

Preparing For And Participating In A Contested Small Claims Trial

Before attempting to handle a contested small claims hearing on your own, you should consider seeking legal assistance. There are specific rules that must be followed to succeed in a small claims hearing.

Preparing Your Case

Plan to put your proof together so that is more convincing than the other side's proof. The plaintiff bears the burden of proving his or her case "by the greater weight of the credible evidence." Collect and preserve any documents or receipts from your dealings with the other party. Making a detailed timeline of all of the events involved may help you present your case in a more organized way.

Determine what witnesses you will need to have testify at the trial. Friends and relatives may come voluntarily, but business people, police officers and others with no interest in your case may not. In that case, if the witness lives in Wisconsin, you can force the witness to come to court by serving a subpoena. A "subpoena" is a court order compelling a witness to come to court on the date and time of the trial. Subpoena forms can be obtained without charge from the Clerk of Courts office (Room 104). They are free. If you need the witness to bring documents or other evidence to the trial, you need to specifically state what the witness is to bring on the subpoena form. You will need to have the subpoena served on the witness by the Sheriff or a private process server in a reasonable time before the trial. You will also need to serve with each subpoena a check for the witness fee, which is \$16, plus \$0.20 per mile the witness has to travel.

If your case involves defective merchandise or faulty repairs (or other services), it may be very helpful to get an "expert" witness to testify for you. Full-time mechanics or repairers with several years of experience will often qualify as experts. A written statement concerning the nature of the defect and the decrease in value due to the defect is often helpful. An "affidavit" (a sworn and notarized statement) from the expert witness is better. Having the expert testify in person is best. Merely repeating what your expert told you is very weak evidence. It must be corroborated by written evidence or other in-court testimony.

Participating in Trial

You and your witnesses should show up at least 20 minutes early to the assigned courtroom on the date and time of the trial. Remember that you will need to give yourself enough time to find parking (if applicable) and to go through security. You should bring with you any proof you feel is necessary to win your case.

The plaintiff is almost always asked to present his or her side of the story first; then the defendant is able to present his or her case. After swearing or affirming to testify truthfully, tell your story, giving clear and concise details to support your claim. Keep to the key facts and do not discuss side issues unless a question requires it. If you have written documents, or other evidence to support your claim, show them to the judge or commissioner and defendant, explaining what it is and how it relates to your case. Bring several copies of each document.

At the conclusion of the plaintiff's testimony, the judge or commissioner may ask some questions. The defendant then has the right to cross-examine the plaintiff. When that is completed, the plaintiff may call any other witnesses he or she has. The judge or commissioner may ask questions of and the defendant may cross-examine any of the plaintiff's witnesses.

The defendant follows the plaintiff and presents his or her case in the same way. The defendant may testify about or call witnesses to testify to support his or her denials of the plaintiff's claims and whatever additional defenses he or she may have. The plaintiff may cross-examine any of the defendant's witnesses.

Small claims trials are not governed by the rules of evidence, except those pertaining to privilege. Privileges are laws allowing witnesses to refuse to answer questions about confidential communications to spouses, health professionals, and the clergy, and to refuse to answer any questions which may self-incriminate the witness.

Any evidence, other than privileged evidence, having reasonable value as proof, may be offered. However, the judge or commissioner may refuse to hear evidence or arguments that are repetitious or irrelevant.

1. Collect and preserve any documents or other evidence you will need for your trial.
2. Determine what witnesses you will need.
3. Fill out a subpoena form for any witness who will not appear voluntarily. Official forms are available from the Clerk of Courts (Room 104) office.
4. Have subpoenas, along with the witness fees, served by the Sheriff or a private process server within a reasonable time before the trial
5. Go to the correct courtroom at least 15 minutes before your assigned court time. If there is a bailiff or court clerk present, let him or her know that you have arrived.
6. Present your case to the Judge/Court Commissioner:
 - Be prepared to give your testimony calmly, clearly, and completely
 - Be prepared to ask questions of your witnesses so that their testimony is clear and complete.
 - Present to the court any documents or other physical evidence supporting your claim