

INSTRUCTIONS TO DEFENDANT WHO WISHES TO APPEAL

1. Massachusetts General Laws chapter 218, section 23 (which is reproduced below) permits a defendant to appeal from a magistrate's decision in a small claim for trial before either a Trial Court judge or a jury. If you request a trial by a judge, you will not have any right in the future to a trial by a jury.

2. Generally the plaintiff does not have any right of appeal in a small claim. However, the plaintiff may appeal from a magistrate's decision in any **counterclaim** that was brought by the defendant against the plaintiff.

3. To claim an appeal, you must file this form or an equivalent claim of appeal **within 10 days** of receiving the court's "Notice of Judgment" form notifying you of the magistrate's decision. Saturdays, Sundays and holidays are included in counting the 10-day period, but if the tenth day falls on a Saturday, Sunday or legal holiday, you may file your claim of appeal on the following business day. File this form in the clerk-magistrate's office of the court where the small claim was tried. Within the 10-day period, you must also pay the \$25 filing fee for the appeal required by G.L. c. 218 § 23. Make your check payable to "Clerk-Magistrate." Also within the 10 days you must generally post a \$100 appeal bond. See Section 23 below for those situations when a higher bond, or no bond, is required. You must do all of these things timely or your appeal will be dismissed.

4. You are entitled to a trial by either a judge or a jury **only for disputed questions of fact**. Section 23 requires you to specify those disputed facts in your claim of appeal. If a judge finds that no legally-significant facts in this claim are disputed, the judge may decide your appeal without a jury and without conducting a trial, by a procedure known as "summary judgment," in which the judge applies the law to undisputed facts. **You should be prepared to inform the judge about which relevant facts the plaintiff and the defendant agree on, and which relevant facts they disagree about.**

5. Generally, the magistrate's earlier decision will be "prima facie" evidence in the trial by a judge or a jury. This means that the judge or the jury will be told about the magistrate's decision. It also means that the judge or the jury could again decide in the plaintiff's favor even if the plaintiff chooses to rest entirely on the magistrate's prior decision and presents no other evidence before the judge or the jury.

6. There is no right to a jury trial for certain types of claims, including claims under the Massachusetts Consumer Protection Act (General Laws chapter 93A). If you request a jury trial for such a claim, the judge may decide to submit your appeal to a jury (for either a binding verdict or an advisory verdict), or may determine them himself or herself without a jury.

7. You will be notified by the clerk-magistrate's office when to appear for a pretrial conference or for trial. Please notify the clerk-magistrate's office if you change your address.

Excerpts from General Laws chapter 218, section 23 (as amended by St. 1992, c. 379)

A plaintiff beginning a cause under the [small claims] procedure shall be deemed to have waived a trial by jury and any right of appeal to a jury of six session in the district court department. If, however, said cause shall be appealed to a jury of six session in the district court department by the defendant as hereinafter provided, the plaintiff shall have the same right to claim a trial by a jury of six.

The defendant may, within ten days after receipt of the magistrate's finding, file in the court where the cause was determined a claim of trial by jury, or in the alternative for a trial before a single justice and shall file his affidavit that there are questions of law and fact in the cause requiring a trial by jury or a single justice, with the specifications thereof, and that such trial is intended in good faith.

A defendant's claim for trial by jury or by a single justice shall be accompanied by twenty-five dollars for the entry of the cause in the court of the department to which the case has been appealed, and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of the district court department, payable to the other party or parties to the cause, conditioned to satisfy any judgment and costs which may be entered against him in the jury of six proceeding or a proceeding before a single justice in said cause waiting thirty days after the entry thereof. Notwithstanding the foregoing, in any action brought by a tenant of residential premises pursuant to [G.L. c. 186, § 15B], bond shall be given in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled, plus interest at the rate of five percent from the date when such payment became due, together with court costs and an amount equal to a reasonable attorney's fee for service which had been performed by an attorney, if any, or which may be expected to be performed by an attorney during the pendency of the appeal.

A finding for the plaintiff in the district court department shall be prima facie evidence for the plaintiff in the trial by jury of six or before a single justice. At such trial the plaintiff may, but need not, introduce evidence.

No bond shall be required of . . . a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in [G.L. c. 90, § 1] if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in [G.L. c. 90, § 34D].

The court shall waive the requirement of a bond in the amount of one hundred dollars if it is satisfied that the defendant has insufficient funds available to him to furnish the necessary bond and that the defendant's appeal is not frivolous.