

HOW TO REPRESENT YOURSELF IN CIVIL CASES IN JUSTICE COURT

If you are reading this you have either been sued in Justice Court, or you are thinking about suing someone in Justice Court. Following are the answers to some frequently asked questions about representing yourself in Justice Court.

For purposes of the following discussion it is assumed that you cannot afford a lawyer.

What is Justice Court?

Answer: Justice Court is sometimes called small Claims Court. It deals with civil controversies involving less than Three Thousand and Five Hundred Dollars (\$3,500.00). Often landlord/ tenant disputes such as evictions are handled in Justice Court as well as other types of civil cases.

What do you mean by civil cases or controversies?

Answer: The word civil refers to non-criminal matters, in other words disputes between private individuals. If you are being sued in Justice Court by a representative of the government, and the case involves the possibility of jail time and/or a fine, then that would be a criminal, not a civil matter.

What sort of civil cases does Justice Court handle?

Answer: Justice Court typically handles collection actions, evictions, actions for the return of property called replevin actions, suits for damages in minor motor vehicle accidents and similar matters. It does not handle domestic matters such as divorce, custody, adoption, child support or estates. These are handled in Chancery Court.

Do I need a lawyer in Justice Court?

Answer: It is always helpful to have a lawyer when you go to court. However, as a private individual you are not required to have a lawyer in Justice Court, or any other court for that matter. Because the amount in dispute in Justice Court is usually relatively small many people do not find it cost-effective to hire a lawyer to represent them in Justice Court civil matters.

I have just received a Summons to Justice Court. What should I do?

Answer: The Summons will tell you the date, time and place of trial, as well as the name of the person or company suing you. This person is called the Plaintiff. As the person being sued you are called the Defendant. Be sure you calendar the date and time of the trial and, if necessary, request time off from work to be there.

Next, look and see if the Affidavit, sometimes called the Declaration is attached to the Summons. This is the paper where the person suing you says why they think you owe them the money or other relief they have requested.

Often in Justice Court actions the Declaration is not attached to the Summons. If it is not you should go to the Justice Court Clerk and request a copy so that you will know in advance what the lawsuit is about.

Even if the Declaration is attached it is a good idea to go to the Justice Courthouse anyway to see if there is anything else in the Court file. This will also help insure that you do not get lost or fail to allow enough time to get to Court on the day of trial.

I read the Declaration and I think the Plaintiff is right. What should I do?

Answer: It is always a good idea to consult a lawyer if you are sued. Typically, lawyers do not charge much for a consultation, and you may have defenses of which you are unaware.

If you cannot afford to consult a lawyer and you think the Plaintiff is correct you can always call and try and work out an agreement with the Plaintiff before the date of trial. Not only is paying your just debts the right thing to do, it will benefit your credit history if you can pay the Plaintiff and have him dismiss the suit before a judgment is taken.

If you do work out an agreement before the date of trial be sure that the agreement is in writing, signed by both parties, that your payment is acknowledged, and that all this is communicated to the Court. You do not want to pay the Plaintiff before Court, then run the risk of a miscommunication and have the Plaintiff take a judgment against you for money you have already paid.

If you cannot work out an agreement you should still go to court even if you think the Plaintiff is right. This is because if you are there on the day of trial and the Plaintiff does not attend the Justice Court is required to dismiss the Plaintiff case with prejudice under Rule 2.06 of the Uniform Rules of Procedure for Justice Court. If this happens you can still pay the Plaintiff if you wish but you will not be legally required to do so.

If the Plaintiff is there when the case is called and you don't wish to defend the suit you can simply tell the Court you agree with the Plaintiff and the Court will enter a judgment in the Plaintiff favor. Most judgment creditors will be happy to work out a payment plan with you if you wish to do so. Some judgment creditors will even agree not to enroll the judgment so long as you

keep to your payment plan. If this is done you will not have a judgment against you on your credit history.

I read the Declaration and I do not think the Plaintiff is right. What should I do?

Answer: Again, consulting a lawyer as to possible defenses is likely to be helpful and comparatively inexpensive, even if you do not retain him or her to represent you in court.

Whether or not you consult a lawyer be sure you show up on the day and time stated on the summons. If possible try and be at least one half hour early to make sure that you are not late.

Make sure that you are dressed respectably. In other words no shorts, tee shirts, flip-flops, off the shoulder dresses, or short skirts. Remember hats are not allowed to be worn in the courtroom. If you have some religious belief, which requires you to violate this dress code make sure you have called and communicated this to the Court Clerk or Bailiff before trial to avoid misunderstandings.

Once your case is called you will be given an opportunity to cross-examine the Plaintiff, and later to tell the Court why you think the Plaintiff should not get his or her requested relief.

If you have witnesses who are unable or unwilling to come to court you can request the Clerk of Court to issue a subpoena, which will compel them to attend. If you have issued a subpoena and your witness is not in attendance the Court will usually give you a continuance if you ask for one. However, remember that subpoenas cost money to have issued and served.

If your defense depends upon matters which can be proved by documents, for instance cancelled checks, money orders, receipts, notices, etc., be sure that you bring the original documents to court if you have them. You will not be given an opportunity to go home and get them once court is in session.

Should I file a written response to the Declaration or Affidavit?

Answer: Generally, in non-eviction cases a written response called an Answer is not required. Nevertheless, it is a good idea to file an Answer in writing with the Court Clerk before the hearing. Be sure to have the Clerk give you two copies stamped filed. You will need one and you will need to give one to the Plaintiff either at or before trial.

If you are being sued by a landlord for eviction for holding over or non-payment of rent there must be an Affidavit by the landlord in the Court file. If there is not that in itself is a defense to the action against you. You, too, should always file a sworn answer, also called an Affidavit with the Justice Court Clerk denying the facts in the landlord 's Affidavit with which you disagree. This is simply a written statement, which you have sworn to in front of a notary public who then places their notarial stamp upon the document. You can find a notary in any bank, or - usually - in the courthouse itself.

For your convenience a sample Affidavit is attached for you to fill out or use as a model should you wish to do so.

I have claims against the person suing me. What should I do?

Answer: A Defendant's claims against a Plaintiff are called counter-claims. You are not required to file your counter-claims in the Justice Court proceeding, and for various reasons you may not wish to do so. For instance, if they exceed Justice Court \$3,500.00 jurisdictional limit you may wish to save them and file them later in a different court, typically County Court. You can do this on appeal if you lose, or - if you win - in a completely separate action.

If you do wish to assert your claims against the Plaintiff you should file an Answer with a section designated "Counterclaims." You can then set out why you assert the Plaintiff owes you money or other relief. These claims will be heard in the same proceeding in which you are being sued.

I haven't been sued, but I want to sue someone in Justice Court. What do I do?

Answer: First, be sure that the amount in controversy is less than the Justice Court \$3,500.00 jurisdictional limit.

Then make sure that the Defendant lives in an area within the Justice Court jurisdiction. Typically, Justice Courts only have jurisdiction within their county lines, although some counties have two judicial districts. If you are unsure of the court jurisdiction call and ask the Justice Court Clerk.

Once you have done this go to the Court. Usually the Court Clerk will have forms for the Complaints in the different types of cases that are tried in Justice Court Ask the Clerk if they have a form for the type of suit you wish to file.

Fill out the form complaint (also called the Declaration or Affidavit and pay the fee for filing it and service of the summons upon the Defendant. Typically the Justice Court Clerk will prepare the summons for you. You will

have to provide the Clerk with an address at which the Defendant can be served.

If you truly cannot afford the fee for filing and service you can file a Pauper Affidavit and the Justice Court Clerk should help you without charge. A model Pauper Affidavit is attached to this pamphlet. Be aware, however, that if the Court subsequently decides you are not a pauper it will dismiss your case.

Be sure to find out from the Clerk the day, time and place your case will be set for trial. Failure to attend court will result in your case being dismissed with prejudice. This means that you will not be allowed to refile it.

What happens when I get to Court?

Answer: Typically the Court will call the cases set for hearing that day. This is known as calling the docket.

If the Defendant is not there when the docket is called you will be given a default judgment. If the Defendant is there your case will be called in turn, usually after the uncontested cases are resolved.

When your case is called you will have the opportunity to tell the Judge why you think you are owed the money or other relief you have requested.

When you have done this the Defendant will be allowed to ask you questions. This is known as cross-examination. After this the Defendant will get to testify and you will then be allowed to cross examine him.

Depending upon what has been said you may be given a chance to testify again. This is known as rebuttal. When you are both through the Judge will make a decision.

The foregoing pamphlet and attached form(s) is informational only and has been provided free of charge. While every effort has been made at the time of writing to be accurate, no warranties, express or implied, are made regarding the accuracy of the information provided. No attorney/client relationship is created by virtue of a reader's reliance upon the foregoing pamphlet.

(c) 2004-07-08

Mississippi Center for Legal Services, Corp.
North Mississippi Rural Legal Services, Corp.

IN THE JUSTICE COURT OF _____ COUNTY, MISSISSIPPI
_____(JUDICIAL DISTRICT)

PLAINTIFF

VS.

CAUSE NO:

DEFENDANT

Answer

I deny the allegations of the Plaintiff in the above referenced matter and demand strict proof of same. I deny that he/she is entitled to the relief requested.

Defendant

State of Mississippi
County of _____

Sworn and subscribed before me the undersigned authority this the ____ day
of _____, 20__ A.D.

Notary Public

Seal
My Commission Expires:

IN THE JUSTICE COURT OF _____ COUNTY, MISSISSIPPI
_____(JUDICIAL DISTRICT)

PLAINTIFF

VS.

CAUSE NO:

DEFENDANT

AFFIDAVIT

**STATE OF MISSISSIPPI
COUNTY OF HARRISON**

Personally appeared before me, the undersigned authority, a Notary Public in and for the aforesaid jurisdiction, _____, being first duly sworn by me, deposes and says that she is a citizen of the State of Mississippi and, because of her poverty, she is not able to pay the costs or give security for the same in the action which she is about to commence, and that, to the best of her belief, she is entitled to the redress which she seeks by such suit.

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ___ DAY OF _____, 20___, A.D.

NOTARY PUBLIC

MY COMMISSION EXPIRES