdiction should be done sparingly because if specific performance or restitution is ordered, the party will be looking to the court for enforcement if the order is not obeyed.
- A person having a claim in excess of the applicable jurisdictional amount prescribed by MCL 600.8401 may institute an action in the small claims division but may not claim or recover more than the jurisdictional amount. (MCL 600.8425[1])
- Actions in the small claims division are governed by the procedural provisions of Chapter 84 of the Revised Judicature Act, MCL 600.8401 *et seq.*, and by subchapter 4.300 of the Michigan Court Rules. After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division. (MCR 4.301)
- Attachment or garnishment shall not issue from the small claims division prior to judgment but execution may issue in the manner prescribed by law and the judgment may be enforced in any other manner provided by law and not prohibited under the provisions of this chapter. (MCL 600.8409[1])

2. Magistrate Authority

A small claims hearing may be conducted either by a district court judge or by a district court magistrate who is an attorney licensed to practice in this state and who is authorized to do so by the chief judge of the district court district as provided in MCL 600.8514. (MCL 600.8427)

A district court magistrate who is an attorney licensed to practice law in this state, if authorized by the chief judge of the district, in cases in the small claims division may:

- a. administer oaths,
- b. examine witnesses,
- c. make findings of fact and conclusion of law, and
- d. recommend a judgment in the case.

In doing so, the magistrate shall perform all functions which a district court judge performs in trying a case in the small claims division. A recommended judgment shall become a final judgment as of the date the judgment was recommended unless an appeal is taken within seven days after the judgment was recommended. (MCL 600.8514)

Magistrates may exercise the same powers and perform the same duties as deputy clerks of the district court for the purpose of carrying out the provisions of the small claims statutes. (MCL 600.8545)

3. Parties

a. Representation

1) Attorneys

An attorney shall not take part in the prosecution or defense of litigation in the small claims division except on his or her own behalf. (MCL 600.8408) Litigants are defined as acting in **pro per** or **pro se**, which means they are unrepresented by attorneys. The Court of Appeals has ruled that this prohibition includes postjudgment enforcement proceedings in the small claims division. (*In re Goehring*, 184 Mich App 360; 457 NW2d 375 [1990])

2) Officers or Employees

- A sole proprietorship, partnership, or corporation as plaintiff or defendant may be represented by an officer or employee who has direct and personal knowledge of facts in dispute. If the officer or employee who has direct and personal knowledge of facts in dispute is no longer employed by the defendant or plaintiff or is medically unavailable, the representation may be made by the person's supervisor, or by the sole proprietor, a partner, or an officer or a member of the board of directors of a corporation. (MCL 600.8408[2])
- A county, city, village, township, or local or intermediate school district as plaintiff or defendant may be represented only by an elected or appointed officer or an employee who has direct and personal knowledge of the facts in dispute. If the officer or employee who has direct and personal knowledge of the facts in dispute is no longer an officer or employee of the plaintiff or defendant, the representation may be made by the officer's successor or that employee's supervisor, or by a member of the governing body of the county, city, village, township, or local or intermediate school district.

In addition, a person may not represent a county, city, village, township, or local or intermediate school district in the small claims division unless authorized to appear in the case by the governing body of the county, city, village, township, or local or intermediate school district. (MCL 600.8408[3])

b. Governmental Unit as Party

The state or political subdivision of the state or any other agency cannot be named as a party in a small claims action. (MCL 600.8424[2]) A county may be a party in the small claims division. However, the county may not be named as a defendant if the claim is subject to the defense of immunity. (MCL 600.8424[3])

c. Improper Parties

An assignee of a claim or a third party beneficiary under a third party beneficiary contract may not file or prosecute a claim in the small claims division. (MCL 600.8407[1])

A collection agency or agent or employee of a collection agency, or a person other than the plaintiff or defendant (except as indicated below) shall not take part in the prosecution or defense of litigation in the small claims division. (MCL 600.8408[1])

d. Plaintiff

The plaintiff is defined in MCL 600.8407(3) as follows:

1) Sole Proprietor

The sole proprietor or a full-time employee having knowledge of the facts surrounding the claim may file a small claims case.

2) Partnership

Any partner or full-time employee having knowledge of the facts surrounding the claim may file a small claims case.

3) Corporation

The person filing the claim must be a full-time employee of the corporation, having knowledge of the facts surrounding the claim.

4) Governmental Unit or Intermediate School District

The person filing the claim must be an elected or appointed officer or an employee having knowledge of the facts surrounding the claim and be authorized by the governing body of the governmental unit or local or intermediate school district to file the claim.

e. Defendant

An individual, sole proprietorship, partnership, or corporation may be sued in the small claims division in any name used in any advertisement, sign, invoice, sales slip, register tape, business card, contract, or other communication or document, published, displayed or issued to the public in the course of its business. Any judgment in such a name shall be valid if the business is accurately identified by a location or mailing address where or through which the business is conducted. (MCL 600.8426)

C. Waiver of Rights

Unless a party removes a small claims action to the district court pursuant to MCL 600.8408(4), all parties to an action in small claims shall be considered to have waived the following rights:

- the right to counsel,
- the right to trial by jury,
- the right to recover more than the applicable jurisdictional amount as prescribed in MCL 600.8401, and
- the right to appeal, except that if the action is heard before a district court magistrate pursuant to MCL 600.8427, the parties have a right to an appeal to the general civil division of the district court as provided by MCL 600.8427.

(MCL 600.8412)

An attorney may file for removal of a small claims action to the district court. (*In re Lafayette Towers*, 200 Mich App 269; 503 NW2d 740 [1993])

D. Sessions and Locations

The small claims division of the district court must sit at least once each 30 days at locations at which the district court is required to sit pursuant to MCL 600.8251. A clerk or deputy clerk of the district may be available for filing of claims with the small claims division after regular court hours at the discretion of the presiding judge. (MCL 600.8416[1], [2])

Additionally, the clerk shall inform the plaintiff and defendant that evening and Saturday court hours may be made available upon written request and need shown. (MCL 600.8404[2])

E. Sources of Law

In adjudicating a small claims case, the magistrate must make sure that the claim is one over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the claim is filed. Ultimately, the magistrate must decide the case. In making all of these decisions, the magistrate must consult the appropriate law.

1. Relevant Acts

Michigan Compiled Laws should be available in the court's library. Relevant acts include the following.

- Payment of Wages Act - Employee Relations (MCL 408.471 *et seq.*).
- Motor Vehicle Repair Act (MCL 257.1301 *et seq.*).
- Seller Disclosure Act - Sale of Real Property (MCL 565.951 *et seq.*).
- Residential Builder's Act - Licensing Requirements (MCL 339.2401 *et seq.*).
- Unlawful Eviction - Landlord/Tenant (MCL 600.2918).
- Bad Checks - Double Damage Provision (MCL 600.2952).
- Security Deposit Act-Landlord/Tenant (MCL 554.601 *et seq.*).
- "Scanning" Law - Retail Sales (MCL 445.360a).
- Mini-Tort Provision - Automobile Collision (MCL 500.3135).
- Consumer Protection Act - Consumer Contracts (MCL 445.901 *et seq.*).
- "Rent to Own" Act - Consumer Contracts (MCL 445.951 *et seq.*).

2. Exclusions

Actions for fraud, libel, slander, assault, battery, or other intentional torts cannot be commenced in the small claims division. Actions for dishonored checks pursuant to MCL 600.2952(6) and Consumer Protection Act actions are exceptions to this rule. (MCL 600.8424[1])

8.2 Minimum Standards

8.2.1 Commencing Small Claims Action

A. Venue

1. First-Class Districts

a. Actions Against Individuals

Actions shall be filed where the cause of action arose or in the county in which the defendant is established or resides or is employed. If there is more than one defendant, actions shall be filed in the county in which any defendant is established or resides or is employed. (MCL 600.8415[1])

b. Actions Against Governmental Unit

- 1) Actions against a city, village, or township shall be filed in the county in which the city, village, or township is located.
- 2) Actions against a county shall be filed in that county.

(MCL 600.8415[3])

c. Actions Against Local or Intermediate School District

Actions against a local or intermediate school district shall be filed in the county in which the local or intermediate school district has its principal administrative office. (MCL 600.8415[4])

2. Second- and Third-Class Districts

a. Actions Against Individuals

Actions shall be filed in the district in which the cause of action arose or in the district in which the defendant is established or resides or is employed. If there is more than one defendant, actions shall be filed in the district in which any defendant is established or resides or is employed. (MCL 600.8415[2])

b. Actions Against Governmental Unit

- 1) Actions against a city, village, or township shall be filed in the district in which the city, village, or township is located.
- 2) Actions against a county shall be filed in the district in which the county seat of the county is located.

(MCL 600.8415[3])

c. Actions Against Local or Intermediate School District

Actions against a local or intermediate school district shall be filed in the district in which the local or intermediate school district has its principal administrative office.
(MCL 600.8415[4])

B. Filing Action

An action shall be commenced in the small claims division by filing with the clerk or a deputy clerk of the district court an affidavit and one copy of the affidavit for each defendant to be served. The form and contents of the affidavit shall be as prescribed by the statute and the state court administrator (SCAO-Approved form DC 84). (MCL 600.8402[1])

Within a district court district, a person shall not file more than five claims in the small claims division in one week. (MCL 600.8407[2])

1. Fees

A fee of \$25.00 is charged for the filing of the small claims affidavit in an action in which the amount in controversy does not exceed \$600.00, a fee of \$45.00 is charged in actions in which the amount in controversy is greater than \$600.00 up to \$1,750.00, and a fee of \$65.00 is charged in an action in which the amount in controversy is greater than \$1,750.00 up to \$3,000.00. Except as otherwise provided in the small claims division act, a fee or charge shall not be collected by an officer for any service rendered under the act or for the taking of affidavits for use in connection with any action commenced under the act. (MCL 600.8420)

a. Notice to Appear

On the same form as the affidavit there shall be printed a notice directing the defendant to appear and answer as prescribed in MCL 600.8404. (MCL 600.8402[1])

b. Names

The full and correct name of the plaintiff shall be given, and the affidavit shall state whether the plaintiff is a corporation, partnership, sole proprietorship, or individual. If the plaintiff was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall be given. (MCL 600.8402[2], MCR 4.302[C][1])

The defendant may be identified as permitted by MCL 600.8426, or as is proper in other civil actions. (MCR 4.302[C][2])

c. Amount of Claim

If the amount of the plaintiff's claim exceeds the statutory limitation, the actual amount of the claim must be stated. The claim must state that by commencing the action the plaintiff waives any claim to the excess over the statutory limitation, and that the amount equal to the statutory limitation, exclusive of costs, is claimed by the action. A judgment on the claim is a bar to a later action in any court to recover the excess. (MCR 4.302[D])

d. Signature

If the plaintiff is an individual, the affidavit must be signed by the plaintiff, or the plaintiff's guardian, conservator, or next friend. (MCR 4.302[B][1])

If the plaintiff is a sole proprietorship, a partnership, or a corporation, the affidavit must be signed by a person authorized to file the claim by MCL 600.8407(3). (MCR 4.302[B][2])

e. Right to Removal

The affidavit, in boldface type, shall inform both parties of the right to removal before trial from magistrate jurisdiction, if applicable, and removal before trial to the general civil division. The affidavit shall inform the parties of rights waived if they choose to remain in the small claims division. (MCL 600.8402[3])

f. Waiver of Rights

The affidavit shall contain a statement that the plaintiff understands that he or she has waived the following rights:

- the right to counsel,
- the right to trial by jury,
- the right to recover more than the applicable jurisdictional amount as prescribed in MCL 600.8401, and
- any right to appeal, except that if the action is heard before a district court magistrate pursuant to MCL 600.8427, the parties have a right to an appeal to the general civil division of the district court as provided by MCL 600.8427.

(MCL 600.8412)

2. Contents of Notice

- a. The notice to the defendant must meet the requirements of MCL 600.8404. The court clerk shall notify the plaintiff to appear at the time and place specified with the books, papers, and witnesses necessary to prove the claim, and that if the plaintiff fails to appear, the claim will be dismissed. (MCR 4.303[A])
- b. The date for the appearance of the defendant provided in the notice shall not be less than 15 days nor more than 45 days after the date of the notice. The person filing the claim shall receive from the clerk a copy of the affidavit and notice of hearing. (MCL 600.8406[1])
- c. The notice must be in a form prescribed by the state court administrator and shall inform the defendant of all of the following:
 - when and where to appear.
 - that the defendant and the plaintiff are to bring all books, papers, and witnesses needed to establish any claim or defense.

- that failure to appear may result in a judgment against the defendant of up to the applicable jurisdictional amount as prescribed by MCL 600.8401 or the amount of the claim stated in the affidavit, whichever is less, together with costs of the action.
- that if settlement of the dispute is made before or at the hearing, the defendant may be charged with costs incurred by the plaintiff in initiating the action.
- that, even if the defendant does not have a legal defense, the defendant may appear to request installment payments pursuant to MCL 600.8410.

(MCL 600.8404[1])

- d. Additionally, the clerk shall inform the plaintiff and the defendant that evening and Saturday court hours may be made available upon written request and need shown.
(MCL 600.8404[2])

C. Service

1. Fees

A fee in an amount equal to the prevailing postal rate for the service provided is charged for each defendant to whom a copy of the affidavit is mailed by the clerk. (MCL 600.8420[2])

If the affidavit and notice to appear and answer are served by personal service, the person serving the process shall be entitled to the same fee and mileage as for the service of a summons and complaint out of the district court. (MCL 600.8420[6])

2. Methods of Service

Service of the affidavit and notice to appear and answer shall be made upon the defendant by:

- a. certified mail, return receipt requested and deliverable to the addressee only,
- b. by personal service, or
- c. upon a showing that service of process cannot reasonably be made as provided by MCL 600.8405, the court may, by order, permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

Where service by certified mail is made, it shall be made by the clerk and the receipt of mailing together with the return card signed by the defendant shall constitute proof of service. (MCL 600.8405)

3. Service on Corporations or Partnerships

If the defendant is a corporation or a partnership, the certified mail described in MCL 600.8405 need not be deliverable to the addressee only, but may be deliverable to and signed for by an agent of the addressee. (MCR 4.303[B])

4. Notice Not Served or Timely

- a. If it appears that notice was not received by the defendant at least seven days before the appearance date and the defendant does not appear, the clerk must, at the plaintiff's request, issue further notice without additional cost to the plaintiff, setting the hearing for a future date. The notice may be served as provided in MCR 2.105. (MCR 4.303[C])
- b. If the notice is not served upon the defendant at least seven days before the appearance date, the plaintiff may apply to the clerk or deputy clerk for a new notice setting a new date for the appearance of the defendant which shall be not less than 15 days nor more than 30 days after the date of the issuance of the new notice. (MCL 600.8406[1])
- c. If a defendant is not personally served or did not sign the certified mail return receipt at least seven days before the appearance date, there shall not be jurisdiction to render judgment, unless the defendant appears on the appearance date and does not request a continuance. If the defendant was not served within the minimum time specified, the matter, upon request of either party, shall be continued for not less than seven days. (MCL 600.8406[2])

D. Appearance

The plaintiff shall appear on the date shown in the notice of hearing and have all books, papers, and witnesses necessary to prove the claim. (MCL 600.8406[1])

If the defendant files a verified answer stating any new matter which constitutes a counterclaim, the court may grant a continuance upon request of either party. (MCL 600.8422) If the counterclaim exceeds the small claims division jurisdictional limit, the counterclaim must be filed in a court of competent jurisdiction. See Section 8.2.2, page 19.

8.2.2 Processing Small Claims Action

A. Pretrial Assistance

Pretrial assistance is primarily intended to inform the public about the nature of the small claims division and to help establish realistic expectations about the role of the small claims division.

Small claims actions present several challenges, including:

- how to provide access to the courts through adequate procedural assistance without giving legal advice.
- because there are no pretrial proceedings through which the magistrate can familiarize himself or herself with the case, the magistrate begins the trial with only the information provided by the litigant in the affidavit and claim.
- the magistrate must determine relevant facts, apply relevant law, determine liability, assess damages, make a decision, and explain the decision to the parties in a relatively short time frame.

Because of the nature of this process, the magistrate must actively assist the litigants in order to “dispense expeditious justice between the parties.” This may include advising parties on preparation of the case, asking all the questions at the trial, advising the plaintiff of the basis of their claim, advising the defendant of the fact that they have a defense, and providing information on collecting the judgment.

It is recommended that courts consider establishing a pretrial assistance procedure for both parties which provides a basic understanding about the small claims division and what to expect at trial. This might include written materials such as brochures or instructions, videos, and, if available, assistance from a community dispute resolution center.

1. Removing Misconceptions

Litigants often have misconceptions which the magistrate should strive to dispel. Some information is provided to litigants in the SCAO-Approved forms and instructions; however, the information should be communicated verbally as well. Three primary misconceptions are:

- a. the court will actively collect the small claims judgment from the defendant and the plaintiff will receive payment without any further efforts.

- b. the filing and service fees will be returned if the plaintiff loses the case.
- c. the court will actively investigate the whereabouts of a defendant.

2. Errors

There are a number of errors litigants make. By providing procedural guidance, the magistrate can help to alleviate a great deal of the frustration and inefficiency that is often experienced by the litigants and the court staff. Some common errors occur in determining:

- a. how to identify and serve the defendant,
- b. in which court to file the claim,
- c. how to prepare for trial,
- d. how to collect a judgment,
- e. what defenses are available, and
- f. whether to request a payment plan.

B. Scheduling Hearings

Scheduling of small claims hearings shall be done to lessen as much as possible the time that it is necessary for a plaintiff or defendant to be absent from employment. A judge of the district court may be available to hear small claims after regular court hours if the presiding judge determines that evening hours will facilitate the adjudication of small claims cases. (MCL 600.8416[3])

A magistrate shall stagger the docket schedule so that an attorney or party may be heard within a time reasonably close to the scheduled time and, except for good cause, the docket shall be called in order. (MCR 8.116[C])

See Section 1.8, page 56, for additional details.

1. Time Frames

The date for the appearance of the defendant provided in the notice shall not be less than 15 days nor more than 45 days after the date of the notice. If another appearance date must be scheduled because the notice was not served within the time required, the date shall be not less than 15 days nor more than 30 days after the date of the issuance of the new notice. (MCL 600.8406[1])

C. Conducting Hearings

1. Notice of Rights to Parties

Before the commencement of a hearing in the small claims division, the district court judge or magistrate shall inform both parties, orally or in writing, of the right to removal before trial to the general civil division and of all rights waived if they choose to remain in the small claims division. (MCL 600.8411[1])

2. Hearing Provisions

- a. In hearings before the small claims division, witnesses shall be sworn.
- b. The magistrate shall conduct the hearing in an informal manner so as to do substantial justice between the parties according to the rules of substantive law.
- c. The magistrate is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. The sole object of such hearings is to dispense expeditious justice between the parties.
- d. There shall be no jury.
- e. A verbatim record of such proceedings shall **not** be made.

(MCL 600.8411[2])

D. Settlement

Before or at the hearing, the parties may make a settlement upon those terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing the settlement with the court, the magistrate shall review the settlement and may enter it as the judgment of the court or may require that a full hearing take place. (MCL 600.8410[1])

E. Default

1. Failure to Appear

If all parties fail to appear, the claim may be dismissed for want of prosecution or the court may order another disposition as justice requires. (MCR 4.304[B][3])

a. Defendant

If a defendant fails to appear at a small claims hearing, judgment may be entered by default if the claim is liquidated, or on the ex parte proofs the court requires if the claim is unliquidated. (MCR 4.304[B][1])

b. Plaintiff

If the plaintiff fails to appear, the claim may be dismissed for want of prosecution, the defendant may proceed to trial on the merits, or the action may be adjourned, as the court directs. (MCR 4.304[B][2])

F. Judgments

1. Entry

A judgment must be entered at the time of the entry of the court's findings. (MCR 4.305[A])

2. Provisions

a. All judgments of the small claims division shall be conclusive upon the plaintiff and the defendant and shall be in a form prescribed by the Supreme Court (SCAO-Approved form DC 85). (MCL 600.8413)

b. The judgment must contain the payment and stay provisions required by MCL 600.8410(2). (MCR 4.305[A])

The magistrate shall also provide for a stay of further proceedings to collect the judgment while the defendant is in compliance with the order of the court. (MCL 600.8410[2])

c. The magistrate shall order that judgment in the small claims division shall be satisfied by payment to the clerk or the plaintiff either in a lump sum or in installments in amounts and at times as the judge/magistrate considers just and reasonable under the circumstances.

- d. The judgment shall include a warning that the defendant's failure to pay the judgment pursuant to its terms or any installment payment ordered may result in execution against the defendant's property and that the defendant may be compelled to appear for an examination of the defendant's assets. (MCL 600.8410[4])
- e. The prevailing party in any action in the small claims division is entitled to costs of the action and also the costs of execution upon a judgment rendered. The costs shall include cost of service of the notice for the appearance of the defendant. (MCL 600.8421)
- f. If the defendant is not present when the judgment is entered, or is present but does not immediately pay the full amount of the judgment when the judgment is entered, the judge/magistrate shall order that the defendant, within 30 days after the date of entry of the judgment, pay the judgment in full or disclose in writing to the plaintiff and the court his or her place of employment and the location of his or her accounts in state or federally chartered banks, savings and loan associations, and credit unions. (MCL 600.8410[5])

3. Service

- a. A copy of the judgment shall be given in court, delivered, or mailed immediately to each plaintiff and defendant following entry of the judgment. (MCL 600.8410[6])
- b. A copy of the instruction sheet regarding execution, attachment, or garnishment to enforce payment of the judgment required by MCL 600.8409(2) shall be offered to the plaintiff at the same time as a copy of the judgment is given to the plaintiff. (MCL 600.8410)

4. Modification

A judgment of the small claims division may be modified or vacated in the same manner as judgments in other civil actions, except that an appeal may not be taken. (MCR 4.305[B])

G. Removal or Transfer

1. Removal to General Civil Jurisdiction

Before commencement of a trial, the plaintiff or defendant may, upon demand, require that the trial be conducted before a district court judge and not a magistrate, or may remove the case from the small claims division to the general civil division of the district court. (MCL 600.8408[4])

a. Demand for Removal

A party may demand that the action be removed from the small claims division to the trial court for further proceedings by:

- signing a written demand for removal and filing it with the clerk at or before the time set for hearing, or
- appearing before the court at the time and place set for hearing and demanding removal.

(MCR 4.306[A])

The demand may be made by an attorney. (*In re Lafayette Towers*, 200 Mich App 269; 503 NW2d 740 [1993])

b. Order for Removal

On receiving a demand for removal, the court shall, by a written order filed in the action, direct removal to the trial court for further proceedings. (MCR 4.306[B])

- The order must direct a defendant to file a written answer and serve it as provided in MCR 2.107 within 14 days after the date of the order.
- The clerk must mail a copy of the order to each party.

c. Costs

There is no fee for the removal, order, or mailing. (MCR 4.306[B]) However, if the plaintiff amends the complaint in the district court for an amount greater than the original claim, any difference in the filing fee for the new amount must be paid. (MCL 600.8425[2])

d. Venue

If the venue of an action is proper pursuant to MCL 600.8415 at the time the action is filed in the small claims division and a party removes the action to the general civil division of the district court as provided by law or court rule, the court shall not order a change of venue of the action because the venue in which the action was filed would not have been proper if the action would have been filed in the general civil division of the district court. The court may order a change of venue of the action as otherwise required or permitted by court rule. (MCL 600.8415[5])

2. Transfer

a. Counterclaim

If a defendant has a claim against the plaintiff that is for an amount over the jurisdiction of the small claims division but is of a nature which would be subject to counterclaim in accordance with rules of the Supreme Court, the defendant may commence an action against the plaintiff in a court of competent jurisdiction. If the counterclaim increases the amount claimed in the small claims court, any difference in the applicable filing fee must be paid by the defendant. (MCL 600.8425[2])

b. Commencing Action

The action is commenced by filing an affidavit in a form prescribed by the Supreme Court setting forth the fact of the commencement of the action by the defendant.

- The affidavit must be filed with the clerk or deputy clerk of the small claims division where the plaintiff filed the small claims action.
- The affidavit must be filed at or before the time set for the trial of the small claims action. The defendant must attach a true copy of the complaint to the affidavit.

c. Costs

The defendant must pay to the clerk the sum of \$1.00 for a transmittal fee. The plaintiff in the small claims action shall not be required to pay to the clerk of the court to which the action is transferred any transmittal, appearance, or filing fee in the action, unless the claim is increased from the original and results in a higher filing fee. (MCL 600.8423, 600.8425[2])

d. Service

The defendant shall mail to the plaintiff a copy of the affidavit and complaint at or before the time set for the trial.

e. Order of Transfer

The magistrate of the small claims division shall order that the small claims action shall be transferred to the court set forth in the affidavit. All files and paper in the action shall be transmitted to the other court and the actions shall then be tried together in the other court. (MCL 600.8423)

8.2.3 Postjudgment Proceedings

A. Appeals

If a small claims hearing is conducted by a district court magistrate, an appeal de novo as of right may be taken by either party to the small claims division of the district court. Appeal shall be taken within seven days after the entry of the decision of the magistrate. Further appeal from the judgment of the district court judge shall not be available to either party. (MCL 600.8427)

B. Modification or Vacation

A small claims judgment may be modified or vacated in the same manner as judgments in other civil actions, except that an appeal may not be taken. (MCR 4.305[B]) See also MCR 2.306, MCR 2.610, MCR 2.611, MCR 2.612.

C. Collection of Judgment

1. Authority

The district court has jurisdiction and power to make any order proper to fully effectuate the district court's jurisdiction and judgments. (MCL 600.8315)

If the defendant fails to pay the judgment according to the terms and conditions, the clerk or deputy clerk of the court, on application of the plaintiff, shall certify such judgment on a form prescribed by the Supreme Court. (MCL 600.8418)

If the magistrate ordered that judgment be satisfied by payment to the clerk or the plaintiff either in a lump sum or in installments in amounts and at times as the magistrate considers just and reasonable under the circumstances, the magistrate shall also provide for a stay of further proceedings to collect the judgment while the defendant is in compliance with the order of the court. (MCL 600.8410[2])

2. Procedural Regulations

After judgment, other applicable Michigan Court Rules govern actions that were brought in a small claims division. (MCR 4.301)

3. Costs

A fee of \$15.00 is charged and collected for the issuance of a writ of execution, attachment or garnishment and for the issuance of a judgment debtor discovery subpoena. (MCL 600.8420[2])

4. Remedies

An instruction sheet is offered to the plaintiff at the same time as a copy of the judgment is given to the plaintiff pursuant to MCL 600.8410 explaining the remedies available to enforce payment of the judgment and how to request the court to issue execution, attachment, or garnishment. (MCL 600.8409[2])

Attorneys may not file postjudgment proceedings. (*In re Goehring*, 184 Mich App 360; 457 NW2d 375 [1990])

a. Garnishment

A writ of garnishment may not be issued to enforce the judgment until the expiration of 21 days after it was entered. If a judgment had been ordered to be paid by installments, an affidavit for a writ of garnishment must so state and must state that the order has been set aside or vacated. (MCR 4.305[C])

A writ of garnishment issued by the small claims division of the district court remains in effect as to periodic payments as provided in MCL 600.4012.

See MCL 600.6201 *et seq.* and MCR 3.101 for procedures on garnishment.

b. Execution

Whenever a judgment is rendered in any court, execution to collect the judgment may be issued to a sheriff, bailiff, or other proper officer of any county, district, court district or municipality of this state. (MCL 600.6001)

See MCL 600.6001 *et seq.* for procedures on execution.

c. Discovery Subpoena

A proceeding supplementary to judgment may be maintained until the judgment is satisfied, vacated, or barred by the statute of limitations. (MCL 600.6101)

After judgment for money has been rendered in an action in any court of this state, the judge may, on motion in that action or in a subsequent proceeding, compel a discovery of any property or things in action belonging to a judgment debtor, and of any property, money, or things in action due to him, or held in trust for him . . . and order the satisfaction of the judgment out of the property, money, or other things in action, liquidated or unliquidated, not exempt from execution. (MCL 600.6104[1])

See MCL 600.6101 *et seq.* for procedures on discovery.

d. Statute of Limitations

The period of limitations is six years for actions found upon a judgment or decree rendered in a court not of record. A person shall not bring or maintain an action to enforce a noncontractual money obligation after six years from a judgment or decree rendered in the small claims division. (MCL 600.5809)

e. Financial Responsibility, Unsatisfied Judgment

A plaintiff may request a court in which an unsatisfied judgment exists arising from a vehicle crash where damages are the result of the ownership, maintenance, or use of a motor vehicle to file with the Department of State a “Court Certification of Unsatisfied Judgment” (Michigan Department of State form FR-24). See the Section 8 Appendix for a copy of the form. (MCL 257.23) This verifies that the plaintiff has a civil judgment involving an automobile accident which the defendant has not satisfied. The department will mail the defendant a “Financial Responsibility Order of Suspension” upon receipt of the certified abstract. The suspension becomes effective and is entered on the driving record 30 days after the date the order of suspension is prepared.

D. Setting Aside Default Judgment

1. Motion

A motion to set aside a default judgment may only be heard by a judge. Except when grounded on lack of jurisdiction of the defendant, the motion shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. (MCR 2.603[D][1])

2. Time for Filing Motion

Subject to the provisions of the rule, a default judgment may only be set aside if the motion is filed within 21 days after the default judgment was entered. (MCR 2.603[D][2])

8.2.4 Adjudication

TO BE DEVELOPED

8.3 Procedures

A. Scheduling Trials

- Determine methods of scheduling with judge.
- Set up schedule and communicate to clerks.

B. Filing and Pretrial Assistance

- Have clerks review affidavits at the time they are filed to see if intentional torts are alleged.
- Have clerks complete notice of hearing based on agreed upon methods.
- Sort files by probable length of hearing time.
- Provide information to the plaintiff and the defendant about the court's role in small claims. This includes at a minimum the instructions provided with the affidavit and claim form (SCAO-Approved form DC 84).
- Distribute or implement any other pretrial assistance procedures that have been developed.

C. Preparing for Trial

- Review affidavit and determine whether intentional tort, improper damages or other errors of law have been made.
- Research special statutes and other law.
- Check to see that service of process is proper.

D. Conducting Trial

- Prior to hearing, take roll and dispose of the dismissals and defaults first. See E. below for procedures.
- Explain to the parties the four rights being waived by proceeding in small claims. Place the waiver on the record or in writing.
- Call the case.

- Identify the parties and any witnesses they may have.
- Ask if either party wishes to remove the case to the general civil division. See F. below for procedures.
- Swear in all parties and witnesses.
- Ask the plaintiff to present evidence to the court. Do not allow the defendant to question the plaintiff or witnesses or interrupt the testimony of the plaintiff or witnesses.
- Ask the defendant if he or she has any question for the court to ask the plaintiff and then to present evidence to the court. Do not allow the plaintiff to question the defendant or witnesses or interrupt the testimony of the defendant or witnesses.
- Determine what the parties agree to and what issues are actually in dispute.
- Examine any exhibits that may be offered.
- End all questioning with: "Is there anything else anyone wants to tell me that I haven't already heard?"
- Inform parties that the testimony has concluded and that the court will render a decision.
- Make specific findings of fact, recite the law, and apply the facts to the law.
- Assess costs.
- Ask the defendant whether he or she is prepared to pay the judgment now. If not, obtain information from the defendant concerning assets (SCAO-Approved form DC 87) and arrange a plan for satisfaction of the judgment if requested by the defendant.
- Prepare and sign judgment form. (SCAO-Approved form DC 85)
- Give copies of the judgment to the parties.
- If the defendant does not pay the judgment now, provide information to plaintiff on the methods for collecting the judgment. (SCAO-Approved form DCI 84)
- File original judgment with the court clerk.

E. Defaults

- Call the case.
- Identify the person and title appearing for the plaintiff.
- Swear in the witness (plaintiff).
- Review file to determine whether service on the defendant was proper.
- Obtain a factual basis for the claim (determine liability).
- Obtain a factual basis for the amount claimed (determine damages).
- Determine appropriate costs.
- Prepare and sign judgment form.
- Give copy of judgment to plaintiff.
- Mail copy of default judgment to defendant at the address of record by regular mail.
- File original judgment with the court clerk.

F. Removal

- Ask if either party wishes to remove the case to the general civil jurisdiction of the court, review the information.
- If the demand is made orally, provide the requesting party with a copy of the form and have them to complete it. Otherwise proceed to the next step. (SCAO-Approved form DC 86)
- Sign and date the order directing the defendant to file a written answer within 14 days after the date of the order.
- Provide copies of the order to the parties or ask the clerk to mail copies if the parties are no longer in the presence of the court.
- File the original demand and order for removal with the court clerk.

8.4 Forms

Every clerk and deputy clerk of the district court shall be furnished a reasonable supply of all forms and stationery necessary for the expeditious and efficient operation of the small claims division by the governing legislative body of each district control unit. (MCL 600.8419)

Printed affidavit forms for the commencement of actions in the small claims division shall be available at the office of each clerk and deputy clerk of the district court who shall prepare such affidavit for a claimant upon request. (MCL 600.8403, MCR 4.302[A])

The state court administrator shall prepare instruction sheets clearly explaining in plain English how, and under what circumstances, a plaintiff in whose favor a judgment has been entered may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment. A copy of the instruction sheet shall be offered to the plaintiff at the same time as a copy of the judgment is given to the plaintiff pursuant to MCL 600.8410. Additional copies of the instruction sheets and forms for writs of garnishment shall be made available at the office of each clerk and deputy clerk of the district court. (MCL 600.8409[2])

A. Small Claims Forms

- 1) DCI 84 - Small Claims Pamphlet, "Collecting Money from a Small Claims Judgment"
- 2) DC 84 - Affidavit and Claim, Small Claims (with instructions)
- 3) DC 85 - Judgment, Small Claims
- 4) DC 86 - Demand and Order for Removal, Small Claims
- 5) DC 87 - Affidavit of Judgment Debtor

B. Garnishment, Property Seizure, and Discovery Forms

- 1) MC 11 - Subpoena (Order to Appear)
- 2) MC 12 - Request and Writ for Garnishment (Periodic)
- 3) MC 13 - Request and Writ for Garnishment (Non-Periodic)
- 4) MC 14 - Garnishee Disclosure
- 5) MC 15 - Motion for Installment Payments
- 6) MC 15a - Order Regarding Installment Payment.

- 7) MC 16 - Motion and Affidavit to Set Aside Order for Installment Payments
- 8) MC 16a - Order on Motion to Set Aside Order for Installment Payments
- 9) MC 19 - Request and Order to Seize Property
- 10) MC 48 - Final Statement on Garnishment of Periodic Payments
- 11) MC 49 - Objections to Garnishment and Notice of Hearing
- 12) MC 50 - Garnishment Release
- 13) MC 51 - Order on Objections to Garnishment
- 14) MC 52 - Request and Writ for Garnishment (Income Tax Refund/Credit)
- 15) MC 82 - Partial Payment Receipt and Inventory of Seized Property
- 16) MC 83 - Report of Collection Activity Under Order to Seize Property

APPENDIX 8

Court Certification of Unsatisfied Judgment

COURT CERTIFICATION OF UNSATISFIED JUDGMENT

Michigan Department of State
Action Processing Unit – BDVR
Lansing, Michigan 48918-0001

In accordance with Section 511 of Public Act 300, 1949, as amended, State of Michigan, I hereby certify that the following is a true abstract record of the _____ Court of _____, in the case of:

Plaintiff(s): _____

Address: _____
Street & Number P.O. Box City, State, Zip

Plaintiff's Counsel: _____

Address: _____
Street & Number P.O. Box City, State, Zip

Phone Number: _____

Defendant(s): _____

Address: _____
Street & Number P.O. Box City, State, Zip

Defendant's Counsel: _____

Address: _____
Street & Number P.O. Box City, State, Zip

Defendant's License # ____ - ____ - ____ - ____ - ____ Issuing State _____

Defendant(s) Date of Birth: Month ____ Day ____ Year ____

Nature of Case: Motor Vehicle Accident

Date of Accident: _____ Amount of Judgment: _____

Date of Judgment: _____

Certification Date: _____ Docket Number: _____

Signature of Judge or Clerk _____ Title _____