

WAUSHARA COUNTY SMALL CLAIMS RULES

I. These rules are made pursuant to Section 799.22(4) Wis. Stats.

II. **Effective date.** Effective November 1, 2005 and until further order of the Court, the following rules shall govern small claims proceedings in Waushara County, Wisconsin.

(a) **Pleadings.** All pleadings shall be in writing with complete itemizations, invoices/billings or creditor affidavits regarding the claim.

(1) If the defendant or the defendant's attorney appears in person on the return date, the court will permit an oral denial of the complaint. Such oral denial shall be followed by a written answer setting forth the basis for the denial within a time set by the court. Failure to timely submit a written answer may constitute a basis for the entry of default judgment. Default judgment may also be entered in the event the court determines that the answer filed by a defendant does not join issue with any material elements of the plaintiff's claim and the complaint adequately establishes the basis for the relief sought. No oral counterclaims, affirmative defenses or motions will be permitted. Answers by telephone will not be permitted. Answers by fax in accordance with the local Facsimile Transmission rule will be permitted.

(b) **Service of Summons.** Service of summons may be made by personal or substituted service as provided in 801.11 Wis. Stats. Except as hereafter provided, service may be made by certified mail, return receipt requested, providing that the fee prescribed by Sec. 814.62(4), Wis. Stats., is paid to the Clerk of Courts. Any summons for actions, **other than evictions or contempt proceedings**, shall contain notice to the defendant of the option to answer without

appearance in court on the return date and the methods of answering permitted by this rule.

Service of a summons in the following matters **shall** be by personal or substituted service as provided in Section 801.11, Wis. Stats.,

- (1) Eviction actions under Sec. 799.40 Stats.
- (2) Contempt proceedings under Sec. 799.26 Stats.

In eviction actions and contempt proceedings, parties and their attorneys, if any, must appear in person and be prepared to proceed with trial of the matter on the return date and time.

(c) **Filing Required Before Service.** Service of a summons and complaint before filing and authentication thereof is not authorized.

(d) **Personal Appearance.** Except for eviction actions or contempt proceedings, Plaintiff or plaintiff's attorney need not be present on the return date. Any defendant may answer without appearing on the return date by filing an answer in writing by mail or by delivery to the Clerk of Court. Such answer must be received and filed with the Clerk of Court no less than two (2) hours prior to the return date and time.

III. Contested cases will be set for pretrial conference and/or trial at the convenience of the court. The court may require pretrial statements, identification of witnesses, and submission of exhibits as may aid in the disposition of the matter.

IV. Default judgment will be granted if a defendant does not appear or file a written answer and the complaint contains adequate documentation for the relief sought. Otherwise, the default will be noted but judgment deferred until the factual basis for the judgment is supplied. Judgment on claims subject to the Wisconsin Consumer Act require complaints which comply with the requirements of 425.109(1)(d) and Household Finance v. Kohl, 179 Wis. 2nd 798 (Ct. App.1993). The complaint must set forth the figures for computing the amount owing.

V. Consolidated Creditor Actions – Specific Provisions.

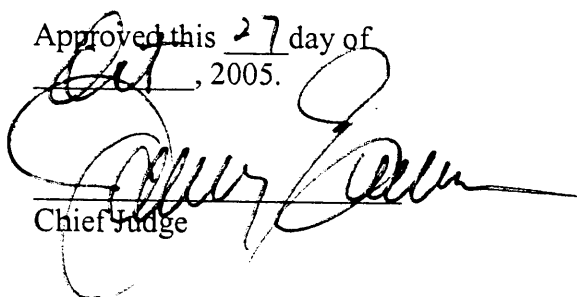
Sec. 218.04(9j), Wis. Stats. allows a licensed collection agency to initiate one consolidated action against a single debtor on behalf of multiple creditors. Such actions must be brought under a single complaint that includes the name of the attorney who has either drafted the document or has supervised its preparation. The complaint must include a complete itemization, invoices or billings or creditor's affidavit in support of each creditor's claim. The collection agency will not be permitted to appear in court on behalf of any creditor and is not allowed to have its name included within any pleadings.

Judgments entered upon Consolidated Creditor Actions will be entered separately as to each creditor that the court determines is entitled to recovery and each creditor shall be responsible for payment of an individual docketing fee when making a request to docket the judgment. Pursuant to Paulson vs. Allstate Ins. Co., 2002 WI App. 168,256 Wis. 2nd 892, 649 N.W.2nd 645, each prevailing creditor will be entitled to recover statutory attorney fees. Costs may only be taxed once by the entire class of creditors and will be awarded to the creditor whose name first appears on the caption to the complaint. The collection agency or attorney representing the class of creditors will then be required to apportion costs between each creditor. THE COURT IS NOT RESPONSIBLE FOR DETERMINING WHAT PORTIONS OF THE COSTS SHOULD BE AWARDED TO EACH CREDITOR.

VI. Copies of this Order shall be made available to litigants and their attorneys.

Dated and signed at Wautoma, Wisconsin, this 14th day of October, 2005.

Approved this 27 day of Oct, 2005.


Chief Judge

By the Court:


Guy D. Duder
Circuit Court Judge