

A WALK THROUGH YUKON'S SMALL CLAIMS COURT

Booklet#3: You Are Being Sued – What To Do

PRODUCED BY:

YUKON DEPARTMENT OF JUSTICE

REPLYING TO A CLAIM IF YOU ARE SUED:

What should I do if I do not agree with the plaintiff's claim?

You should complete the Reply (Form #7) which was served on you with the claim. How you complete the form will depend on the kind of reply you want to make.

- 1) *If you think you do not owe any money at all:*
Mark the part of the reply which states that you disagree with the claim. Give details of the reason for your reply in the space provided. Be sure to include your current address and phone number. Attach a copy of any documents you that will support your reply.

- 2) If you agree that you owe some money, but not the entire amount claimed by the plaintiff: Mark the part of Form #7 that states that you admit responsibility for a set dollar amount, and fill in the blank with the amount that you agree that you owe. Explain why you disagree with the remaining amount of the plaintiff's claim. As in #11 (above), provide your current address and phone number, and keep your reply brief. Attach a copy of supporting documents.

If you are able to pay the amount that you agree you owe, make your payment to the plaintiff or to the Small Claims Clerk. Get a receipt from the plaintiff if you make a direct payment. If you cannot pay right away, see the instructions below.

What should I do if I agree that I owe all the money?

Fill out the section of Form #7 which states that you do not dispute the plaintiff's claim. You can pay the amount owed to the plaintiff or to the Small Claims Clerk. (See the second part of this handout, Making Payment on a Claim.)

What should I do if I can't make a full or partial payment right away?

If you cannot pay right away, contact the clerk to arrange a mediation session with the plaintiff to work out a payment schedule. If mediation does not work, contact the clerk to set up a pre-trial conference. (See Booklet #4, Mediation and Pre-trial Conferences.)

What should I do if I have insurance?

Send or bring a copy of the claim and the blank Form #7 to your insurer as soon as possible. If you are covered by your insurance policy, your insurer will take over the case for you. You must cooperate with your insurer, this can include going to court as a witness when you are asked to do so.

If your insurer says that you are not covered and you disagree, you should file a Third Party Claim (Form #8) in court, and arrange to serve it on the insurer. You will have to

file the original #8 as well as two copies to it for the insurer and one copy for the plaintiff and for each other defendant (if any). (See Booklet #2, How to Start a Small Claim.)

How should I reply if I think that somebody else owes the plaintiff money?

You can file a third party claim. Refer to the information on how to file a claim against an insurer. If you are claiming against more than one third party, you must file the third party claim, as well as two copies of the third party claim for each third party and one copy for the plaintiff and each other defendant. Once the clerk has dated and 'issued' the claim, your copies will be returned to you. You can then serve the plaintiff and other defendants (if any) with a copy of the third party claim and any supporting documents. You will also need one extra copy of each claim served on each party to use with an affidavit or certificate to prove service. (See Booklet #2 for details on how to serve a claim and how to prove service.)

What should I do if I think that the plaintiff owes me money?

If you wish to claim that the plaintiff owes you money, you must complete Form #7. You should show on the form that you wish to make a "counterclaim" against the plaintiff. If you believe that you owe the plaintiff a smaller amount after you deduct the amount that you believe the plaintiff owes you, show that amount on the reply. You should give brief details of your claim against the plaintiff. Attach a copy of any supporting documents to your reply. A counterclaim can usually be dealt with in court at the same time as the trial of the plaintiff's claim.

How do I file my reply in court?

You must bring your reply or send it by mail to the clerk within 20 days of the date you are served with the claim if you are served in the Yukon, or within 30 days if you are served outside the Yukon. Be sure to enclose a reply fee of \$25. You must also provide one copy of the reply and of any supporting documents for each of the other parties involved.

The clerk will file the original reply and will stamp and return the copies to you. You should also keep a copy of the reply and the original of any supporting documents. You may need to produce the documents as exhibits in court if the case goes to trial.

What do I do once the clerk returns my copies?

You must mail a copy of the filed reply to the plaintiff and to any other party. Other parties could include partners or a third party who has been served with your third party claim.

What happens after I send my reply to the other party or parties?

If you are disputing the claim and the plaintiff feels that mediation may help settle the matter, the plaintiff will contact you to ask if you will agree to mediation. If the plaintiff does not want mediation, the clerk will contact you to make arrangements for a pre-trial conference. (See Booklet #4, Mediation and Pre-Trial Conferences)

If you agree to pay the claim, read the section called Making Payment on a Claim.

How much does it cost to file a reply?

If you disagree with or are paying only part of the plaintiff's claim, it costs \$25 to file a reply. There is no charge if you are paying the entire amount of the claim and the plaintiff's costs.

What happens if I don't file a reply?

If you do not reply to the claim, the plaintiff can request that the clerk issue a "default judgement", which automatically finds that you owe the money. This judgement is a court order requiring you to pay the amount claimed. It can be enforced in the way as any other judgement of the court. (See Booklet #6, Judgements and How to Collect a Small Claim.)

What should I do if I am late filling in my reply?

If you do not file your reply on time and a default judgement is entered against you, you can apply to the court to have the judgement set aside if you can show that you have a good reason. You should speak to the clerk about the procedure for setting aside judgements. You may also want legal advice on this matter.

MAKING A PAYMENT ON A CLAIM:

How do I make a payment on a claim?

You can make a payment on a claim by paying the plaintiff directly, or by paying the money into court. If the judge orders payment to some other party, you should pay the person indicated in the judgment.

What should I do if I pay the plaintiff directly?

You should be sure to get the plaintiff to sign a written release. A release sets out the amount of money paid, the reason for the payment, and a statement that the plaintiff has no further claim against you in the matter, which is the subject of the claim. It should be

signed and dated by the plaintiff and a witness. If you have any questions as to whether the release would stand up under the law, you should seek legal advice.

Once the plaintiff has the release, you should give a copy of it to the Small Claims Clerk so that the file can be closed.

Do I have to pay the plaintiff's costs and fees if I make a direct payment to the Plaintiff?

Whether you pay the plaintiff or the clerk, you must pay the costs of any filing fees and service fees, and any court costs that the plaintiff has already paid or was awarded by the court. If the plaintiff already has a judgement against you, you will also have to pay interest awarded to the plaintiff. The claim file will not be closed until these payments have been made, unless the Plaintiff files a Notice of Withdrawal (Form #14). The Plaintiff can start collection action against you if you fail to pay these amounts.

What should I do if the plaintiff agrees to settle for less than the amount of the claim?

If the plaintiff agrees to accept a payment that is less than the amount set out in the claim, obtain a written release from the plaintiff and have the plaintiff contact the clerk to sign a Notice of Withdrawal.

What happens if I pay the Small Claims Clerk?

The clerk will issue you a receipt and will close the file if the payment is for the full amount of the claim. The plaintiff's payment will be paid out of the courts' trust account. As with direct payments, if you do not pay the full amount of the claim, the file will remain open and the plaintiff can take collection action to recover the unpaid amount.

How will making a partial payment to either the plaintiff or the clerk affect the claim against me?

A partial payment will reduce the total amount that you must pay, but the plaintiff will still have a claim against you and can take any action necessary to recover the debt.

If I am unable to pay all the debt at once, may I arrange a payment schedule?

You may arrange to pay the debt in instalment if the plaintiff agrees to the payment schedule. If the claim has not yet gone to court, talk to the clerk about setting up a session with a mediator and the plaintiff to arrange terms of payment. If the plaintiff agrees to mediation and the mediation results in a payment agreement, both parties will

be asked to sign a “Consent Judgement”. The mediator will then take the consent judgement and file it in court.

As long as you make payments by the dates set out in the agreement, the plaintiff cannot take further action against you. If you miss a payment, the plaintiff is entitled to proceed against you. This action can take the form of collection action or, if the plaintiff cannot find any other income or assets to collect against, by requesting a hearing before a judge to ask questions about your financial situation. (See Booklet #6, Judgements and How to Collect a Small Claim.)