

## **HOW TO ANSWER A CIVIL LAWSUIT IN MAGISTRATE COURT**

This pamphlet is not designed to give legal advice; it simply describes a small portion of the court's procedures. If a lawsuit has been filed against you, you should consult an attorney for legal advice about what to do.

### **WHAT IS A COMPLAINT?**

A Complaint is a document filed with the court that asks the court for some sort of assistance. The Complaint is filed by the Plaintiff and the one being sued is called the Defendant.

A Plaintiff must be a person at least 18 years old, the guardian or parent of a minor, or a business partnership, company or corporation. The Defendant may be any person, business or corporation.

If the Plaintiff or Defendant is a corporation, the corporation is required by law to hire an attorney.

### **WHAT IS A SUMMONS?**

After the Complaint is filed, the law requires that the Defendant be given notice of the lawsuit. It is the responsibility of the Plaintiff to make sure that the Defendant receives proper notice. This notice is called a Summons.

The Plaintiff is not permitted by law to deliver the Complaint and Summons to the Defendant. However, the following persons can deliver the Complaint and Summons:

- the County Sheriff; or
- a private process server; or
- any person 18 years of age or older who is not a party in the lawsuit.

There are specific rules that must be followed to give proper notice to the Defendant. If the Defendant is not a corporation, the three basic ways to properly serve are by:

- giving the Complaint and Summons directly to the Defendant (personal service); or
- posting the Complaint and Summons on the front door of the Defendant's residence. If posted, a copy of the Complaint and Summons also must be mailed to the Defendant (posting and mailing); or
- giving the Complaint and Summons to someone who resides at the Defendant's residence and is 15 years of age or older (substitute service).

If the Defendant is a corporation, the Complaint and Summons must be given to the Registered Agent, an officer, manager or person in charge of the corporation.

## **WHAT IS AN ANSWER?**

An Answer is a written reply to a Complaint. The Answer is the Defendant's chance to explain its side of the case to the Court.

After the Defendant is served with the Complaint and Summons, the Defendant must file an Answer within 20 calendar days.

An Answer form should be attached to the Complaint and Summons. Answer forms are available at the court clerk's office.

## **WHAT SHOULD BE INCLUDED IN THE ANSWER?**

In the Answer, the Defendant should state whether he or she admits or denies the Plaintiff's claims made in the Complaint. The Defendant also can include any explanation or defense it may have to the claims. The Defendant should provide a current mailing address. A copy of the Answer must be mailed to the Plaintiff and all other parties involved in the lawsuit.

In an Answer, the Defendant may request a jury. The Defendant also may file a counter-claim, cross-claim or a Third-Party Complaint.

## **WHAT IS THE TIME LIMIT TO FILE AN ANSWER?**

The Defendant must file an Answer to the Complaint within 20 calendar days from the date he or she was served the Complaint and Summons.

## **CAN A JURY BE REQUESTED?**

Either party may request a jury trial. The Plaintiff must make the request when the Complaint is filed. The Defendant must make the request when filing the Answer. There are additional fees for a jury trial. All jury fees must be paid at the time of the filing of the Complaint or Answer. If a jury trial is not requested, then the assigned judge will make the decision(s) in the case.

## **WHO WILL BE THE JUDGE?**

Cases are randomly assigned to a judge, if there is more than one judge in the district, at the time the case is filed. In a civil case, the Plaintiff can disqualify/excuse a judge within 10 days after filing the Complaint. The Defendant can excuse the judge within 10 days after filing the Answer.

## **WHAT ARE THE COURT FEES?**

The Plaintiff is responsible for the filing fee. Other fees include \$.50 per page for copies.

If a jury is requested, a \$25.00 non-refundable jury fee is charged along with a \$50.00 jury bond. The jury fee and jury bond must be paid separately. The jury bond may be refundable.

## **WHAT HAPPENS IF AN ANSWER IS NOT FILED?**

If the Defendant does not file an Answer within 20 days after service, the Plaintiff can request the court to enter a Default Judgment against the Defendant.

A Default Judgment means that the Plaintiff will win automatically and usually will be given the amount requested in the Complaint.

Therefore, it is extremely important that the Defendant file an Answer if the Defendant wants to protect its rights.

### **WHAT IS A COUNTER-CLAIM?**

On occasion the Defendant may want to sue the Plaintiff in the same lawsuit. A counter-claim is a lawsuit against the Plaintiff in the same case. A counter-claim is usually based on the same dispute or set of facts.

### **WHAT IS A CROSS-CLAIM?**

If the Defendant believes another Defendant is responsible for the damages claimed by the Plaintiff, then the Defendant can file a lawsuit against the other Defendant. A cross-claim is a lawsuit against another Defendant in the same lawsuit based on the same dispute.

### **WHAT IS A THIRD-PARTY COMPLAINT?**

A Third-Party Complaint is a lawsuit against a party who has not been named in the lawsuit, but whom the Defendant believes is responsible for the damages claimed by the Plaintiff.

When a Third-Party Complaint is filed, additional parties are required to be joined in the lawsuit. These additional parties are called Third-Party Defendants.

At the time the Third-Party Complaint is filed, the clerk will prepare a Service Packet that the Defendant will need to have served on the Third-Party Defendant.

It is the Defendant's responsibility to have this Service Packet delivered to the Third-Party Defendant.

The Service Packet is served on the Third-Party Defendant in the same manner that the Defendant received notice of the lawsuit.

Please note that the damages claimed by the Defendant on the counter-claim, cross-claim and/or Third-Party Complaint cannot exceed \$10,000.

Also note that any party who files any document with the court must mail a copy of that document to all other parties involved in the lawsuit.

### **WHAT HAPPENS AFTER AN ANSWER IS FILED?**

After the Answer is filed, the court may refer the case to mediation, if available. Mediation is an opportunity for people to settle their lawsuit prior to trial.

If the case is referred to mediation, a meeting will be scheduled at a time convenient for everyone. If the dispute is settled, the case will be dismissed and no further hearings will be

scheduled.

If the case is not settled or does not go through the mediation process, the judge will schedule a pretrial hearing or trial. A pretrial hearing is an opportunity for the judge to inform the parties of the necessary steps to prepare the case for trial. Pretrial hearings are not scheduled in every case.

If and when a trial is scheduled, the Plaintiff is required to give the Defendant a Witness List and Exhibit List at least 20 days before the trial. The Defendant is required to give the Plaintiff a list of its Witnesses and Exhibits at least 15 days before trial

**Other pamphlets are available in the Magistrate Court Clerk's Office**