

Rule No. 4: Small Claims Procedures

401 Effective date: February 20, 2006, originally promulgated 4/11/80 in different format (typographical error corrected 1/25/96), revised November 1, 1991, revised in September 2008.

402 All small claims initial return dates shall be set by the Clerk of Circuit Court for the first and third Thursday of each month at 9:00 a.m. on days that the courthouse is open for business.

403 Service in small claims:

1. For Taylor County defendants (except replevin and eviction): by regular mail.
2. For Out-of-County defendants (except replevin and eviction): by certified/return receipt mail or personal/substituted service
3. For all Replevin actions: by certified mail/return receipt or personal service.
4. For all Eviction actions: by personal service.
5. Service of contempt proceedings authorized by Wis. Stat. § 799.26(2) shall be by personal service and served upon the defendant at least 72 hours prior to the hearing time.
6. If a party is required or elects to use personal service of a small claims complaint, amended complaint, or Notice and Motion for Contempt, proof of service shall be filed with the court prior to or at the return date or contempt hearing date.

Whenever attempted service by mail is returned by the U.S. Postal Service, whether or not service has been accomplished shall be determined as follows:

(1) "Refused": Shall constitute a presumption of service upon the defendant since it indicates that he/she was presented with the envelope but refused to accept it under circumstances indicating that he/she had reason to know that it involved legal proceedings against him/her.

(2) "Unclaimed": shall not constitute service since there is no presumption that the defendant has reason to know that legal proceedings involving him/her have been commenced. In such cases, the Clerk shall advise the plaintiff of the failure of service and direct plaintiff to obtain personal service or service by publication within 30 days of the date of the notice or have the action dismissed for failure of service.

404 Any defendant who disputes the allegations of the Complaint shall file a written answer by mail or in person and shall appear in person on the return date. The written answer must be received by the Clerk of Court on or before the date and time of the initial return date. It is also the defendant's responsibility to serve a copy of the answer on the plaintiff.

405 Telephone appearances by either the plaintiff or defendant are not allowed at the initial return date.

406 Appearance requirements:

a. Plaintiff appears/Defendant fails to appear or properly answer:

The plaintiff shall be entitled to default judgment if otherwise allowed by law. The complaint must be verified and the plaintiff must submit the proper judgment form to the Clerk of Court.

b. Defendant appears/Plaintiff fails to appear:

The defendant shall be entitled to dismissal of the complaint. The dismissal shall be without prejudice. Plaintiff may seek to reopen the matter upon payment by the plaintiff of \$15.00 costs to the Clerk of Court. The Clerk of Court shall transmit the \$15.00 to the defendant as repayment for the out-of-pocket expenses in time, travel expenses, wages, etc.

c. Both Plaintiff and Defendant fail to appear:

1. Plaintiff shall be entitled to default judgment if the plaintiff has verified the complaint and has submitted the proper judgment form to the Clerk of Court.

2. If Rule 406(c)(1) does not apply, the matter shall be dismissed by the court for lack of prosecution. The dismissal shall be without prejudice.

d. Both Plaintiff and Defendant appear:

1. If both parties appear at the initial return date, the small claims Court Commissioner shall inquire of the parties as to the issues in dispute. The Commissioner shall grant a judgment on the pleadings if it appears that either party is entitled to judgment based on the pleadings, and the pleadings cannot be amended to state a proper claim for relief or a defense as appropriate. A defendant's answer must allege facts. A general denial will not be accepted.

If the matter is not settled at the initial return date appearance, then the matter shall be scheduled for the next available trial date (the first Monday of each month) on the small claims trial calendar.

The Clerk of Court shall provide the court hearing notice along with the small claims trial brochure to the litigants either in person or by regular mail.

407 If the matter involves an eviction, garnishment, or replevin, the court shall put the matter at the head of the calendar on the next small claims trial date, or if time is claimed to be of the essence, the clerk may inquire of the judge if the matter may be expedited on the court calendar.