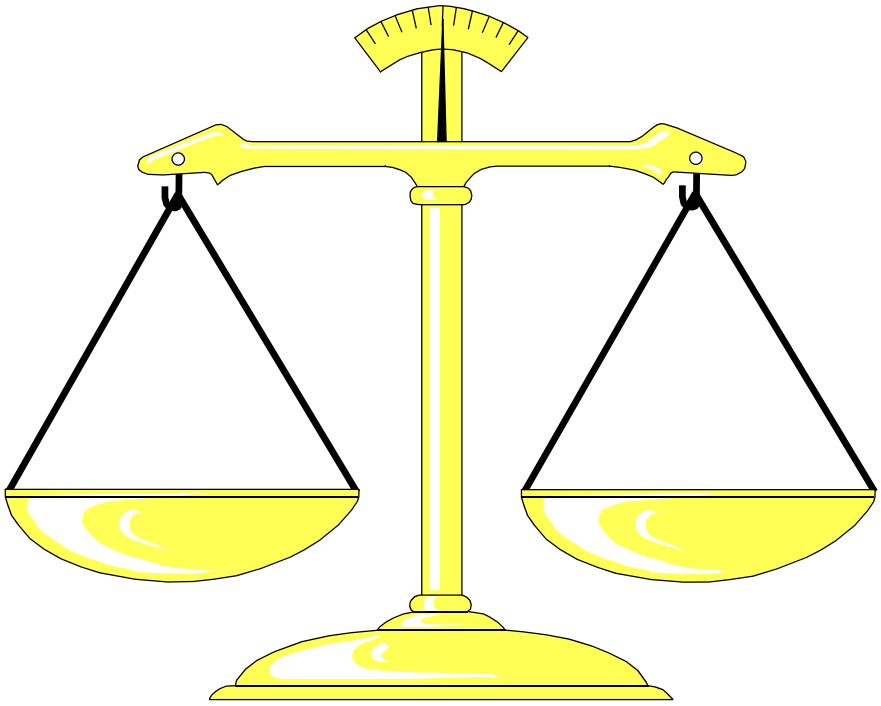
SMALL CLAIMS BOOKLET



PART I : Small Claims
PART II: Collecting a Judgment

Furnished by
the Judges of the County Court
of Lake County, Florida

DISCLAIMER

This booklet is intended as a guide to small claims in Lake County. It is not legal authority, and should not be considered as such. Therefore, the authors express no opinion as to the validity of the contents, and disclaim any liability based upon the contents. Any person seeking legal advice as to small claims should engage the services of an attorney.

SMALL CLAIMS COURT

"Small Claims Court" is a term used to describe a simplified procedure for resolving civil disputes involving amounts of $5,000 or less. Small claims cases are heard in county court, with the proceedings being governed by the Small Claims Rules, hereinafter referred to as "SCR."

Due to the SCR, the process for small claims is simple, fast and inexpensive. These rules, which may be found in the county law library, enable individuals to handle their own cases in most instances. However, cases which involve small amounts often have complex legal issues. Therefore, any individual who is unsure of whether to proceed or how to proceed in a case, or who is unsure of the law which might govern the case, should consult an attorney.

EVALUATING THE CASE

Prior to commencing any case, the party contemplating the filing of a lawsuit should evaluate the claim to be made. One simple method for evaluating the claim is to review the answers to the following questions:

1) Is the claim for less than $5,000?

2) Is the claim a valid <u>legal</u> claim?

3) Is there proof of the claim?

4) Will the court consider the evidence offered?

5) Is the party to be sued identifiable by full legal name, and complete address?

6 Have all possibilities of settlement been exhausted?

If, after reading this pamphlet, the answer to any of the above questions is an uncertainty or a definite no, a lawsuit should not be instituted in small claims court. On the other hand, if the answer to each of the above questions is a definite yes, a lawsuit may be properly filed.

COMMENCING A CASE

A small claims case may be commenced by any individual or business. Minors must be represented by a parent or guardian in order to sue. Likewise, a business must be represented by an officer or authorized employee.

The case is commenced by filing a Statement of Claim, along with the appropriate fee, with the county court. Forms and assistance in preparation of those forms are provided by the Clerk of the Court. If the claim is based upon a written document, the written document must be attached to the Statement of Claim. The person filing the Statement of Claim must sign it and include thereon the person's address and telephone number, including area code. Further,

the names, addresses and telephone number, including area codes of all persons who are party to the lawsuit must be stated upon the statement of claim.

PROPER PLACE OF FILING

In order to properly file a Statement of Claim, the person filing the claim, hereinafter referred to as "the plaintiff," must do so in the proper county. In most instances, the plaintiff may properly file a Statement of claim in the counties described by the following:

1) Where the contract was entered into;

2) If the suit is on an unsecured promissory note, where the note was signed or where the maker resides;

3) If the suit is to recover property or to foreclose a lien, where the property is located;

4) Where the event giving rise to the suit occurred;

5) Where anyone or more of the defendants reside;

6) Any location agreed to in a contract; or,

7) In an action for money due, if there is no agreement as to where the suit may be filed, where payment was to be made.

If the party being sued, hereinafter referred to as "the defendant" believes the statement of Claim was filed in an improper county, the defendant may request that the case be transferred to the county which the defendant believes is proper.

PROPER PARTIES

Also, the plaintiff must name the proper party as a defendant. If the defendant is an individual, the plaintiff should determine the person's full legal name and any aliases prior to filing the lawsuit. If the defendant is a business, the plaintiff must determine if the business is a corporation, a partnership or a sole proprietorship. The corporate status of any corporation legitimately doing business in Florida can be determined by contacting the Florida Secretary of State, Division of Corporations, in Tallahassee, Florida 32301, (850) 488-9000, or www.sunbiz.org

If the business entity to be sued is a corporation, the corporation should be named as a defendant, not its officers. If the business entity is either a partnership or a sole proprietorship, the entity and the individuals which own the entity should be named as defendants. One method of determining ownership of these entities is to contact the Florida Secretary of State.

NOTICE AND SERVICE OF PROCESS

After the Statement of Claim is filed, the plaintiff must ensure that the defendant receives a copy of the Statement of Claim. This process of informing the defendant of the pending action is called service of process. The plaintiff may complete service of process upon a Florida defendant by registered mail. However, the defendant or someone authorized to receive mail at the defendant's residence or place of business must sign the receipt for the mail. For corporate entities, the addressee should be the registered agent of the corporation, the person identified by the corporate status check discussed in the preceding paragraph. Other methods of service of process are completed by a delivery of the Statement of Claim to the defendant by a representative of the appropriate sheriff's office, or by a private process server. Any of the methods described above require the payment of an additional expense by the plaintiff.

PRE-TRIAL CONFERENCE

A notice to appear is attached to, and served with, the Statement of Claim. This notice informs the defendant of the time, date and place of the mediation conference. On this appointed day, the plaintiff and the defendant appear before a court mediator in order to discuss the case. At this conference, the mediator will attempt to aid the parties in settling the case. If the case is not settled at this conference, the court will set a time, date and place for an appearance before the court.

DISMISSAL AND DEFAULT

Failure to attend either the mediation or the trial can result in dire consequences for the party failing to attend. If the plaintiff fails to attend, the case can be dismissed or the defendant can present the defendant's case to the judge unopposed. If the defendant fails to attend, the plaintiff is entitled to a default. In other words, if the defendant fails to appear, the plaintiff wins.

PLEADINGS

In addition to just appearing at the appointed time, the defendant may also file documents with the court. These include, but are not limited to, a motion to dismiss, an answer, an affirmative defense, a counterclaim and a third-party complaint. An answer is simply an admission or denial of the claims made by the plaintiff. The other documents called pleadings, are discussed more fully below. Copies of all pleadings are required to be served on the other party or the party's attorney. This subsequent service may be accomplished by regular mail.

MOTIONS TO DISMISS

A motion to dismiss attempts to demonstrate to the court why the plaintiff should not be allowed to continue regardless of the truth of the plaintiff's claim. The following are examples of basic motions to dismiss and a simplified explanation of those motions:

1) Lack of jurisdiction over the subject matter - the action is not proper in small claims court because it involves more than $5,000 or involves an equitable claim (e.g. a divorce claim).

2) Lack of jurisdiction over the person - the court cannot exercise its authority over the defendant (e.g., the defendant was not served properly).

3) Improper venue - the complaint is filed in the wrong county.
4) Insufficiency of process - the summons was not properly executed.

5) Insufficiency of service of process - the summons was not served on the defendant properly.

6) Failure to state a cause of action - if the allegations of the complaint are taken as completely true, they do not amount to a legally recognizable claim for damages.

7) Failure to join indispensable parties - the claim does not seek damages from another party who should be liable along with the defendant if the plaintiff is successful.

AFFIRMATIVE DEFENSES

Affirmative defenses, on the other hand, seek to avoid liability by admitting the claim while asserting a legal excuse as to why the plaintiff should not be awarded any damages based upon the claim. Some examples of affirmative defenses are as follows, while a more complete list can be found in Florida Rule of civil Procedure 1.110:

1) Accord and satisfaction - the plaintiff is correct that the defendant was liable to the plaintiff; however, the defendant and the plaintiff agreed to settle the liability for a lesser amount which the defendant paid.

2) Failure of consideration - the defendant agreed to pay the plaintiff if the plaintiff performed a service for the defendant and the plaintiff did perform; however, the plaintiff's performance was so shoddy that the defendant should not be liable to the plaintiff for payment.

3) Payment - the plaintiff is correct that the defendant was liable to the plaintiff; however, the defendant paid the amount due.

4) Statute of limitations - the plaintiff is correct that the defendant was liable to the plaintiff, however, the plaintiff failed to file the Statement of Claim by the time the plaintiff was required to do so by law. For a more detailed explanation on statutes of limitation please consult the article beginning on page 27 of the July/August 1989 issue of the Florida Bar Journal.

COUNTERCLAIMS

Counterclaims can be described as a lawsuit which the defendant files against the plaintiff after the defendant is served with the plaintiff's lawsuit. Counterclaims fall into two (2) categories, compulsory and permissive. To be compulsory, the counterclaim must be based upon the incident which is the subject of the plaintiff's suit. Permissive Counterclaims, are not based upon the incident which is the subject of the plaintiff's suit. A defendant wishing to file a counterclaim must do so no later than five (5) days prior to the first scheduled court appearance. For example, if a plaintiff sues a defendant based upon a car wreck, and the defendant feels that the plaintiff should pay for damages sustained by the defendant, the defendant should file a counterclaim against the plaintiff for the amount which the defendant feels is owed. However, if the counterclaim amount is more than $5,000, the case will be transferred to the court of appropriate jurisdiction upon the payment of the additional filing fees.

THIRD-PARTY COMPLAINTS

Third-party complaints are filed when the defendant feels that someone else should be responsible for the amount of damage claimed by the plaintiff. Likewise, the plaintiff may file a third-party complaint in response to any counterclaim made by the defendant.

DISCOVERY

Parties to any lawsuit should be aware that they may be subject to discovery prior to trial. Discovery is an attempt by a party to gain information about the strength of the opposing party's position. Although generally not allowed in small claims cases, discovery is nonetheless possible in certain circumstances. A complete discussion of discovery is not within the scope of this pamphlet. Those wishing to gain more information on discovery as it relates to small claims should consult SCR 7.020.

DISMISSAL

The plaintiff in a small claims action may end the lawsuit by voluntarily dismissing the suit. In order to properly do this, property must not have been seized, nor may property be in the custody of the court, and:

1) the plaintiff must inform the defendant and the Clerk of the Court of the dismissal prior to the trial date, the submission of the case to the jury or the submission of a non-jury case to the court, or,

2) the parties must enter into joint stipulation for dismissal.

Any dismissal by the above described methods will be without prejudice, unless otherwise requested by the plaintiff or stipulated to by the parties. The without prejudice designation allows the lawsuit to be refiled even though it may allege the exact grounds as the previously dismissed case; however, if a plaintiff chooses to dismiss the refiled lawsuit in accordance with one of the above methods, the second dismissal will bar any subsequent attempt to refile. No other dismissals are allowed except by order of the court. Further, a lawsuit in which a counterclaim has been filed will not be dismissed over the counter claimant's objection unless the counterclaim is allowed to go forward as an independent lawsuit. Further, a party may request dismissal of the opposing party's lawsuit for failure of the other party to comply with the SCR. Also, a party may request dismissal of the opposing party's lawsuit for failure of the other party to prove entitlement to relief under the law. These provisions, along with those discussed in the above paragraph apply to both complaints and counterclaims.

SETTLEMENT

Cases may also fail to reach the trial stage due to settlement. The parties may agree to settle the case at any stage of the proceedings, and will in most instances be encouraged to do so at the mediation conference. If a case is settled, the plaintiff notifies the Clerk of the Court. Based upon the settlement agreement, the case may then be dismissed or continued, with such continuance being conditioned upon the performance of or payment by a party. In most instances, a settlement at the mediation conference will be reduced to writing by the mediator and signed by the parties. This document is called a stipulated settlement form. Failure of performance by any party to a small claims settlement subjects that party to a final judgment without notice upon the filing of an affidavit by the opposing party which states that the party whose performance was required under the settlement agreement failed to perform.

SUMMARY JUDGMENT

A judgment in favor of one of the parties may be entered summarily by the court at the pre-trial conference or the trial if the court determines there are no triable issues present in the case.

CONTINUANCES

A delay in the proceedings may be had upon proper request. This delay is called a continuance, and is properly

requested by filing a written motion for continuance with the Clerk of the Court. The motion should allege good cause for the continuance. A copy of the motion should be mailed to the other party when it is filed with the Clerk of the Court. The court in its discretion may choose to set new times for the proceedings. If the court so chooses, new notices will be sent to the parties. The party requesting the continuance should not attempt to contact the judge by telephone to request a continuance unless the other party has agreed to the continuance.

TRIAL

If the case does not settle, the court, at the pre-trial conference, will set a time, date and place for the actual trial. No further notice of the trial will be given. This trial will either be a non-jury trial or a jury trial. The type of trial is established by the parties. If the plaintiff wants to have a jury trial, the plaintiff must demand a jury trial in writing at the time the Statement of Claim is filed. If the defendant wants to have a jury trial, the defendant must demand a jury trial within five days of being served with the Statement of Claim or at the pre-trial conference, whichever is later. If both the plaintiff and the defendant fail to request a jury trial, the case will be decided solely by the judge. Parties not represented by an attorney should generally not attempt to present their case to a jury, as the process is more difficult and more formal than presenting the case to a judge.

EVIDENCE

Regardless of whether the case is decided by a jury or a judge, the one essential element in any party's case is proof. In order to win, a party must be able to prove his position. Simply telling one's story to the judge or jury is seldom enough. The plaintiff has the burden of overcoming any contradictions between the plaintiff's story and the defendant's story. If the parties are equally convincing, the defendant will win.

A good method for a party to follow in determining the adequacy of that party's proof is the case outline. In developing a case outline, a party should outline the facts and law of which the party wishes the court to be aware. Second, the party should write beside each fact or point of law the method the party will use in order to place the fact or point of law before the court. For example, if a party desires to prove the existence of a contract, the party should have a copy of the contract ready to present to the court. Similarly, if the contract was oral, the party should have someone who witnessed the agreement being made ready to testify about the agreement and its terms.

The above illustration describes the two types of evidence allowed by the court, documents and testimony. It is important that any documents relating to the lawsuit be found and produced at court. Further, it is critical that all persons with knowledge of the facts in dispute be available for questioning at the trial. The judge will not allow the facts to be presented second hand. For instance, someone testifying may not generally testify about what someone else told him. He must testify as to those facts which he personally observed. Witnesses are also generally precluded from stating their opinion. The only exception to this rule is an expert witness.

An expert witness may be called to testify as to the expert's opinion about a particular issue. Experts are those persons who either through education or experience have a specialized knowledge of the subject being debated. For example, in a lawsuit over an automobile repair, an automobile mechanic would be a good witness about whether the repair was done properly. Experts should be sought out well before trial. Further, experts are allowed to charge a fee for their testimony.

In order to insure witness attendance, the Clerk of the Court will issue subpoenas requiring the witness named therein to be in attendance at the trial. Any party desiring to subpoena a witness must furnish the Clerk of the Court with the witness' name and address. Further, the Clerk of the Court charges a fee for this service, and must be paid prior to the issuance of any subpoenas.

COURTROOM CONDUCT AND APPEARANCE

When appearing before the court, persons should conduct themselves properly. Persons appearing before the court should be properly attired. Men should wear coats and ties, and women should wear dresses or suits. If the proper attire is not available nor affordable, the best garment in a person's closet will suffice so long as it is clean. However, the court will not allow any person to appear before it in t-shirts, shorts, tank tops, sleeveless shirts nor flip-flops. Further, any person appearing in court should be bathed and well groomed. Any person not properly attired and groomed will be barred from the court proceeding.

Although the pre-trial conference and trial are conducted informally, proper respect for the court must be shown. The judge should be addressed as judge or your honor. Questions asked by the judge should be responded to with a sir or madame. The parties should address the court, never each other. The parties should not argue between themselves or with witnesses. All persons should be polite and courteous to the judge, jury, court personnel, parties and other persons in attendance. Rude behavior will not be tolerated by the court. Finally, it is essential that the parties be on time. The failure to be prompt may result in a dismissal or a default as discussed earlier.

JUDGMENT

At the conclusion of the pre-trial conference or trial, the judge or jury will render a decision. If the judge has to research a point of law the decision might be delayed. However, the parties will receive a written copy of the decision when it is final. This written decision is called a final judgment. It is simply a document which sets forth the responsibilities of the parties. For example, if the plaintiff wins a monetary judgment, the judgment will tell the plaintiff what amount to which the plaintiff is entitled, but it does not require the defendant to pay the plaintiff. In order to collect the amount due under the judgment, the plaintiff must follow the procedures set forth in the section below entitled Collection. On the other hand, if the defendant wins, the judgment tells the plaintiff that the plaintiff is entitled to nothing, and in fact may entitle the defendant to recover the defendant's costs of the trial from the plaintiff.

MOTION FOR NEW TRIAL AND APPEAL

Any party who is unsatisfied with the court's decision, and who can demonstrate some <u>legal</u> basis for a reversal or change in the court's position, may file a motion for new trial with the court. This motion must be filed no later than ten days after a jury verdict or ten days after a non-jury decision is filed. Further, the motion must state with particularity the grounds upon which the motion is based. If the court declines to rehear the case or if the party who is unsatisfied decides to forego this step, the unsatisfied party may file an appeal to the Circuit Court. A discussion of the appellate process is beyond the scope of this pamphlet. Those wishing to gain more information on appeals as it relates to small claims should consult SCR 7.230 and the Florida Rules of Appellate Procedure.

COLLECTION

The party in whose favor the final judgment was rendered must collect on the final judgment. In a few cases, the losing party will pay upon request; however, in most cases the winner must track down the loser's property and seize it to pay the judgment. This process can be time consuming and expensive. Further, the loser, now called the judgment debtor, may not have any assets. If this is the case, it probably would not be worthwhile for the winner, now called the judgment creditor, to pursue collection.

If collection is a reasonable option, the winner should try to establish a list of the loser's property which is available for sale. A good foundation for this list may be created by searching the real property records, the automobile

registration records and the property appraiser's records. The list may then be supplemented by discovering where the loser banks, works, and lives. For information on court proceedings in aid of collection, the Florida Rules of Civil Procedure should be consulted. After compiling a list of the loser's assets, the winner should attempt to seize and sell enough of the assets to pay the debt.