

## VI. STARTING A CIVIL CASE

### A. What is a civil case?

In a civil case, the court is asked to resolve a dispute between two parties. A party might be an individual, a corporation, or a government agency. There are many types of civil cases. Some examples are divorces, 209A restraining orders, mental health proceedings, eviction proceedings, contract disputes and personal injury claims. If you are uncertain whether your case is civil, call your local court.

If you file a civil complaint, the other party may respond by filing a counterclaim against you, or by involving another party in the case. The claims raised by others then become part of your case.

#### LEARNING THE LANGUAGE

***Plaintiff*** In a civil case, the plaintiff is the person who starts the case by filing a complaint.

***Defendant*** In a civil case, the defendant is the person being sued by the plaintiff.

***Petitioner*** In some types of civil cases, a person starts the case by filing a petition rather than a complaint. This person is called the petitioner.

***Respondent*** In civil cases where a petition is filed, the defending party is called the respondent.

### B. How do I start a civil case?

A civil case usually starts when a complaint or petition is filed. The first thing you will need to do is figure out in which court department and division you should file your case. A case is usually filed in the court closest to where one or both parties live or have their businesses. Other factors that may affect where you should file your case might be the type of case you have or where the event in dispute took place.

The Massachusetts Rules of Civil Procedure, the Massachusetts Rules of Domestic Relations Procedures, and other applicable case law and statutes will help you determine where and how to start your case. The laws and rules that apply in this area

can be complex. It is your responsibility to know the rules and law that apply to your case. If you have specific questions about how to file a claim, your local court might be able to assist you. See *Appendix A* for additional resources.

In some cases, you can get a complaint or petition form from the court or from the Trial Court's website. In other cases, there is no form and you will need to write the complaint or petition yourself. After you complete the complaint or petition, the rules will specify how to properly file your claim at the courthouse.

If a party files a case that the court determines was filed for the sole purpose of making someone angry or to harass them and the case has no sound legal basis, the court can make that party pay for the other party's lawyer's fees plus any costs that might apply and may even make that party pay costs for wasting the court's time.

### SMALL CLAIMS CASES

**Small Claims** is a special process designed to resolve relatively minor civil cases. Small claims procedure is simpler and quicker than traditional civil procedure. It is governed by its own set of rules.

A small claims case starts with the filing of a form called a "Statement of Claim and Notice," rather than a complaint.

With a few exceptions, small claims procedure can be used only in cases in which the actual amount of damages the plaintiff seeks is relatively small (\$2,000.00 as of the date of publication).

- ✓ The parties are usually not represented by attorneys.
- ✓ Small claims cases are usually heard and decided by a clerk-magistrate or assistant clerk-magistrate.
- ✓ The defendant can appeal the decision to a judge but the plaintiff cannot.
- ✓ Small claims cases are heard in the District Court, Boston Municipal Court, and Housing Court departments.

### C. How much does it cost to file a civil case?

Typically, there is a fee that must be paid when you file a complaint or petition with the court. There are other costs that may come up during a case as well. Make sure you find out what costs apply to your type of case before proceeding.

**ALERT!**

Filing fees vary and are set by the Legislature. If you cannot afford the **fees and costs** required in connection with your case, you may be able to have them waived.

You can request a waiver of a fee or fees by filling out an “Affidavit of Indigency” form. The **Affidavit of Indigency** form asks for information about your income and expenses. This will enable the court to determine if you should be excused from paying the fees.

The waiver request can be granted by the clerk-magistrate, register or recorder. If the request is denied or if there are questions about whether you qualify, the request might be referred to a judge.

**D. How do I “serve” the complaint?**

Once you file your complaint or petition with the court, you must have a copy of it delivered to the other party in the manner required by the rules. You must also deliver a summons or citation, which you can get from the clerk-magistrate, register or recorder of the court. This is called “service of process” and is a crucial part of your case. There are several ways to do this. You must learn what rules apply to your case and then follow them.

After you have served the other party, you will need to file proof with the court that you have done so. This is referred to as “return of service.” Your local sheriff’s or constable’s office may be able to provide helpful information about how to serve your complaint or petition and summons.

**E. If I get served with a complaint, what do I do?**

- **Read the summons and the complaint or petition.** It is important to read both the summons (or citation) and the complaint (or petition) very carefully. The complaint or petition will tell you what claims are being made against you. The summons or citation will include important instructions on what steps you should take to defend yourself. Know the rules that apply to your case and follow them.
- **Write and file an answer.** The “answer” is your written response to the claims made against you. You must file an answer with the court that issued the summons or citation. If you fail to answer, you could lose the case without ever

having the opportunity to tell your side of the story. The summons or citation will provide you with information regarding where and when to file your answer.

- **Serve the other party with a copy of the answer.** You have to serve the other party with a copy of your answer. Consult the rules to find out how. The clerk's or register's or recorder's office might also be able to answer questions you have. The Trial Court law libraries are a source of information as well. Refer to *Appendix A*.

### **ALERT!**

Some defenses must be stated in the answer or you may lose your right to use them in court. These are called **affirmative defenses**.

Research the rules and law to find out if any of your defenses to the complaint are affirmative defenses that must be stated in your answer.

This is a critical step in the court process. The applicable laws and rules that apply are complex and will require your attention.

### **ALERT!**

Failure of a defendant to file an answer might result in the entry of a **default judgment**. A default judgment is when the judge grants the plaintiff's request and enters judgment in favor of the plaintiff without hearing from the defendant.

Failure of a plaintiff to actively pursue a case might result in **dismissal** of the case. A case can be dismissed by the court for a variety of reasons, including the failure of the plaintiff to meet court deadlines, orders, or applicable rules.

A dismissal **with prejudice** prevents the plaintiff in a civil case from bringing a new case on the same claim. A dismissal **without prejudice** disposes of the particular case before the court, but a new case may be brought in the future based on the same claim.