

# 27

## A CONSUMER'S GUIDE TO SMALL CLAIMS COURT

### § 27. 1. Introduction

This consumer rights chapter describes how you can bring a Small Claims Court law suit. It contains the following sections:

- § 27. 2. What Is Small Claims Court?
- § 27. 3. Who Can Sue In Small Claims Court?
- § 27. 4. Cost Of Filing A Case
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### § 27. 2. What Is Small Claims Court?

Small Claims Court is a simple, informal and inexpensive hearing in which the judge listens to you tell your side of the story, then listens to the person you are suing and then makes up his mind as to who is right. *You do not need a lawyer.* Before you see the Judge you will meet with a Court

Mediator and the opposing party and attempt to settle your case. Carefully consider any fair settlement offer. You are never guaranteed to win your case and if you settle you at least will not go away empty-handed.

Small Claims Court is part of the Maine District Court and is designed to help citizens to sue for amounts that are too small to justify the hiring of a lawyer. *The District Court Clerks will try to answer your questions but they are prohibited from giving you any legal advice.* You can also refer to Maine Small Claims statutes and Rule's.<sup>1</sup> For a general guide to Maine Small Claims Court, see [www.maine.gov/courts/mainecourts/smallclaims/smallclaimsguide](http://www.maine.gov/courts/mainecourts/smallclaims/smallclaimsguide).

## § 27. 3. Who Can Sue In Small Claims Court?

You can sue in Small Claims Court if you are 18 or over and somebody owes you or you have suffered damages of no more than \$4,500. This \$4,500 limit does not include any interest charges or court costs you may be claiming. Examples of consumer Small Claims include:

- A. Somebody refuses to give you the goods or services that are legally due you (*e.g.*, a landlord refuses to return your security deposit);
- B. Somebody illegally refuses to allow you to return or receive a refund on an article (*e.g.*, an appliance or a car) that you purchased;
- C. Somebody illegally refuses to repair an article that you purchased;
- D. Somebody illegally refuses to allow you to cancel a contract; or
- E. Your claim *does not* involve *title* to real estate.

Small Claims Court can award you *monetary damages* or *equitable relief*. Equitable relief is limited to orders to return, reform, refund, repair or rescind.<sup>2</sup> You can also receive post-judgment interest on a money judgment.<sup>3</sup>

In order to qualify for Small Claims Court, can you break down a multipart claim for more than \$4,500 into fewer claims that do not exceed the \$4,500 limit? The statute would *not* seem to prohibit this. For example, imagine that a homeowner wishes to sue a contractor for poor workmanship. The homeowner believes his damages total \$6,000: \$4,000 to repair the leaking roof; \$500 to repair poor insulation; \$1,500 to repair the sinking driveway. In order to qualify for Small Claims Court, the homeowner decides to sue for only the roof repair and the insulation repair, a total of \$4,500 in damages. This would seem permissible, but it is quite possible the homeowner would not be able to later sue for the cost of driveway repair. The homeowner may have only one bite of the repair apple.<sup>4</sup>

If the business is a corporation, then you must sue the corporation. In addition, you can also sue the person who might own the corporation. The Bureau of Corporations in the Secretary of State Office can give you the name and address of the corporation's registered agent. This is the person you serve with your lawsuit.<sup>5</sup>

<sup>1</sup> See 14 M.R.S.A. §§ 7481-7485; Maine Rules of Court, Rules of Small Claims Procedures.

<sup>2</sup> 14 M.R.S.A. § 7481.

<sup>3</sup> 14 M.R.S.A. § 7487.

<sup>4</sup> 14 M.R.S.A. § 7485. See *Caporina v. Lacasse*, 511 A.2d 445, 447 (Me. 1986) (the principle of *res judicata* prohibits re-litigation of matters that could have been litigated in the previous small claims action).

<sup>5</sup> A judge may ignore the corporation and sue its owner when the corporate identity is being used to cover fraud or illegality, or to justify a wrong. See *Theberge v. Darbo, Inc.*, 684 A. 2d 1298, 1301 (Me. 1996). This is called "piercing the corporate veil."

## § 27. 4. Cost Of Filing A Case<sup>6</sup>

The fee to file a Small Claim is \$40 which includes the cost of postage and a mediation fee. Checks or money orders for the \$40 filing fee should be made payable to “Maine District Court”.

### A. Additional Charge for Arrangement of Service

An essential part of a Small Claims case is notifying the defendant about the case. This is referred to as “service” on the defendant. When the clerk arranges for service the plaintiff must pay a service fee of \$16 per defendant.

The plaintiff may request that the clerk arrange for service. If the clerk is unable to notify the defendant of the lawsuit by mail, the clerk will arrange for service by the deputy sheriff if the plaintiff has requested sheriff service. The plaintiff must pay the sheriff’s office a small fee for service and for mileage. A deposit is required and any balance will be refunded.

The court can order the defendant to pay the plaintiff for the filing fee, postage fee, service fee and any other costs of service if the plaintiff wins the case.

### B. If You Cannot Afford Service

A plaintiff who cannot afford the cost of bringing a Small Claims case can apply to the court for permission to file the case without paying the filing and postage fees. The clerk will provide an application form that will require some basic financial background. A Plaintiff found by the judge to be unable to afford the fees will be permitted to file suit without payment of the fees.

No fee is charged to a defendant. However, if a defendant wants to file a Small Claims counterclaim against the plaintiff, then the defendant must pay the filing fee, postage fee and service fee (if the defendant wants the clerk to arrange for service) for the new case.

## § 27. 5. Do I Need Someone To Represent Me?

Any person over 18 years of age can bring a Small Claims case. If the person is under 18, a representative or guardian may bring a case on behalf of the person. The defendant must also be age 18 or over. If the person being sued is under 18, the person must be represented by a guardian or representative.

If the defendant believes that the plaintiff owes him or her money, the defendant can file a Small Claims case (a counterclaim) against the plaintiff if the amount does not exceed \$4,500.00. The defendant can ask the clerk to schedule both cases for the same hearing date.

The plaintiff or defendant in a Small Claims proceeding may be represented by an attorney or may proceed without an attorney. A corporation, partnership, sole proprietorship, or governmental entity may be represented by an officer or employee even though not an attorney. A spouse may not represent his or her spouse.

## § 27. 6. Where To File The Case

A plaintiff can bring a Small Claim in the division (i.e., local court) of the District Court: (A) where the reason for the lawsuit arose (e.g., where the contract was broken); (B) where the defendant

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<sup>6</sup> This section and §§ 27.5 through 27.14 are based on the pamphlet, *A Guide to Small Claims Proceedings In the Maine District Court*, which is published by the Maine Administrative Office of the Courts. See [www.maine.gov/courts/maincourts/smallclaims/smallclaimsguide](http://www.maine.gov/courts/maincourts/smallclaims/smallclaimsguide) for any updates.

resides; (C) where the defendant has a place of business; or (D), if the defendant is a business entity, such as a corporation, where the registered agent of the business resides (*see* § 27.3).

If your complaint is against an out-of-state company (e.g., a mail order firm), you may be able to sue the company in the small claims court where you reside. If the company's level of business in Maine satisfies our "long-arm" statute (14 M.R.S.A. § 704-A), then the court will have jurisdiction over the company. Or, if the out-of-state company has a Maine registered agent (contact the Secretary of State). You can also bring your action in the court where the agent resides.

If the case is filed in the wrong court, either the plaintiff or defendant can ask to have the case transferred to the correct court. If the case is brought in the wrong court and the parties do not agree to transfer it to the proper court, it is possible that the court may dismiss the case.

## § 27.7. How To File The Case

A Small Claims statement of claim form can be obtained at any District Court clerk's office. The plaintiff may ask the clerk for assistance in completing it, but the clerk cannot provide any legal advice.

The plaintiff should complete the statement of claim form by providing:

- A. The name and address of the defendant, including the exact name of the defendant (if the defendant is a corporation or an individual doing business as a named entity, this should be stated);
- B. A brief statement of the claim (that is, the nature of the dispute—what caused the dispute, when the dispute occurred, etc.), including the relevant dates;
- C. The brief statement of the claim (that is, the amount of money that is owed by the defendant or whatever action the plaintiff is requesting from the defendant);
- D. If there is a bill, contract, or other written record relating to the dispute, a copy may be attached to the statement of claim form (if this is done, the plaintiff will need two copies to give the clerk when filing the claim).

If the plaintiff requests that the clerk arrange for service, the plaintiff must also complete and sign a sworn to *affidavit* stating that the plaintiff has not filed and does not intend to file more than three Small Claims cases within the month.

The plaintiff must file the Small Claims forms, with the filing and postage fees or with an application for waiver of the fees, in person or by mail with the clerk of the court. If the plaintiff has made service on the defendant, the plaintiff must file the return of service, and this can be filed at the same time the plaintiff files the statement of claim. The return of service is the acknowledgment of service if service was made by regular mail, or the green card if service was made by certified mail, or a return signed by the deputy sheriff if service was made by the deputy.

## § 27.8. How To Arrange For Service

An essential part of a Small Claims case is notifying the defendant about the case. This is referred to as "service" on the defendant. If the plaintiff has filed or intends to file less than 3 Small Claims actions in a calendar month, the plaintiff can have the clerk arrange for service on the defendant. A clerk *cannot* arrange service for a plaintiff who has filed or intends to file 3 or more Small Claims cases in a month.

If the plaintiff is making service on the defendant without assistance from the clerk because the plaintiff is filing 3 or more Small Claims cases that month or because the plaintiff desires to make service, there are three methods that can be used for service:

- A. **Service by regular mail.** For this type of service the plaintiff should mail to the defendant a copy of the completed statement of claim, two copies of the acknowledgment form and a stamped envelope addressed to the plaintiff. The acknowledgment form can be obtained from the clerk's office. Service by this method is completed when the defendant signs the acknowledgment form and sends it back to the plaintiff. The plaintiff should file the acknowledgment form with the clerk's office within 20 days of service.
- B. **Service by certified mail.** For this type of service the plaintiff should mail to the defendant a copy of the completed statement of claim. It should be mailed by registered or certified mail, return receipt requested, restricted delivery. The plaintiff should file the green card, signed by the defendant, with the clerk's office within 20 days of service. If the green card is signed by someone other than the defendant, the service is incomplete and the plaintiff will have to try certified mail service again or arrange for service by the sheriff.
- C. **Service by the sheriff.** The plaintiff should contact the sheriff's department of the county in which the defendant resides. The plaintiff will have to give the sheriff two copies of the statement of claim, one for the sheriff to give to the defendant and the other for the sheriff to sign to indicate that service has been made. The sheriff or deputy has to give the statement of claim to the defendant in hand or leave it at the defendant's dwelling house with a person of suitable age who lives there. This latter copy will be returned to the plaintiff who must file it with the clerk's office, within 20 days of service. The plaintiff has to make payment arrangements with the sheriff's department.

## § 27. 9. The Hearing Date And Continuances

After the return of service has been filed with the clerk, the clerk will notify both the plaintiff and defendant by mail of the hearing.

A *continuance* is a postponement of a court date. If the hearing has been scheduled for a time when you are absolutely unable to attend, you should ask for a continuance. While continuances are not favored, they may be granted for legitimate reasons such as illness, emergencies or unavailability of a witness. You should notify the clerk of the court and request a continuance as soon as you discover that you or an important witness cannot attend the hearing at the scheduled time.

## § 27. 10. Preparing For The Hearing

To prepare for the hearing, collect all papers, photographs, receipts, estimates, cancelled checks, advertisements or other documents that concern the case. It may be helpful to write down ahead of time the facts of the case in the order that they occurred. This will help organize the facts so you can make a clear presentation to the judge. If you are nervous (don't be!), it sometimes helps to practice saying your speech before you get to court. Remember, your testimony will be under oath.

Witnesses should be asked to attend the hearing. If the witness can't come to the hearing, the testimony of the witness can be presented in writing. It should be in the form of a *sworn statement known as an affidavit*. However, written testimony is usually not as persuasive as testimony in person, and the judge may exclude the written testimony.

A witness who is not willing to give testimony voluntarily can be subpoenaed, that is, required to come to court. The clerk's office has subpoena forms. The party who subpoenas the witness must pay the witness fee.

All Small Claims sessions are open to the public, so you may want to attend a session before your own hearing date. This will familiarize you with the courtroom and the procedure. The clerk of court can tell you when Small Claims cases are scheduled.

Arrive early and get used to the courtroom. Do not worry about trying to sound like a polished lawyer. The Rules of Evidence do not apply in Small Claims Court, so be natural and tell your story. The judge just wants to hear *your side* of the dispute, not a grand speech. (Although you can bring a lawyer or a friend to argue your case, it is sometimes most effective for the judge to hear your complaint in your own words.)

Before your hearing, you will be asked to see a Court Mediator. This is a good opportunity for you and the person you are suing to informally explore the possibility of settling your dispute yourselves, without presenting your case to the judge. Trained individuals from the Court Alternative Dispute Resolution Service will be your mediator.

Be sure you are not late for your hearing. If you fail to appear, your case will be dismissed. If you absolutely cannot make your court date (e.g., due to illness, emergency, unavailability of witness), call District Court and ask for a new court date (a continuance). You can find a listing of Small Claims Courts by county, complete with phone numbers, in § 27.17.

## **§ 27. 11. Out-Of-Court Settlement**

If the case is settled before the hearing date, one or both of the parties should notify the clerk of court immediately so the hearing can be canceled. It is strongly suggested that an out-of-court settlement be in writing and submitted to the court. *See* § 27.17 for a model settlement agreement.

## **§ 27. 12. Mediation Before The Hearing**

Be certain to arrive at the hearing on time. It is advisable to arrive at the courthouse early in order to find the proper courtroom and locate any witnesses you may have asked to appear.

At the beginning of the court session, the clerk or the judge will read all the names on the court's Small Claims list for that day in order to determine which cases are ready to be heard. If the plaintiff does not appear, the case will be dismissed. If the defendant fails to appear, the judge may enter a *default judgment*, which is a judgment against a defendant who has not appeared. Before granting a default judgment, the judge may ask the plaintiff to present some evidence in support of the claim. If the plaintiff fails to appear, the case will be dismissed.

Before your hearing, the judge will usually ask you to meet with a Court Mediator, in order to see if your dispute can be resolved without going to trial. If the parties are successful in settling the dispute, the settlement must then be submitted for court approval. A court-approved settlement has the force and effect of a court judgment.

If settlement efforts fail or are considered by the judge to be inappropriate, the judge will conduct a hearing where both parties will tell their stories, present relevant papers and other exhibits, and have any witnesses testify. The judge will first ask the plaintiff to tell his or her side of the story and to present evidence and witnesses. Then, the defendant will have an opportunity to respond and to present witnesses. Each party should tell his or her story slowly and clearly. Each party should give the judge any documents while testifying. Do not interrupt. If you disagree, you will be given an opportunity to make that known. Both parties have the right to cross-examine.

Both the plaintiff and the defendant have a right to have the hearing electronically recorded. *If you think you may want to appeal the judge's decision in the event that it is not in your favor, you should request that the hearing be recorded.* This will create the "record" you would need to appeal. If possible, you should notify the clerk of court in writing 24 hours in advance of the hearing date that you will want the hearing recorded. This guarantees that the equipment and personnel necessary to make a recording will be available at the time of your hearing. However, you are entitled to a recording even if you have not requested it in advance.

The plaintiff should not come to court on the hearing date assuming that if he or she wins the case, the defendant will immediately pay any money that is owed.

At the conclusion of the hearing, the judge may not announce the decision immediately. Sometimes a judge will take a case *under advisement*, which means that the judge wants time to think about the case or to do some legal research. If the case is taken "under advisement," you will be notified of the decision by mail. Each party will receive a copy of the decision by mail. Each party will receive a copy of the judgment either at the end of the hearing or by mail. The judgment will contain the name of the winning party, the time allowed for appeal, the amount awarded in the judgment plus costs, any other action ordered by the court, and a statement that, if the judgment is not paid, a Disclosure Hearing may be held at the request of either party. *See below* "Collecting The Judgment through a Disclosure Hearing" at § 27.14.

## **§ 27. 13. How To Appeal The Judge's Decision**

The parties have thirty (30) days from the date of entry of the judgment to appeal a Small Claims case to the Superior Court. To appeal, the party must file a notice of appeal with the clerk of the District Court where the Small Claims case was heard. The fee for filing an appeal is \$100. A plaintiff may appeal only on questions of law and is not entitled to a new trial.

A Defendant may appeal on questions of law or may request a new trial, this time in front of a jury<sup>7</sup>. To request a jury trial, the defendant must briefly state the grounds of the appeal and demand a jury trial in writing on the "notice of the appeal" form. If the defendant wants a jury trial, there is an additional fee of \$300 to be paid by the defendant to the Superior Court. The defendant must also file an affidavit with the notice of appeal, specifying that there is a genuine issue of material fact. Failure to make demand for jury trial with the accompanying affidavit constitutes a waiver of the right to jury trial.

To appeal, you will need a transcript of the trial. This transcript is prepared from a recording of your trial. The District Court clerk can assist the plaintiff in ordering a transcript. A deposit for the transcript will have to be paid to the Judicial Branch Recording Division. No recording will have been made unless you requested one. So, if you think you may appeal an unfavorable decision, do not forget to request that your hearing be recorded.

If you feel the judge treated you unfairly at your trial, you can file a complaint with:

Judicial Discipline Committee  
P.O. Box 8058  
Portland, Maine 04104-8058  
Telephone: (207) 780-4364

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<sup>7</sup> See e.g., *Ahlgren v. Fabian*, 722 A.2d 868 (Me.1999).

## § 27. 14. Collecting The Judgment Through A Disclosure Hearing

Let's assume you win your case and the judge orders the defendant to pay you money. If the defendant does not pay the judgment within 30 days, the most common manner of collecting the judgment is through a *Disclosure Hearing*.

The purpose of a Disclosure Hearing is for the winning party (now called the *judgment creditor*) to "disclose" the losing party (now called the *judgment debtor*). This means that the creditor will try to find out from the debtor what income and assets he or she has from which the judgment can be paid. The disclosure of income and assets is under oath in front of a judge.<sup>8</sup>

### A. Requesting A Disclosure Hearing

There are two ways of setting up a disclosure hearing: (1) the plaintiff (judgment creditor) fills out the paperwork and arranges service of the notice on the defendant (judgment debtor) or (2) the judgment creditor requests a disclosure hearing in writing and the clerk arranges for service of a notice on the debtor. The rules that determine whether the clerk can arrange for service of the disclosure notice on the debtor are the same as for arranging service on the defendant of a Small Claims statement of claim. That is, if the creditor does not file or intend to file three or more Small Claims cases in a calendar month, the creditor can ask the clerk to arrange for service. Otherwise, the creditor must arrange for service him or herself.

### B. When The Clerk Arranges For Service

If the creditor wants the clerk to arrange for service, the creditor must file a written request with the clerk's office. The clerk's office has forms entitled "Request for a Disclosure Hearing". The form must be completed and filed with the clerk with a \$15 dollar filing fee and a service fee of \$10 dollars. The clerk will then have the debtor served with the appropriate notice and will inform both parties of the date of the disclosure hearing.

### C. When The Creditor Arranges For Service

If the creditor must arrange for service because the creditor files 3 or more Small Claims cases in a month, the creditor should obtain a hearing date form from the clerk's office. That date should be far enough ahead to allow plenty of time for service, because the debtor has to be served at least 7 days before the disclosure hearing. The creditor should also obtain the form called "Notice of Disclosure Hearing". This form will have the clerk's signature on it. The creditor should fill out the form and have it photocopied. The creditor should give the original and the copy to the deputy sheriff for service. The sheriff will have the copy served on the debtor and will write on the original that service has been made and when it was made and return the original to the creditor. The creditor must then file the original with the return of service signed by the deputy at the clerk's office. This must be accompanied by a \$15 dollar filing fee.

### D. At The Disclosure Hearing

At the disclosure hearing, the creditor should be prepared to ask the debtor questions about the debtor's assets and income. The debtor will be placed under oath by the judge. The creditor may present evidence to show that the debtor can pay the judgment. Either party may subpoena witnesses. The judge will determine whether the debtor should pay the entire amount at once or in installment payments, or whether property owned by the debtor should be turned over to the creditor. If justified, the court can order that the defendant make weekly installment payments of up to 25% of the sum of the debtor's disposable income for that week<sup>9</sup> However, if the debtor's income and exempt income or

<sup>8</sup> 14 M.R.S.A. § 3125.

<sup>9</sup> 14 M.R.S.A. § 3126-A(3).



property is exempt under Maine law, the disclosure will be terminated, which means that the creditor will have to wait six months before having the debtor brought back to court for another disclosure hearing. Examples of types of income that are exempt from court order include social security benefits, veteran's benefits and unemployment benefits. Other kinds of income and property are also exempt.

### ***E. If The Creditor Or Debtor Fails To Appear At The Disclosure Hearing:***

If the creditor fails to appear at the disclosure hearing, the disclosure is terminated. To terminate a disclosure means that the creditor must wait six months before requesting another disclosure hearing. Each new disclosure hearing requires a new filing fee and service of the notice of disclosure on the debtor.

If the debtor fails to appear at the disclosure hearing, a civil order of arrest will be issued by the court upon the request of the creditor. If the creditor wants a civil order of arrest the creditor will have to file an affidavit with the court stating that he or she knows of no valid reason for the nonappearance of the debtor.

The clerk's office has forms entitled "Affidavit and Request for Civil Order of Arrest." The affidavit must also contain the present address of the debtor. The clerk will arrange for the arrest of the debtor, but the creditor must pay the sheriff's office a \$25.00 fee for the arrest. This cost can be added to the amount of the judgment. The civil order of arrest directs the sheriff to arrest the debtor on a day that the court is in session and bring the debtor to court. He will not take the debtor to jail.

When the debtor is arrested and brought to the court, the clerk will immediately notify the creditor who must appear at court. If the disclosure hearing cannot take place (due to the unavailability of the creditor or the judge or if the court is simply too busy), the *personal recognizance* of the debtor can be taken. If a debtor fails to appear in court after having been given a personal recognizance, a civil order of arrest will be issued again if the creditor so requests.

### ***F. Transfer To Another Court***

If the debtor resides in a division other than the one in which the case was filed, the case will be transferred to the division where the debtor resides if the creditor requests a civil order of arrest. For example, if the Small Claims judgment was issued in the Portland court and the debtor failed to appear for the disclosure hearing and the debtor resides in Biddeford, the case will be transferred to Biddeford if the creditor wants a civil order of arrest. This is because a sheriff in Portland has no authority to arrest someone in Biddeford. This means that when the debtor is arrested in Biddeford, the sheriff will take the debtor to the Biddeford court and the creditor must go to the Biddeford court.

### ***G. Contempt***

If the debtor is ordered to make payments on the judgment but does not, the creditor can bring a *Motion for Contempt*.<sup>10</sup> The clerk's office has forms entitled "Motion for Contempt". The creditor must arrange for the filing and service of the contempt motion and contempt subpoena. Also, a business's refusal to pay a consumer's judgment could itself be a violation of the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207). If so, the consumer could hire an attorney to help in the collection effort and ask the court to also award the attorney's fees.

### ***H. When Payment Is Received***

The creditor should notify the Court when payment is received from the defendant. The court record will be updated to state that the judgment has been satisfied.

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<sup>10</sup> 14 M.R.S.A. §§3123-3125.

## § 27. 15. What To Do If You Are Being Sued By A Business

It sometimes happens that a consumer will refuse to pay a business because the consumer believes the business failed to provide the goods or services their contract called for. When this happens the consumer will sometimes find that the business has sued in Small Claims Court. If this occurs the consumer is the “defendant” and the business is the “plaintiff”. Here are some important points to remember if you are sued in Small Claims Court:

### ***A. Keep The Clerk Informed***

It is important that you keep the clerk informed of your correct address. If you should move, notify the clerk of your new address promptly.

### ***B. Check To See If The Case Was Filed In The Proper Court***

In a Small Claims proceeding, you can be sued in the district where you live, where the event which gave rise to the dispute occurred, where you do business, or, if your business is incorporated, where the registered agent of your business lives. Even when the case is brought in the proper court, if defending the case in that court would be a hardship, you may ask that the case be transferred to another court location of the District Court. To request a transfer, immediately notify the clerk of the court where the case was filed and explain your reasons for needing the transfer. The clerk will then contact the judge who will decide whether to permit a transfer.

### ***C. Seek A Continuance If Necessary***

If the hearing has been scheduled for a time when you absolutely cannot attend, you should ask the clerk for a continuance, as described above in § 27.9(F). *Remember, if you do not appear in court on the trial date, you will lose by default.*

### ***D. Prepare For The Hearing***

Prepare for the hearing in the same manner as a plaintiff — assemble all of your documents and witnesses and organize your facts. Read the suggestions given in § 27.10, Preparing For The Hearing. *If you think that you will want to appeal if you lose, you should ask for a recording of the proceeding. See § 27.13, How to Appeal the Judge’s Decision.*

### ***E. File Your Own Small Claims Action***

If you believe that the business which is suing you owes you money, you may have several alternatives. First, if the amount of money you believe you are owed does not exceed \$4,500, you can file your own Small Claim against the business and ask that your case be scheduled at the same time as the case filed against you by the plaintiff. This claim against someone who is suing you is called a *counterclaim*. Or, regardless of the amount of money involved, you have a right to file a regular civil lawsuit.

Second, rather than sue the business for the amount you claim you are owed, in certain limited circumstances you can use your counterclaim as a defense in the Small Claims case brought against you by the business. In order to do this, your claim against the business must be directly related to or rise out of the same events as the plaintiff’s claim against you. You may use your counterclaim as a defense, but only to the extent (i.e., the amount) of the business’ claim.

For example, if the business claims that you owe it \$300, you can raise a defense that the business owes you \$150 and that you are therefore liable for only \$150. But if you claim that the business owes you \$400, you can only collect the full amount of that claim by filing your own case. If you raise your

claim as a defense in the case brought against you by the business for \$300, you may defeat the business' claim against you for \$300, but you cannot be awarded the extra \$100 you claim the plaintiff owes you.

If you settle the case with the business before the date of the hearing, make certain that the Clerk of Court is notified. If the hearing date is not canceled and you fail to appear for the hearing, a default judgment may be entered against you.

If you lose the case and are ordered to pay the winning party, you must comply with the provisions of the judgment within thirty (30) days or you may be notified to appear in court for a disclosure hearing. *See* § 27.14, Collecting The Judgment Through A Disclosure Hearing. Make certain that the winning party notifies the clerk of court as soon as you have paid the judgment plus costs.

If you do not have enough money to pay the judgment plus costs in a short period of time, ask the judge to permit you to pay in installments. However, your payments must be made on time or your wages could be attached or you could be held in contempt.

## **§ 27. 16. Small Claims Courts**

*(Part Of The Maine District Court), By County*

### ANDROSCOGGIN

Lewiston	207-795-4801
Livermore Falls	207-897-3800

### AROOSTOOK

Caribou	207-493-3144
Fort Kent	207-834-5003
Houlton	207-532-2147
Madawaska	207-727-4700
Presque Isle	207-764-2055

### CUMBERLAND

Bridgton	207-647-3535
Portland	207-822-4200

### FRANKLIN

Farmington	207-778-8200
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### HANCOCK

Ellsworth	207-667-7141
Bar Harbor	207-288-3082

### KENNEBEC

Augusta	207-287-8075
Waterville	207-873-2103

## KNOX

Rockland	207-596-2240
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## LINCOLN

Wiscasset	207-822-6363
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## OXFORD

Rumford	207-364-7171
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So. Paris	207-743-8942
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## PENOBSCOT

Bangor	207-941-3040
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Lincoln	207-794-8512
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Millinocket	207-723-4786
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Newport	207-368-5778
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## PISCATAQUIS

Dover-Foxcroft	207-564-2240
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## SAGADAHOC

Bath-Brunswick	207-442-0200
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## SOMERSET

Skowhegan	207-474-9518
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## WALDO

Belfast	207-338-3107
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## WASHINGTON

Calais	207-454-2055
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Machias	207-255-3044
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## YORK

Biddeford	207-273-1147
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Springvale	207-495-1400
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Small Claims Court TTY numbers can be found at:

<http://www.courts.maine.gov/mainecourts/district/directory>.

# § 27. 17. Model Settlement Agreement

PLAINTIFF

\*

\*

v.

\*

SETTLEMENT AGREEMENT

\*

DEFENDANT

\*

The parties to this Small Claims Court case (the Small Claims Court in \_\_\_\_\_, Docket Number \_\_\_\_\_), hereby agree to fully settle this dispute in the following way:

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(continue on back if necessary)

DATE: \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF'S NAME (please print)

\_\_\_\_\_  
PLAINTIFF'S SIGNATURE

DATE: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT'S NAME (please print)

\_\_\_\_\_  
DEFENDANT'S SIGNATURE