

2014 Nuts & Bolts Seminar Des Moines



Do's and Don'ts of Small Claims

10:00 a.m.-10:30 a.m.

Presented by

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TUESDAY, OCTOBER 28, 2014

IOWA SMALL CLAIMS LAW

1. Procedures and General Rules.
 - A. Iowa Code Section Section 631.
 - B. Iowa Bar Association-How to Use Small Claims Court
2. Overview of Statute
 - A. \$5,000 or less. Also FEDs (However, these are fairly specialized and not covered here)
 - B. Statutes and Rules relating to venue and jurisdiction apply.
 - C. Forms and EDMS forms are supplied.
 - D. Service can be by Certified Mail. Twenty days to respond. Can serve Secretary of State and special forms for non-resident owner and operators.
 - E. Set for hearing, not less than five nor more than twenty days after last appearance. Does not always work that way. Some counties have mediation requirements.
 - F. Defaults. Need Itemization of Account and of Non-Military service.
 - G. Fees. Currently \$85 Filing Fee. \$10 certified mail or personal service by private server or sheriff. Fees vary.
 - H. All Motions heard at time of Hearing, but a Motion under 1.246 (or Change of Venue since it says rules as to venue apply).
 - I. No Compulsory Counter claims. All Counterclaims are deemed denied and no Answer is needed.
 - J. If counterclaim exceeds \$5,000. Court may keep the under \$5,000 claim. Never had a case where court did not transfer all of claim to district court.
 - K. Jurisdiction determined first.
 - L. If neither party appears, dismissed without prejudice. If only Plaintiff does not appear, claim dismissed with prejudice. Affidavit constitutes an Appearance.
 - M. Hearings recorder digitally.
 - N. Appeals. Either orally at end of hearing or twenty days after judgment. Either way, must pay within twenty days.

O. Appeal heard on the record. No new evidence.

P. May use an attorney. Appeals to Supreme Court are discretionary.

3. Cases.

1. *Hyde v. Anania*, 578 N.W.2d 647 (Iowa, 1998) Chapter 631 prohibits the small claims court from considering a rule 252(a) motion (Motion to Reconsider).. Chapter 631--and more specifically section 631.7(2) (prohibiting post trial motions)--is inconsistent with rule 252(a) and therefore supersedes the rule. Iowa Code section 631.2(1) further supports our conclusion because it requires the small claims court to "determine small claims according to the statutes and the rules prescribed by this chapter." (Emphasis added.) Rule 252(a) is not a rule prescribed by chapter.
2. *Barnes Beauty College v. McCoy*, 279 N.W.2d 258 (Iowa, 1979) The appeal to district court in this case was untimely and the small claims judgment became final. We believe the legislative scheme for informal small claims procedure did not contemplate new trial motions. Accordingly, we reverse a district court modification of the small claims judgment and we remand the case for reinstatement of the judgment as entered in small claims court.
3. *Ge Money Bank v. Morales*, 773 N.W.2d 533 (Iowa, 2009) On discretionary review, we find the small claims court correctly considered the billing statements faxed to the court on the morning of the proceeding in making its decision. Accordingly, we affirm the judgment of the district court affirming the judgment in the small claims proceeding.

CHAPTER 631 SMALL CLAIMS**631.1 SMALL CLAIMS.****631.2 JURISDICTION AND PROCEDURES.****631.3 COMMENCEMENT OF ACTIONS -- CLERK TO FURNISH FORMS -- SUBPOENA.****631.4 SERVICE -- TIME FOR APPEARANCE.****631.5 APPEARANCE -- DEFAULT.****631.6 FEES AND COSTS.****631.7 PARTIES, PLEADINGS, AND MOTIONS.****631.8 PROCEDURE.****631.9 JURISDICTION DETERMINED.****631.10 FAILURE TO APPEAR -- EFFECT.****631.11 HEARING.****631.12 ENTRY OF JUDGMENT -- SETTING ASIDE DEFAULT JUDGMENT.****631.13 APPEALS.****631.14 REPRESENTATION IN SMALL CLAIMS ACTIONS.****631.15 STANDARD FORMS.****631.16 DISCRETIONARY REVIEW.****631.17 PROHIBITED PRACTICES.****631.1 SMALL CLAIMS.**

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a manufactured or mobile

home or personal property pursuant to section 555B.3, if no money judgment in excess of four thousand dollars is sought for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

7. The district court sitting in small claims has concurrent jurisdiction of an action for the collection of taxes brought by a county treasurer pursuant to sections 445.3 and 445.4 where the amount in controversy is five thousand dollars or less for actions commenced on or after July 1, 2003, exclusive of interest and costs.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.1]

Section History: Recent Form

83 Acts, ch 63, § 1, 5; 86 Acts, ch 1077, § 1; 90 Acts, ch 1038, § 1; 93 Acts, ch 154, §18; 94 Acts, ch 1117, §1; 95 Acts, ch 49, §23; 99 Acts, ch 79, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1087, §1, 2; 2003 Acts, ch 178, §20

Referred to in § 331.307, 364.22

Jurisdictional amount to revert to \$4,000 if a proper court declares the \$5,000 amount unconstitutional; 2002 Acts, ch 1087, §3

Jurisdictional amount to revert to \$2,000 if a proper court declares the previous \$3,000 or \$4,000 jurisdictional amounts unconstitutional; 94 Acts, ch 1117, §2; 95 Acts, ch 49, §28

631.2 JURISDICTION AND PROCEDURES.

1. The district court sitting in small claims shall exercise the jurisdiction conferred by this chapter, and shall determine small claims according to the statutes and the rules prescribed by this chapter. Except when transferred from the small claims docket as provided in section 631.8, small claims may be tried by a judicial magistrate, a district associate judge, or a district judge.

2. The clerk of the district court shall maintain a separate small claims docket which shall contain all matters relating to small claims which are required by section 602.8104, subsection 2, paragraph "e", to be contained in a combination docket.

3. Statutes and rules relating to venue and jurisdiction shall apply to small claims, except that a provision of this chapter which is inconsistent therewith shall supersede that statute or rule.

Section History: Early Form

[C73, § 631.2, 631.3; C75, 77, 79, 81, § 631.2]

Section History: Recent Form

83 Acts, ch 101, § 124; 83 Acts, ch 186, § 10116, 10201

631.3 COMMENCEMENT OF ACTIONS -- CLERK TO FURNISH FORMS -- SUBPOENA.

1. All actions shall be commenced by the filing of an original notice with the clerk. At the time of filing, the clerk shall enter on the original notice and the copies to be served, the file number and the date the action is filed.

2. The clerk shall furnish standard forms as provided in section 631.15, as such pleadings may be required. The clerk may furnish information to any party to enable the party to complete a form.

3. The clerk shall cause to be entered upon each copy of the original notice and in the docket the time within which the defendant is required to appear, which time shall be determined in accordance with section 631.4.

4. Upon the request of a party to the action, the clerk or a judicial officer shall issue subpoenas for the attendance of witnesses at a hearing. Sections 622.63 to 622.67, 622.69, 622.76 and 622.77 apply to subpoenas issued pursuant to this chapter.

Section History: Early Form

[C73, § 631.3, 631.5; C75, 77, 79, 81, § 631.3]

Section History: Recent Form

83 Acts, ch 186, § 10117, 10201; 84 Acts, ch 1322, § 1

631.4 SERVICE -- TIME FOR APPEARANCE.

The manner of service of original notice and the times for appearance shall be as provided in this section.

1. *Actions for money judgment or replevin.* In an action for money judgment or an action of replevin the clerk shall cause service to be obtained as follows, and the defendant is required to appear within the period of time specified:

a. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall mail to the defendant by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form. However, if the defendant is a corporation, partnership, or association, the clerk shall mail to the defendant by certified mail, return receipt to the clerk requested, a copy of the original notice with a conforming copy of an answer form. The defendant is required to appear within twenty days following the date service is made.

b. If the defendant is a resident of this state, or if the

defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall cause a copy of the original notice and a conforming copy of an answer form to be delivered to a peace officer or other person for personal service as provided in rule of civil procedure 1.302(5), 1.305, or 1.306. The defendant is required to appear within twenty days following the date service is made.

c. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service in any other manner that is approved by the court as provided in that rule, and the defendant is required to appear within sixty days after the date of service.

d. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under section 617.3, the plaintiff may elect that service be made as provided in that section. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original notice to be filed with the secretary of state and shall cause a copy of the original notice and a conforming copy of an answer form to be mailed to the defendant in the manner prescribed in section 617.3. The defendant is required to appear within sixty days from the date of filing with the secretary of state.

2. *Actions for forcible entry and detainer.*

a. In an action for forcible entry and detainer under chapter 648, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

b. Original notice shall be served personally upon each defendant as provided in rule of civil procedure 1.305, which service shall be made at least three days prior to the date set for hearing. Upon receipt of the prescribed costs the clerk shall cause the original notice to be delivered to a peace officer or other person for service upon each defendant.

c. If personal service cannot be made upon each defendant, as provided in rule of civil procedure 1.305, the plaintiff may elect to post, after at least two attempts to perfect service upon each defendant, one or more copies of the original notice upon the real property being detained by each defendant at least three days prior to the date set for hearing. The attempts to perfect personal service may be made on the same day. In addition to posting, the plaintiff shall also mail, by certified mail, to each defendant, at the place held out by each defendant as the place for receipt of such communications or, in the absence of such designation, at each defendant's last known place of residence, a copy of the original notice at least three days prior to the date set for hearing. Under this paragraph, service shall be deemed complete upon each defendant by the filing with the clerk of the district court of one or more affidavits indicating that a copy of the original notice was both posted and mailed to each defendant as provided in this paragraph, whether or not the defendant signs a receipt for the notice.

d. If personal service cannot be made upon each defendant in an action for forcible entry and detainer joined with an action for

rent or recovery pursuant to section 648.19, service may be made pursuant to paragraph "c".

3. *Actions for abandonment of manufactured or mobile homes or personal property pursuant to chapter 555B.*

a. In an action for abandonment of a manufactured or mobile home or personal property, the clerk shall set a date, time, and place for hearing, and shall cause service to be made as provided in this subsection.

b. Original notice shall be served personally on each defendant as provided in section 555B.4.

Section History: Early Form

[C73, § 631.3--631.5; C75, 77, 79, 81, § 631.4]

Section History: Recent Form

84 Acts, ch 1322, § 2; 86 Acts, ch 1077, § 2; 93 Acts, ch 154, §19, 20; 95 Acts, ch 125, §13; 96 Acts, ch 1203, § 7; 99 Acts, ch 155, §13, 14; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2004 Acts, ch 1101, §85; 2009 Acts, ch 21, §12

Referred to in § 562A.29A, 562B.27A, 631.3

631.5 APPEARANCE -- DEFAULT.

This section applies to all small claims except actions for forcible entry and detainer pursuant to chapter 648 and actions for abandonment of mobile homes or personal property pursuant to chapter 555B.

1. *Appearance.* A defendant may appear in person or by attorney, and by the denial of a claim a defendant does not waive any defenses.

2. *Hearing set.* If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty days after the latest timely appearance, unless otherwise ordered by the court. The clerk shall transmit the original notice and all other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

3. *Partial service.* If the plaintiff has joined more than one defendant, and less than all defendants are served with notice as determined by subsection 4, the plaintiff may elect to proceed against all defendants served or may elect to have a continuance, issuable by the clerk, to a date certain not more than sixty days thereafter. If the plaintiff elects to proceed, the action shall be dismissed without prejudice as against each defendant not served with notice.

4. *Return of service.* Proper notice shall be established by a signed return receipt or a return of service as provided in rule of civil procedure 1.308.

5. *Notification to parties.* When a small claim is set for hearing the clerk immediately shall notify by ordinary mail each

party or the attorney representing the party, and the judicial officer to whom the action is assigned, of the date, time and place of hearing.

6. *Default.* If a defendant fails to appear and the clerk in accordance with subsection 4 determines that proper notice has been given, judgment shall be rendered against the defendant by the clerk if the relief is readily ascertainable. If the relief is not readily ascertainable the claim shall be assigned to a judicial magistrate for determination.

Section History: Early Form

[C75, 77, 79, 81, § 631.5]

Section History: Recent Form

84 Acts, ch 1322, § 3, 4; 93 Acts, ch 154, §21; 2003 Acts, ch 151, §49; 2004 Acts, ch 1101, §86

Referred to in § 631.9

631.6 FEES AND COSTS.

1. The clerk of the district court shall collect the following fees and costs in small claims actions, which shall be paid in advance and assessed as costs in the action:

a. Fees for filing and docketing shall be eighty-five dollars.

b. Fees for service of notice on nonresidents are as provided in section 617.3.

c. Postage charged for the mailing of original notice shall be ten dollars.

d. Fees for personal service by peace officers or other officials of the state are the amounts specified by law.

2. The amounts collected for filing and docketing shall be distributed as provided in section 602.8108.

Section History: Early Form

[C73, § 631.5, 631.6; C75, 77, 79, 81, § 631.6; 81 Acts, ch 189, § 5, 7]

Section History: Recent Form

83 Acts, ch 63, § 2, 3, 4; 83 Acts, ch 101, § 125; 83 Acts, ch 186, § 10118, 10201; 85 Acts, ch 195, §59; 85 Acts, ch 197, §37, 38; 88 Acts, ch 1258, §2; 89 Acts, ch 83, §84; 91 Acts, ch 116, §18; 91 Acts, ch 218, § 26; 91 Acts, ch 219, §34; 94 Acts, ch 1074, §10; 2002 Acts, ch 1126, §3; 2003 Acts, ch 151, §50; 2006 Acts, ch 1144, §9; 2009 Acts, ch 179, §63, 72

Referred to in § 602.8105, 602.9104A

631.7 PARTIES, PLEADINGS, AND MOTIONS.

1. Except as specifically provided in this chapter, there shall be no written pleadings or motions unless the court in the interests of justice permits them, in which event they shall be similar in form to the original notice.

2. Motions, except a motion under rule of civil procedure 1.246, shall be heard only at the time set for a hearing on the merits.

3. Except as provided in section 631.8, subsection 4, a counterclaim, cross-petition or intervention shall be in writing and in the form promulgated under section 631.15. Copies shall be submitted for each party appearing, and shall be mailed by ordinary mail to those parties by the clerk. A cross-petition against persons not a party to the action shall be made pursuant to rule of civil procedure 1.246 and the new party shall be served with notice as provided in this chapter.

4. The rules of civil procedure pertaining to actions, joinder of actions, parties and intervention shall apply to small claims actions, except that rule of civil procedure 1.241 shall not apply. No counterclaim is necessary to assert an offset arising out of the subject matter of the plaintiff's claim. A counterclaim, cross-petition, or intervention against an existing party is deemed denied and no responsive pleading by such party is required.

Section History: Early Form

[C73, § 631.7, 631.8; C75, 77, 79, 81, § 631.7]

631.8 PROCEDURE.

1. Small claims not determined within ninety days following the expiration of any period of continuance or following the last entry placed on the record for that action shall be dismissed by the clerk without prejudice.

2. In small claims actions, if a party joins a small claim with one which is not a small claim, the court shall:

a. Order the small claim to be heard under this chapter and dismiss the other claim without prejudice, or

b. As to parties who have appeared or are existing parties, either (1) order the small claim to be heard under this chapter and the other claim to be tried by regular procedure or (2) order both claims to be tried by regular procedure.

3. If commenced as a regular civil action or under the statutes relating to probate proceedings, a small claim shall be transferred to the small claims docket. A small claim commenced as a regular action shall not be dismissed but shall be transferred to the small claims docket. Civil and probate actions not small claims but commenced hereunder shall be dismissed without prejudice except for defendants who have appeared, as to whom such actions shall be transferred to the combination or probate docket, as appropriate.

4. In small claims actions, a counterclaim, cross claim, or intervention in a greater amount than that of a small claim shall be in the form of a regular pleading. A copy shall be filed for each existing party. New parties, when permitted by order, may be brought in under rule of civil procedure 1.246 and shall be given notice

under the rules of civil procedure pertaining to commencement of actions. The court shall either order such counterclaim, cross claim, or intervention to be tried by regular procedure and the other claim to be heard under this division, or order the entire action to be tried by regular procedure.

5. In regular action, when a party joins a small claim with one which is not a small claim, regular procedure shall apply to both unless the court transfers the small claim to the small claims docket for hearing under this division.

6. In regular actions, a counterclaim, cross claim, or intervention in the amount of a small claim shall be pleaded, tried, and determined by regular procedure, unless the court transfers the small claim to the small claims docket for hearing under this division.

7. Pleadings which are not in correct form under this section shall be ordered amended so as to be in correct form; but a small claim which is proceeding under this chapter need not be amended although in the form of a regular pleading.

8. Copies of any papers filed by the parties which are not required to be served, shall be mailed or delivered by the clerk as provided in rule of civil procedure 1.442.

Section History: Early Form

[C73, § 631.2, 631.8; C75, 77, 79, 81, § 631.8]

Referred to in § 631.2, 631.7

631.9 JURISDICTION DETERMINED.

At the time set for the hearing of a small claim, the court first shall determine that proper notice as provided in section 631.5, subsection 4, has been given a party before proceeding further as to that party, unless the party has appeared or is an existing party, and also shall determine that the action is properly brought as a small claim.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.9]

631.10 FAILURE TO APPEAR -- EFFECT.

Unless good cause to the contrary is shown, if the parties fail to appear at the time of hearing the claim shall be dismissed without prejudice by the court; if the plaintiff fails to appear but the defendant appears, the claim shall be dismissed with prejudice by the court with costs assessed to the plaintiff; and if the plaintiff appears but the defendant fails to appear, judgment may be rendered against the defendant by the court. The filing by the plaintiff of a verified account, or an instrument in writing for the payment of money with an affidavit the same is genuine, shall constitute an appearance by plaintiff for the purpose of this section.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.10]

631.11 HEARING.

1. *Informality.* The hearing shall be to the court, shall be simple and informal, and shall be conducted by the court itself, without regard to technicalities of procedure.

2. *Evidence.* The court shall swear the parties and their witnesses, and examine them in such a way as to bring out the truth. The parties may participate, either personally or by attorney. The court may continue the hearing from time to time and may amend new or amended pleadings, if justice requires.

3. *Record.* Upon the trial, the judicial magistrate shall make detailed minutes of the testimony of each witness and append the exhibits or copies thereof to the record. The proceedings upon trial shall not be reported by a certified court reporter, unless the party provides the reporter at such party's expense. If the proceedings are not reported by a certified court reporter, the magistrate shall cause the proceedings upon trial to be recorded electronically, and both parties shall be notified in advance of that recording. If the proceedings have been recorded electronically, the recording shall be retained under the jurisdiction of the magistrate unless appealed, and upon appeal shall be transcribed only by a person designated by the court under the supervision of the magistrate.

4. *Judgment.* Judgment shall be rendered, based upon applicable law and upon a preponderance of the evidence.

5. *Destruction of recordings.* Unless an appeal is taken, an electronic recording of a proceeding in small claims shall be retained until the time for appeal has expired as specified in section 631.13. Thereafter, the magistrate may direct that the recording tape or other device be erased and used for subsequent recordings. If the proceeding is appealed, the recording may be erased following entry of judgment by the district judge hearing the appeal.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.11]

Section History: Recent Form

2009 Acts, ch 75, §1

631.12 ENTRY OF JUDGMENT -- SETTING ASIDE DEFAULT JUDGMENT.

The clerk shall immediately enter the judgment in the small claims docket and district court lien book, without recording. Such relief shall be granted as is appropriate. Upon entering judgment, the court may provide for installment payments to be made directly by the party obligated to the party entitled thereto; and in such event execution shall not issue as long as such payments are made but execution shall issue for the full unpaid balance of the judgment upon the filing of an affidavit of default. When entered on the

small claims docket and district court lien book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court judgment docket and lien book; but if a small claims judgment requires installment payments, it shall not be enforceable until an affidavit of default is filed.

A defendant may move to set aside a default judgment in the manner provided for doing so in district court by rule of civil procedure 1.977.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.12]

Section History: Recent Form

84 Acts, ch 1322, § 5; 99 Acts, ch 144, §11

631.13 APPEALS.

1. *Notice.* An appeal from a judgment in small claims may be taken by any party by giving oral notice to the court at the conclusion of the hearing, or by filing a written notice of appeal with the clerk within twenty days after judgment is rendered. In either case, the appealing party shall pay to the clerk within that twenty days the usual district court docket fee to perfect the appeal. No appeal shall be taken after twenty days.

2. *Stay of judgment.* Execution of judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment.

3. *Transcript.* Within twenty days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk as part of the record a transcript of the official report, if any, or in the event the report was made electronically, a transcription of the recording. If a transcription of an electronic recording is filed, the record on appeal shall contain the tape or other medium on which the proceedings were preserved. A transcription of an electronic recording shall be provided any party upon request and upon payment by the party of the actual costs of transcription.

4. *Procedure on appeal.*

a. The appeal shall be promptly heard upon the record thus filed without further evidence. If the original action was tried by a district judge, the appeal shall be decided by a different district judge. If the original action was tried by a district associate judge, the appeal shall be decided by a district judge. If the original action was tried by a judicial magistrate, the appeal shall be decided by a district judge or a district associate judge. The judge shall decide the appeal without regard to technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the judge or magistrate should have rendered.

If the record, in the opinion of the deciding judge, is inadequate for the purpose of rendering a judgment on appeal, the judge may

order that additional evidence be presented relative to one or more issues, and may enter any other order which is necessary to protect the rights of the parties. The judge shall take minutes of any additional evidence, but the hearing shall not be reported by a certified court reporter.

b. Upon entry of judgment the clerk may cause any recording tape or other device contained in the record to be erased for subsequent use.

Section History: Early Form

[C73, 75, 77, 79, 81, § 631.13]

Section History: Recent Form

84 Acts, ch 1322, § 6, 7
Referred to in § 331.307, 364.22, 631.11

631.14 REPRESENTATION IN SMALL CLAIMS ACTIONS.

1. Actions constituting small claims may be brought or defended by an individual, partnership, association, corporation, or other entity. In actions in which a person other than an individual is a party, that person may be represented by an officer or an employee.

2. In actions concerning residential rental property that is titled in the name of one or more individuals, an employee of one or more of the titled owners, or an officer or employee of a property management entity acting on behalf of one or more of the titled owners, may bring or defend an action in the name of the titled owners, the property management entity, or the name by which the property is commonly known.

Notwithstanding any other provision to the contrary, if the defendant or plaintiff has been improperly named in the petition in an action concerning residential rental property, the real party in interest shall be substituted at the time the error is identified and the action shall not be dismissed or delayed except to the extent necessary to identify and serve the real parties in interest.

3. A person who in the regular course of business takes assignments of instruments or accounts pursuant to chapter 539, which assignments constitute small claims, may bring an action on an assigned instrument or account in the person's own name and need not be represented by an attorney, provided that in an action brought to recover payment on a dishonored check or draft, as defined in section 554.3104, the action is brought in the county of residence of the maker of the check or draft or in the county where the draft or check was first presented. Any person, however, may be represented in a small claims action by an attorney.

Section History: Early Form

[C75, 77, 79, 81, § 631.14; 82 Acts, ch 1235, § 3]

Section History: Recent Form

87 Acts, ch 137, §5; 2006 Acts, ch 1185, §87
Referred to in § 625.22

631.15 STANDARD FORMS.

The supreme court shall prescribe standard forms of pleadings to be used in small claims actions. Standard forms promulgated by the supreme court shall be the exclusive forms used.

Section History: Early Form

[C73, § 631.4; C75, 77, 79, 81, § 631.15]

Section History: Recent Form

83 Acts, ch 101, § 126
Referred to in § 631.3, 631.7
Forms prescribed by the supreme court are published in the compilation "Iowa Court Rules"

631.16 DISCRETIONARY REVIEW.

1. A civil action originally tried as a small claim shall not be appealed to the supreme court except by discretionary review as provided herein.

2. "*Discretionary review*" is the process by which the supreme court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

3. The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the court below.

4. The record and case shall be presented to the appellate court as provided by the rules of appellate procedure; and the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

5. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the lower court judgment, and may order a new trial.

6. The decision of the appellate court with any opinion filed or judgment rendered must be recorded by the supreme court clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

7. The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the trial court or by its clerk.

Section History: Early Form

[C73, § 602.71; C75, 77, 79, 81, § 631.16]

Section History: Recent Form

85 Acts, ch 157, §1, 2

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

631.17 PROHIBITED PRACTICES.

1. The district court, after due notice and hearing, may bar a person from appearing on the person's own behalf in any court governed by this chapter on a cause of action purchased by or assigned for collection to that person for any of the following:
 - a. Falsely holding oneself out as an attorney at law.
 - b. Repeatedly filing claims for costs allowed under section 625.22 which have been found by the court to have been exaggerated or without merit.
 - c. A pattern of conduct in violation of article 7 of chapter 537.
2. A person barred pursuant to subsection 1 shall not derive any benefit, directly or indirectly, from any case brought pursuant to this chapter within the purview of the order of bar issued by the district court.
3. The district court shall dismiss any pending case based on a cause of action purchased or assigned for collection brought on the person's own behalf by a person barred pursuant to subsection 1, and shall assess the costs against that person.
4. The district court shall dismiss any case subsequently brought directly or indirectly by a person subject to a bar pursuant to subsection 1 in violation of that subsection and shall assess all costs to that person, and the court shall assess a further civil fine of one hundred dollars against that person for each such case dismissed.
5. The district court shall retain jurisdiction over a person barred pursuant to subsection 1 and may punish violations of the court's order of bar as a matter of criminal contempt.

Section History: Recent Form

86 Acts, ch 1238, § 25; 87 Acts, ch 98, §6

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This page has been prepared to assist persons who want to sue or defend themselves in Small Claims Court in Iowa without hiring a lawyer. It outlines the basic steps involved in bringing and defending a small claims action. No attempt has been made to cover all possible problems or situations that may arise. If problems arise which are not covered in the manual, it may be necessary to consult an attorney.

To find a legal professional to meet your needs, please visit www.iowafindalawyer.com.

The small amount of money involved often makes it economically impractical for a person to hire a lawyer to represent him or her in Small Claims Court. Such a person usually has to choose between giving up or trying to represent himself or herself. This manual is intended to answer some basic questions for the person who chooses to "go it alone". It does not answer all the questions that might come up during the lawsuit. If you decide to use this manual, you should ask questions whenever you are in doubt. The personnel at the courthouse and Sheriff's Department are there to serve you and will be glad to answer questions about various procedural matters. However, they can not act as legal counsel to you.

Definitions

Affidavit

A written statement of facts. The person making this statement must swear as to its truth before a Notary Public.

Appeal

The action or right of a party to resort to a higher Court for review of a lower Court's decision.

Appearance and Answer

The defendant's acknowledgment, in writing, that he or she is aware of the action against him or her and his or her response to the claim being made.

Clerk

An officer who has charge of the Court's records; usually the Clerk of the District Court in each county or an assistant designated by the Clerk to handle Small Claims matters.

Court Costs

Cost of administering Small Claims matters including filing fees, service fees, etc.

Court Reporter

Someone who makes a complete record of everything said at the trial.

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Default

The failure of any party to appear by the required date.

Defendant

The person or party against whom a claim is made.

Forcible Entry and Detainer Action

A claim asking for the removal of a person or party from property such as eviction of a tenant for nonpayment of rent or other failures of the tenant to honor the terms of a lease.

Judge or Magistrate

The Judicial Officer who hears and renders decisions in Small Claims cases.

Judgment

The final decision of the Judge or Magistrate which is officially entered in the Court records.

Judgment Debtor

The person or party against whom a judgment has been rendered which has not been paid.

Original Notice

The plaintiff's notice to the defendant that he or she has filed suit and of what he or she is suing for.

Plaintiff

The person or party who makes or files a claim.

Trial

The time and place when the Judge hears the evidence presented with respect to a Small Claim lawsuit. The trial is sometimes called a hearing and generally means the same thing.

What is Small Claims Court?

Small Claims Court is a division of the District Court where you can sue to collect a debt, for breach of contract, to recover for damages suffered in an accident, or almost any civil claim against another party so long as the amount you claim is owed to you is less than \$5,000 without having to go through extensive and technical proceedings. You, the plaintiff or defendant, have the choice of either representing yourself or hiring an attorney to represent you. The purpose of this Manual is to assist the party who elects to represent himself or herself.

Please read these instructions very carefully before proceeding and refer to them frequently throughout the process of your Small Claims case. The Clerk, Magistrate and Sheriff are prohibited by law from answering questions of legal substance, e.g., interpreting the meaning of a law or advising you on whether to pursue a claim. If your questions cannot be satisfactorily answered by this pamphlet, you should contact the attorney of your choice.

How Do I Begin a Small Claims Action?

The Clerk of the District Court will supply any individual, partnership, association, corporation, or entity with all of the legal forms required to complete the Small Claims procedure. The Clerk may also assist any party in completing these legal forms. A small claims case is begun by the plaintiff filing an Original Notice form with the Clerk of the District Court. The Clerk will supply the correct Original Notice form either for an action for money judgment or for an action for forcible entry and detainer. To fill out this Original Notice, the following steps should be taken:

A. On the top of the original Notice form, you must fill in the name of the county in which the suit is being filed. The action must be filed in the county where the defendant lives or where the event occurred.

B. Fill in the name of the plaintiff and plaintiff's specific address where indicated. If the plaintiff is a business and operates under a business name, the name of the owner and operator must be stated along with the name of the business. (EXAMPLE: Joe Jones, Joe's Auto Repair.)

If the plaintiff is a corporation or a partnership, this fact must be stated after the name, (EXAMPLES: Smith's Garage Inc., or Smith's Garage, a partnership).

C. Fill in the defendant's full name and his or her current specific address where indicated. If there is more than one defendant, you must include the first and last name of each defendant and their current address. If the defendant is a business, corporation or partnership, it must be stated as in "B" above. If the defendant is under age eighteen (18), you should consider naming the parents as additional defendants.

D. Fill in what you are asking from the defendant. If it is a sum of money, state the amount and the reason the defendant owes you the money. If you are demanding that the defendant vacate real estate that you own (forcible entry and detainer), state briefly the reason for the demand.

E. Sign the Original Notice at the bottom of the page and deliver it to the Clerk along with two copies of the completed Original Notice for each defendant named.

F. You must pay a filing fee plus advance costs, if any, as determined by the Clerk. These fees must be paid to the Clerk at the time of delivering the Original Notice to the Clerk.

G. Upon receipt of the Original Notice, the Clerk will assign a Small Claims Number to your lawsuit and enter the date the action was filed and the time within which the defendant must make his appearance on each copy of the Original Notice.

On the completion of these steps, your Small Claims action been filed and commenced.

How is the Defendant Informed of the Claim?

After the Original Notice has been filed, the defendant must be informed of the lawsuit before a trial is held. The manner in which the defendant is notified may vary depending upon such things as the type of relief sought by the plaintiff, the location of the defendant's residence, whether defendant's residence is known, etc.

If the plaintiff is seeking to recover money, then one of the following procedures will be taken:

A. The Clerk will mail a copy of the Original Notice and an Answer form to each defendant by certified mail, return receipt requested. The defendant will be required to appear within twenty (20) days following the date service is made.

B. As an alternative to mailing the Original Notice and Answer form, the plaintiff may direct the Clerk to deliver the Original Notice and an Answer form to the Sheriff for personal service on the defendant. If this method of serving the defendant is chosen, it is the plaintiff's responsibility to pay the Sheriff's service charges. Service fees for personal service are specified by law and must be paid on or before the trial date. The defendant will be required to appear within twenty (20) days following the date service is made.

C. If the defendant does not live in the State of Iowa but has made a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if the defendant committed a wrongful act in whole or in part in Iowa against a resident of Iowa and the lawsuit is over the contact or wrongful act involved, service of the Original Notice may be made by filing duplicate copies of the Original Notice with Secretary of State of the State of Iowa together with a fee of Ten Dollars (\$10.00). The Clerk will collect the fees and costs and will file copies of the Original Notice with the Secretary of State for you. The Clerk will then mail a copy of the Original Notice and an Answer form to each defendant by registered or certified mail within ten (10) days after filing with the Secretary of State. The date for the defendant's appearance under this method of service will be sixty (60) days from the date of the filing of the Original Notice with the Secretary of State.

If you are filing an action for forcible entry and detainer:

Defendant must be served personally as set forth at "B" above. The Clerk will set a date, not for defendant's appearance, but for a hearing which will be at least five (5) days after personal service is had upon defendant. You (the plaintiff) must attend this hearing.

In any case, the plaintiff should be prepared to produce proof of service at the trial or hearing. This would be the return receipt if service is had by certified mail, (A above), by a return of service signed by the Sheriff if personal service is had (B above), or by copy of the Original Notice with a Secretary of State's certificate of filing and an affidavit of the plaintiff or his attorney stating compliance with the requirements of "C" above (note that proof of service under "C" does not include a return receipt).

I've Been Sued - What Do I Do?

You have just received an Original Notice and an Appearance and Answer form indicating that you have been sued and are now a defendant in a Small Claims action. What should you do? Immediately make note the date by which you must appear if you wish to contest the claim; you must enter a timely appearance to avoid being in default. The Original Notice will advise you as to when and where you must appear. The date on the Original Notice is not the trial date, unless it is an action for forcible entry and detainer of real property in which case the date is for a hearing at which you attendance is required. In all other cases, when you file an Appearance and Answer on or before the appearance date, the Clerk will then assign a date for the trial.

You should read the Original Notice very carefully and try to recollect all of the facts surrounding the claims stated in the Original Notice. On the Appearance and Answer form, you may admit or deny any or all of the claims made, but you must deny all of the plaintiff's claims which you intend to disagree with at trial. The Appearance and Answer form must be delivered to the Clerk's office whether in person or by mail, on or before the appearance date contained in the Original Notice. If you are denying the claim, you should immediately begin to assemble the facts and documents which support your position.

If you, as the defendant, believe that the plaintiff owes you money, then you may wish to make a claim against that plaintiff in this same suit. Your claim as defendant will be called a "counterclaim" and the Clerk will provide you with the necessary form to assert this counterclaim. The plaintiff will then be advised by the Clerk of this claim. In this manner, both the claim and counterclaim can be tried at the same time.

After considering the plaintiff's claim, you may determine that someone else who is not a party to the action owes all or a part of the amount being claimed by the plaintiff. In that event, you may file what is known as a "cross claim" to bring in additional party

and the Clerk should be advised of your desire to do this.

A counterclaim or cross claim in excess of \$5,000 must be filed in the form of a regular pleading. It will then either be tried separately or the entire matter will be tried regular procedure, at the Court's discretion.

How Will I Know When to Be in Court and What Should I Do to Prepare?

If the defendant or person against who a claim is made enters an Appearance, the Clerk of Court will mail to each party written notice containing the time, date and location of the trial. This is the date when you must be personally present in Court.

If you are the plaintiff and do not show up at the time and place indicated, the Court will dismiss your claim and if the defendant(s) does show up you will not be permitted to sue this same party again on this claim and will likely be assessed the Court costs. If the party you sued made a claim against you in the same lawsuit, and you do not appear, the other party will most probably be awarded a judgment for the relief requested. Therefore, you should not file a Small Claims lawsuit unless you intend to attend the trial. There is one exception. If you are the plaintiff and are suing on an account or written document for the payment of money, by preparing and filing a Verification and Affidavit form available in the Clerk's office, you will not be required to appear personally at the trial. However, if the party you have sued does appear, there is a chance your claim will be denied by the Court. Therefore, it is always the best practice to appear in person at the trial.

If you are the defendant and fail to attend the trial, judgment will likely be entered against you in favor of the plaintiff for the relief requested and court costs.

If for a legitimate reason, you have a conflict with the trial date which can not be resolved, you should contact the Clerk's office immediately and request another trial date or time.

To prepare for the trial, you must gather all the evidence you wish to present to the Judge to prove your claim or defense. Evidence is generally the testimony of witnesses under oath at the trial and any written materials relevant to the claim or defense of the claim. Notify any persons you want to testify on your behalf of the trial date as soon as possible. It is your responsibility to see that the witnesses appear at the trial. If the witness will not volunteer to come, you can obtain a subpoena from the Clerk's office. The subpoena must be filled out and given to the Sheriff's office for service on the witness. The witness must then come to the trial or face being held in contempt of the court. Witnesses may be anyone having knowledge of the facts including yourself, members or your family and your spouse.

In addition to witnesses, the Judge will want to see any written documents which tend to support your position. If the dispute is over a written contract of any kind, you should bring the contract with you and show it to the Judge. Also, if there are claims for medical expenses or property damage, the bills showing these expenses should be assembled to be shown to the Judge. If the suit is for balance owing on an account, you should bring your records of the account, receipts, and any other agreements or correspondence pertaining to the account to the trial. If the claim is from damages in an automobile collision, you should bring pictures of the damaged property and the scene of the accident.

Remember, the Judge's knowledge about the case depends on the evidence you submit to him or her, and your say-so is less convincing than documentary evidence or the testimony of a neutral witness who has no stake in the outcome of the case. Always try to present the best, most direct evidence that you can. A well informed judge will be more likely to give a proper decision.

What Happens and What Do I Do When I Get to Court?

The trial is the time when you get the opportunity to either prove your claim against another party or defend yourself against a claim brought by someone else. In some counties, a mediation or settlement conference will be ordered to occur prior to the time that you will be able to see a judge. If your county requires this, you should expect to receive notice of this by mail from the Clerk. Mediation and settlement conferences are often good ways to settle your case in a manner that is mutually agreed upon by all parties. If you are unable to resolve your dispute in this forum, you will be able to proceed in front of a judge.

It is important to be on time for all court appearances. If you are unfamiliar with the courthouse, you may want to arrive early or make a separate trip to find out where your courtroom is. Your case will be assigned to particular Judge who will be present and conduct the trial. There may be other trials assigned for the same time. The Judge will decide in what order to hear the trials. You must wait your turn.

When your case is called, stand and tell the Judge you are present. The Judge should be addressed as either "Judge" or "Your Honor." Even though the trial will generally be conducted informally, respect for the Court must be shown at all time.

The Judge will usually ask each party and any witnesses to be sworn. Once this is done, the Judge will generally seek to find out what the dispute is about and will ask each party his or her position on the matter. The Judge will also hear what any of the witnesses have to say and will consider any written materials the parties have to support their respective positions.

If you want the testimony at the trial to be recorded, you must ask the Judge for a Court Reporter or to have the proceedings taped. This should not be left until the last minute. Any costs of having the testimony reported or taped will be charged to the party requesting it. In most cases, there is no need to have the testimony preserved in this manner. Instead, the Judge will normally take adequate notes concerning testimony.

The Judge will normally do all the questioning if neither, or just one, party is represented by an attorney. If an attorney is present for one or both of the parties, then the attorneys may also ask questions.

After the Judge has heard all the evidence presented by the parties, he or she may decide the case while the parties are still present. However, in some cases, the Judge may "take the matter under consideration" which means he will rule at a later time. The parties will be notified of the ruling by mail.

If the plaintiff wins and is entitled to a sum of money, or the defendant has admitted the claim, the Judge may order the defendant to pay this money in installments if the defendant indicates he or she is unable to pay the entire sum at once. If the defendant wants to pay the claim in installment payments, the defendant should tell the Judge at the trial.

What Do I Do if I Lose?

If you are not satisfied with the decision and wish to pursue it further, you may appeal by (a) telling the Judge at the conclusion of the trial that you are appealing, or (b) filing a written Notice of Appeal with the Clerk of District Court within twenty (20) days after the decision or judgment is given.

If you wish to appeal, you must pay an appeal fee to the Clerk of District Court within twenty (20) days after the judgment or decision is reached. If this fee is not paid on time, you lose your right to appeal.

If you are the losing party, taking an appeal does not prevent the other party from trying to collect on any judgment entered in its favor unless you file an Appeal Bond with the Clerk of District Court.

Within twenty (20) days after the appeal fee is paid, you may file with the Clerk of District Court a written transcript of the trial if the evidence was taken down by a Court Reporter. The Court Reporter, upon request, will prepare this transcript at your expense. If the transcript is prepared from a tape recording or similar device, you must notify the Judge to preserve the tape and file it with the Clerk of District Court. If the trial was not taken down by a Reporter or electronically recorded, the only record of the trial will be the written notes made by the Judge during the trial. Those notes are referred to as the "Minutes of Testimony" and you must make sure these "Minutes" are placed in the Court file in District Court. It is the responsibility of the appealing party to see that this is done, although typically the Judge will automatically do this.

The only evidence considered on appeal is the record of the original hearing, unless the reviewing District Court Judge feels that the record is inadequate in which event the District Court Judge will request and consider new evidence on the inadequately covered issues. The District Court Judge can uphold, change, or reverse the Small Claims Judge's decision.

If I Win, How Do I Get My Money?

If you have made a claim for money and the Judge rules in your favor, or if you obtain a default judgment, then a judgment for a specific amount plus Court costs and interest will be entered. However, this does not automatically get you the money. If the other party does not voluntarily pay the amount of the judgment to you, you must then take steps to enforce or collect on the judgment. If the defendant has been ordered to make installment payments and has failed to do so or has stopped making payments, you must file an Affidavit of Default showing the unpaid balance. Until this form is filed with the Clerk's office, you will not be permitted to take steps (c), (d) or (e) below. However, if you are not involved with installment payments or have filed the Affidavit of Default, then you should pursue the following steps:

A. Call or contact the party against who the judgment is entered and discuss voluntary payment. If the suitable arrangement for payment is not agreed on, then consider the following steps.

B. Wait and do nothing. All judgments attach as a lien against any real estate located in the county where the judgment is obtained, including a home, owned by the person owing the judgment. The lien is good for ten (10) years and if the property is sold within that time, normally the lien must be satisfied which means you will be paid your money.

C. If you would rather not wait, request the Clerk's office to issue an "execution" which then permits you to ask the Sheriff to do several things:

1. To make a personal demand on the judgment debtor for payment of the judgment;
2. To levy upon certain property owned by the judgment debtor; or
3. Both of the above.

The cost of the execution and any Sheriff's fee will have to be paid by you initially but will be added to the Court costs to be collected from the judgment debtor. After execution is issued, in order to have the Sheriff carry out your wishes, you must supply the information to the Sheriff as to what property the Sheriff should seize to satisfy the judgment by filling out a "Dictation to Sheriff". The easiest kinds of property to execute on are personal bank accounts and wages of the person owing the judgment. This is done by garnishment. If you know the name and address of the judgment debtor's bank and his or her employer, request in the Dictation to Sheriff that any bank accounts in this bank or wages being held by this employer be garnished. This normally means if any such funds exist, you will get them. You may garnish bank accounts and wages as many times as it takes to satisfy your judgment. However, both Federal and State laws limit the amount of wages which can be garnished, depending on the judgment debtor's income. The Clerk or Sheriff should be able to help you determine the amount that can be reached this way once you know the judgment debtor's income.

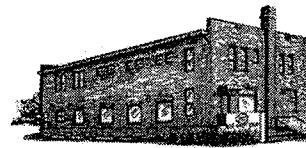
D. If garnishment of personal bank accounts or wages is unsatisfactory, you can direct the Sheriff by the "Dictation" to attach and sell any non-exempt or unencumbered (free of existing debt) property located in the county belonging to the judgment debtor. However, because of the problems that can arise in attempting such procedure, it may be best to consult with an attorney before proceeding with this step.

E. If you do not know what assets (bank accounts, wages, property located in the county) the person owing on the judgment (judgment debtor) has, you can require the debtor to tell you under oath. This procedure is known as a "Judgment Debtor Examination." To do this, you must first obtain an execution from the Clerk's office and then fill out the Dictation to Sheriff from directing the Sheriff to make a demand on the Judgment debtor payment. If this demand is returned by the sheriff "unsatisfied", that is, the judgment is not paid, then you can ask the Clerk's office to notify the judgment debtor by written notice, that he or she must come to the Courthouse and answer questions under oath from you concerning his or her assets, including employment information.

Obviously, if you have reason to believe any money judgment you might receive in Small Claims Court will not be collectable because of the other party's inability to pay any judgment, you probably should not even file your claim.

To find a legal professional to meet your needs, please visit www.iowafindalawyer.com.

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