

STEP BY STEP THROUGH SMALL CLAIMS COURT

1. COMPLAINT FILED:

Chapter 19 of Ohio Revised Code explains the Provisions of the Small Claims Act.

(a) The Plaintiff is the person who is suing the Defendant. Be sure to bring with you any evidence or exhibits you intend to use to prove your claim and the correct name and address of the person you are suing. At the time of the filing, the Plaintiff is informed of the date on which the case will be heard by the Magistrate. Even though a Counterclaim or Cross-Claim has been filed, unless otherwise noted by the Court in writing, this date will remain the hearing date.

(b) The Small Claims Law provides that we can assist you in reducing your Claim, Counterclaim, or Cross-Claim to a short and plain statement in writing. At the time of filing, we provided you with a hand-out which contains limited information. These hand-outs are available for pick-up by anyone during Small Claims business hours, or by mail by sending a self-addressed stamped number 10 envelope.

(c) Other than that, we are prohibited by law in advising you whom to sue, how to set forth the facts of your claim, the legal procedure to follow or which legal procedures are available to you or "What do I do next?" as this would constitute the unlawful practice of law. See Ohio Revised Code 4705.01.

2. SERVICE:

A copy of the COMPLAINT is mailed by Certified Mail to the Defendant. If service is not made, Plaintiff is notified, Plaintiff must request and pay the costs for additional service, as the hearing date cannot be set until service has been made.

3. HEARING:

The actual hearing (Trial) is held before the Magistrate. At that time, both parties **MUST** have all their witnesses, papers, bills or whatever they have in their possession (evidence) that will help in winning or defending their case. Bring the 'Original' and two (2) copies of all the documents that you intend to testify from, and admit into evidence. At the trial you must prove your case by the Preponderance of the Evidence, which means the greater weight of evidence.

Affidavits are acceptable, but, the personal attendance of your witness or witnesses to testify is preferred. The written Affidavit must be signed, dated, and notarized. You must bring with you persons who have present knowledge of the entire incident regarding your claim. The Magistrate will **NOT** continue the hearing because you “forgot” to bring along some evidence or did not bring along a witness. Bring all your witnesses and evidence! You can subpoena witnesses through the Clerk of Courts office. Do so well in advance of the hearing date.

4. DECISION OF THE MAGISTRATE:

Based on the evidence and testimony presented to him, the Magistrate will make a “Decision” either immediately at the hearing or after studying the facts and the law. A copy is handed or mailed to each party. (A Magistrate’s decision shall be served on all the parties or their attorney).

5. OBJECTION TO THE MAGISTRATE’S DECISION:

- (a) Time for filing. Within fourteen days of the filing of a Magistrate’s decision, a party may file written objections to the Magistrate’s decision. If any party timely files objections, any other party may file a response to those objections not later than ten days after the first objections are filed. If a party makes a request for findings of fact and conclusion of law under Civ. R. 52, the time for filing objections begins to run when the Magistrate files a decision including findings of fact and conclusions of law. A filing fee of \$10.00 is required at the time the objection is filed.
- (b) Form of objections. Forms available at Clerk’s office. Objections shall be specific and state with particularity the grounds of objection. Either party has fourteen (14) days to file an objection to the Magistrate’s decision. All objections **MUST** be accompanied by a \$10.00 filing fee and **ONE** of the following: a) A transcript prepared, at your expense, from the courtroom video (if a video was in fact recorded); b) An agreed Reconstruction of Evidence as presented at the original hearing (must be agreed to by all/both parties); c) If court reporter was hired by either party, and was present at the time of small claims hearing, a certified transcript prepared by that court reporter and paid for by either the objecting Plaintiff or objecting Defendant. If alternatives a, b or c are not possible, then by an Independent Review of the file, and all documents and exhibits presented at the original small claims hearing. Said review to be done by the Judge of this court as per Civil Rule 53(E)(4)(b). A party shall not assign as error on appeal the court’s adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule.

- (c) If you do file an objection, you **MUST** send a copy to the other party and indicate that you have done this on your objection above your signature. If you fail to do this, under Civil Rule 5D, your objection WILL NOT BE CONSIDERED BY THE COURT.

6. FINAL JUDGMENT:

The Judge of the Berea Municipal Court will thoroughly review the Case File, Magistrate's Decision, the Objections, if any, and enter Final Judgment which may be the exact Magistrate's Decision or a modification of it.

7. APPEAL:

The Judgment entered by the Judge can be appealed to the Court of Appeals. This is a very technical procedure which **MUST** be done within a relatively short time after the Judgment and will probably require the services of an attorney.

8. VEHICLE COMPLAINTS:

Title to your vehicle **MUST** be shown at the time of your hearing. Only the owner of the vehicle can sue for damages. The owner must be a party to the lawsuit and must be present at the trial to testify as to "damages". If you are a Lessee, we suggest you contact the Lessor prior to filing suit. The Lessee of a vehicle can sue for damages, but **MUST** name the Lessor in the lawsuit.

9. RIGHT TO HAVE AN ATTORNEY:

Because Small Claims was originally conceived as being for lay people, and still is, more often than not the parties appear without attorneys. However, anyone in a Small Claims Hearing can have an attorney. (O.R.C. 1925.01(D)). It is your choice whether or not to bring along an attorney.

PLEASE NOTE THAT A CORPORATION USUALLY WILL HAVE AN ATTORNEY REPRESENT IT. The agent, or officer of a corporation cannot practice law and act as an attorney - that is, engage in cross examination, argument, or any other act of advocacy. (O.R.C. 1925.17) The Magistrate will **NOT** continue a case for you to get an attorney if at the hearing the other party arrives with an attorney.

Other than the above, we cannot advise you whom to have present at the trial or how to proceed. Please consult an attorney about any questions you may have regarding any hand-out. The hand-outs are only for your convenience. That is why you should consult an attorney regarding your claim or how the hand-outs apply to you.

10. EXPERT TESTIMONY:

If you are relying on the Statement or Opinion of some other person (an expert) that the repairs to your personal property (car, appliance, etc.) were improperly done or that a product you purchased is defective, or a remodeling job was not done in a good workmanship like manner, you must have that qualified (opinion) witness in court to testify (you can subpoena that witness). A written statement or Affidavit of such witness is NOT admissible even if notarized.

11. LOCAL RULES OF THE BEREA MUNICIPAL COURT RULES - SECURITY OF COSTS:

No action or proceeding shall be accepted for filing by the Clerk of this Court unless there first shall be deposited the filing fee required by this Court in its schedule of costs, except that upon representation of indigency, the Clerk of this Court shall investigate the accuracy of such representation and upon finding that such indigency does exist, the security for cost shall be waived.

When a jury trial is demanded, the party requesting same shall be REQUIRED to make an advance deposit as required by law and fixed by the Court, except upon a finding of indigency as above.

Deposits and advance payments of fees and costs shall be returned only by Order of Court, and only when the same have been paid by the party against whom they are assessed by the Court.