

GENERAL SESSIONS COURT:

Advice for Persons Who Want to Represent Themselves

INTRODUCTION

Getting Started

A case is usually started by filing a **Civil Warrant** with the clerk of the court and by serving it on the defendant. The person filing the Civil Warrant is the plaintiff. It alleges facts and claims based on those facts. It also tells the court what the plaintiff would like the court to do in the case. It serves as the summons of the defendant to appear before the court.

Filing Fees

There is a filing fee for filing the Civil Warrant, unless the court decides the plaintiff is unable to pay the fee. The amount of the fee is usually about \$100, depending on the county and what kind of legal process must be served. The cost is about \$20 greater if process is served in another county or by the Secretary of State.

If the plaintiff believes he or she qualifies for financial relief, he or she should file an **Affidavit of Indigency**. The court will decide whether to defer – *but not forgive* – the filing fee. (At the conclusion of the case, the judge will decide who must pay the court costs.)

If the court decides the fee must be paid when the case begins, the plaintiff must also file a Cash Bond (an advance payment of an amount, usually \$500, that is refundable if court costs are not imposed on the plaintiff) or a Surety Bond (where an insurer guarantees payment of court costs on a form it prepares). If the plaintiff has an attorney, a Cost Bond may be filed, and by signing this document the attorney guarantees payment of court costs.

Clerks

Clerks deserve your respect and can make your life easier by pointing out, for example, if you have overlooked something. Also, if you go to the clerk's office or call it, try to avoid busy times like the last 45 minutes of the day.

The Civil Warrant

The Civil Warrant has nine separate parts for use by you and others during the case. The words in CAPITAL LETTERS are the titles of sections of the document or explain their purpose.

NAMES AND ADDRESSES OF PARTIES. See the top right side of the first page. You must complete this section. If your address changes during the case, it is important to notify the other party and the clerk.

CIVIL WARRANT. See the right middle of the first page. The clerk completes this section. In some types of case, this section contains a different name such as DETAINER or COMPLAINT.

SERVICE. See the lower right side of the first page. The deputy sheriff (or private process server) complete this section. If one or both of the parties has an attorney, he or she will fill in the information regarding attorneys.

CIVIL SUMMONS. See the top left side of the first page. You must complete this section with assistance from the clerk about the date of the first appearance in court. State both the facts and the legal reason (such as negligence, breach of contract, or violation of a statute) why the defendant is at fault. Although it is rare, you may attach as many pages as you want.

JUDGMENT. See the left middle of the first page. The judge will complete this section at the conclusion of the case.

ORDER. See the lower left side of the first page. The judge will complete this section during, or more likely, at the conclusion of the case.

AFFIDAVIT. See the upper left side of the second page. You should complete it at the beginning of the case.

APPEAL. See the middle of the left side of the second page. The losing party completes it (at the conclusion of the case) if he or she wants to appeal.

APPEAL BOND. See the lower left side of the second page. The losing party completes it at the conclusion of the case if he or she wants to appeal. Someone who will guarantee the obligations of the appellant (the principal) must also sign as surety.

Service of Process

The Civil Warrant must be personally delivered to the defendant. There are many ways to serve legal papers and, for this reason, you may want to consult our separate booklet on this subject. Service by a deputy sheriff is not required though we do recommend it. One of the other methods is delivery by a person who is 18 years of age or older. We will discuss this alternative here.

You may not serve the Civil Warrant on the defendant yourself. The person serving your papers should leave the papers with the defendant. If the defendant is not at home when the papers are delivered, the papers may also be served by leaving them with any other responsible person who resides with the defendant.

Once your papers have been served, the person serving them must complete the SERVICE section of the Civil Warrant. After finishing these steps, file the original Civil Warrant with the clerk of the court and keep a copy for your records.

If the defendant cannot be found in order to serve him or her personally, you may serve him or her by publication. More information on this type of service is found in a separate booklet.

Answer

If you are the defendant and wish to contest some or all of the matters stated in the Civil Warrant, you are permitted but not required to file an Answer. There is no required or suggested form for an Answer.

THE TRIAL

Step 1: The Date.

The date of your first court appearance will usually be shown on the Civil Warrant. If not, each party must call the court clerk and find out the date. Postponements are possible through agreement of the parties or, occasionally, by order of the judge.

Step 2: Docket Call.

The first time you must appear in court is known in some counties as docket call. (Not all counties have a docket call. Be sure to ask the clerk. Your first appearance may be the hearing itself.) At the docket call, your case will be called, and if you are the plaintiff but are not present, you will lose. If you are the plaintiff and are present but the defendant is not, you can win a judgment. If both the plaintiff and the defendant are present, the judge will set a later day and time for the hearing. Each must return for the hearing.

Step 3: Prepare for the Trial.

You may want to call witnesses at the hearing. If you are very sure your witness will show up, you may only have to tell them the date of the hearing. If you are not sure that they will show up or if you do not want the hearing to go on unless the witness is there to testify, you may want to have your witnesses subpoenaed.

A subpoena is a court order telling a person to come to court on a certain day and testify. A subpoenaed witness who does not come to court can be punished by the court. A subpoena can also be a court order to produce documents (for example, from a telephone company if you need records of telephone calls made) *at or before* trial. It can be combined with a subpoena to testify at trial.

You get subpoenas from the court clerk. There is a fee for the subpoena and it must be paid before the subpoena is issued. You may be able to avoid paying this fee if your Affidavit of

Indigency is approved. The subpoena will be delivered to the witness by a deputy sheriff or a private process server. See our separate booklet on subpoenas for more details.

Get everything ready before you go to your hearing. Gather all the papers supporting your side of the case. Decide who you want to call as a witness and what you will ask them. Remember if you don't understand what you want to say, neither will the judge.

If you are the plaintiff and for some reason you change your mind about bringing this suit, you can dismiss it (end it) without hurting your chances to bring it up again later. You can only do this twice, however. After that, the court will decide you have lost the case and you cannot bring suit on that case again.

Step 3: Wait Your Turn.

There will be many other cases scheduled on the same day of your hearing. Wait until you hear your case called by the judge or court clerk. Arrive early to court because if you are late your case may be dismissed.

Step 4: Present Your Case.

The judge or an official of the court will have you, the other party, and all of the witnesses raise your right hands and swear an oath to tell the truth. Usually, the witnesses will then be excused so that they cannot hear anyone else testify.

The plaintiff has the right to call the first witness, and this will usually be the plaintiff herself or himself. But it can be someone else, even the defendant. The plaintiff's other witnesses are next, followed by the defendant and his or her witnesses.

The person calling a witness has the right to question him or her, and then the other side has the right to cross-examine.

If you are the plaintiff, you will present your side of the case first. Once the case has been called, explain to the judge what property is being held or what money you are owed and why. Call your witnesses and give the judge your papers showing your right to ownership or money.

If you are the defendant, you have a chance to explain your side of the case. You can call your own witnesses and show the judge any documents that are important.

Each side has the right to ask questions of the other party. This is called cross-examination.

It is important that the trial cover at least the following points:

- There is no reason why the court cannot decide the case. In other words, all legal papers have been properly served; the case is in the right court; and both parties are present in person or otherwise properly before the court.

- The facts that you rely on.
- The legal basis – such as the violation of a statute – for your claim.
- The reason that you should win.
- The legal relief that you should be granted, as requested in your Warrant or Answer.
- The attorney fees and court costs should be paid in the manner you want.

AFTER THE TRIAL

If you are the plaintiff and you win the lawsuit, the court may award you a money judgment plus any court costs you have paid. You will have to try and collect the money from the defendant. If you are the defendant and you win the lawsuit, you do not have to take other action. But you might want to check your credit report to make sure the lawsuit is not mentioned.

If you are the defendant and you lose the lawsuit, the plaintiff probably will fill out papers at the court clerk's office to collect on the judgment. If the plaintiff knows where you work, the plaintiff may try to garnish your wages. Or the plaintiff may be able to have some of your property seized and sold at an auction held by a deputy of the court. The money of the sale will then be paid to the plaintiff to satisfy the judgment.

If you lose the case, but want to try again, you have the automatic right to appeal. You must file an appeal within ten days from the time the court gave its decision. If you appeal, the case will be heard in the Circuit Court. That court will hold a new hearing and treat the case as if your first trial did not happen.

Adapted from booklets of Legal Aid of East Tennessee and the Northwest Justice Project.