

CONCILIATION COURT BASICS

CREATED AND PRESENTED BY
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MANAGER

VOLUNTEER LAWYERS NETWORK



TRAINING OUTLINE

1. LAP Clinic Overview
2. What Makes a Great Clinic Attorney?
3. Conciliation Court vs. District Court
4. Should a Client Sue?
5. Can a Client Sue?
6. Resources for Attorneys
7. Commonly Seen Issues
 - Ex. 1, Security Deposit Claim
 - Ex. 2, Wage Claim
 - Ex. 3, Consumer Debt Collection Claim
 - Ex. 4, Car Title Issues
8. Questions/Next Steps

TWO TYPES OF ADVICE CLINICS

Walk-in Clinic

- Hennepin County Government Center, self-help desk
- No income restrictions
- Attorneys have a few minutes to prepare
- Internet and printer access

Phone Advice

- Clients given 2-hour window to receive call, a week or more in advance
- Income restrictions apply
- Attorneys have a day or more to review client file



What Makes a
Great
Clinics Attorney?

TIME MANAGEMENT



- **Set expectations.** Make sure the client knows that you have a finite amount of time for him or her. Typically, attorneys & clients only meet for **15-20 minutes** if other clients are waiting to be called.
- Setting this from the start makes it easier to enforce.

BALANCE

- Balance **empathy** and letting the client tell the story with....
- **efficiency** and getting to the legal issue, which is the only issue that you can really help with.



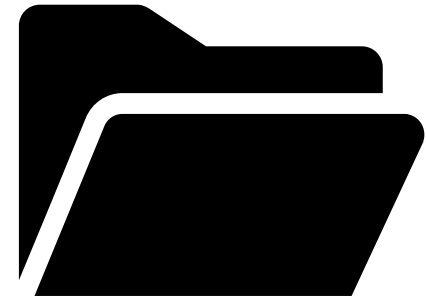
USING ONLINE RESOURCES



- Know and use available online resources regarding the law and referrals.
- Make *pro se* clients aware that there are several websites that provide legal forms and information.
 - ❑ www.LawHelpMN.org
 - ❑ www.mncourts.gov
 - ❑ www.projusticemn.org

TELLING VLN WHAT SERVICES YOU PROVIDED

- Please be sure to send VLN an e-mail with
 - what services you provided
 - how much time you spent working on the case
- VLN cannot credit you for your pro bono work or report the outcome of your services to our funders unless you tell us what you did and how much time you spent working on the case.



SAMPLE ADVISE REPORT: BAD

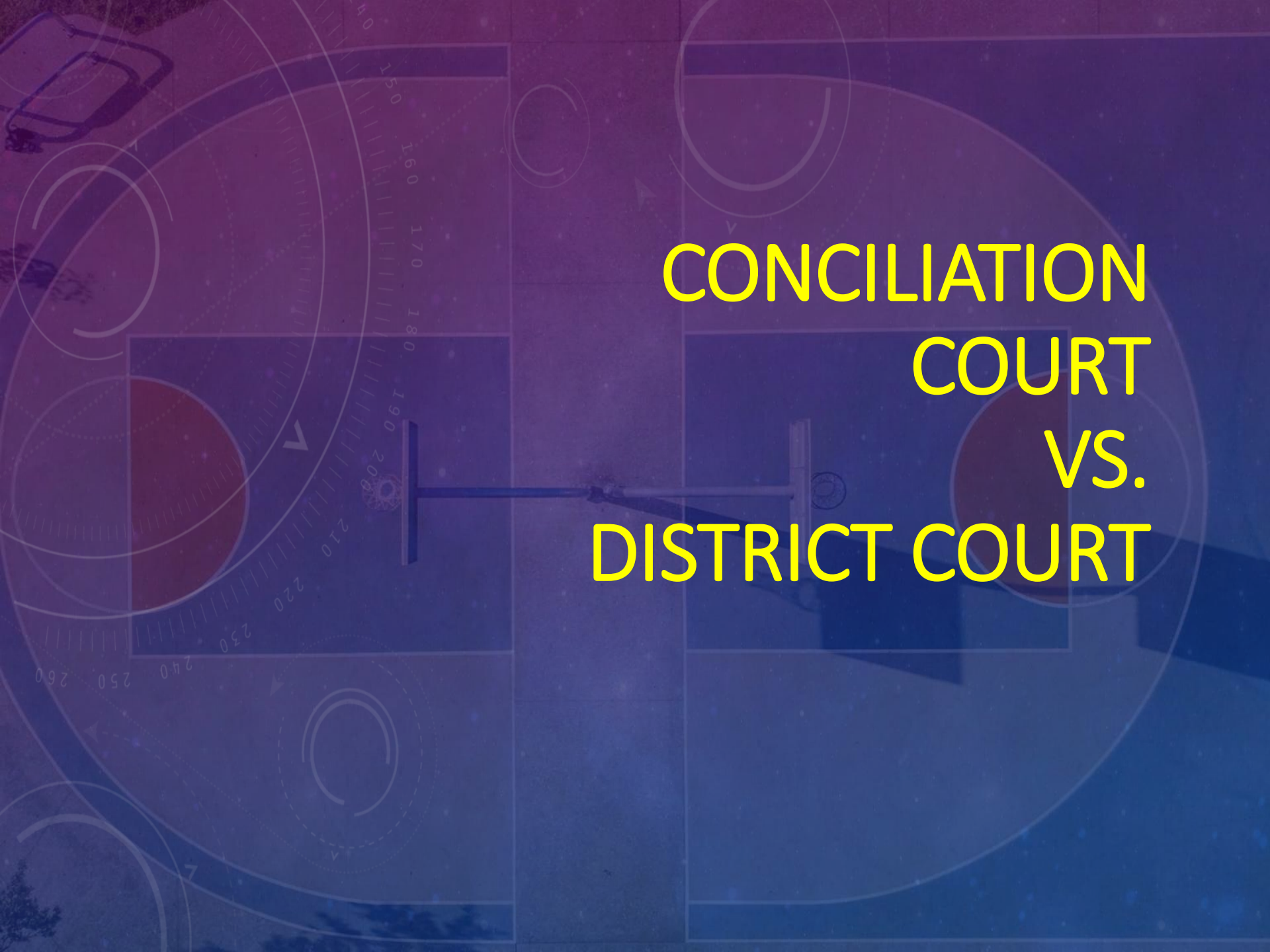
- "Talked to client about conciliation court process. 20 minutes."



SAMPLE ADVISE REPORT: GOOD

- "Spoke with client for 20 minutes. I reviewed facts with client. Oral agreement with ex on or about 9/15/24 for \$8000. I advised client on types of proof she might get (bank records, txt messages, etc). I talked through filing conciliation court case, emailed her the forms. I advised client about possible collectability problems. Ex is currently unemployed, may be judgment proof."



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**CONCILIATION
COURT
VS.
DISTRICT COURT**

CONCILIATION COURT VS. DISTRICT COURT:

Conciliation Court...

- is a court of limited jurisdiction (limited to claims of \$20,000)
- requires a \$70 filing fee.
- rules span two dozen pages in the *Minnesota Rules of Court*.
- the vast majority of parties are self represented.
- offers a forum where a *pro se* party can often prevail without investing a significant amount of time or money in the case.

District Court...

- is a court of general jurisdiction.
- requires a \$297 filing fee.
- rules span hundreds of pages in the *Minnesota Rules of Court*.
- judges expect *pro se* clients to comply with complex courts rules and meet deadlines imposed by the *Scheduling Order*.
- For a *pro se* party to prevail in litigation often requires a Herculean effort which most clients cannot afford to make, even if the filing fee is waived.

DIFFERENT SERVICE RULES

Conciliation Court...

- If a plaintiff is suing for **\$2,500 or less**, the court simply mails the defendant the Statement of Claim & Summons by first class mail.
 - no Affidavit of Service is required
- If a plaintiff is suing for **more than \$2,500**, the defendant must be either personally served or served via certified mail.
 - Affidavit of Service must be filed.

District Court...

- To start a lawsuit, the defendant usually must be personally served.
- A defendant can be served via first class mail only if the defendant consents to be served by mail by signing an *Acknowledgment of Service*.
- If the defendant can't be found, the defendant can be served via "Service By Publication" though rarely is this advisable in a clinic setting.

CONCILIATION COURT IS THE BEST PLACE FOR A *PRO SE* PARTY TO SUE

- Conciliation Court lawsuits don't involve much paperwork.
- Defendants who are sued don't need to serve an Answer. They just need to show up at the (usually Zoom) hearing in order to defend themselves.
- The lack of a written Answer may give Plaintiffs an inherent advantage.
- There is no discovery phase.

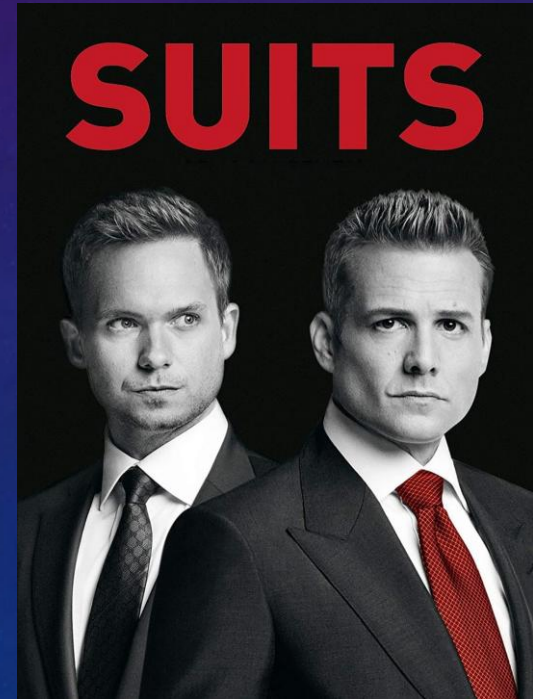


HOW DO I EXPLAIN THE DIFFERENCES BETWEEN CONCILIATION COURT AND DISTRICT COURT TO A CLIENT?

ANALOGIZE TO TV SHOWS!



Vs.



SHOULD A CLIENT SUE?



COLLECTABILITY IS QUESTION #1

- Assessing the likelihood that the opposing side can or will pay (i.e., has income or assets that can be garnished or levied) in order to satisfy the judgment, **should be the first step when deciding whether to sue.**



WINNING A JUDGMENT IS NOT THE SAME THING AS COLLECTING ON A JUDGMENT!

- Most clients do not understand that **the court is not a collection agency**, and the client alone is responsible for all aspects of collecting on the judgment.
- Many judgment creditors become angry when they finally realize that all of their efforts to win a judgment were for naught if the judgment debtor is judgment proof, goes bankrupt, or is a business or corporation that is inoperative.



SUING CAN TAKE A VERY LONG TIME!

- A Conciliation Court case filed today will not have a hearing for about 3 months.
- District Court lawsuits may go on for months or more than a year before a trial. Complying with a judge's Scheduling Order just to make it to a trial may be difficult.
- For example, on 03/27/2008, VLN helped a client file a Conciliation Court lawsuit for return of her \$300 security deposit
- After winning a judgment on 08/05/2008, the landlord appealed to District Court.
- Two years, much litigation and a court trial later, the District Court finally entered judgment in favor of the client on 08/06/2010.

CAN A CLIENT SUE IN CONCILIATION COURT?

SUBJECT MATTER JURISDICTION
& PERSONAL JURISDICTION

SEE [MINN. STAT. § 491A.01](#)

CONCILIATION COURT SUBJECT MATTER JURISDICTION:

CONCILIATION COURT IS A COURT OF LIMITED JURISDICTION AND CANNOT HEAR EVERY TYPE OF CLAIM.
SEE [MINN. STAT. § 491A.01](#)

Acceptable Claims:

- Defective goods sold or service provided
- Damage to property or vehicle
- Back rent owed
- Accident repair expenses not paid
- Bounced check
- Damage deposit not returned
- Wages not paid
- Return of property (Replevin)

Unacceptable Claims:

- Title to real estate
- Libel or slander
- Specific performance or injunction
- Class Actions
- Medical malpractice
- Discrimination claims
- Actions against deceased persons

GENERALLY, A CLAIM MUST BE FILED IN THE COUNTY WHERE THE DEFENDANT RESIDES.

Exceptions include:

- A claim for a **bad check** must be filed in the county where the check was tendered.
- A claim against **multiple defendants** can be filed in the county in which one or more of the defendants resides.
- Claims for **security deposits or rent** may be filed in the county in which the rental property is located.

THE \$20,000 QUESTION



- Conciliation Court can hear claims up to \$20,000. It can also order that personal property be returned.
- If a party's claim exceeds the maximum of \$20,000, the party must state on the claim that he or she is asking for the lower amount for the court to have jurisdiction.
- A party can also include the \$70 cost of the filing fee in the claim, so technically the largest judgment that someone can win in Conciliation Court is \$20,070.

WHAT'S THE #1 MISTAKE IN CONCILIATION COURT CLAIMS?

Botching the
Defendant's
name!

- Must have the **correct address of the defendant.**
- Without an address, there is almost always **no point** in continuing the suit. Most clients don't have what it takes to effect service by publication.
- Has the **correct name of an individual defendant.** Don't sue "Jim Smith" when you can sue "James Robert Smith."

IMPROPERLY NAMING A CORPORATE DEFENDANT CAN LEAD TO AN UNCOLLECTIBLE JUDGMENT!

- If the Plaintiff sued and won a judgment against “ACME” and the corporation’s actual name was “ACME Associates III, LLC” any effort to serve a garnishment summons upon “ACME” will not impound the accounts owned by “ACME Associates III, LLC” and all of the company’s real property and other assets will be held in the company’s actual legal name.
- Always check for the full legal name of a company by searching the Minnesota Secretary of State’s website at: <http://mblsportal.sos.state.mn.us/>



Resources for Attorneys





SUBSTANTIVE LAW RESOURCES

- Housing Law Issues
- Car Title Transfer
- Wage Claim
- Debt Collection / Wage Garnishment
- **VLN Staff Attorney available at Court Clinic or by phone**



Commonly Seen Legal Issues



EXAMPLE CASE 1: SECURITY DEPOSIT

TAMMY THE FORMER TENANT

- Tammy moved out of her apartment after her lease expired. The landlord sent her a letter stating that all of Tammy's \$600 security deposit (plus \$6 in interest) will be kept by the landlord to pay for damage to her apartment, and says she still owes more money for the damage.
- Tammy denies causing damage and wants to sue in Conciliation Court the **property manager** for **return of her deposit**, for **defamation of character**, and for **pain and suffering**.
- What advice to give to this client?

ADVICE OUTSIDE OF SUBSTANTIVE LAW

(what you should say without knowing anything about housing law)

- Sue proper party (building owner, not property manager)
- Conciliation Court cannot hear claims for slander or libel
- Pain and suffering claims will not prevail
- The Conciliation Court does have jurisdiction to decide the security deposit claim, and it appears to be well within the \$ limit
- Suing the landlord may open Tammy up to a counterclaim
- Getting \$ through court **takes time**

NO EXTRA-CONTRACTUAL DAMAGES IN CONTRACT CASES!

- In the absence of specific statutory provisions, extra-contractual damages, such as emotional distress, are not recoverable for breach of contract except in exceptional cases where the breach is accompanied by an independent tort.
 - *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 561 (Minn. 1996); *Haagenson v. National Farmers Union Property & Cas. Co.*, 277 N.W.2d 648, 652 (Minn. 1979); *Olson v. Rugloski*, 277 N.W.2d 385, 388 (Minn. 1979); *Wild v. Rarig*, 302 Minn. 419, 440, 234 N.W.2d 775, 789 (1975); see William Lloyd Prosser, *The Borderland of Tort and Contract, in Selected Topics On the Law of Torts* 380, 426 (1953) (noting in contract actions, there is no recovery for mental suffering). The accompanying independent tort must be willful and support the extra-contractual damages in its own right. *Lickteig*, 556 N.W.2d at 561.
- A malicious motive in breaking a contract will not convert a contract action into a tort action.
 - *Id.*; see *Wild*, 302 Minn. at 442, 234 N.W.2d at 790 (concluding bad faith breach of contract does not become tort).

MINN. STAT. § 504B.178

INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES; LIMIT ON WITHHOLDING LAST MONTH'S RENT

Subd. 3. Return of Security Deposit.

Every landlord shall within three weeks after termination of the tenancy and after receipt of the tenant's mailing address or delivery instructions, **return the deposit** to the tenant, with interest thereon or **furnish to the tenant a written statement showing the specific reason for the withholding** of the deposit or any portion thereof.

Subd. 4. Damages.

Any landlord who fails to provide a written statement within three weeks of termination of the tenancy after receipt of the tenant's mailing address or delivery instructions **is liable to the tenant for damages in an amount equal to the portion of the deposit withheld** by the landlord and interest thereon as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Subd. 7. Bad Faith Retention.

The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to **punitive damages not to exceed \$500** for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

HOW MUCH IS TAMMY'S CLAIM?

\$600 security deposit

+ \$6 interest

+ \$606 in statutory damages pursuant to Minn. Stat. § 504B.178, subd. 4

+ \$500 in statutory punitive damages pursuant to Minn. Stat. § 504B.178, subd. 7

+ \$70 Conciliation Court filing fee

= \$1,782 Claim



EXAMPLE CASE 2: WAGE CLAIM

SAMMY THE SERVER

- Sammy is college student. Sammy has worked at Danny Deadbeat's Diner since it opened six months ago. Sammy gets paid weekly, but their hours and income vary from week-to-week depending on the amount of business. Sammy also makes tips.
- Danny Deadbeat's Diner is an assumed name, and the name-holder and owner of the business is an entity called Deadbeat Eats, LLC.
- Unfortunately, Sammy hasn't gotten a paycheck in the three weeks, and Danny told the whole staff that the restaurant is closing after this weekend. Business has been terrible lately.
- Danny did not say when employees will be paid so Sammy walked out on their shift and sent Danny a text message saying Sammy won't work the weekend and needs to be paid immediately because their rent is due in a few days.

WILL SUING HELP SAMMY MAKE THE RENT DUE IN A FEW DAYS?

- No, if Sammy filed a lawsuit today it would likely take 10-12 weeks just to get a hearing.
- What other options to pay the rent might Sammy consider?
 - Applying for unemployment benefits?
 - Finding a new job?
 - Applying for emergency assistance?
 - Borrowing money from family & friends?
 - Illegal Self-Help? – Sometimes clients suggest taking illegal self-help remedies after learning about the difficulties associated with suing and collecting. **Advise against this!**



WILL SUING GET SAMMY THEIR MONEY BACK IN THE LONG-TERM?

- Maybe, maybe not.
- If Deadbeat Eats, LLC **cease to operate** and no longer has any income or assets, any judgment will be unenforceable.
- Deadbeat Eats, LLC may also **file for bankruptcy**. Sammy should consult a bankruptcy attorney regarding submitting a proof of claim in any bankruptcy proceeding. VLN has a bankruptcy clinic that can help with this.

WHEN SHOULD BE PAID FORMER EMPLOYEE BE PAID? IT DEPENDS.

- If the client was **fired or laid-off**, Minnesota law requires that they are **paid within 24 hours** after requesting payment.
- If the client **quit or resigned**, they must be paid on or **by the next regular payday** unless it is less than 5 days away. Then the employer can wait until the second payday. **The client must be paid within 20 days of their last day.**



- www.lawhelpMN.org has information that answers most of client's basic questions regarding wage claims.

WAGE CLAIMS

- Minn. Stat. § 181.14 **PAYMENT TO EMPLOYEES WHO QUIT OR RESIGN; SETTLEMENT OF DISPUTES.**
- **Subd. 2. Nonprompt payment.**
- Wages or commissions not paid within the required time period shall become immediately payable upon the demand of the employee. If the employee's earned wages or commissions are not paid within 24 hours after the demand, **the employer shall be liable to the employee for a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for every day, not exceeding 15 days in all,** until such payment or other settlement satisfactory to the employee is made. The employer shall also be liable to the employee for the amount of wages and commissions that are earned and unpaid. An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions. An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other remedies related thereto as provided in this section.

WHAT ARE SAMMY'S "AVERAGE DAILY EARNINGS"?

- From a practical standpoint, since Sammy's hours vary significantly from day-to-day and week-to-week given the changing schedule of her serving job, they are in a much better position to figure out what she is owed than any volunteer attorney. There is often not enough time at the clinic to help clients calculate their average daily earnings.



WHO TO NAME AS DEFENDANT?

“Danny Deadbeat’s Diner”

- This is **nothing more than the name painted on the sign** outside of the restaurant that Sammy works at. Should they sue “Danny Deadbeat’s Diner”?
- Danny Deadbeat is such an ego-maniac that he just had to include his own name on the sign in bright flashing lights. Can Sammy sue Danny as an individual?

“Deadbeat Eats, LLC”

- This is a **limited liability company** that is registered with the Minnesota Secretary of State. However, the registered address of the LLC is a different address than the restaurant. Is this important?
- The LLC is the entity that issued Sammy pay-checks when they were actually getting paid. There’s no employee handbook.



EXAMPLE CASE 3: CONSUMER DEBT

Welcome to the Wild West of Debt Collection!

DANTE THE DEBTOR

- Dante received a letter in the mail from a law firm, claiming he owes \$5,000 from a company **he's never heard of**. It says he has 21 days to respond, or a default judgment will be entered
- The papers looks official, but there is no court file number, and looking at online filings, there is no case filed with the court
- Is this a **scam**? Should it be **ignored** until something is actually filed?

WHAT IS POCKET FILING?



MINNESOTA'S UNIQUE COURT RULES & GARNISHMENT STATUTES

- In Minnesota, original creditors and debt purchasers may commence district court lawsuits without filing them (see MINN. R. CIV. PRO. 3.01), garnish bank accounts and wages without paying a filing fee (see MINN. STAT. § 571.71), and obtain default judgments without producing evidence to substantiate their claims (see MINN. R. CIV. PRO. 55.01(a)).
- Minnesota is one of only three states that does not require a plaintiff to file a lawsuit. This is often referred to as “pocket filing” or “pocket service.”

CONSUMER CREDIT CONTRACT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

[REDACTED]

Plaintiff,

vs.

[REDACTED]

Defendant(s).

SUMMONS

Court File No.

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANT(S):

1. **You are being sued.** The Plaintiff has started a lawsuit against you. The *Complaint* is attached to this *Summons*. Do not throw these papers away. They are official papers that start a lawsuit and affect your legal rights, even if nothing has been filed with the court and even if there is no court file number on this *Summons*.

2. **You must BOTH reply, in writing, AND get a copy of your reply to the person/business who is suing you within 21 days to protect your rights.** Your reply is called an *Answer*. Getting your reply to the Plaintiff is called service. You must serve a copy of your *Answer or Answer and Counterclaim* (Answer) within 21 days from the date you received the *Summons* and *Complaint*.

ANSWER: You can find the *Answer* form and instructions on the MN Judicial Branch website at www.mncourts.gov/forms under the "Civil" category. The instructions will explain in detail how to fill out the *Answer* form.



MINNESOTA'S UNIQUE COURT RULES & GARNISHMENT STATUTES

- Since a plaintiff can start a lawsuit in Minnesota without paying a filing fee and win a judgment without appearing at any hearing, it's often quicker and easier to win a default judgment in a **District Court** lawsuit than in a Conciliation Court lawsuit.
- Most District Court default judgments are entered and docketed administratively by the Court Administrator with **little to no judicial oversight**.

TO ANSWER,
OR NOT TO
ANSWER



THERE'S NO POINT IN FIGHTING A LOSING BATTLE

- It may be cheaper and easier for a client without any defenses to a collections lawsuit to lose by default judgment at the beginning of a lawsuit rather than months later on summary judgment.
- Nearly all credit card contracts have attorneys' fees provision requiring the debtor to pay in the event of default followed by collection litigation.



BAD DEFENSES

- Client admits they owe money, but the amount listed is wrong
- Client has not heard of Plaintiff / debt buyer

THE BEST AFFIRMATIVE DEFENSES IN DEBT BUYERS CASES....

Lack of Standing

- Plaintiff lacks standing

Mistaken Identity

- If you client has a common name

Invalid Assignment

- Plaintiff's claims, may be barred, in whole or in part, by an invalid assignment of the account that is the subject matter of this suit, and Defendant does not consent to or ratify any assignment of Defendant's account.



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EXAMPLE CASE 4: CAR TITLE TRANSFER




KEISHA AND THE CAR SALE

- Keisha sold her car to her cousin's friend, Deshawn. Deshawn paid in cash and she handed over the title to him. She dutifully submitted notice of sale to DVM
- A few months later, she's received several parking tickets in the mail. She tried to reach out to Deshawn but he's blocked her number.
- How did this happen? How can she get the car out of her name? **Is Keisha responsible for these tickets?**



HOW CAR TITLE TRANSFER WORKS

MINN. STAT. § 168A.10

- At time of sale, Seller executes an "Assignment of Title" to the buyer 
- Within 10 days of sale, Seller must submit "Notice of Sale" certificate to DVS 
- Within 10 days of sale, Buyer must execute an "Application for a New Certificate of Title" and deliver to DVS 

Ideally, this all occurs at the same time, at the time of sale, at a DVS facility!

IS KEISHA RESPONSIBLE FOR THE PAYMENTS?

No!

Minn. Stat. § 168.10 Subd. 5. Compliance removes liability after delivery

Except as provided in section 168A.11 and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with; however, **an owner who has delivered possession of the vehicle to the transferee and has complied, or within 48 hours after such delivery does comply, with the provisions of this section requiring action by the owner is not liable as owner for any damages resulting from operation of the vehicle after the delivery of the vehicle to the transferee.** An owner is not liable who has complied with the provisions of this section except for completing and returning the Notice of Sale or transmitting the required information electronically under subdivision 1

HOW TO FORCE TITLE TRANSFER

- File Notice of Motion and Motion for Order Directing Change of Title to a Motor Vehicle
 - Form for buyer available on court website
 - Forms for seller available from VLN
- Commissioner of DVS is one of the defendants





QUESTIONS?

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THANK YOU!

PLEASE DON'T HESITATE TO CONTACT ME!

SEBASTIAN ELLEFSON

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